

REPORTER'S RECORD  
VOLUME 4 OF 6 VOLUMES  
TRIAL COURT CAUSE NO. 0836979A and 0836985A

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	TARRANT COUNTY, TEXAS
BARTON R. GAINES	X	213TH JUDICIAL DISTRICT

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TRIAL ON THE MERITS AND PUNISHMENT PHASE CONTINUED

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On December 11, 2002, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Robert K. Gill, Judge presiding, held in Fort Worth, Tarrant County, Texas.

Proceedings reported by computerized stenotype machine.

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## REPORTER'S RECORD

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VS. X TARRANT COUNTY, TEXAS

BARTON RAY GAINES X 213TH JUDICIAL DISTRICT

TRIAL ON THE MERITS AND PUNISHMENT PHASE CONTINUED

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Proceedings reported by computerized stenotype Machine; Reporter's Record produced by Computer-Assisted Transcription.

STEVE SCHILLER, Texas CSR No. 4665  
Official Court Reporter  
213th Judicial District Court  
Tarrant County, Texas

## PROCEEDINGS

(December 11, 2002)

(Morning Session: )

THE COURT: Anything we need to do before we bring the jury out?

MS. HARTMANN: Your Honor, on behalf of the State, the Defense has subpoenaed a fair number of records from various doctors and agencies, and I have agreed to waive the 13-day filing notice.

However, I would like an opportunity to be able to review these records and lodge relevancy objections prior to them being marked, introduced or attempted to be introduced in front of the jury. At that point it might appear that we are trying to hide something. They were just handed to us this morning. We're ready to go forward with Defense witnesses as long as we have an adequate time before production of any records for us to review them.

MR. WESTFALL: Nothing from the Defense, Your Honor.

THE COURT: Do we have witnesses to go forward with while those are being reviewed?

MR. WESTFALL: Yes, I do.

THE COURT: If you have a number of witnesses, I will swear them in all at once.

Are both sides ready for the jury?

MS. HARTMANN: State's ready, Your Honor.

Defense is ready, Your Honor.

(Jury present)

THE COURT: Good morning, ladies and gentlemen. If you are going to testify, please raise your right hand.

(Witnesses sworn)

THE COURT: Give your name for the record.

THE WITNESS: Melissa Adams.

THE WITNESS: Tiffany Phillips.

THE WITNESS: Paula Thomas.

THE WITNESS: William Gordon.

THE COURT: Who is your first witness?

MR. WESTFALL: William Gordon, Your Honor.

THE COURT: Mr. Gordon, please come up to the witness stand. Everyone else, please retire out to the hallway.

Whereupon,

WILLIAM GORDON,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WESTFALL:

Q. Mr. Gordon, would you please state your full name for the record.

A. William D. Gordon.

Q. What do you do for a living, Mr. Gordon?

A. I'm the president of Fort Worth City Credit Union.

Q. In that capacity, have I subpoenaed you to bring certain records here to court?

A. Yes.

Q. What were the records I asked you to bring?

A. You requested copies of all checks written on a specific account.

Q. Who is the name on that specific account?

A. Barton Ray Gaines.

Q. And what you have brought today, copies of these checks, do they constitute records that your bank keeps?

A. It is a credit union, but yes, sir.

Q. Okay. That your credit union keeps. And those records, the notations in the records and on the records, are those made at or near the time that the events actually occurred, meaning the checks that are written, the notations that your institution puts on them, are they put on them at the time?

A. These are all done when the checks clear.

Q. The information is put on them by members of your institution, is that information that's put on them -- and information that's put on them by others who

1 deal with them, is that information that is made by people  
2 who at the time have knowledge of what they are doing?  
3 A. Yes. Some information was put on by the party  
4 that received the check, some was put on by the bank where  
5 the check was deposited and some was put on when we post  
6 the check and debit the account.

7 Q. These copies of checks that you brought, are  
8 these records that your institution keeps in the ordinary  
9 course of its business?

10 A. Yes.

11 Q. Is it a regular practice of your institution to  
12 keep records such as the ones you have brought today?

13 A. Yes.

14 MR. WESTFALL: May I approach the witness,  
15 Your Honor?

16 Q. (BY MR. WESTFALL) As president of the Fort  
17 Worth Credit Union, are you the custodian of these  
18 records, the ultimate custodian?

19 A. Yes.

20 MR. WESTFALL: Your Honor, the checks that  
21 I have asked him to bring are marked for identification as  
22 Defendant's No. 18. I request their conditional admission  
23 subject to being tied up through later testimony.

24 MS. HARTMANN: The State would have an  
25 objection as to the relevancy.

How nice it would have been to read what  
they discussed.

1 May I approach the bench?

2 THE COURT: You may.

3 I am going to conditionally admit

4 Defendant's Exhibit 18 subject to relevancy being shown.

5 MR. WESTFALL: Thank you, Your Honor. I'd  
6 pass the witness.

7 CROSS-EXAMINATION

8 BY MS. HARTMANN:

9 Q. Mr. Gordon, I just have a few questions for you,  
10 sir. You're able to tell the jury that the -- I guess the  
11 markings put on by your credit union, those markings you  
12 can vouch for?

13 A. Yes.

14 Q. The accuracy of? such as the date, e.g., 2/23/02,  
maybe

15 A. Yes.

16 Q. However, any extraneous writing such as writing  
17 put on there by the person who actually wrote the check or  
18 writing put on there by the person receiving the check,  
19 you can't vouch for the accuracy of any of that?

20 A. No. Other than the fact that the checks did  
21 clear.

22 Q. Okay. Were you asked to bring a signature card  
23 for that account?

24 A. No, I was not.

25 Q. Is there a signature card for this particular

1 account? She wants to be damn sure I wrote  
2 A. Yes. what she perceived coming down the river.

3 Q. Would you be able to provide that to us?

4 A. Yes.

5 Q. Thank you, sir. I have no more questions.

6 MR. WESTFALL: I have nothing further, Your  
7 Honor. Ask that he be excused.

8 THE COURT: I think he was asked to provide  
9 some other information.

10 MS. HARTMANN: We'd just ask that the  
11 signature card, a copy of it, be provided.

12 THE WITNESS: Okay.

13 MR. WESTFALL: Your Honor, we call Ms.  
14 Missy Adams.

15 Whereupon,

16 MISSY ADAMS,  
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WESTFALL:

20 Q. Missy, would you please state your full name for  
21 the record.

22 A. Melissa Adams.

23 Q. Tell us a little bit about yourself.

24 Where were you born?

25 A. I was born in Fort Worth, Texas.

1 Q. What year?

2 A. 1966.

3 Q. 1966?

4 A. (Witness nods head)

5 Q. And who were your parents -- who are your  
6 parents or were your parents?

7 A. Gail Ingram and Dub Meador was my stepfather who  
8 adopted me.

9 Q. Was your last name ever Meador?

10 A. Uh-huh, yes, sir.

11 Q. Where did you grow up?

12 A. Mostly in Benbrook, Texas.

13 Q. Did you live in a house?

14 A. Uh-huh, yes, sir.

15 Q. What did your stepfather Dub Meador do?

16 MS. HARTMANN: objection to relevancy.

17 THE COURT: Sustained.

18 Q. (BY MR. WESTFALL) Just briefly tell me about  
19 your parents.

20 MS. HARTMANN: objection to relevancy.

21 THE COURT: Overruled.

22 THE WITNESS: My mother always worked in an  
23 office. My stepfather was a policeman.

24 Q. (BY MR. WESTFALL) And you actually moved out of  
25 the house when you were quite young?

1 A. Yes, sir.  
 2 Q. How old were you?  
 3 A. 14.  
 4 Q. And about that time did you meet Bart's father,  
 5 Barton Ray Gaines, Sr.?  
 6 A. I knew Bart's father when I was about 12 years  
 7 old or 13.  
 8 Q. And when you were 14, you moved out of the  
 9 house?  
 10 A. Yes, sir.  
 11 Q. Did you move in with Bart's father?  
 12 A. Uh-huh, yes, sir.  
 13 Q. I'll show you what's been marked for  
 14 identification as Defendant's Exhibit 1. Is that Bart's  
 15 father?  
 16 A. Yes.  
 17 Q. Is that an accurate picture of him?  
 18 A. It was actually taken right before he died. He  
 19 hadn't seen the proofs.  
 20 MR. WESTFALL: Move for admission of  
 21 Defendant's 1.  
 22 MS. HARTMANN: No objection.  
 23 THE COURT: 1 is admitted.  
 24 (Defendant's Exhibit No. 1 received)  
 25 Q. (BY MR. WESTFALL) Now, this is Barton Ray

1 Gaines, Sr.?  
 2 A. Yes, sir.  
 3 Q. Tell me about him.  
 4 MS. HARTMANN: Your Honor, I object to  
 5 relevancy at this point.  
 6 THE COURT: Focus the question, Counsel.  
 7 MR. WESTFALL: Okay.  
 8 Q. (BY MR. WESTFALL) Just very briefly -- well,  
 9 let me ask you this first. How long after you were 14 and  
 10 moved in with Mr. Gaines, Sr. were you and he married?  
 11 A. Probably within like four or five months.  
 12 Q. So you would have been 14 or 15?  
 13 A. I was still 14.  
 14 Q. How long after that was Bart born?  
 15 A. I was 14 -- he wasn't born until '82. It was  
 16 like two years later.  
 17 Q. So you were 16?  
 18 A. Uh-huh, yes, sir.  
 19 Q. How old was Bart when he was killed?  
 20 A. 21.  
 21 Q. How old was Bart when Bart, Sr. was killed --  
 22 Bart, Jr. when Bart, Sr. was killed?  
 23 A. Two.  
 24 Q. In those two years of Bart's life before his  
 25 father was killed, what was your relationship like with

1 Bart, Sr.?  
 2 A. It was very abusive and he didn't have a lot to  
 3 do with Bart. He just didn't believe that Bart was his,  
 4 and there were times that he would beat on me and Bart  
 5 would be covered with blood.  
 6 Q. How long did you actually live under the same  
 7 roof with Bart, Sr. after Bart was born?  
 8 A. I only stayed there about six weeks after he was  
 9 born.  
 10 Q. And --  
 11 A. It was December.  
 12 Q. It was December?  
 13 A. He was born October 25 and I stayed until  
 14 December.  
 15 Q. He was born October 25, 1982?  
 16 A. Uh-huh.  
 17 Q. And after you-all separated, you say he didn't  
 18 have much to do with Bart?  
 19 A. No. I can only remember one time that he came  
 20 and picked him up --  
 21 MS. HARTMANN: Objection to nonresponsive.  
 22 THE COURT: Sustained.  
 23 Q. (BY MR. WESTFALL) Can you remember any  
 24 particular contact that he had with Bart?  
 25 A. I can remember one time that he picked him up to

1 visit with him and he brought him back and he -- beer cans  
 2 fell out all over my parents' driveway and he didn't have  
 3 him in a car seat. So we went back to court so we could  
 4 have supervised visits.  
 5 Q. How old was Bart when he was killed -- how old  
 6 was Bart, Jr. when Bart, Sr. was killed?  
 7 A. He had turned two like two weeks before he died.  
 8 Q. How was Bart, Sr. killed?  
 9 A. On a motorcycle accident.  
 10 Q. Prior to Bart, Sr. being killed, had you begun  
 11 dating another man?  
 12 A. Yes, sir.  
 13 Q. What was his name?  
 14 A. Robert Hampton.  
 15 Q. At this time how old are you?  
 16 A. I was about 18.  
 17 Q. Did you marry Robert Hampton?  
 18 A. Yes, sir.  
 19 Q. Tell me about Robert Hampton.  
 20 MS. HARTMANN: Your Honor, objection to the  
 21 relevancy.  
 22 THE COURT: Sustained.  
 23 Q. (BY MR. WESTFALL) Was Bart with you when you  
 24 were married to Robert Hampton?  
 25 A. Yes, sir.

1 Q. Tell me about Robert Hampton as Bart would have  
2 known him. What was y'all's family like?

3 A. He was really a nice man. He was good to Bart.  
4 But the marriage was short because I think I married him  
5 because I didn't want to go to my parents' house. I had  
6 moved back home --

7 MS. HARTMANN: Excuse me. Objection,  
8 nonresponsive.

9 THE COURT: Sustained.

10 Q. (BY MR. WESTFALL) At about this time when you  
11 are 18, you are on your second marriage and you and Bart  
12 and Robert Hampton are together. What is an average day  
13 like? What do you do for a living? What did Robert do  
14 for a living? What is Bart doing?

15 A. He worked for an advertising company, and I was  
16 going to beauty school and Bart went to day care.

17 Q. Did Bart go and visit his grandparents?

18 A. No. My mother, yes. The other ones have passed  
19 away. My mother and dad, yes.

20 Q. Did he spend a lot of time over at your mother  
21 and Dub's house?

22 A. Quite a bit, yeah. Most weekends -- that was  
23 her only grandchild.

24 Q. And he spent a lot of time over there when you  
25 weren't there.

1 happy and sit in his room and play and he'd come back in  
2 there and be very content and happy and very loving and --  
3 very loving. He would get your face and do like this to  
4 kiss you and talk to you.

5 Q. Bart is four years old now, and you are -- who  
6 are you married to at this point at four -- when Bart is  
7 four?

8 A. I got divorced from Robert, and I started dating  
9 Dean. And then I met a man named Terry Stephens.

10 Q. How long were you divorced from Robert before  
11 you married Terry?

12 A. Probably a couple years at the most.

13 Q. During this time you were also carrying on a  
14 relationship with Dean?

15 A. Yes, sir.

16 Q. Once you were married to Terry, did you continue  
17 to carry on a relationship with Dean?

18 A. Yes.

19 Q. Did you take Bart with you when you would go and  
20 visit with Dean?

21 A. Yes.

22 Q. How old is Bart during this time?

23 A. Probably went on until he was almost nine.

24 Q. And did Bart know the nature of your  
25 relationship with Dean?

1 A. Right.

2 Q. At about this time you met a fellow need Dean  
3 Coldwell?

4 A. Yes, sir.

5 Q. And did you begin a relationship with Dean?

6 A. Yes, sir.

7 Q. Did Bart know Dean?

8 A. Yes.

9 Q. Tell me about your relationship with Dean that  
10 Bart was exposed to.

11 A. Dean was an alcoholic, and when he drank, he  
12 would be abusive, and Bart witnessed some of that too.

13 Q. Did Bart witness Dean being abusive to you?

14 A. Yes, sir.

15 Q. And how old is Bart during this time?

16 A. He's probably about four starting out, four  
17 years old when I met him, three to four.

18 Q. Let's talk about Bart when he's two or three  
19 years old. What was he like?

20 A. He was always a real happy guy. I just never  
21 had any problems with him.

22 Q. What did he do --

23 A. He was very content -- he would go in a room and  
24 play by himself. He would be -- you wouldn't know he was  
25 in the house if you didn't go check on him. He was really

1 A. Yeah.

2 MS. HARTMANN: Object to speculation.

3 THE COURT: Sustained.

4 MS. HARTMANN: Request that the answer be  
5 stricken.

6 THE COURT: Ladies and gentlemen of the  
7 jury, you are instructed to disregard the last answer of  
8 the witness.

9 Q. (BY MR. WESTFALL) Had you asked Bart to keep a  
10 secret about your relationship with Dean?

11 A. Yes. I told him not to tell.

12 Q. Not to tell who?

13 A. Terry.

14 Q. Now, Bart is four years old. At around four  
15 years old, did you begin to see a change in Bart?

16 A. A real big change.

17 Q. Could you please explain that?

18 A. He got to where he was crying a lot, and when we  
19 would ask him to go get the paper, he would always act  
20 like he was scared to leave me. He would act real sad and  
21 I couldn't figure out why. He would run outside just like  
22 really fast, and he would like come back with the paper or  
23 whatever it was I asked him to get. He would come back in  
24 and give it to me. He was scared to death. He never  
25 wanted to leave my mother's side or my side.

1 Q. Did you notice anything about Bart washing his  
2 hands or becoming --

3 A. Like I noticed a lot of times it wasn't real  
4 normal. I would be with --

5 MS. HARTMANN: Objection to nonresponsive.

6 THE COURT: Sustained.

7 A. He would act like --

8 MS. HARTMANN: Objection, nonresponsive.

9 Q. (BY MR. WESTFALL) Let me ask the question.

10 Did you notice Bart started washing his  
11 hands a lot?

12 MS. HARTMANN: Objection, leading.

13 THE COURT: Overruled.

14 Q. (BY MR. WESTFALL) Please tell the ladies and  
15 gentlemen of the jury about the things you saw in Bart's  
16 cleaning rituals.

17 A. It was really odd for a four-year-old. He felt  
18 dirty. He would always go to the bathroom and wash his  
19 hands or he would wash his bathtub and shower curtain and  
20 he was always real nervous like. He didn't leave my  
21 side. It was just -- it was a big change. He went from a  
22 very loving and content to just really -- it was sad -- I  
23 didn't understand why.

24 Q. At four years old, what is y'all's family  
25 situation? Are you still married to Terry?

1 the country. There's not a whole lot of people around  
2 except for his cousin next door. Bart always looked kind  
3 of lonely because there wasn't a lot of kids to play with.

4 Q. And he's seven years old now. He's started  
5 elementary school, and how are you and Terry getting  
6 along?

7 A. All right. It is just that Terry would just sit  
8 in the house, and he never gave Bart any attention. I  
9 don't think he would know if Bart was there or if he was  
10 gone.

11 Q. Does Terry know about Dean?

12 A. No.

13 Q. Does Terry suspect that you are seeing somebody?

14 A. No.

15 Q. Are you still taking Bart over to Dean's house?

16 A. Yes.

17 Q. 1991 -- 1992 Bart would have been nine and ten  
18 years old. Is this when your marriage with Terry began to  
19 fail?

20 A. Yes.

21 Q. Could you please tell us about that?

22 A. I got tired of living with him. It was like he  
23 would just come home from work and sit in his chair and  
24 watch TV and went to bed. He didn't speak to us. I mean,  
25 it was just lonely living there. I would be just as

1 A. Yes.

2 Q. Still seeing Dean?

3 A. Right.

4 Q. And what is Bart doing during the day?

5 A. Sometimes I didn't work and he stayed home with  
6 me. And then sometimes he stayed a lot with my mother or  
7 Dub, my stepfather. And there were times he was alone  
8 with my stepfather.

9 Q. Bart started school when he was about seven  
10 years old, when he was seven years old, which would have  
11 been about 1989?

12 A. I believe so.

13 Q. And we have gone ahead three years. Are you  
14 still married with Terry?

15 A. Yes.

16 Q. Where do you-all live?

17 A. We had bought a trailer and lived behind his  
18 sister in Rendon in the country.

19 Q. Tell me about that.

20 MS. HARTMANN: Objection to relevancy.

21 THE COURT: Overruled.

22 A. Bart didn't act like he liked it very well.

23 Q. (BY MR. WESTFALL) Set a scene with the  
24 trailer. What is it like?

25 A. I mean, it is a nice trailer, but it is out in

1 lonely living by myself.

2 Q. About this time is Bart in the third grade at  
3 Westcreek Elementary?

4 A. Yes.

5 Q. Looks like between '92 and '93 you made several  
6 house moves. Could you please explain that to me?

7 A. When me and Terry moved from Rendon to Fort  
8 Worth, Bart changed school districts to Westcreek. But  
9 then we bought a house like a few streets away right  
10 before we separated. But because it was a few streets  
11 away, it changed the school district and he had to go to  
12 Crowley School District. So within the same year he had  
13 to go to another school.

14 Then me and Terry broke up, and I moved  
15 into some apartments in Hulen, and all within the same  
16 year he had to go to another school system. Then me and  
17 Cory moved in together when I was on Hulen, and we found a  
18 house to rent in Crowley, so in that same year in November  
19 we moved to Crowley and he had to change to another school  
20 district because that's a different elementary school and  
21 it was very hard on him. He didn't adjust to things very  
22 well.

23 Q. In the space of one year, did you actually live  
24 in six residences -- or in the space of a year and a half?

25 A. Yes.

1 Q. And Bart went to five schools?  
 2 A. Yes.  
 3 Q. Let me show you what's been marked for  
 4 identification as Defendant's Exhibit 3. Is that a  
 5 picture of Bart and Dub Meador?  
 6 A. Yes.  
 7 Q. Defendant's Exhibit 4, is that a 1989 class  
 8 picture of Bart?  
 9 A. Yes.  
 10 Q. Defendant's No. 5, is that a 1991 class picture  
 11 of Bart?  
 12 A. Yes.  
 13 Q. Defendant's No. 6, is that a picture of Bart in  
 14 about 1992?  
 15 A. Yes.  
 16 Q. Defendant's Exhibit 7, is that a '93-'94 class  
 17 picture including Bart?  
 18 A. Yes.  
 19 Q. And Defendant's No. 8, is that a '94-'95 class  
 20 picture which includes Bart?  
 21 A. Yes.  
 22 MR. WESTFALL: Your Honor, we tender  
 23 exhibits -- Defendant's Exhibit 3, 4, 5, 6, 7 and 8 to the  
 24 State and request their admission.  
 25 MS. HARTMANN: No objection.

1 THE COURT: 3 through 8 are admitted.  
 2 (Defendant's Exhibits 3-8 received)  
 3 Q. (BY MR. WESTFALL) Is this Bart around 1992?  
 4 A. Yes.  
 5 Q. Would this have been about the time that you met  
 6 and married Cory?  
 7 A. Yes.  
 8 Q. What was Bart like during this time?  
 9 MS. HARTMANN: Your Honor, I will object.  
 10 That's repetitive.  
 11 THE COURT: Overruled.  
 12 A. He was very happy, a very loving, shy child. He  
 13 was a good boy. I never had to ask him to do his chores.  
 14 He just did them. He was good.  
 15 Q. (BY MR. WESTFALL) He's 10 years old. How is he  
 16 doing in school?  
 17 A. Not so good.  
 18 Q. What do you mean?  
 19 A. When he first started Crowley School District,  
 20 she said he was too far behind and I needed to hold him  
 21 back, that he couldn't do the work. So when he was in  
 22 grade school I started getting phone calls almost every  
 23 week. I would go up to the school -- they would say --  
 24 MS. HARTMANN: Excuse me, Your Honor.  
 25 Object to hearsay.

1 THE COURT: Sustained.  
 2 Q. (BY MR. WESTFALL) The teachers were calling  
 3 you?  
 4 A. Yes.  
 5 Q. And was Bart doing well in school?  
 6 A. No.  
 7 Q. Was Bart having problems in school?  
 8 A. Yes.  
 9 Q. What problems is Bart having in school?  
 10 A. Couldn't do the work. It was too hard. He  
 11 would come home with homework, and I would try to help him  
 12 and he just couldn't do it. I mean, he would start  
 13 crying, and I would tell the teachers, he's crying and he  
 14 would get exhausted and he would pull on his hair and  
 15 cry. I would tell the teacher that and they would say --  
 16 MS. HARTMANN: Object to hearsay, Your  
 17 Honor.  
 18 THE COURT: Sustained.  
 19 Q. (BY MR. WESTFALL) During the time when Bart is  
 20 10, are you working?  
 21 A. Yes.  
 22 Q. What are you doing?  
 23 A. I am working at a beauty shop right down the  
 24 road from where we lived.  
 25 Q. Tell me about Cory.

1 A. He's a Fort Worth fireman, and he works one day  
 2 and he's off two, so he was home sometimes when the boys  
 3 got home and just -- I'm sorry. I forgot the question.  
 4 Q. Bart is an only child?  
 5 A. Yes.  
 6 Q. And did Cory also bring a child into the  
 7 marriage?  
 8 A. Yes.  
 9 Q. You have stopped seeing Dean by now?  
 10 A. Right.  
 11 Q. And you are still married to Cory today?  
 12 A. Right. Still married to Cory.  
 13 Q. What are your observations about Bart from a  
 14 mental standpoint? What do you see in Bart? Does he seem  
 15 fast? Does he seem slow? What does he seem to you?  
 16 A. Cory's son was the same age as Bart, and Bart  
 17 was much slower. We can never help him with his  
 18 homework. He couldn't get it. We even thought his  
 19 brother could sit down and help him and he wouldn't feel  
 20 intimidated, and he still couldn't understand when his  
 21 brother would sit down and try to teach it to him. He was  
 22 just a lot slower than Justin.  
 23 Q. He was 10 years old. He's repeated third grade.  
 24 He seems to not be able to get his school work. Have you  
 25 taken him at this point to see a counselor?

1 A. Counselor at the school would call me up there  
2 to have meetings with them. They put him in a program  
3 called content mastery. He would only have to do half the  
4 work of the other kids.

5 Q. Have you taken him to see any sort of  
6 psychiatrist to see if he has some sort of condition that  
7 can be treated at the time he's 10 years old?

8 A. Not at 10, I don't believe.

9 Q. Where did you and Cory live from the time Bart  
10 is, say, 10 until he's 13?

11 A. We lived in Crowley in a rent house.

12 Q. I'm sorry. I forgotten you had -- up here in  
13 the upper right-hand corner, is that Bart?

14 A. Yes, sir.

15 Q. This would have been Bess Race Elementary  
16 School, 1994/95. That's what's on Defendant's No. 8.

17 Did Bart turn 13 in '95 -- October 25 of  
18 '95?

19 A. I believe so, yes.

20 Q. Around this time when Bart turns 13 years old,  
21 which would have actually been the next year, tell me did  
22 you start to see further changes in Bart?

23 A. Yeah.

24 Q. Tell me about that.

25 A. He just seemed like he got more frustrated

1 prejudicial outweighs the relevancy. We would object  
2 under --

3 MR. WESTFALL: He abused her for several  
4 years, and then she continued to take him over to Dub's  
5 house, and then Dub is arrested for molesting neighborhood  
6 children, and all of this kind of had an effect on Bart.  
7 It was traumatizing to him. It is not clear whether he  
8 ever abused Bart. I am not going to make an allegation  
9 that he did.

10 MS. HARTMANN: That's way out there.

11 THE COURT: I am not going to find that it  
12 is relevant.

13 Q. (BY MR. WESTFALL) And this is Dub Meador?

14 A. Yes.

15 Q. Bart's grandfather.

16 Let's switch gears a little bit. When Bart  
17 is 13, is that when you first began applying for special  
18 education?

19 A. Yes.

20 Q. Has there -- even up to this point when Bart is  
21 13 years old, has there been any sort of psychiatrist or  
22 psychologist who has examined Bart given you any kind of  
23 diagnosis of what might be wrong with him?

24 MS. HARTMANN: Object to hearsay, Your  
25 Honor.

1 because he couldn't do the school work. He became more  
2 despondent. He seemed to withdraw more. Real shy.

3 Q. Is 13 when Bart started getting into drugs?

4 A. Yes.

5 Q. And when Bart was 13, was this man arrested?

6 A. Yes.

7 MS. HARTMANN: Excuse me, Your Honor. May  
8 we approach?

9 THE COURT: Okay.

10 (Outside the hearing of the jury)

11 MS. HARTMANN: Object to relevance.

12 THE COURT: What is the relevance?

13 MR. WESTFALL: He was arrested for sexually  
14 abusing children in the neighborhood --

15 THE COURT: What is the relevancy of the  
16 arrest?

17 MR. WESTFALL: He's Bart's family. He was  
18 arrested for sexually abusing children.

19 THE COURT: The relevancy is?

20 MR. WESTFALL: I mean, it's family  
21 dynamics. In a punishment case anything you deem relevant  
22 is relevant. It is family dynamics, something for the  
23 jury to take into consideration. The allegation was his  
24 grandfather abused --

25 MS. HARTMANN: If it is relevant, the

1 THE COURT: Overruled.

2 A. I believe that's when I started taking him to  
3 some doctors.

4 Q. (BY MR. WESTFALL) Prior to 13, you had never  
5 taken him to a psychiatrist or no one had ever done any  
6 workup on Bart to say he's ADD or needs Ritalin or  
7 anything?

8 A. No.

9 Q. But you had seen up to this point what appeared  
10 to be obviously problems in school?

11 A. Right.

12 Q. Did you make formal application when he was 13  
13 to get him into Special Ed?

14 A. When I went to the school counselor meeting,  
15 yes.

16 Q. When Bart is 13 that is when he starts using  
17 drugs?

18 A. Yes.

19 Q. Tell me about that.

20 A. The first time I noticed his eyes, and he  
21 admitted smoking marijuana to me. And I got really mad.  
22 I told him he wasn't going to do that and live in my  
23 house.

24 Q. Is that what prompted you to start taking him to  
25 doctors?

1 A. Yes.

2 Q. What actions did you take?

3 A. I started -- I believe I took him to Excell  
4 and -- I took him to Excell, and they admitted him in a  
5 day program. And they told me if he --

6 MS. HARTMANN: Objection to hearsay, Your  
7 Honor.

8 THE COURT: Sustained.

9 Q. (BY MR. WESTFALL) These people that are telling  
10 you things, are they doctors --

11 A. Yes.

12 Q. -- or psychiatrists? They're doctors? And  
13 things they were telling you had to do with their  
14 treatment of Bart?

15 A. Right.

16 Q. Tell me about Bart's personality at 13. Is he  
17 shy or outgoing? Is he modest or flamboyant? Just give  
18 me a profile of his personality.

19 A. Very withdrawn, very shy, very modest. If his  
20 brother wanted in the bathroom to brush his teeth and he  
21 was in the shower, he wouldn't even let him in there. He  
22 wasn't real outgoing.

23 Q. Did he do things like mow the lawn?

24 A. Yeah. He would do chores without even being  
25 asked.

1 these doctors, are you taking him for the purpose of drug  
2 counseling?

3 A. Right.

4 Q. Are you taking him to any of these doctors  
5 because of dyslexia?

6 A. No.

7 Q. Are you taking him because of ADD or ADHD?

8 A. No.

9 Q. And to this point, has any doctor still done any  
10 testing on him for those matters?

11 A. No. They just looked at me and told me that he  
12 suffered from major depression, and I tended to believe  
13 them because both of his grandparents committed suicide.  
14 So I believed them.

15 Q. Bart's grandmother and grandfather on his  
16 father's side both have committed suicide?

17 A. Yes.

18 Q. When did his grandmother commit suicide?

19 A. When I was about 13 and right before I married  
20 Bart's daddy. I can't remember the year. I'm sorry.

21 Q. Bart is 14 years old now, and his grandfather  
22 committed suicide --

23 MS. HARTMANN: Objection to Counsel leading  
24 the witness.

25 THE COURT: Overruled.

1 Q. What did he look like? Long hair? Short hair?

2 A. No, it was short. About like what it looks like  
3 now. He was clean cut other than I didn't agree with how  
4 the kids liked their underwear sticking out. He was just  
5 clean cut. But seems like as the months went on, his  
6 appearance did change. His face started breaking out  
7 more. He didn't dress as nice as he was dressing.

8 Q. And these things caused you to actually seek --

9 A. Right.

10 Q. -- the help for Bart that you have talked about?

11 A. Right. Because he was always like -- his hair  
12 and his face, he was real particular about it. And I  
13 noticed he was losing interest in that and he started  
14 sleeping more. He would sleep 12 or 14 hours in one day.  
15 I would finally go in there at 2:00 o'clock in the  
16 afternoon to see if he was going to get up. I knew  
17 something was wrong.

18 Q. The people that you took him to see, who were  
19 the doctors and the Excell Center you mentioned, who else  
20 did you take him to see during this time?

21 A. Peter Koralski from the Excell Center. I  
22 believe Dr. Choudry's office. I took him there. I'm not  
23 sure which order this was. I took him to a Dr. Forari's  
24 office. I took him to a Dr. Timothy Keith's office.

25 Q. During all this time when you are taking him to

1 Q. (BY MR. WESTFALL) Was Bart aware that his  
2 grandfather committed suicide?

3 A. Yes. It was down the street from where we  
4 lived, at the police station in Benbrook.

5 Q. In 8th grade -- when Bart is in 8th grade, which  
6 is in 1997, did you withdraw him from Crowley School and  
7 try to send him to a private school?

8 A. Yes.

9 Q. Tell the jury about that.

10 A. I came to a school meeting, and they told me he  
11 couldn't do the work, and they just told me he could. I  
12 said, he's sitting at home crying. He cannot do the  
13 work. So I put him in a special school, a Christian  
14 school that there were less kids and they could give him  
15 attention. I was willing to pay any price to get him some  
16 help. He wasn't there very long, not even one whole  
17 report-card period and the principal --

18 MS. HARTMANN: Objection, nonresponsive.

19 THE COURT: Sustained.

20 Q. (BY MR. WESTFALL) What happened when you moved  
21 him to the Stepping Stone Christian School?

22 A. The principal called me up to the office and  
23 told me --

24 MS. HARTMANN: Excuse me, Your Honor. I  
25 will object to hearsay.

1 THE COURT: Sustained.  
 2 A. Okay.  
 3 Q. (BY MR. WESTFALL) Did Bart stay at the Stepping  
 4 Stone School --  
 5 A. No, because they said --  
 6 MS. HARTMANN: Objection, hearsay.  
 7 A. -- he was too far behind.  
 8 MS. HARTMANN: Excuse me. Objection.  
 9 THE COURT: Sustained.  
 10 Q. (BY MR. WESTFALL) Without saying what they  
 11 said, did something they said cause you to withdraw Bart  
 12 from that school?  
 13 A. Yes.  
 14 Q. How long was Bart at that school?  
 15 A. Probably not even four weeks. He was too far  
 16 behind. He couldn't keep up with the other children.  
 17 Q. Where did Bart go when he left the Stepping  
 18 Stone School?  
 19 A. I took him back to Crowley F. Stevens.  
 20 Q. How old is Bart at this time?  
 21 A. Probably about 14, going on 15.  
 22 Q. Did Bart continue to stay at the Excell Center?  
 23 A. No.  
 24 Q. How long was he at the Excell Center?  
 25 A. Probably about two weeks, if that.

1 Q. And these counselors at the Excell Center, in  
 2 communicating to you some plan, some -- Bart's diagnosis  
 3 and what to do about it, did they instruct you to use like  
 4 tough love on Bart?  
 5 A. Yes. We were to sit down and write out an  
 6 agreement between Bart and I, and part of their agreement  
 7 that the tough-lover is that if they can't follow the  
 8 rules, you throw them out of the house.  
 9 Q. And how long after that did you throw Bart out  
 10 of your house?  
 11 A. Probably two days.  
 12 Q. How old is Bart?  
 13 A. 14 or 15. I don't remember. Probably about --  
 14 I want to say 14, not quite 15 yet.  
 15 Q. About this time was there a suicide that  
 16 affected Bart?  
 17 A. Yes.  
 18 Q. Another suicide. Who was that?  
 19 A. It was one of our good friends who was another  
 20 Fort Worth fireman, his son took a .38 and shot himself in  
 21 the head.  
 22 Q. He was a friend of Bart's?  
 23 A. Yeah. They went to church camp together and --  
 24 MS. HARTMANN: Objection, nonresponsive.  
 25 THE COURT: Sustained.

1 Q. (BY MR. WESTFALL) And did you allow Bart back  
 2 in the house after that?  
 3 A. Yes. I told Cory --  
 4 MS. HARTMANN: Objection, nonresponsive and  
 5 hearsay.  
 6 THE COURT: Sustained.  
 7 THE WITNESS: Yes.  
 8 Q. (BY MR. WESTFALL) Did you have a couple of  
 9 foster children?  
 10 A. Yes.  
 11 Q. Who were they?  
 12 A. Brian Dawson and Simpson Dawson.  
 13 Q. When Bart was 14 years old, did he overdose?  
 14 A. Yes.  
 15 Q. And he had to go to the hospital?  
 16 A. Yes.  
 17 Q. As a result of that, did you give up the foster  
 18 children?  
 19 A. We called the common we were working for --  
 20 MS. HARTMANN: Objection, nonresponsive.  
 21 THE COURT: Sustained.  
 22 Q. (BY MR. WESTFALL) Was Bart close to one of  
 23 those foster children?  
 24 A. What? I didn't hear --  
 25 Q. Was Bart particularly close to one of those

1 foster children?  
 2 A. Yes.  
 3 Q. How long had he been living with you-all?  
 4 A. 2 1/2 years.  
 5 Q. What happened to the foster children after they  
 6 left your house?  
 7 A. The youngest one died.  
 8 Q. How?  
 9 MS. HARTMANN: Objection to relevance, Your  
 10 Honor.  
 11 THE COURT: Overruled.  
 12 A. He fell down some stairs and broke his neck.  
 13 They had an investigation, said it looked like he was  
 14 beaten to death.  
 15 Q. (BY MR. WESTFALL) Was that in the care of the  
 16 next foster parents?  
 17 A. Yes.  
 18 Q. Did Bart seem to blame himself for that?  
 19 MS. HARTMANN: Objection to speculation.  
 20 THE COURT: Sustained.  
 21 Q. (BY MR. WESTFALL) Bart is about 15 years old  
 22 now?  
 23 A. Yeah.  
 24 Q. Is he working?  
 25 A. He worked with my stepfather.

1 Q. Has he tried to get any other jobs?  
 2 A. (Inaudible)  
 3 Q. Tell us about that.  
 4 A. He would go apply for a job. I had to sit in  
 5 the car to fill the applications out because he couldn't  
 6 understand how to fill them out.  
 7 Q. What couldn't he understand?  
 8 A. He would just write things backwards like  
 9 dyslexia. It was like he really wouldn't understand  
 10 Social Security numbers and was writing upside down. He  
 11 didn't understand he had to fill out every single spot on  
 12 the application.  
 13 Q. What would you have to do?  
 14 A. He would go in McDonald's or Jack in the Box or  
 15 wherever he went, and he would say I am going to bring  
 16 this back. And he would bring it to me in the car, and I  
 17 would fill it out and he would take it back in.  
 18 Q. How many times did you do this?  
 19 A. Years. I did it for years trying to help him  
 20 get a job.  
 21 Q. Bart dropped out of school in the ninth grade?  
 22 How old was he?  
 23 A. He was 16 years old.  
 24 Q. Is he still trying to get jobs?  
 25 A. Yes.

1 Q. Are y'all still having to drive around and get  
 2 applications and fill them out and turn them back in?  
 3 A. Yes. He was hired at one job but fired --  
 4 MS. HARTMANN: Objection to nonresponsive.  
 5 THE COURT: Sustained.  
 6 Q. (BY MR. WESTFALL) Tell me about Bart being  
 7 fired from jobs.  
 8 MS. HARTMANN: Objection, unless she has  
 9 personal knowledge, Your Honor.  
 10 THE COURT: Overruled.  
 11 Q. (BY MR. WESTFALL) Did Bart get fired from jobs  
 12 because of nonperformance or --  
 13 A. Yes.  
 14 Q. Tell me about that.  
 15 A. He got fired at Taco Bell.  
 16 MS. HARTMANN: May I take the witness on  
 17 voir dire?  
 18 THE COURT: You may.  
 19 VOIR DIRE EXAMINATION  
 20 BY MS. HARTMANN:  
 21 Q. Ms. Adams, these jobs that you say your son were  
 22 fired from, were you present at the time that he was  
 23 fired?  
 24 A. I went and picked him up.  
 25 Q. Were you present at the time he was actually

1 told he was being fired or he was fired?  
 2 A. No.  
 3 Q. So you have no personal knowledge of the reasons  
 4 why he would have been fired or let go?  
 5 A. Bart --  
 6 Q. Other than what he might have told you or  
 7 someone -- an employee, you have no personal knowledge  
 8 because you were not there, correct?  
 9 A. Other than Albertson's. They sent an evaluation  
 10 thing and sent it home with me.  
 11 Q. Other than that one job, you have no personal  
 12 knowledge?  
 13 A. No.  
 14 MS. HARTMANN: Your Honor, we'd object  
 15 based on her answers on hearsay.  
 16 THE COURT: Sustained.  
 17 DIRECT EXAMINATION CONTINUED  
 18 BY MR. WESTFALL:  
 19 Q. How did being fired from the jobs affect Bart?  
 20 A. He would get sadder, he would sleep more. He  
 21 couldn't figure out why nobody wanted him. He would dress  
 22 up and look at me and say, mom --  
 23 MS. HARTMANN: Objection to nonresponsive.  
 24 THE COURT: Sustained.  
 25 Q. (BY MR. WESTFALL) why did he get fired from

1 Albertson's?  
 2 MS. HARTMANN: Objection, calls for an  
 3 answer based upon hearsay.  
 4 THE COURT: Sustained.  
 5 Q. (BY MR. WESTFALL) When Bart is about -- when  
 6 Bart is about 17 years old, does he get a checking  
 7 account?  
 8 A. Yes.  
 9 Q. And did you go with him to get the checking  
 10 account?  
 11 A. Yes, Cory and I both did.  
 12 Q. Was that checking account at the Fort Worth  
 13 Credit Union?  
 14 A. Yes.  
 15 Q. In Fort Worth City Credit Union?  
 16 And did you help Bart write checks?  
 17 A. Yes.  
 18 Q. Did you see checks that Bart had written?  
 19 A. Yes.  
 20 Q. Did you counsel Bart on how to write checks?  
 21 A. Yes.  
 22 Q. Did he have any other checking account other  
 23 than the one at Fort Worth City Credit Union?  
 24 A. No.  
 25 Q. If you were to see the actual checks that Bart

1 wrote, would they assist you in explaining to the jury the  
2 way Bart wrote checks and what you did with Bart to help  
3 him write checks?

4 A. Yes.

5 MR. WESTFALL: Move for the admission of  
6 Defendant's 18.

7 MS. HARTMANN: The State has no objection  
8 at this time.

9 THE COURT: 18 is admitted.

10 Q. (BY MR. WESTFALL) I will show you one of the  
11 checks. Is this an example of one of the checks that  
12 Bart --

13 A. Yes.

14 Q. Is this another example of one of the checks  
15 that Bart wrote?

16 A. Yes.

17 Q. And that's November 2 of '01, so he's 19 years  
18 old at that point?

19 A. Right.

20 Q. November 2 of '00, 18 years old?

21 A. Yes.

22 Q. And he writes a check for 13 dollars and 12  
23 cents?

24 A. Yes.

25 Q. The writing is different on this one. Tell me

1 pay the check. It was overdraft protection. It would  
2 cost him \$25 for them to take that out each time. So I  
3 seen it wasn't working.

4 MR. WESTFALL: May I approach the witness?

5 THE COURT: Yes.

6 Q. (BY MR. WESTFALL) I am showing you what's been  
7 marked for identification as Defendant's Exhibit 16 and  
8 17. Is that a picture of Bart?

9 A. Yes.

10 Q. And is that the picture of Bart --

11 A. Yes.

12 Q. Are those accurate?

13 A. Yes.

14 MR. WESTFALL: Your Honor, I'm tendering  
15 Defendant's Exhibit 16 and 17 to the State and moving for  
16 their admission.

17 MS. HARTMANN: No objection.

18 THE COURT: 16 and 17 are admitted.

19 (Defendant's Exhibit Nos. 16-17 received)

20 Q. (BY MR. WESTFALL) who is that?

21 A. Tiffany, his girlfriend.

22 Q. When did Bart meet Tiffany?

23 A. He was about 15, I guess.

24 Q. And tell me how Tiffany is related to you-all,  
25 related to Bart. Is there some kind of indirect family --

1 why.

2 A. Because I would put down -- I saw his checks  
3 were coming back like this, so I thought if I sat down  
4 with him and show him how the checks were written out and  
5 just have him sign them to help him, he could understand.  
6 But as you can see, he just wrote his first name and that  
7 was it. That was with my writing the checks trying to  
8 help him.

9 Q. In fact, in this pile of checks, is your writing  
10 on the majority of them?

11 A. Right.

12 Q. And then you would have Bart just sign the  
13 check?

14 A. And as you can see, it says NSF. He got to  
15 where he cannot understand --

16 MS. HARTMANN: Objection, nonresponsive.

17 THE COURT: Sustained.

18 Q. (BY MR. WESTFALL) Did Bart have a savings  
19 account also?

20 A. Yes.

21 Q. Was he not able to sort out which account --

22 A. No, he would be confused and put his paycheck in  
23 his savings instead of his checking. Then they would --  
24 because his father and I were on the account, they would  
25 send notice to us that they took \$25 out of savings plus

1 A. It is a stepbrother's cousin.

2 Q. How long was Bart with Tiffany?

3 A. For almost five years.

4 Q. And they broke up when?

5 A. They were always -- they would break up, get  
6 back, break up, but they finally broke up the last time  
7 the end of January of 2002.

8 Q. Now, when Bart is 18 years old -- he's 19 years  
9 old, do you and Gail take him to the Texas Rehabilitation  
10 Commission?

11 A. Yes, sir.

12 Q. First of all, when he was 18, was he allowed to  
13 be on Cory's insurance anymore?

14 A. No, not unless he was a full-time student, so  
15 no.

16 Q. And the Texas Rehabilitation Commission, what do  
17 they do?

18 A. They take people that have like lower IQs that  
19 are slow and pay for their school and help train them in  
20 some kind of skills to help them learn to survive and  
21 stuff like that. They teach them things like writing  
22 checks and things we take for granted. They take them and  
23 they teach them like filling out applications.

24 Q. Will they also do psychological --

25 A. Right. I'm sorry. Yes. They do psychiatric

1 and psychological evaluations. They send you to  
 2 psychiatrists and they do a five-day-a-week vocational  
 3 work training program.  
 4 Q. Will they also ultimately pay for prescription  
 5 medicine?  
 6 A. Yes. Once you qualify for the services, they  
 7 pay for your prescriptions if you need them.  
 8 Q. And when did Bart go there?  
 9 A. In January of 2002.  
 10 Q. In December and January, Bart saw several people  
 11 through this --  
 12 A. Yes.  
 13 Q. Did you go with him when he went to see Dr.  
 14 Warren, the psychologist?  
 15 A. We took him up there, but we waited outside.  
 16 Q. Did you go with him when he went to see Dr.  
 17 Ouseph, a psychiatrist?  
 18 A. Yes. We took him up there and we were in the  
 19 room with him.  
 20 Q. When you were with Dr. Warren, the psychologist,  
 21 who did all the testing on Bart -- is he in the same  
 22 building as Dr. Ouseph?  
 23 A. No.  
 24 Q. Did you go on separate days?  
 25 A. Yes.

1 that prescription?  
 2 A. No. I had to take the prescription back to TRC  
 3 and they would fill it. They had to do the paperwork.  
 4 Q. Was there a time lag?  
 5 A. It went on for about three weeks, four weeks.  
 6 Bart would come home every day and ask him --  
 7 MS. HARTMANN: Objection, nonresponsive and  
 8 hearsay.  
 9 THE COURT: Sustained.  
 10 Q. (BY MR. WESTFALL) In the meantime during those  
 11 three, four weeks, did you give Bart Paxil from some other  
 12 source?  
 13 A. The first of February I did. His daddy Cory was  
 14 on the same medicine, Paxil, and we had samples from his  
 15 doctor, so I gave him those samples and followed what the  
 16 prescription said to do.  
 17 Q. You started giving him Paxil about the first  
 18 part of February.  
 19 A. Yes.  
 20 Q. How would you dispense the Paxil to him?  
 21 A. Well, the prescription said for the first three  
 22 days only take half a tablet. We had a whole sack full of  
 23 capsules and I broke them in half. I would give them to  
 24 Bart personally so he didn't have access to them. I would  
 25 leave that out for him to take.

1 Q. Did you ever actually speak with Dr. Warren?  
 2 A. No.  
 3 Q. Were you mailed a report or anything by Dr.  
 4 Warren?  
 5 A. No.  
 6 Q. Did you actually go in and speak with Dr.  
 7 Ouseph?  
 8 A. Yes, after she was finished with Bart.  
 9 Q. When she was finished with Bart, what did she  
 10 tell you?  
 11 MS. HARTMANN: Your Honor, I will object to  
 12 hearsay.  
 13 THE COURT: Sustained.  
 14 Q. (BY MR. WESTFALL) I only want to hear about  
 15 whatever her medical diagnosis was.  
 16 MS. HARTMANN: Same objection. Hearsay.  
 17 THE COURT: Sustained.  
 18 Q. (BY MR. WESTFALL) Did she give Bart a  
 19 prescription?  
 20 A. Yes.  
 21 Q. What was that prescription for?  
 22 A. Atraxin.  
 23 Q. What drug was that prescription for?  
 24 A. It was Paxil.  
 25 Q. Were you able to go out and immediately fill

1 Q. Did you give him exactly what the prescription  
 2 called for?  
 3 A. Yes.  
 4 Q. Tell me about Bart. We are at the first of  
 5 February. What is Bart doing? Does he have a job?  
 6 A. Yes, he finally got a job.  
 7 Q. Where is that?  
 8 A. SCS for --  
 9 Q. What kind of job is that?  
 10 A. Working on an assembly line putting air  
 11 conditioner parts together.  
 12 Q. How is Bart doing on that job?  
 13 A. Like a whole new kid. He was so happy. He  
 14 would make his lunch every night. He would come straight  
 15 home after work. I am thinking this is the Godsend. He  
 16 was just doing perfect. He was responsible and he was so  
 17 happy that he got his little bitty paycheck each week. I  
 18 think he felt like a real person.  
 19 Q. Seemed like his mood was lifting?  
 20 A. Yes.  
 21 Q. Was he staying home in the evenings?  
 22 A. Yes.  
 23 Q. And getting up and going to work?  
 24 A. We would get up in the morning to make sure he  
 25 had gotten up ready for work, and he was already gone. I

1 didn't have to wake him up. He woke up by himself, and  
2 he -- he was getting up at 5:00 in the morning to go to  
3 work.

4 Q. He had been broken up from Tiffany for a couple  
5 of weeks?

6 A. Right.

7 Q. On February 14 does Bart have a date with a new  
8 girl?

9 A. Yes.

10 Q. What is her name?

11 A. Her -- I just know that her first name was  
12 Crystal.

13 Q. Tell me about how Bart is doing that night.

14 A. Very nervous. He asked me to go to Costco --

15 MS. HARTMANN: Excuse me. Object to  
16 hearsay.

17 THE COURT: Overruled.

18 A. He asked me to pick up some roses for him to  
19 give this girl. He was taking her out to eat for dinner,  
20 and he was very nervous because Tiffany was the only girl  
21 he had dated.

22 Q. (BY MR. WESTFALL) Is Bart getting ready to go  
23 out on his date with Crystal?

24 A. Yes. He picked her up and brought her over for  
25 us to see.

1 Q. That's a Thursday. February 14 is a Thursday.

2 The next day Friday, did you go with Bart to the bank?

3 A. Yes.

4 Q. What did y'all do at the bank?

5 A. He had a balloon note already there on a CD he  
6 had, and he took his credit cards and some taxes he owed  
7 and combined them into one payment to pay off in October.  
8 And he was very excited. He was getting his bills paid  
9 and it was really less for him to worry about because it  
10 was one payment instead of three or four. He could not do  
11 that unless I take it (inaudible) to be paid.

12 Q. How was he doing after that?

13 A. After he left the bank, he seemed really happy,  
14 looked relieved because he didn't have to pay out as much  
15 money. And he went out that evening and came back home.

16 Q. Did he seem happier than he had a couple of days  
17 before?

18 A. Yeah. It is like he was louder when he talked.  
19 Sometimes when you are happy, your voice does go up.  
20 Maybe talking a little faster, and I thought he was really  
21 happy. He's relieved.

22 Q. The next day is Saturday. That's Saturday,  
23 February 16 of this year.

24 A. Uh-huh.

25 Q. Tell us about Bart on that Saturday.

1 A. He woke up early that morning and kind of  
2 piddled around the house. At about 11:00 o'clock his cell  
3 phone started ringing nonstop. If that phone wasn't  
4 ringing, my home phone was ringing. It was really  
5 annoying. I'm talking one after another.

6 Q. Who were making these calls?

7 A. Bart's friends.

8 Q. His friends at the time, are a couple of them  
9 Brett Tucker and Jason Tucker?

10 A. Yes.

11 Q. Tell me, how did Bart's friends treat him  
12 generally?

13 A. Manipulative. I have heard Jason sit out in my  
14 front yard and --

15 MS. HARTMANN: Objection to hearsay.

16 THE COURT: Overruled.

17 A. I was standing there.

18 Q. (BY MR. WESTFALL) Would his friends kind of  
19 openly taunt him?

20 A. They called him retard, and they would make fun  
21 of him because he didn't get things. And (inaudible).

22 Q. This day his friends are calling, what are the  
23 phone calls that Bart is getting? What is the effect this  
24 seems to be having on him?

25 A. He became very excited and he keeps walking back

1 and forth in our house telling me things that Tiffany  
2 supposedly has done, and it was like he couldn't leave it  
3 alone. He would say, I can't believe she's done this.

4 And --

5 MS. HARTMANN: Objection, Your Honor, to  
6 hearsay.

7 THE COURT: Sustained.

8 Q. (BY MR. WESTFALL) These things that his friends  
9 were telling him, they were telling him Tiffany was having  
10 sex with --

11 MS. HARTMANN: Your Honor, I am going to  
12 object. That's an improper leading question.

13 THE COURT: Sustained.

14 Q. (BY MR. WESTFALL) These phone calls that Bart's  
15 getting, they had a very aggravating effect on him?

16 A. Yes.

17 Q. Is that what you have told us?

18 A. Yes.

19 Q. And do you know what these people are saying to  
20 Bart that is so aggravating to him?

21 A. Yes, because his girlfriend called me back --

22 MS. HARTMANN: Object to hearsay, Your  
23 Honor.

24 THE COURT: Sustained.

25 Q. (BY MR. WESTFALL) What Bart is hearing over the

1 phone is apparently aggravating him a lot?  
 2 A. It was upsetting him very much. It looked like  
 3 he was going to break out and bawl any minute. I have  
 4 never seen him look so bad.  
 5 Q. Did Bart have a habit of kind of trusting people  
 6 and just believing what people said?  
 7 A. He's real nice and will believe what anybody  
 8 tells him.  
 9 Q. And what these people are telling him on the  
 10 phone, it doesn't matter whether it is true or not because  
 11 it is having an effect on him?  
 12 A. Right.  
 13 Q. And, in fact, what they are telling him is not  
 14 true?  
 15 A. Yes.  
 16 Q. But it is having an effect on Bart?  
 17 A. Right.  
 18 MR. WESTFALL: Your Honor, may I allow the  
 19 witness to testify to what these people are telling him on  
 20 the phone?  
 21 THE COURT: Ask the question and I will  
 22 rule on it when I hear it.  
 23 Q. (BY MR. WESTFALL) What were these friends of  
 24 Bart's telling him?  
 25 MS. HARTMANN: Object to hearsay.

1 THE COURT: Overruled.  
 2 A. That Tiffany had slept with three guys.  
 3 Q. And Bart is believing these things?  
 4 A. Yeah, he's believing them, but he's coming in  
 5 there going, Why, mama? Why would she do that?  
 6 Q. Is Bart very excited?  
 7 A. Very upset, and he starts prancing around the  
 8 house, you know, walking, and I try to just tell him, Let  
 9 it go. If she's that way, then you don't need her and he  
 10 just doesn't let it go. I was in the bathtub, and he's  
 11 trying to walk in there and still talk to me. That's  
 12 something he would never do. Then it got so bad --  
 13 MS. HARTMANN: Objection, nonresponsive.  
 14 THE COURT: Sustained.  
 15 Q. (BY MR. WESTFALL) What does Bart look like?  
 16 A. His eyes were really wide, bouncing, his legs  
 17 under the kitchen table, just sitting there with his hair  
 18 in his hand on our table. Just -- I was getting the  
 19 thought that he wanted me to check him for STD, that he  
 20 was so afraid he got an STD from that. I couldn't find  
 21 one because it was Saturday. He was getting more and more  
 22 upset, pulling his hair and just like he was going to  
 23 start crying. Well, why -- (inaudible)  
 24 THE COURT REPORTER: I can't understand.  
 25 MR. WESTFALL: Have you got some water up

1 there?  
 2 Q. (BY MR. WESTFALL) The way that he was acting on  
 3 Saturday, was there a big difference between that and the  
 4 day before?  
 5 A. Yes.  
 6 Q. Did he seem -- what did it seem like he was  
 7 thinking? How did he seem in his mind?  
 8 A. His thoughts were just rushing. You couldn't  
 9 even really talk to him. He just kept talking, like  
 10 rambling.  
 11 Q. Did he ask you to check him personally for STDs?  
 12 A. Yes. That's when I knew he was very upset  
 13 because he said that he didn't know if he had an ingrown  
 14 hair or if he had herpes. And he wanted me to look at  
 15 him, and I was like, We'll have your daddy go look. This  
 16 is a modest child, wouldn't let his brother in the  
 17 bathroom.  
 18 Q. The next day you saw him, you saw him the  
 19 following Sunday?  
 20 A. Yes.  
 21 Q. And he went to church in the morning but you  
 22 weren't there?  
 23 A. Right.  
 24 Q. Tell me about what Bart was doing after church.  
 25 A. He came home. It was about 1:00 something, and

1 he changed his clothes and put like regular blue jeans and  
 2 T-shirt, emptied his keys and got quarters. He said he  
 3 was going to the car wash to wash his truck.  
 4 Q. How long was he gone washing his truck?  
 5 A. Probably an hour and a half.  
 6 Q. When he got finished washing his truck, did he  
 7 come home?  
 8 A. Came home, pulled in front of our house, pulled  
 9 the hose out to the street and washed it again. I went  
 10 out and asked him, I said, What are you doing? You just  
 11 washed your truck, and he said, yeah, I know --  
 12 MS. HARTMANN: Objection, nonresponsive.  
 13 THE COURT: Sustained.  
 14 Q. (BY MR. WESTFALL) When he was finished washing  
 15 his truck that time, what did he do then?  
 16 A. He started cleaning the garage, taking  
 17 everything out of it, redoing the shelves, mopped the  
 18 floor.  
 19 Q. Were these things -- did he wash the truck twice  
 20 after he got back home?  
 21 A. Twice.  
 22 Q. Was that strange behavior?  
 23 A. Very strange.  
 24 Q. This cleaning the garage, was that unusual?  
 25 A. Yeah.

1 Q. Was Bart one up to that point to just go down  
2 and clean the garage spic and span?

3 A. Bart was always clean. We are talking taking  
4 everything out of the garage and restacking shelves.

5 Q. How long did that take him?

6 A. At least three, four hours.

7 Q. Then when he was finished rearranging the garage  
8 and cleaning the garage, what did he do then?

9 A. He went inside and took a shower. He ate a  
10 little bit and started lifting weights.

11 Q. About what time of day is this?

12 A. Probably about 4:00 or 5:00 -- probably about  
13 5:00.

14 Q. And he takes a shower and then comes out and  
15 starts lifting weights?

16 A. Actually, it might have been about 6:00 because  
17 it was dark. He went inside, took a shower and came back  
18 out and started lifting weights in our garage.

19 Q. How long did he lift weights?

20 A. He would -- 15 or 20 minutes, come back in the  
21 house and we might talk about Tiffany a little bit and he  
22 would go back out there. Then he would come back in and  
23 ask questions. Kind of like, go through the house,  
24 walking very nervously, like upset, but Tiffany was still  
25 on his mind.

1 Q. How long did he continue on with that that  
2 evening, lifting those weights in those intervals and then  
3 coming in and going back out there?

4 A. Until he went to bed about 9:00 o'clock.

5 Q. For about three to four hours?

6 A. Yeah. He might sit down and watch 10 or 15  
7 minutes worth of TV and I would turn around and he would  
8 be going back out there. He would come in, sit down. I  
9 would try to talk to him and he'd leave. (inaudible) He  
10 just kept going in and out, in and out. And I thought,  
11 Well, I guess he's got some anxiety over it.

12 Q. What does his face look like?

13 A. He doesn't seem to be blinking. That's one  
14 thing I noticed. And his walk was different. When he was  
15 talking, I just noticed -- Bart doesn't talk real loud.  
16 He's very shy, and he talking loud. And like more eye  
17 contact where he don't really get close to your face. He  
18 got close to me talking about Tiffany making me feel  
19 uncomfortable. He wasn't violent or anything. He was  
20 just like, Why, mama? Why? Because he was in my face, I  
21 was like -- I didn't know what to tell him.

22 Q. Were you -- the next morning is Monday morning.  
23 Did Bart go to work?

24 A. Yes, he laid his clothes out the night before  
25 and made his lunch, and he went to work. I thought, Well,

1 he's going to be all right.

2 MS. HARTMANN: Object to the repeated  
3 nonresponsive nature of the answers.

4 THE COURT: Sustained.

5 Q. (BY MR. WESTFALL) When Bart got finished with  
6 work, where did he go?

7 A. He came home and he ate dinner real quick, and I  
8 mean quick. It was like five seconds. And he told me --

9 MS. HARTMANN: Objection, nonresponsive and  
10 hearsay.

11 THE COURT: Sustained.

12 Q. (BY MR. WESTFALL) After he finished eating  
13 dinner, where did he go?

14 A. He went to Discount Tire and called me because  
15 he wanted to --

16 MS. HARTMANN: Objection to hearsay and  
17 nonresponsive.

18 THE COURT: Sustained.

19 Q. (BY MR. WESTFALL) He called you from Discount  
20 Tire and -- he came home and ate dinner real quick and  
21 then went to Discount Tire?

22 A. Yes.

23 Q. Was he trying to buy rims?

24 MS. HARTMANN: Objection, Your Honor.  
25 Calls for speculation.

1 THE COURT: Sustained.

2 Q. (BY MR. WESTFALL) When Bart came home that  
3 evening, did he have rims?

4 A. No.

5 Q. And when he came home from Discount Tire that  
6 evening, what did he do?

7 A. He went and changed and he was watching TV with  
8 us, and we would turn around and he was out in the garage  
9 again lifting weights. And he would come back in, sit  
10 down maybe 15 minutes, go back out lifting weights again  
11 like nonstop.

12 Q. So he did the same thing.

13 A. He did the same thing. Like probably 7:00  
14 o'clock to 9:00 o'clock.

15 Q. Tuesday morning, did he go to work?

16 A. Yes.

17 Q. When he got off of work, what did he do?

18 A. The same thing he did Monday. He came in, ate,  
19 said he's going to Discount Tire. He calls me from  
20 Discount Tire, calls me from there.

21 MS. HARTMANN: objection, Your Honor.  
22 Nonresponsive.

23 THE COURT: sustained.

24 Q. (BY MR. WESTFALL) Did he come home and eat real  
25 fast?

1 A. Yes.  
 2 Q. The he then go to **Discount Tire**?  
 3 A. Yes.  
 4 Q. Did you receive a call from **Discount Tire**?  
 5 A. Yes.  
 6 Q. When he came home, did he have new rims?  
 7 A. Yes.  
 8 Q. Then did he lift weights and watch TV in  
 9 15-minute intervals?  
 10 A. Exactly.  
 11 Q. When Bart gets up Wednesday morning, does he go  
 12 to work?  
 13 A. Yes.  
 14 Q. When he gets off work, does he come home?  
 15 A. Yes.  
 16 Q. What does he do?  
 17 A. Gobbles down dinner and he says he's going to  
 18 **Discount Tire**.  
 19 Q. When -- did you receive a call from **Discount**  
 20 **Tire**?  
 21 A. I received another phone call and I was  
 22 accused --  
 23 MS. HARTMANN: Excuse me, Your Honor.  
 24 Object to nonresponsive.  
 25 THE COURT: Sustained.

1 Q. (BY MR. WESTFALL) And then when that phone call  
 2 was over, ultimately Bart comes home from **Discount Tire**  
 3 and does he have new rims?  
 4 A. No.  
 5 Q. Then what does Bart do?  
 6 A. Goes and starts working out again. But he --  
 7 MS. HARTMANN: Objection to nonresponsive.  
 8 THE COURT: Sustained.  
 9 MS. HARTMANN: Your Honor, the State would  
 10 ask the Court to direct the witness --  
 11 THE COURT: Ma'am, just answer the  
 12 question, please.  
 13 Q. (BY MR. WESTFALL) How does Bart seem?  
 14 A. Very agitated, wide-eyed. He was sitting on a  
 15 couch trying to watch TV. His legs are just moving  
 16 constant. He lifted the weights and same thing he did  
 17 Monday, Tuesday, Wednesday, except Wednesday he was really  
 18 agitated, just really agitated. Like and I am still  
 19 thinking it is Tiffany, that he's upset over that.  
 20 Q. How loud was he speaking?  
 21 A. Very loud.  
 22 Q. How fast was he talking at this point?  
 23 A. He sounded look a drunk to me.  
 24 Q. Sounded drunk?  
 25 A. He sounded drunk, but I knew he wasn't drunk

1 because he would get in my face like to talk to me. He  
 2 wasn't drunk, but he was very loud. Very loud. And  
 3 biting his lips and just real wound up like. I have never  
 4 seen him that way.  
 5 Q. Was Bart somebody who used a lot of profanity?  
 6 A. No. He would get onto me. And he wouldn't say  
 7 any of that --  
 8 MS. HARTMANN: Objection, Your Honor.  
 9 Nonresponsive.  
 10 THE COURT: Sustained.  
 11 Q. (BY MR. WESTFALL) Has Bart ever been convicted  
 12 of a felony in this state or any other state?  
 13 A. No.  
 14 Q. Has he ever been convicted of a felony --  
 15 A. No.  
 16 Q. -- in the Courts of the United States?  
 17 A. No.  
 18 Q. Wednesday night -- when Bart goes to bed Monday,  
 19 Tuesday and Wednesday, he's done the exact same thing over  
 20 and over again. Wednesday night when he goes to bed, when  
 21 is the next time you see him?  
 22 A. I am going to say Saturday morning that I  
 23 actually see him.  
 24 Q. Did you speak to him on the phone on Thursday?  
 25 A. **Yes.**

1 Q. How did he sound?  
 2 A. He was so loud that his father could hear him  
 3 across the table talking to me on my cell phone. He was  
 4 loud, just really loud, talking fast, sounded like he was  
 5 drunk telling --  
 6 MS. HARTMANN: Objection, Your Honor.  
 7 Hearsay and nonresponsive.  
 8 THE COURT: Sustained.  
 9 Q. (BY MR. WESTFALL) What Bart was saying to you,  
 10 could it have been in any way taken as being true?  
 11 A. No.  
 12 Q. And the way he was saying it, did it cause you  
 13 alarm --  
 14 A. Yes.  
 15 Q. -- what was he saying?  
 16 MS. HARTMANN: Your Honor, I will object to  
 17 hearsay. **How so?**  
 18 THE COURT: Overruled.  
 19 A. **He said, Mama, -- I said, Bart, where are you?**  
 20 **Are you coming home? You have to work tomorrow. And he**  
 21 **said, No, I am spending the night with Tara.**  
 22 Q. (BY MR. WESTFALL) Do you know what? **I'm**  
 23 **confused.** Let's talk about Friday because that will draw  
 24 an objection.  
 25 I want to talk about the conversation you

1 had with him on Friday. Thursday night, basically, when  
 2 you spoke with Bart, you knew he wasn't coming home?  
 3 A. Right.  
 4 Q. And -- well, you have already testified to it.  
 5 What did he tell you Thursday night?  
 6 A. He told me he was going to spend the night at  
 7 Tara's and that -- I was worried that he might miss work  
 8 or be late because he had never been late or anything. He  
 9 said, No, I am closer to Crowley here. I can get to work.  
 10 Q. How did he sound that Thursday when you spoke to  
 11 him?  
 12 A. He was slurring like I couldn't even hardly  
 13 understand him. It was like he was screaming in my ear.  
 14 He was just -- like the words were coming out of his mouth  
 15 where I can barely -- I couldn't understand him.  
 16 Q. Do you know Thursday night was the night he shot  
 17 Andrew Horvath and Michael Williams?  
 18 A. Yes, I know that now.  
 19 Q. Friday you spoke with him on the phone?  
 20 A. Yes.  
 21 Q. By Friday are you concerned --  
 22 A. Yeah.  
 23 Q. You speak with him on the phone, and this is the  
 24 conversation I was talking about earlier. Where are you  
 25 when you speak with him?

1 A. Me and my husband are at a Chinese restaurant  
 2 eating.  
 3 Q. Did you call him or did he call you?  
 4 A. I called him.  
 5 Q. Had you been trying to call him?  
 6 A. Uh-huh.  
 7 Q. Had you been trying to call him a lot?  
 8 A. Yeah.  
 9 Q. You got hold of him on Friday?  
 10 A. Yeah.  
 11 Q. What was he sounding like when you spoke with  
 12 him?  
 13 A. Like a wild man really. He was loud before, but  
 14 this was like -- I can't even describe how loud he was  
 15 talking to me. My husband was literally on the other side  
 16 of the booth and could hear him. He was telling me things  
 17 that --  
 18 MS. HARTMANN: Objection, nonresponsive.  
 19 THE COURT: Sustained.  
 20 Q. (BY MR. WESTFALL) What was he saying?  
 21 A. He said, Mama -- I said, Hey, come home. He  
 22 said, No, Mama, I have had so many ho's, I don't know  
 23 which one to stay the night with. What's the deal? I get  
 24 rid of Tiffany and now I have ho's everywhere. I have got  
 25 ho's everywhere. I can't decide which one to pick.

1 Q. Do you think there's any way on the planet that  
 2 he had lots of girlfriends hanging around?  
 3 A. No.  
 4 Q. Cory was sitting across the table from you?  
 5 A. Yes.  
 6 Q. And did Cory know who you were talking to?  
 7 A. Yes.  
 8 Q. How did he know?  
 9 A. He could hear him. He was so loud. You can  
 10 just hear him across the table. It was that loud.  
 11 Q. Did you ever speak with Bart anymore the rest of  
 12 that day?  
 13 A. No.  
 14 Q. Then let's go to Saturday. When you get up  
 15 Saturday morning, is Bart home?  
 16 A. Bart is home.  
 17 Q. Tell me what you see.  
 18 A. We walk out and we see his truck full of big  
 19 tools. I'm talking air compressors, big drill press,  
 20 humongous. I don't know what all of them were, huge  
 21 humongous tools.  
 22 Q. How long was it before you saw Bart?  
 23 A. Probably about an hour later, hour and a half at  
 24 the most.  
 25 Q. And what was Bart like when you saw him?

1 A. His eyes were just like the size of eggs, and he  
 2 was just bouncing around. He was slurring his speech. He  
 3 was so loud and bouncing. I had knocked on the door to  
 4 ask him to come out. He was in the shower, and when he  
 5 did come out he came out in a towel barely covering him.  
 6 I mean, I am being -- just barely covering him and he was  
 7 hanging on the door frame in front of his father, his  
 8 brother and his friend. And I said, Bart --  
 9 Q. Tell me about the towel. Why was that unusual?  
 10 A. Because he just don't come out in a towel. He  
 11 had a little robe that my mother had bought him, and he  
 12 just wouldn't come out like that. And more or less, that  
 13 towel wasn't even completely together where you could  
 14 almost see him.  
 15 Q. And he had a friend with him?  
 16 A. Right.  
 17 Q. Who was that?  
 18 A. Daniel.  
 19 Q. Had you ever seen Daniel before?  
 20 A. Not that I had ever remembered, no.  
 21 Q. What time of day is this?  
 22 A. About 11:00 in the morning, 10 until 11:00.  
 23 Q. Did you ask Bart about the tools?  
 24 A. Yes. I wanted to do his face but I didn't want  
 25 to embarrass him. I said, What is that stuff in your

1 truck? Where did you get it?  
 2 And he's hanging out the door like showing  
 3 his privates saying, Five-finger discount, Mom. It was so  
 4 loud I turned around and I know our neighbors were looking  
 5 at us out in the yard. I mean, it was loud.  
 6 I said, You mean you stole that stuff? I  
 7 said, Why? Why would you steal? I am still trying to  
 8 talk quietly to him and Justin's brother is (inaudible)  
 9 and he's got friends over there. It was so loud. He  
 10 said, I don't know; I just felt like it. My mouth just --  
 11 MS. HARTMANN: Object to the nonresponsive  
 12 nature of witness' answer.  
 13 THE COURT: Sustained.  
 14 Q. (BY MR. WESTFALL) Did Bart leave soon after  
 15 that?  
 16 A. Yes.  
 17 Q. When was the next time you heard from Bart?  
 18 A. When he called me from the jail Sunday.  
 19 Q. How did he sound when he called you from the  
 20 jail?  
 21 A. Honestly just like he was just not all there.  
 22 Q. Was he hollering for you to bring --  
 23 A. Yeah, he was ordering me. He doesn't order me.  
 24 Q. Was he ordering you to bring his Paxil?  
 25 A. Yeah, he called us several times wanting the

1 MS. HARTMANN: Objection to hearsay.  
 2 THE COURT: Sustained.  
 3 Q. (BY MR. WESTFALL) As a result of what you told  
 4 Dr. Ouseph, did Dr. Ouseph seem concerned and scared?  
 5 A. Yes.  
 6 MR. WESTFALL: We'll pass the witness.  
 7 THE COURT: Ladies and gentlemen of the  
 8 jury, we'll take a stretch break. Please retire to the  
 9 jury room. Remember and follow your instructions.  
 10 (Recess taken)  
 11 MS. HARTMANN: We are ready.  
 12 MR. WESTFALL: Defense is ready, Your  
 13 Honor.  
 14 THE COURT: Bring the jury in.  
 15 (Jury present )  
 16 CROSS-EXAMINATION  
 17 BY MS. HARTMANN:  
 18 Q. Ms. Adams, --  
 19 MS. HARTMANN: May I approach the witness?  
 20 THE COURT: Yes.  
 21 Q. (BY MS. HARTMANN) Would you recognize your  
 22 son's vehicle if you saw it in a picture?  
 23 A. Yes.  
 24 Q. Let me show you what's been admitted into  
 25 evidence as State's Exhibit No. 37. Is that your son's

1 Paxil.  
 2 Q. Since he's been in the jail, how has he been --  
 3 he's been in jail ever since he was arrested?  
 4 A. Right.  
 5 Q. How has he been?  
 6 A. Sometimes okay but there are times I get four  
 7 calls a day. I at least get one to two a day.  
 8 Q. What is it like when you go visit him?  
 9 A. Sometimes he is real relaxed sitting there with  
 10 a cup of coffee, and sometime he's standing up and can't  
 11 even look at me. He turns around in circles and sticks  
 12 his fingers in the screws on the wall (inaudible).  
 13 Q. Sometimes you go there and he's very normal,  
 14 and sometimes you go there and he's done what you just  
 15 testified to?  
 16 A. Yes.  
 17 Q. Right after Bart was arrested, did you get a  
 18 call from Dr. Ouseph?  
 19 A. Yes.  
 20 Q. And Bart actually had an appointment to go see  
 21 Dr. Ouseph that you missed because he was in jail?  
 22 A. Right.  
 23 Q. Did you tell Dr. Ouseph what the situation was?  
 24 A. Yes.  
 25 Q. What did Dr. Ouseph say?

1 truck?  
 2 A. Yes.  
 3 Q. Do you know what year that truck is?  
 4 A. 2002.  
 5 Q. A 2002?  
 6 A. A 2000, whatever.  
 7 Q. And your son is the owner of that vehicle,  
 8 correct?  
 9 A. Correct.  
 10 Q. Who purchased that vehicle?  
 11 A. My mother.  
 12 Q. And did she pay for it outright or is she making  
 13 payments or what?  
 14 A. Paid cash.  
 15 Q. So in essence, Bart owned that vehicle?  
 16 A. Yes.  
 17 Q. Who paid for the insurance on the vehicle?  
 18 A. Bart.  
 19 Q. Okay. And so do you know approximately how much  
 20 money your mother paid for Bart's truck?  
 21 A. No.  
 22 Q. Do you know if it was several thousand dollars?  
 23 A. Yes.  
 24 Q. A two-year-old truck, right?  
 25 A. No, it was a brand-new truck.

1 Q. She bought it for him brand new; is that true?  
 2 A. Yes.  
 3 Q. And she paid cash and gave it as a gift, I  
 4 guess, outright to your son?  
 5 A. Yes.  
 6 Q. And then your son paid to carry the insurance on  
 7 the vehicle.  
 8 A. Yes.  
 9 Q. There has been some mention earlier about some  
 10 difficulty about your son not being able to be on your  
 11 husband's insurance, and I guess the implication was there  
 12 was no money to pay for prescription drugs that are needed  
 13 or being prescribed?  
 14 A. Yes.  
 15 Q. But in effect, your son had a vehicle, correct?  
 16 A. Yes.  
 17 Q. And did your son being able to have  
 18 transportation outweigh his being able to pay for  
 19 medication that people were telling him he needed?  
 20 A. He had the truck before he needed medication.  
 21 Q. But he had the truck when he needed the  
 22 medication, correct?  
 23 A. (No response)  
 24 Q. Is that correct, ma'am?  
 25 A. Yes, I guess.

1 Q. Was there ever any interest or consideration by  
 2 the family of, Hey, you know, this medication seems to be  
 3 what the doctors think he needs. It is very important.  
 4 We're just going to have to sacrifice having  
 5 transportation, because one way or another we are going to  
 6 have to get you the medication so we are going to have to  
 7 sell the truck?  
 8 A. No.  
 9 Q. So the medication was important but not that  
 10 important, correct?  
 11 A. I wouldn't say that.  
 12 Q. Well, you had a vehicle that you could have sold  
 13 and gotten money for, right?  
 14 A. I guess you could.  
 15 Q. And you-all chose not to do that, correct?  
 16 A. Yes.  
 17 Q. All right. And there was also some talk about  
 18 your son having some difficulty in school, correct?  
 19 A. Correct.  
 20 Q. Isn't it true, ma'am, that actually up until  
 21 maybe the end of junior high his grades were relatively  
 22 good, B's and C's?  
 23 A. No.  
 24 Q. You would disagree with that?  
 25 A. Well, I don't know why the teachers would call

1 me down there.  
 2 Q. Would you agree he's a relatively good student?  
 3 A. Yes.  
 4 Q. You would agree with that, that he was?  
 5 A. What, now? I am sorry. I forgot the question.  
 6 Q. Up through, I guess, about the end of junior  
 7 high --  
 8 A. No, the grades were not good towards the end of  
 9 junior high.  
 10 Q. As a parent, were they sending home report cards  
 11 to you?  
 12 A. Yes.  
 13 Q. Would you look at those report cards?  
 14 A. Yes.  
 15 Q. Like any good parent would?  
 16 A. Yes.  
 17 MS. HARTMANN: May I approach the witness?  
 18 THE COURT: Yes.  
 19 Q. (BY MS. HARTMANN) I'm going to show you what's  
 20 been marked for identification purposes as State's Exhibit  
 21 No. 40. If you can please take a look through those pages  
 22 for me. Don't read anything out loud, but I'm going to  
 23 ask you some questions about it.  
 24 A. (Witness complies)  
 25 MR. WESTFALL: Your Honor, may I approach

1 and see what she's showing to her?  
 2 THE COURT: Yes.  
 3 Q. (BY MS. HARTMANN) And after taking a look at  
 4 what was marked for identification as State's Exhibit No.  
 5 40, at least up until 8th grade, your son did fairly well  
 6 in school, correct?  
 7 A. B's and C's, yes.  
 8 Q. And that was in all different range of classes,  
 9 correct? Math, history, science, English?  
 10 A. Yes.  
 11 Q. And even in some there is -- he was scoring in  
 12 the 90s, correct?  
 13 A. Yes.  
 14 Q. Now, as far as the checking account went, was he  
 15 the only person on the signature card?  
 16 A. His stepfather.  
 17 Q. I'm sorry?  
 18 A. Cory Adams, his stepfather.  
 19 Q. Was that a joint account?  
 20 A. It was his account because it was through the  
 21 Fort Worth City Credit Union. The member had to sign the  
 22 card to have an account.  
 23 Q. The person was actually writing checks on the  
 24 account was your son?  
 25 A. Correct.

1 Q. You have told the jury that you would frequently  
2 fill out checks for your son, correct?  
3 A. Correct. Still suspicious of the alibi check for  
4 the extraneous?  
5 Q. So is it your testimony that all -- the copies  
6 of checks in State's Exhibit No. 18 were they all filled  
7 out by you?  
8 A. No, not all of them.  
9 Q. A great number of them appear to be in your  
10 son's handwriting.  
11 A. Correct. But a lot of them are utilities and  
12 credit card companies. I sat down with him and showed him  
13 how to write the checks.  
14 Q. You wrote out all the utility company checks and  
15 the credit card companies --  
16 A. No, that's not what I said.  
17 Q. Well, did you write out the check to Conoco,  
18 Check 1001?  
19 A. No. I believe he did that one. I said there  
20 were times he paid his bills I sat down beside him.  
21 Q. And the check that I just wrote, 1001 that was  
22 written to Conoco, did your son make out this check?  
23 A. I wasn't there, but it looks like his writing.  
24 Yes.  
25 Q. He filled that out correctly, didn't he?  
A. Uh-huh.

1 Q. Is that yes?  
2 A. Yes.  
3 Q. You just have to say it out loud for the court  
4 reporter so he can take down what you're saying.  
5 In fact, a fair number of these checks have  
6 been filled out correctly by your son.  
7 A. Yes.  
8 Q. There are some misspellings.  
9 A. Yes.  
10 Q. But there are a lot of people who have trouble  
11 with spelling, correct?  
12 A. I would guess so.  
13 Q. As far as how your son was acting during most  
14 recent time period that you talked to the jury about, this  
15 February 14, I believe, into the next week, you obviously  
16 have not been here in the courtroom when the witnesses  
17 testify about what happened on the evening of February 21,  
18 correct?  
19 A. Correct.  
20 Q. And is it your understanding that those people  
21 were actually with your son on that evening?  
22 A. Which evening?  
23 Q. Well, a number of individuals by the name of  
24 Michael Williams, Andy Horvath, Mindy Keisel, Tara Green?  
25 A. I have been told, yes.

1 Q. Is it your understanding those individuals were  
2 with your son on the evening of the 21st of February of  
3 this year, correct?  
4 A. Correct.  
5 Q. And wouldn't it be fair to say they would be a  
6 better judge of how he appeared back on that evening  
7 because you weren't with him, correct?  
8 A. I guess that evening, no, I wasn't with him.  
9 Q. Who bought the shotgun for your son?  
10 A. I did -- he did.  
11 Q. You knew he had it, though, didn't you?  
12 A. Yes.  
13 Q. How long had he had it prior to February 2002?  
14 A. I don't know when he bought it.  
15 Q. I asked how long he had it.  
16 A. I don't know.  
17 Q. Had you seen him with it before?  
18 A. Maybe once.  
19 Q. Where did you see him with it?  
20 A. It was in his closet.  
21 Q. Did you find it? Did he show it to you?  
22 A. No, I seen it.  
23 Q. Just kind of came upon it?  
24 A. Yeah.  
25 Q. Was this before -- well, strike that.

1 Do you know when it was that you found the  
2 shotgun in his closet?  
3 A. Sometime after he turned 18.  
4 Q. And in spite of all the problems you have been  
5 telling the jury about, you weren't concerned enough to  
6 take the shotgun away?  
7 A. Yeah, I was. But at 18, by law he can buy one.  
8 No matter how many I throw away, he can buy one.  
9 Q. But he was living in your home, wasn't he?  
10 A. Correct.  
11 Q. And you have control over what you have in your  
12 house, correct?  
13 A. Yes.  
14 Q. And you as a responsible parent believing that  
15 your son has got some serious problems going on, you would  
16 be entitled, don't you think, to have that gun out of the  
17 house?  
18 A. Yes.  
19 Q. And this week where you were noticing his  
20 pulling on his hair and fidgeting with his legs and  
21 talking real loud, which doctor did you call to notify  
22 about that?  
23 A. No one.  
24 Q. You didn't call any doctor, did you?  
25 A. No.

- 1 Q. You were so concerned about what was going on,  
2 but yet you didn't pick up the phone and call your doctor,  
3 did you?  
4 A. No.  
5 Q. Didn't take him to a doctor, did you?  
6 A. No.  
7 Q. Didn't take him to a hospital?  
8 A. No.  
9 Q. When your son wasn't coming home and he was  
10 calling you and you say he was talking loudly and giving  
11 you some concern, you never picked up the phone and called  
12 the police, did you?  
13 A. No.  
14 Q. Never picked up the phone to call somebody and  
15 say, hey, I think my son is out of his head. I don't know  
16 where he is. Can somebody help me go find him?  
17 A. No. *Must've been thinking she*  
18 Q. Never did that, did you? *knew something; this was*  
19 A. (No response) *perjury, after all*  
20 Q. Now, I know you talked a little bit to the jury  
21 about, I guess, his academic problems that you believed  
22 that he had and some other things, but he's got some  
23 problems with some other issues, doesn't he, such as  
24 alcohol?  
25 A. No.

- 1 Q. You deny that he abused alcohol?  
2 A. Yes.  
3 Q. Would you be surprised to know, ma'am, he's been  
4 diagnosed as having an alcohol problem?  
5 A. Every doctor he went to said he had a drug  
6 dependency problem, so, yes, it would.  
7 Q. That would surprise you? What about the use of  
8 Xanax?  
9 A. I believe that would fall under a drug problem.  
10 Q. You were aware that he was using Xanax, correct?  
11 A. No.  
12 Q. You weren't aware of that?  
13 A. I knew he had a drug problem. I didn't know  
14 what drugs he was doing.  
15 Q. You never asked?  
16 A. That's why I took him to a doctor.  
17 Q. You never asked your son?  
18 A. Yes.  
19 Q. What drugs are you using?  
20 A. Right.  
21 Q. Didn't want to know?  
22 A. I wouldn't say that he really opened up to me.  
23 Q. Well, he was living in your home, wasn't he?  
24 A. Yes.  
25 Q. And you never confronted him to say what drug

- 1 are you using?  
2 A. Yes, we would have discussions about it.  
3 Q. Would he tell you?  
4 A. Not really, no. That's why I tried to get help.  
5 Q. And if he was having difficulty holding down  
6 jobs, where would he get the money to buy those drugs?  
7 A. That I don't know.  
8 Q. You have also testified that some of the things  
9 that concern you was his face was breaking out, he was  
10 rebellious and he was dressing improperly?  
11 A. Yes, sir.  
12 Q. Isn't that pretty much typical teenage male,  
13 pretty common?  
14 A. I would think that, but no.  
15 Q. Not for your son?  
16 A. No.  
17 Q. He's the exception to the rule?  
18 A. I also have another one the same age as him.  
19 Q. That's not the question I asked you. Just  
20 answer my question, please, okay.  
21 A. Uh-huh.  
22 Q. Is your son the exception to the rule?  
23 A. Yeah, he really is.  
24 Q. Okay. Fair enough. You did say that you were  
25 present when your son would go see Dr. Ouseph, correct?

- 1 A. Correct.  
2 Q. There were two doctors, one of which you waited  
3 out in the car while he went in to see him, and Dr. Ouseph  
4 you actually went in with him?  
5 A. Correct.  
6 Q. And were you present in the examination room?  
7 A. Not while she was asking him questions, but  
8 right afterward she wanted the family to come to bring us  
9 in there.  
10 Q. All right. And she explained to your son the  
11 risks and benefits of medication of Paxil, correct?  
12 A. I didn't hear her give any risks. He was  
13 concerned about, one, if it would break his face out, and  
14 she said it would not cause that.  
15 Q. There was some discussion about the risks and  
16 benefits of the medication, correct?  
17 A. Right.  
18 Q. She also instructed him that he needed to  
19 maintain complete sobriety?  
20 A. Correct.  
21 Q. In other words, he didn't have a drinking  
22 problem?  
23 A. Right. She said you shouldn't drink to  
24 medication. I heard her say that.  
25 Q. Basically while your son was on the Paxil, he

1 wasn't supposed to be mixing it with alcohol or any other  
2 drug, correct?

3 A. From what I heard, I guess, yes.

4 Q. I mean he knew, right?

5 A. I am not him. I guess he knew.

6 Q. You testified about a lot of other things on  
7 direct examination about what he knew.

8 A. Yes.

9 Q. Okay. I mean, he knew exactly that he was not  
10 supposed to mix Paxil with alcohol or any other street  
11 drugs or prescription drugs he didn't have a prescription  
12 for, correct?

13 A. I wasn't really in there when she said that, no.

14 Q. You know, ma'am, that voluntary intoxication is  
15 not a defense to a criminal act.

16 MR. WESTFALL: Your Honor, I can't see how  
17 she would know that.

18 THE COURT: Sustained.

19 Q. (BY MS. HARTMANN) Are you aware that voluntary  
20 intoxication, whether by alcohol or Xanax or Paxil or  
21 anything else is not a legal defense to a criminal act?

22 A. How would I know that?

23 Q. I'm asking you if you were aware.

24 A. No.

25 Q. Your son is still taking Paxil, correct?

1 A. Yes, but I should not talk to him in the jail  
2 about it.

3 Q. So your testimony is you and your son have never  
4 talked about this?

5 A. Maybe as he's been sitting there -- nothing  
6 really big.

7 Q. Did he tell you he used the shotgun?

8 A. No. He hasn't even really talked to me about  
9 it. He just knows I have heard parts of the case, and I  
10 have just not really talked to him about it.

11 Q. Are you aware that he shot three people?

12 A. That's what I was told.

13 Q. And those people are other people's children,  
14 are they not?

15 A. Yes, they are.

16 Q. They are also mothers, correct?

17 A. Yes.

18 Q. The behavior that you described for this jury  
19 starting on 14th of February, have you ever noticed that  
20 behavior before?

21 A. No.

22 MS. HARTMANN: Pass the witness. Thank  
23 you.

24 MR. WESTFALL: Your Honor, under the Rule  
25 of optional completeness and remainder of writings,

1 A. Yes.

2 Q. Are you aware he has told the staff that he  
3 likes taking Paxil?

4 A. No, I don't know that.

5 Q. That it works for him?

6 A. No, I don't know that.

7 Q. And that he has never reported to any of the  
8 staff that were working with him now any bad side effects  
9 from taking Paxil?

10 A. Is that a question?

11 Q. Yes, ma'am, it is.

12 A. I am not there. I don't know that, no.

13 Q. Can you describe that shotgun?

14 A. I just remember it being black. I couldn't give  
15 you no details.

16 Q. Where is that shotgun now?

17 A. I have no idea.

18 Q. Have you asked your son where it is?

19 A. No, I am not supposed to talk about this case  
20 with him, so no.

21 Q. Who told you that?

22 A. Common sense is what I have been told. I  
23 shouldn't do it.

24 Q. You as his mother are not interested in what he  
25 may or may not have done?

1 Defense offers Defendant's Exhibit 19 which is the  
2 remainder of his school records.

3 MS. HARTMANN: The State never offered any  
4 of those.

5 THE COURT: They were marked but never  
6 offered.

7 MR. WESTFALL: Okay. Then we would move  
8 for the admission of State's 40 and Defendant's 19. They  
9 are shown to be business records. They are the school  
10 records. They have been spoken of during cross-  
11 examination, and they are relevant, and we move for their  
12 admission, Your Honor.

13 MS. HARTMANN: May I see them?

14 MR. WESTFALL: Okay.

15 MS. HARTMANN: Your Honor, at this time the  
16 State has no objection to Defendant's Exhibit 19 and  
17 State's Exhibit 40.

18 THE COURT: Defendant's 19 and State's 40  
19 are admitted.

20 (State's Exhibit No. 40 and Defendant's  
21 Exhibit No. 19 received)

22 REDIRECT EXAMINATION

23 BY MR. WESTFALL:

24 Q. What grade was it did Bart have to repeat?

25 A. Third.

1 Q. I am showing you a portion of State's Exhibit  
2 No. 40. Does that look like a report card from Bess Race  
3 Elementary fourth grade?

4 A. Yes.

5 MR. WESTFALL: Your Honor, permission  
6 to have the witness publish a portion of this by reading  
7 it aloud.

8 THE COURT: She may.

9 Q. (BY MR. WESTFALL) Please read the comments.

10 A. Has difficulty in oral directions, timid about  
11 asking for help, has shown a good attitude about trying to  
12 improve work habits, has shown improvement in academics,  
13 working with more self-control is needed. Thoughtless  
14 actions get him in trouble. Needs constant supervision.  
15 Improved in work habits. And it cuts off after that.

16 Q. In these record does this look like an Iowa Test  
17 of Basic Skills?

18 A. Yes.

19 Q. Dated 4 of '91?

20 A. Yes.

21 Q. In what percentile does it show Bart in in the  
22 population of children in listening?

23 A. Two percent.

24 Q. Vocabulary?

25 A. 32 percent.

1 because it went through his trust fund and they paid the  
2 insurance.

3 Q. Let me see if this refreshes your memory. Is  
4 that a check to Allstate?

5 A. Yes.

6 Q. In the amount of \$107?

7 A. Yes.

8 Q. Who filled that out?

9 A. I did.

10 Q. Is that your handwriting?

11 A. That's my handwriting.

12 MS. WESTFALL: May I publish this by  
13 showing it to the jury, Your Honor?

14 Q. (BY MR. WESTFALL) Now, there are several of  
15 these in here that's Bart's handwriting. Is that Bart's  
16 handwriting?

17 A. Yes.

18 Q. Is that Bart's handwriting?

19 A. Yes.

20 Q. That truck that Bart drove, his grandmother  
21 bought him that truck?

22 A. Yes.

23 Q. Why did she do that?

24 A. She told him if he could get his GED that she  
25 would buy him a new truck.

1 Q. Reading?

2 A. 17 percent.

3 Q. 17th percentile. Spelling?

4 A. Two percent.

5 Q. Punctuation?

6 A. Eight percent.

7 Q. Eight percent. Visual materials?

8 A. 88 percent.

9 Q. 88th percentile. How about math problems?

10 A. Eight percent.

11 Q. Are many of the comments that teachers were  
12 making reflected on these report cards? Let me show them  
13 to you. What you read from was a report card?

14 A. Right.

15 Q. Is this the third grade report card?

16 A. Yes.

17 Q. And it has comments on it. Is that reflective  
18 of how you knew Bart was doing in school?

19 A. Yes.

20 Q. Who insured Bart's truck? Was it Allstate?

21 A. Yes.

22 Q. And in this Defendant's 18 --

23 A. All the checks --

24 Q. -- are there checks in here to Allstate?

25 A. I'm not really sure. No, there wouldn't be

1 Q. Did he get his GED?

2 A. Yes.

3 Q. How many attempts did it take?

4 A. Two.

5 Q. When you were with Dr. Ouseph, how long were you  
6 in there -- how long did Dr. Ouseph do the talking about  
7 Paxil?

8 A. About a minute, maybe two minutes.

9 Q. Did you ever hear her ask Bart if he was a drug  
10 dealer?

11 A. No.

12 Q. Did you ever see the report that Dr. Ouseph  
13 wrote?

14 A. No.

15 Q. Did you try to treat Bart like he was normal?

16 A. At first.

17 Q. But I mean as Bart is growing up, he's getting a  
18 job trying to be normal?

19 A. Right.

20 Q. And how long did you jack with TRC trying to get  
21 them to pay for the Paxil before you started giving him  
22 Cory's.

23 A. About three weeks because they told me I had to  
24 bring a prescription -- actually, longer than that.

25 Probably about a month. Because I had to pay for the

1 prescription to them when I left the doctor's office.

2 Q. Since this trial began, have you set foot in  
3 this courtroom during any testimony before you took the  
4 stand this morning?

5 A. No.

6 Q. Did you see the opening statement? Have you  
7 seen anything in this courtroom?

8 A. No.

9 Q. And you mentioned Bart had a trust fund?

10 A. Yes.

11 Q. What was the basis of that trust fund? Why was  
12 that created?

13 A. The first half of it was from his father dying,  
14 and the second half of it was when his stepfather  
15 committed suicide.

16 Q. That was the sum total of the money that ended  
17 up in that trust fund?

18 A. Yes.

19 MR. WESTFALL: We'll pass the witness.

20 RE-CROSS-EXAMINATION

21 BY MS. HARTMANN:

22 Q. Did you just tell us that Dr. Ouseph had --  
23 didn't diagnose your son with ADHD?

24 A. No.

25 Q. Are you sure about that?

1 marijuana since he was a teenager, correct?

2 A. I knew he smoked it, yes.

3 Q. Isn't it fair to say, ma'am, that your son  
4 abused a number of substances?

5 A. I don't know that for a fact, but I guess.

6 Q. I mean come on, common sense.

7 A. I have just been told he has a drug problem,  
8 that's why I took him to the doctor.

9 Q. You know at the very least it was smoking  
10 marijuana?

11 A. Yes.

12 Q. And drink alcohol?

13 A. I have never asked him. Drinking was not really  
14 his thing, so I don't know that he abused alcohol.

15 Q. And you know that he abused some type of drug.  
16 You don't know whether it was Xanax or not?

17 A. Yes.

18 MS. HARTMANN: May I approach the witness?

19 THE COURT: Yes.

20 Q. Mr. Westfall was asking you about some  
21 evaluations that were done with your son at school.

22 Obviously, if this has been admitted into evidence the  
23 jury would be able to see for themselves the later time  
24 the specific grades he was receiving?

25 A. Correct.

1 A. Yeah, she did not tell me that.

2 Q. And this trust fund, you are apparently able to  
3 go to the trust fund to get money for truck insurance, but  
4 you are not able to go get money for medical needs?

5 A. I would give them -- ask them what I needed and  
6 they voted on it. There were a panel of 12 people and  
7 they vote and tell you what you can and cannot have.

8 Q. Did you submit a request for them to pay for his  
9 medical needs?

10 A. No.

11 Q. But you did for his truck insurance?

12 A. Yes. That was before.

13 Q. Well, when he received the prescription that you  
14 couldn't pay for, was it while you were giving him your  
15 husband's prescription? You have just told us it was  
16 three weeks that you were waiting, correct?

17 A. Correct.

18 Q. You didn't think it was important enough to  
19 submit some type of request or emergency request, Hey, he  
20 needs this medication. We don't have the money. Would  
21 you approve it?

22 A. No, I did not do that.

23 Q. And your son also abuses marijuana, doesn't he?

24 A. I know that he smoked it.

25 Q. You've reported to doctors he's been using

1 Q. Because those are actually set out here for the  
2 different problems, spring semesters and for math,  
3 reading, composition and social studies, things of that  
4 nature?

5 A. Correct.

6 Q. He specifically referenced you to, I guess, your  
7 son's third year in school?

8 A. Correct.

9 Q. He also took the normal reference assessment  
10 program, some type of evaluation for that. Do you see  
11 what I am referring to?

12 A. Yes.

13 Q. And none of these areas, whether reading  
14 comprehension, mathematics, problem solving and data  
15 interpretation, reading and mathematics, his scores in  
16 most of those at least average, correct?

17 A. Three of them.

18 Q. And the rest of them are above the low range,  
19 correct?

20 A. Yes.

21 Q. And even if your son had some difficulty with  
22 spelling and maybe being able to maintain attention  
23 listening to a teacher give instructions, your son is  
24 fairly intelligent, isn't he?

25 A. No.

1 Q. You will disagree with that?  
 2 A. Yes.  
 3 Q. The record's going to reflect in those exhibits  
 4 are just wrong, the grades that are reflected in those  
 5 exhibits?  
 6 A. I see his grades, yes.  
 7 Q. Are they somebody else's grades?  
 8 A. He showed me up to third grade. He did fairly  
 9 well.  
 10 Q. And the grade after that, correct?  
 11 A. Yes.  
 12 Q. And he continued to maintain about a B or C  
 13 average?  
 14 A. Until that grade.  
 15 Q. Up through about the 8th grade, correct?  
 16 A. Somewhat.  
 17 Q. And in the ninth grade, he dropped out?  
 18 A. Actually, I withdrew him.  
 19 Q. And finally he was able to obtain his General  
 20 Equivalency Diploma, correct?  
 21 A. Correct.  
 22 MS. HARTMANN: Pass the witness.  
 23 MR. WESTFALL: Your Honor, at this time  
 24 the State has looked over these records already. These  
 25 are the Texas Rehabilitation records. Dr. Ouseph's report

1 is in here. She's been cross-examined on what was said to  
 2 Dr. Ouseph. This is the entire record from TRC and it's  
 3 been proven up as a business record. We would move for  
 4 its admission.  
 5 MS. HARTMANN: We have no objection.  
 6 THE COURT: Defense Exhibit 20 is  
 7 admitted.  
 8 (Defendant's Exhibit No. 20 received)  
 9 MR. WESTFALL: I'll pass the witness.  
 10 MS. HARTMANN: No further questions, Your  
 11 Honor.  
 12 THE COURT: You may step down, ma'am.  
 13 MR. WESTFALL: May she be excused, Your  
 14 Honor?  
 15 MS. HARTMANN: We have no objection.  
 16 THE COURT: She may.  
 17 Ladies and gentlemen of the jury, let's  
 18 take a lunch break until 1:15. Please remember and follow  
 19 your instructions. And the bailiff will meet you at  
 20 1:05. Have a good lunch.  
 21 (Recess for lunch)  
 22 (Jury not present)  
 23 THE COURT: Are both sides ready for the  
 24 jury?  
 25 MS. HARTMANN: State's ready, Your Honor.

1 MR. WESTFALL: Defense is ready, Your  
 2 Honor.  
 3 (Jury present)  
 4 Whereupon,  
 5 **TIFFANY PHILLIPS,**  
 6 having been first duly sworn, testified as follows:  
 7 **DIRECT EXAMINATION**  
 8 BY MR. WESTFALL:  
 9 Q. State your full name for the jury.  
 10 A. Tiffany Ann Phillips.  
 11 Q. How old are you?  
 12 A. 18.  
 13 Q. Where did you grow up?  
 14 A. Fort Worth, and then I moved to Crowley.  
 15 Q. Do you know Bart Gaines?  
 16 A. Yes.  
 17 Q. How do you know him?  
 18 A. We were together for five years.  
 19 Q. When did you begin dating Bart?  
 20 A. When I was 13.  
 21 Q. How old was Bart?  
 22 A. 15, or fixing to turn 15.  
 23 Q. What was Bart like when you started dating him?  
 24 A. Very sweet, caring, very well mannered, real  
 25 caring, all he wanted was to please people, kind of shy.

1 Q. Are you still dating Bart?  
 2 A. No.  
 3 Q. Do you have a new boyfriend?  
 4 A. Yes.  
 5 Q. For the five years that you dated Bart, did you  
 6 spend a substantial amount of time with him?  
 7 A. We lived together the whole time.  
 8 Q. You knew some of Bart's friends?  
 9 A. Uh-huh.  
 10 Q. Did his friends make fun of him?  
 11 A. Yeah, but they were just trying to influence him  
 12 to get mad at me, to take their anger out on me because me  
 13 and him were always together. They were just real jealous  
 14 of our relationship.  
 15 Q. Would they say things about you that weren't  
 16 true?  
 17 A. Yes, all the time.  
 18 Q. Did he seem to believe them?  
 19 A. Yes, very much so.  
 20 Q. Did that cause you-all problems in your  
 21 relationship?  
 22 A. That's why we broke up.  
 23 Q. **When did you break up from Bart the last time?**  
 24 **A. The very beginning of February, around February**  
 25 **2.**

1 Q. Of this year?

2 A. Uh-huh. Last year.

3 Q. After you broke up with Bart in the beginning  
4 of February, were you still talking to him at all?

5 A. We didn't talk for about -- probably about a  
6 week, and then we saw each other in church and we talked  
7 then, and I had another conversation with him on Thursday.

8 Q. I want to talk to you about the church. You had  
9 been broken up from Bart, and you saw Bart in church?

10 A. Yes.

11 Q. And it was the Sunday before this incident?

12 A. Yes.

13 Q. Could you please tell the jury what Bart was  
14 like when he showed up for church that Sunday before the  
15 incident?

16 A. My aunt, my grandmother and me and then Bart  
17 came in and sat beside me. We weren't together. We  
18 hadn't talked in about a week. He was real -- we sat  
19 there for a little bit kind of cold, and then he started  
20 getting real fidgety and bouncing his legs, couldn't sit  
21 still. My grandma kept getting onto us. The alter call  
22 came, and he grabbed my hand and pulled me up there with  
23 him. That wasn't like Bart. He didn't like getting up in  
24 front of a bunch of people. We sat back down. He was  
25 trying to talk to me and write me notes, and me and him

1 got up and went out to his truck and just talked a little  
2 bit.

3 Q. Was he whispering to you in church?

4 A. Yes.

5 Q. Was he whispering loudly?

6 A. To where my grandmother could hear him. He was  
7 always whispering softly, but he was really loud.

8 Q. How did his face appear? Was there anything  
9 unusual?

10 A. More blank and just -- blank and just  
11 wide-eyed. Talking loudly. He couldn't keep his legs  
12 still, couldn't sit down for that long a time through  
13 church.

14 Q. What church is this?

15 A. University Park Church.

16 Q. Where is that?

17 A. Off University, Fort Worth.

18 Q. Did he leave before or after the service was  
19 over?

20 A. We sat outside talking until everyone started  
21 walking out, and then just said bye. And I went with my  
22 family and he went with his.

23 Q. What was he like when you left?

24 A. Real different. Whenever we hugged, usually he  
25 would hug me tight. He just kind of patted me on the back

1 and -- I mean, he was just blank faced. He was ready to  
2 go and he got in the car and left.

3 Q. What time of day was this?

4 A. Church let out about 12:30 or 1:00.

5 Q. How long had he been sitting there in church  
6 with you before y'all went outside?

7 A. For about an hour.

8 Q. When was the next time you spoke with Bart?

9 A. That was Sunday, and I talked to him the  
10 following Thursday.

11 Q. February 21? Seems a tentative interpretation, right?  
But when combined with previous  
documentation, we know it is.

12 A. Yes?

13 Q. What time of day did you speak with him?

14 A. Afternoon between 3:00 and 4:00.

15 Q. Did you call him or did he call you?

16 A. I called him.

17 Q. Why did you call him?

18 A. Because I would call his mother to see how she  
19 was doing and see how he was doing, and she told me that  
20 he wasn't acting like himself and that he was just being  
21 really weird. And she wanted me to call him, and I wanted  
22 to call to see if I could notice anything of him acting  
23 unnormal.

24 Q. Did you catch him on the phone?

25 A. Uh-huh. I called him and I said, Hey, how are

1 you doing? And he said, Hi. And at first he was kind of  
2 calm, and I thought that maybe he was drunk or something,  
3 but it didn't sound like he was slurring, but it was  
4 because he was talking really fast. He wasn't making any  
5 sense.

6 He started ranting and raving, and I didn't  
7 even know what he was ranting and raving about. I got  
8 upset and my grandmother could hear me crying, and I was  
9 yelling at Bart and telling him to -- you know, What are  
10 you talking about? She picked up the phone and said,  
11 Bart --

12 MR. FORAN: I'm going to object at this  
13 time to the narrative and to the hearsay.

14 THE COURT: Sustained.

15 Q. (BY MR. WESTFALL) Was Bart a person who used a  
16 lot of profanity?

17 A. No.

18 Q. What about in this phone call?

19 A. Yeah, he was cussing a lot. I was on the phone  
20 when my grandmother picked up the phone and heard what he  
21 was saying, and then she hung up the phone. And she came  
22 in my room, and I was crying and she said --

23 MR. FORAN: Objection, nonresponsive.

24 THE COURT: Sustained.

25 Q. (BY MR. WESTFALL) Did your grandmother ever

1 speak with Bart on the phone?

2 A. Yes.

3 Q. Did Bart know that your grandmother was speaking  
4 to him?

5 A. No.

6 MR. FORAN: Objection, speculation.

7 THE COURT: Sustained.

8 Q. (BY MR. WESTFALL) Were you also listening to  
9 the conversation?

10 A. I could just hear what my grandmother was  
11 saying. She was holding the phone like this. I was  
12 standing up and she was holding the phone like this. And  
13 I couldn't hear what he was saying, but I could just hear  
14 that he was yelling. And she kept going, Bart, Bart, and  
15 he didn't know --

16 MR. FORAN: Objection, nonresponsive.

17 THE COURT: Sustained.

18 Q. (BY MR. WESTFALL) That was Thursday, the 21st  
19 in the afternoon. When was the next time you saw or heard  
20 from Bart?

21 A. Saturday.

22 Q. What time?

23 A. About 3:00 -- 3:00 or 4:00, in between there.

24 Q. About 3:00 or 4:00 in the morning?

25 A. Uh-huh.

1 Q. Where were you when you saw Bart?

2 A. He had bought a trailer, and we stayed out there  
3 and he rented it out to my mother so my mother was there  
4 and I was out there with her.

5 Q. So you were at your mother's residence?

6 A. Yes.

7 Q. In Granbury?

8 A. Yes.

9 Q. Did Bart show up alone or with somebody else?

10 A. Somebody else.

11 Q. Who was he with?

12 A. Daniel.

13 Q. Did you previously know Daniel?

14 A. Yes, I have known him for a while.

15 Q. What did Bart do when he shows up at the house?  
16 What did he do?

17 A. He walked in and he didn't knock. We were all  
18 there watching TV. My little sister was there. He walked  
19 in and sat down at the little bar. We were all just like,  
20 What are you doing? Because he just walked in. And he  
21 turned around and he yelled for Daniel to come inside. So  
22 Daniel came in and sat down, and my mom got up. And she  
23 was like, What are you doing here? It is late. And he  
24 was being real loud, --

25 Q. When he calls for Daniel to come in, how loud

1 did he call?

2 A. It woke my mom up, and she was at the other end  
3 of the trailer.

4 Q. Can you demonstrate how loud it was when he  
5 yelled for Daniel?

6 A. Do you want me to yell? He just yelled real  
7 loud. He was out in the truck, and the front door was  
8 still open. And there was the porch right here,  
9 screened-in porch, and you have to walk downstairs, and  
10 the scream was really, really loud. It woke my mother up.

11 Q. Who all was in the room when Bart walked in?

12 A. My little sister, one of her friends was asleep,  
13 one of my friends and me.

14 Q. And Bart awakened your mother, I guess?

15 A. Uh-huh.

16 Q. How are you feeling? What is going through your  
17 mind?

18 A. I was real nervous and scared. I didn't know  
19 why they was there or -- like why he was there or what. I  
20 just didn't know why he was there. The state he was in I  
21 didn't know what was wrong with him, so I was kind of  
22 scared.

23 Q. How did he look? How does his face look?

24 A. His face was -- his eyes were just wide open and  
25 his mouth -- he was talking and he was slurring he was

1 talking so fast, and he was talking so loud and his face  
2 was real blank. Just angry.

3 Q. How long was he there?

4 A. About 10, 15 minutes.

5 Q. Then did he and Daniel leave?

6 A. We went -- my mom was like, Y'all go outside,  
7 because my little sister was there. And he was asking me  
8 a question that my little sister had told me -- my older  
9 sister had told him or something, and I said, Do you want  
10 to ask my little sister? The front doors were open, and I  
11 called her out there and she came out there. And I said,  
12 Ask her. And he asked her the question -- I don't even  
13 remember what it was right now. And she said no, and he  
14 bent down and kind of got close to her. He said, No, you  
15 told me no. And I kind of pushed him back and I told him  
16 just leave and go in the house. He told her that he was  
17 leaving and he didn't think he would see me again.

18 Q. Let me ask you: Did you think it was unusual  
19 for Bart to yell in the face of a 13-year-old girl?

20 A. A lot of times I would have to tell him to tell  
21 her hi because he was real shy and never talked to her.  
22 So that scared her. So it was very unusual.

23 Q. And that morning, early that morning when Bart  
24 left, did you ever see him again before he was in jail?

25 A. No. I forgot one other thing.

1 MR. FORAN: Objection, nonresponsive.  
 2 THE COURT: Sustained.  
 3 A. I was just going to tell you about --  
 4 MR. FORAN: Objection.  
 5 Q. (BY MR. WESTFALL) Hold on.  
 6 I don't know how to ask the question. Is  
 7 there anything you have forgotten to tell me?  
 8 MR. FORAN: Objection. It's too vague.  
 9 THE COURT: Sustained.  
 10 Q. (BY MR. WESTFALL) Is there anything else about  
 11 the morning he showed up at your house?  
 12 MR. FORAN: Objection, vague.  
 13 THE COURT: Overruled.  
 14 A. Yes. Whenever I was leaving -- or whenever he  
 15 was leaving, I told my little sister to go inside. My mom  
 16 shut the door and she reopened it and said, He needs to  
 17 leave. She shut the door and he told me that he didn't  
 18 know if he would see me again. He went to give me a hug,  
 19 and he actually picked me up off the ground and holding me  
 20 real tight but my feet were off the ground and I was  
 21 crying. My mom came out there and I just told him to put  
 22 me down.  
 23 Q. Had Bart ever done anything like that before?  
 24 A. He wasn't hurting me. He was just hugging me.  
 25 Q. When Bart was screaming at you on the phone,

1 Q. Were you a senior last year?  
 2 A. No. I got my GED.  
 3 Q. Did I hear you correctly that you had been going  
 4 out with Bart for five years?  
 5 A. Uh-huh.  
 6 Q. Before you broke up?  
 7 A. Uh-huh.  
 8 Q. Is that yes?  
 9 A. Yes.  
 10 Q. Because this gentleman is taking down everything  
 11 you say, so if you go "uh-huh" or nod, he can't take that  
 12 down. All right?  
 13 A. Okay. Sorry.  
 14 Q. Were you staying with Bart during part of that  
 15 time?  
 16 A. Yes.  
 17 Q. All of it or part of it?  
 18 A. Either he stayed -- either we stayed at his  
 19 parents' house or we stayed at my mother's house. We had  
 20 two different apartments and a trailer in Granbury.  
 21 Q. When did you stay with his parents?  
 22 A. I moved in with his mother before me and Bart  
 23 actually got together. I moved in with her to go to  
 24 summer school and help her take care of her two foster  
 25 kids.

1 what was going through your mind. How did you feel?  
 2 A. He had never talked to me that way before. It  
 3 scared me.  
 4 Q. What were you scared about?  
 5 A. I didn't know what was wrong with him. I didn't  
 6 know if he was going to hurt himself or -- I wasn't with  
 7 him so I didn't know what he was doing, and it was like he  
 8 was crazy the way he was ranting and raving about nothing.  
 9 Q. Were you worried that he was going to hurt  
 10 himself?  
 11 A. Uh-huh. And my grandmother told me that, and  
 12 tried to call him back. And I wanted to see if he would  
 13 come over to my house and just sit. My grandma and my  
 14 grandpa was there, and I couldn't get ahold of him after  
 15 that. His voice mail picked up after that.  
 16 Q. Would you do me a favor and pull that mike a  
 17 little closer to you?  
 18 A. (Witness complies)  
 19 MR. WESTFALL: We'll pass the witness.  
 20 **CROSS-EXAMINATION**  
 21 BY MR. FORAN:  
 22 Q. Ms. Phillips, are you currently in school?  
 23 A. I start school in January.  
 24 Q. What grade are you in?  
 25 A. I will be a freshman at TCC.

1 Q. Then did you move out again?  
 2 A. Yes. My mother got an apartment in Crowley and  
 3 I stayed there. I lived there, but I stayed at Missy and  
 4 Cory's a lot too.  
 5 Q. Did Bart go back and forth between your homes?  
 6 A. Yes. And at one point he moved in with me.  
 7 Q. When was that?  
 8 A. I think -- I'm pretty sure I was 15.  
 9 Q. And he would have been 15 and a half or 16 years  
 10 old. Through that time, you guys got along pretty well?  
 11 A. Yes.  
 12 Q. He seemed all right to you?  
 13 A. Yes.  
 14 Q. I know you said that some of his friends said  
 15 some pretty hurtful things to him; is that right?  
 16 A. Yes.  
 17 Q. You didn't feel that way about him, did you?  
 18 A. I didn't feel that way, no.  
 19 Q. You didn't feel he was dumb, did you?  
 20 A. I know that he was mentally slow. I knew that.  
 21 Q. You knew he had some learning disabilities,  
 22 right?  
 23 A. Yes, he did. He had very poor communication  
 24 skills also.  
 25 Q. But he knew the difference between right and

1 wrong while you were going out with him, didn't he?  
 2 A. Yes.  
 3 Q. The trailer out in Granbury, who owned that  
 4 trailer?  
 5 A. Barton.  
 6 Q. Is that something he bought?  
 7 A. Yes. He got a trust fund check.  
 8 Q. Then he leased it to your mom?  
 9 A. We stayed out there for a while and then he  
 10 wanted to move back to Fort Worth, so my mom rented it  
 11 out.  
 12 Q. Did you go to high school in Crowley?  
 13 A. Yes, sir.  
 14 Q. I guess while you are going out with Bart, your  
 15 friends are going out with other people; is that right?  
 16 A. Yes, sir.  
 17 Q. Some of them attempted to break up?  
 18 A. Yes.  
 19 Q. Some of them handled it well, some of them got  
 20 upset, right?  
 21 A. Uh-huh.  
 22 Q. So it is not unusual for people to get upset  
 23 when they break up, is it?  
 24 A. No, not unusual.  
 25 Q. Do you understand that this is a case involving

1 an aggravated robbery -- two aggravated robberies?  
 2 A. Yes.  
 3 Q. And there was a shotgun used?  
 4 A. Yes.  
 5 Q. Had you ever seen Bart with a gun before?  
 6 A. Yes.  
 7 Q. Can you describe it for us?  
 8 A. It was just a black shotgun. I don't know --  
 9 Q. Did it have a wood stock or did it have a hand  
 10 grip?  
 11 A. I think it had a hand grip.  
 12 Q. Do you know the difference what I'm talking  
 13 about, one has the stock you hold up to your shoulder, and  
 14 then one has like a pistol grip?  
 15 A. I think it had a pistol grip. I'm not --  
 16 Q. But you had seen it more than once, right?  
 17 A. Yes.  
 18 Q. And it is something that Bart had in his  
 19 possession, right?  
 20 A. Yes.  
 21 Q. Do you know where it is today?  
 22 A. No.  
 23 Q. Now, when you were going out, I know you  
 24 mentioned to Mr. Westfall that you were concerned when he  
 25 called you that he was drunk; is that right?

1 A. Yes.  
 2 Q. Now, is this because you have seen him drink  
 3 before; is that right?  
 4 A. Yes.  
 5 Q. And he had a little problem with drinking a lot,  
 6 didn't he, on occasion?  
 7 A. No.  
 8 Q. You had never seen him drunk before?  
 9 A. Yes, but that don't mean he drank a lot.  
 10 Q. He didn't drink a lot? He smokes marijuana; is  
 11 that right?  
 12 A. Yes.  
 13 Q. You knew he was on some medications, right?  
 14 A. Yes.  
 15 Q. You and Bart, both of you would know better than  
 16 to mix alcohol or other drugs with medication; isn't that  
 17 right?  
 18 A. Yes.  
 19 Q. You know that's dangerous; is that correct?  
 20 A. I do.  
 21 Q. He does too, doesn't he?  
 22 A. (No response)  
 23 Q. Right?  
 24 A. I guess.  
 25 Q. Now, when we were talking about -- or you were

1 talking about with Mr. Westfall the night that he came out  
 2 to your mother's place out in Granbury, you said he had  
 3 Daniel with him?  
 4 A. Yes.  
 5 Q. What's Daniel's last name?  
 6 A. I can't pronounce it. It starts with an A.  
 7 Q. Is it Aranda?  
 8 A. Yes.  
 9 Q. You had met Daniel before?  
 10 A. Yes.  
 11 Q. Had he been around very long?  
 12 A. Not too long. He had just moved back from  
 13 California about five or six months. He had been around a  
 14 little while.  
 15 Q. So was Bart driving that same pickup truck that  
 16 he always drives?  
 17 A. Yes.  
 18 Q. Was there anybody else in the vehicle with him?  
 19 A. Just them.  
 20 Q. This was after 3:00 o'clock in the morning?  
 21 A. I'm pretty sure it was between 3:00 and 4:00. I  
 22 couldn't tell you for sure. It was late at night and he  
 23 just came in, but I think that was about right.  
 24 Q. Did Daniel say much to you when he got in there?  
 25 A. No. Daniel didn't say anything. He wouldn't

1 say hi to me and talk to me. He just looked like he  
 2 didn't want to be there.  
 3 Q. Did Daniel seem pretty relaxed?  
 4 A. No.  
 5 Q. Now, these two occasions, both February 21, that  
 6 Thursday when you talked to him on the phone, and then on  
 7 Saturday when he came by the place in Granbury, was it  
 8 unusual for him to behave like that on the phone with you?  
 9 A. Very unusual.  
 10 Q. Other than that, are those the only two  
 11 occasions when he behaved like that with you?  
 12 A. Yes.  
 13 Q. And other than being a little bit upset Sunday  
 14 at church with you and wanting to talk to you, otherwise  
 15 he acted pretty normally; is that right?  
 16 A. He wasn't acting normal. I could tell that he  
 17 wasn't normal.  
 18 Q. Other than those three occasions.  
 19 A. Those are the only --  
 20 Q. Sunday at a church, Thursday when he talked to  
 21 you on the phone and Saturday when he came by. Okay? Up  
 22 until that point, he acted okay with you, didn't he?  
 23 A. He was okay. He had depression problems. He  
 24 had problems, but he wasn't mean to me or abusive or  
 25 anything.

1 Q. Okay. During the time that you were dating him,  
 2 did you ever see him with any other rifles?  
 3 A. There was one gun that he had that was a friend  
 4 of his, Brett Tucker's.  
 5 Q. Really?  
 6 A. Yes.  
 7 Q. He had it?  
 8 A. Yes.  
 9 Q. Did Brett loan it to him?  
 10 A. I think he actually left it in his truck one  
 11 time. To Brett it was just a piece of crap gun --  
 12 Q. So he just kind of abandoned it in Bart's truck?  
 13 A. Pretty much. Bart didn't ask him to borrow it.  
 14 Q. But Brett never asked for it back as far as you  
 15 know?  
 16 A. No.  
 17 Q. So the last person you knew that had the rifle  
 18 was Bart?  
 19 A. I didn't see him carry it with him or anything.  
 20 Q. Or see him give it back or get rid of it or  
 21 anything like that?  
 22 A. Huh-uh.  
 23 Q. So State's Exhibit No. 36, does that look like  
 24 the weapon?  
 25 A. Uh-huh.

1 Q. Is that a yes?  
 2 A. Yes.  
 3 Q. Okay. So Brett wasn't too concerned about  
 4 getting this back, was he?  
 5 A. No, he had plenty of other guns.  
 6 Q. He had plenty of his own, and it was okay to  
 7 leave it with Bart?  
 8 A. (No audible response)  
 9 MR. FORAN: Pass the witness.  
 10 REDIRECT EXAMINATION  
 11 BY MR. WESTFALL:  
 12 Q. What did Daniel look like when Bart brought him  
 13 over to that house on Saturday morning?  
 14 A. He was shocked like he had just seen a ghost.  
 15 He was not relaxed at all. He was very, very shocked. He  
 16 didn't say one word to me. He didn't want to be there.  
 17 He didn't want to get out of the truck.  
 18 Q. And you saw Bart on Sunday at church. You spoke  
 19 with Bart the following Thursday and then you saw him the  
 20 following Saturday. Other than those three occasions, did  
 21 you ever see or hear from Bart during that entire week?  
 22 A. No.  
 23 Q. And y'all had been broken up since the beginning  
 24 of February?  
 25 A. Uh-huh, yes.

1 MR. WESTFALL: Pass the witness, Judge.  
 2 MR. FORAN: No further questions.  
 3 THE COURT: You may step down, ma'am.  
 4 MR. WESTFALL: May she be excused, Your  
 5 Honor?  
 6 MR. FORAN: Fine with us.  
 7 THE COURT: she may.  
 8 MR. WESTFALL: Ladies and gentlemen, there  
 9 is a matter of law I am going to have to take up outside  
 10 your presence. I think it will take me about an hour to  
 11 do. I'll let y'all take a break around the courthouse or  
 12 wherever y'all want to go while I do that. Please  
 13 remember and follow your instructions and let's just make  
 14 it 55 minutes and make it 2:45. Meet the bailiffs about  
 15 2:45. Thank you.  
 16 (Jury not present)  
 17 (Witness Sworn)  
 18 Whereupon,  
 19 EDWIN JOHNSTON, M.D.,  
 20 having been first duly sworn, testified as follows:  
 21 DIRECT EXAMINATION  
 22 BY MR. WESTFALL:  
 23 Q. Would you please state your name for the record.  
 24 A. Edwin Johnston, M.D.  
 25 Q. Where do you live?

1 A. I live in the Sherry West subdivision of  
 2 Houston, Texas.  
 3 Q. How long have you been a medical doctor?  
 4 A. Since 1964.  
 5 Q. Where did you go to medical school?  
 6 A. Baylor College of Medicine in Houston.  
 7 Q. Since that time, have you been continuously  
 8 licensed to practice medicine?  
 9 A. Yes.  
 10 Q. And do you now have a specialty in the medical  
 11 field?  
 12 A. Yes, I do.  
 13 Q. What is that?  
 14 A. Psychiatry.  
 15 Q. How long have you been practicing specifically  
 16 psychiatry?  
 17 A. Since 1968.  
 18 Q. Tell us some of the things you have done  
 19 experiencewise. I have a copy of your CV. Let's talk  
 20 about the Texas Research Institute of Mental Health  
 21 Sciences. What did you do there?  
 22 A. I was at that psychiatric institute for 16 years  
 23 with a combination of different roles. Some of it  
 24 involved doing clinical research on investigational  
 25 potential drugs for treating anxiety depression,

1 schizophrenia.  
 2 Another part of my role was involved in the  
 3 area of providing patient care. In that regard I  
 4 eventually became the person in charge of the outpatient  
 5 clinics to supervise other doctors providing the care.  
 6 And then there was a teaching activity the last seven  
 7 years that I was at the institute. I was in charge of a  
 8 residency training program to train physicians to become  
 9 psychiatrists.  
 10 Q. Have you also worked with drug trials, drug  
 11 trials meaning testing drugs on subjects before putting  
 12 them on the market?  
 13 A. Right. Well, I began that really before I  
 14 finished my residency working in conjunction with Dr.  
 15 Claghorn there at the institute. So that would have begun  
 16 at about 1966. Then he and I both left the institute in  
 17 1984, and for two years I worked together with him doing  
 18 that same kind of clinical drug testing on a private basis  
 19 instead of within the institute.  
 20 And then I just went into full-scale  
 21 private practice, individual private practice, in  
 22 September of 1986.  
 23 Q. So from the '60s on, am I correct in saying that  
 24 you have had experience in either researching or  
 25 prescribing psychotropic medications?

1 A. Yes.  
 2 Q. The field of expertise that you are in,  
 3 psychiatry, number one, are you board certified in  
 4 psychiatry?  
 5 A. Yes.  
 6 Q. When were you board certified?  
 7 A. December of 1970.  
 8 Q. Is the field of psychiatry a legitimate field?  
 9 A. Yes. It is a subspecialty -- a specialty of  
 10 medicine.  
 11 Q. In order to be a psychiatrist, you have to be a  
 12 medical doctor?  
 13 A. True.  
 14 Q. Or a doctor of osteopathy?  
 15 A. Well, it can get into the same medical training,  
 16 specialty training programs either a D.O. or an M.D., yes.  
 17 Q. Now, there is a few subjects I want to talk  
 18 about, and I will just hit on this briefly. I want to  
 19 talk about ADD, ADHD, borderline personality disorder, low  
 20 average IQ, drug use and Paxil and the mental health of  
 21 Bart Gaines as all of those things in addition to the  
 22 subjects that surround that. We need to talk about that.  
 23 Okay?  
 24 Number one, ADHD, have you experience in  
 25 diagnosing and treating ADHD?

1 A. Yes.  
 2 Q. Have you studied and are you current and  
 3 up-to-date on the literature surrounding the psychotropic  
 4 drug Paxil?  
 5 A. Yes.  
 6 Q. And what is Paxil?  
 7 A. Paxil is a brand name for a chemical paroxetine,  
 8 which is an SSRI, which means it's a selective serotonin  
 9 reuptake inhibitor. The kind of antidepressant drug that  
 10 works presumably by boosting the activity of serotonin  
 11 circuits.  
 12 Q. You have made certain conclusions about Bart's  
 13 personality based upon the material that's been provided  
 14 to you; is that true?  
 15 A. That's true.  
 16 Q. Number one, what are the materials that have  
 17 been provided to you?  
 18 A. I have been provided school records. I've been  
 19 provided medical treatment records, as well as the court  
 20 police records that have to do with this offense and the  
 21 medical treatment records from his period of  
 22 incarceration.  
 23 Q. Have you reached any conclusions about Bart  
 24 Gaines' personality in general after a review of the  
 25 materials I gave you?

1 A. Yes, I have.

2 Q. What are those conclusions?

3 A. My conclusions are that he does have the  
4 features of borderline personality disorder.

5 Q. What is that?

6 A. Borderline personality disorder is a lifelong  
7 condition with a -- an individual would exhibit day in and  
8 day out all throughout his life. The features of it are  
9 an emotional instability, a -- an irrational sensitivity  
10 or fear of abandonment that leads to intense relationships  
11 that are full of conflict, a pattern in the relationships  
12 of idealizing the person to be coupled with, often  
13 followed then by when there is a threat to that  
14 relationship breaking up, by a devaluation of that other  
15 person; a tendency to indulge in abuse of alcohol or  
16 street drugs; tendency to arouse anger easily.

17 Some individuals with borderline  
18 personality disorder have embittered episodes where they  
19 mutilate themselves by slashing their wrists or burning  
20 themselves. He does not have that feature, but he has a  
21 sufficient number of the criteria to qualify for the  
22 diagnosis of borderline personality disorder.

23 Q. What criteria did you use to determine that Bart  
24 had borderline personality disorder?

25 A. What source?

1 Q. Yes. What are the facts about it that underlies  
2 that conclusion?

3 A. I don't know for certain whether you are asking  
4 me how does a psychiatrist -- what guidelines do we follow  
5 or are you asking me where did I get the information about  
6 his life?

7 Q. How were you able to arrive at that conclusion?

8 A. I came last Saturday and spent a good part of  
9 the day with relatives and acquaintances of his to find  
10 out -- to fill me in on what their observations could tell  
11 me so that I could establish what were the enduring  
12 characteristics of his personality through the years.

13 Q. Are you also relying on information that I have  
14 sent you?

15 A. Yes.

16 Q. And in addition, have you been trained in your  
17 profession to identify the criteria for a conclusion that  
18 somebody has borderline personality disorder?

19 A. Yes.

20 Q. What role, in your opinion, did Paxil play in  
21 Bart's behavior over the last week before he got put in  
22 jail?

23 A. It appeared to me that after he began to take  
24 Paxil, that he had at least spurts of excited behavior  
25 where he was more energized, talking -- rapidly talking

1 loudly, and getting into people's faces with a kind of  
2 intensity and a wild look in his eye. It sounds like a  
3 hypomanic quality of psychomotor stimulation.

4 Q. What is hypomania?

5 A. Hypomania is sort of the opposite of  
6 depression. It's being overenergized with a mood that is  
7 lifted instead of down. Not necessarily lifted to be a  
8 happy mood. It may be an irritable mood. It usually is  
9 irritable. Occasionally euphoric but more often  
10 irritable. It is usually associated with a lot of speedy  
11 thinking. The person may have a feeling that his thoughts  
12 are rushing and moving faster than he can keep up with.

13 Q. Is hypomania a documented risk factor of Paxil?

14 A. Yes.

15 Q. Is hypomania, in fact, listed in Paxil's package  
16 insert?

17 A. Yes.

18 Q. So is it your opinion that Paxil played a role  
19 in the way Bart Gaines was acting in the last week before  
20 he went to jail?

21 A. Yes, it is.

22 Q. These things that you have just testified to,  
23 are these all items or are these all subjects that would  
24 fall as a practical matter and as a standard matter into  
25 the expertise of a person like yourself?

1 A. Yes.

2 Q. Have there been peer review articles written  
3 that would substantiate what you say?

4 A. Yes, there has.

5 Q. I guess Paxil, or whoever the manufacturer is,  
6 puts it in their package insert, hypomania is a documented  
7 risk?

8 A. Yes. Either the term hypomania is there or the  
9 equivalent description of the condition.

10 Q. And finally, in arriving at the conclusions that  
11 you have arrived at, have you used your expertise as any  
12 psychiatrist would? Have you based your decisions upon  
13 the same type of data, the same type of procedures that  
14 any other psychiatrist would base and have you done all of  
15 this in accordance with the practice of somebody in your  
16 profession?

17 A. Yes, applying the background of knowledge and  
18 the experience that I have, reviewing the materials,  
19 considering alternative explanations for the different  
20 things and then arriving at a conclusion within reasonable  
21 medical probability.

22 MR. WESTFALL: Your Honor, I will tender  
23 the witness to the prosecution.

24 CROSS-EXAMINATION

25 BY MS. HARTMANN:

1 Q. Dr. Johnson, how many times have you met with  
2 the Defendant, Barton Gaines?  
3 A. One time.  
4 Q. When did that take place?  
5 A. Saturday evening.  
6 Q. This past Saturday evening?  
7 A. Yes, ma'am.  
8 Q. So that would have been the 7th?  
9 A. I think so.  
10 Q. How long did you meet with him?  
11 A. About 20 minutes, I guess it was, altogether.  
12 Not very long.  
13 Q. Where did that meeting take place?  
14 A. The jail.  
15 Q. Who all was present?  
16 A. His attorney.  
17 Q. Mr. Westfall?  
18 A. Yes.  
19 Q. Was anybody else present?  
20 A. No.  
21 Q. Were you able to freely speak with Mr. Gaines  
22 without interruption by his attorney?  
23 A. Yeah. With regard to -- without any  
24 interruptions by the attorney, yes.  
25 Q. Did you specifically ascertain from Mr. Gaines

1 that he took Paxil that entire week preceding the  
2 offenses?  
3 A. I didn't get that information from him at that  
4 time. I got that information from the family.  
5 Q. All right. Which member of Mr. Gaines' family  
6 was able to tell you they personally observed him take his  
7 Paxil every day of that week prior to this offense?  
8 A. I believe it was his maternal grandmother who  
9 declared that. Maybe it was his mother. I'm not certain.  
10 Q. Did you take some notes to record that  
11 information?  
12 A. Yes.  
13 Q. Could you look through those notes, please?  
14 A. Let me take a minute to --  
15 Q. All right.  
16 A. My notes indicated that he was observed to take  
17 it in the morning and that there was consistency of his  
18 taking it. There was an uncertainty about when exactly  
19 the day was that he started taking it. But I don't  
20 specify in my notes which person was declaring to me that  
21 she observed his taking it each day.  
22 Q. So according to the information that you have,  
23 we can't even be sure when he started taking the Paxil,  
24 correct?  
25 A. Correct.

1 Q. And we don't know when it started, we don't  
2 know -- we even don't know the name of the person who  
3 allegedly observed him taking it, correct?  
4 A. Not at the moment.  
5 Q. And yet you are willing to give an opinion that  
6 the behavior he was exhibiting was due to Paxil?  
7 A. Yes.  
8 Q. Even though you don't know when he began to --  
9 A. Not the exact day.  
10 Q. Did you perform any testing on the Defendant  
11 while you visited with him for those 20 minutes?  
12 A. No.  
13 Q. Did you take notes?  
14 A. I don't have any notes that I see.  
15 Q. Sir, my question to you was did you take notes?  
16 A. I don't think so.  
17 Q. Well, you did or you didn't. Which one is it?  
18 A. I didn't.  
19 Q. The information that you were referring to a few  
20 moments ago, were those notes from your meetings with the  
21 family members?  
22 A. Yes.  
23 Q. And brought those with you to court?  
24 A. Yes.  
25 Q. Were you asked to bring everything with you to

1 court the you were going to rely upon in giving your  
2 opinion?  
3 A. Yes.  
4 Q. Did you do so?  
5 A. Yes.  
6 MS. HARTMANN: May I approach the witness?  
7 Q. (BY MS. HARTMANN) Is that it?  
8 A. Yes. These are my notes that I --  
9 Q. If this from your visiting with the family  
10 members?  
11 A. They are included there. These are my notes on  
12 the case as I reviewed various documents or had  
13 conversations.  
14 Q. All right. And, sir, in giving your opinion,  
15 are you taking into account the Defendant's fairly  
16 substantial history of abuse of alcohol and street drugs  
17 and prescription drugs?  
18 A. Yes.  
19 Q. These being alcohol, marijuana, Xanax --  
20 A. Yes.  
21 Q. If you have reviewed all these records to some  
22 extent, if you've got, I guess, what I've been provided,  
23 the Defendant also has abused cocaine and methamphetamine,  
24 correct?  
25 A. Correct.

1 Q. Isn't it true, sir, that some of those street  
2 drugs can produce the same type of behavior that you have  
3 been informed by the family that Mr. Gaines was  
4 exhibiting?

5 A. They are in some people.

6 Q. Did you ever ask Mr. Gaines if he had used any  
7 illegal substances during any of these days -- this  
8 particular time period that's at issue?

9 A. I didn't ask him that question.

10 Q. Did you ask anyone that question?

11 A. Yes, I did inquire about his response to taking  
12 stimulants in particular, and his girlfriend indicated  
13 that he had a pattern of becoming calm rather than excited  
14 when he would take a stimulant like an amphetamine.

15 Q. Did you ever interview any of the witnesses who  
16 were around this Defendant at the time of the offense?

17 A. No.

18 Q. Did you not think that was important to know  
19 what the behavior was like during the course of the two  
20 offenses?

21 A. I did think it was important. That's who I read  
22 the reports -- those people's affidavits.

23 Q. Don't you think it would be important to inquire  
24 what their observations, personal observations of his  
25 behavior was during the course of the offense to compare

1 it with these other reports of his behavior to make sure  
2 you can give an accurate opinion as to why he was acting  
3 that way?

4 A. No, I didn't think so.

5 Q. You didn't think so?

6 A. No.

7 Q. That's not important to you?

8 A. I didn't think it was.

9 Q. You are not a toxicologist, are you?

10 A. No, I am not.

11 Q. You are not a pharmacologist, are you?

12 A. No.

13 Q. Which peer review articles were you referring to  
14 that support your opinion?

15 A. That would be the article by Riddle, the article  
16 by Jain, J-A-I-N, the article by Ensley and the article by  
17 Keller.

18 Q. Again, it's your opinion that the ingestion of  
19 Paxil causes him to have these spurts of, I guess, mania?

20 A. Well, manic like.

21 Q. Okay. And you have reviewed his jail records,  
22 correct?

23 A. Yes.

24 Q. And there is no indication in his records that  
25 he's having any problems in jail, is there?

1 A. Not that I see.

2 Q. He's been given Paxil while he's in jail,  
3 correct?

4 A. That's correct.

5 Q. No indication of any type of spurts of manic  
6 like episodes while he's been in jail and on the Paxil?

7 A. Right.

8 Q. And you know he's been in custody since soon  
9 after this offense?

10 A. Right.

11 Q. Does that cause you any type of concern in  
12 rendering an opinion because of the conflict?

13 A. I think there are reasons that the kind of  
14 behavior that was occurring outside of jail is not  
15 occurring inside the jail. But I believe the environment  
16 within the jail, for one thing, prevents the simultaneous  
17 ingestion of marijuana.

18 Q. So is it due to the combined ingestion of Paxil  
19 and marijuana that causes him to have these bursts of  
20 manic like episodes?

21 A. I am not through giving my answer to the first  
22 question, but that's a part of it, the fact that he  
23 doesn't have -- I presume he doesn't have access to the  
24 four or five joints of marijuana a day that he had been  
25 smoking for about a year.

1 Also, the sheer physical isolation and lack  
2 of stimulation that exists within the jail setting has a  
3 calming and sedating kind of capacity to manage excited  
4 states like mania.

5 Q. Did you take into account the fact that he  
6 abused not only marijuana but other substances and how  
7 that could affect these behaviors that he was allegedly  
8 exhibiting?

9 A. Well, yeah, I assumed that whatever other agents  
10 he was able to get ahold of during this time he was not in  
11 the jail, he's not able to have access to. And I assume  
12 he's taking nothing but Paxil in the jail.

13 Q. So I guess in a roundabout way what I am trying  
14 to get to, my understanding of your response to Mr.  
15 Westfall earlier was in your opinion it was his ingestion  
16 of Paxil is what caused him to exhibit these behaviors.  
17 And what I am hearing from you now is if he was only on  
18 the Paxil, he's fine, but if he's on the Paxil in addition  
19 to other stimulants and drugs and alcohol, then he has a  
20 problem. That wasn't included in your opinion you gave  
21 Mr. Westfall, was it?

22 A. I think you are kind of distorting what I had to  
23 say.

24 Q. What about it is a distortion?

25 A. You were asking me what is the explanation for

1 his not manifesting an excited hypomanic-type state inside  
2 the jail, and I explained it on the basis of his, number  
3 one, being in a confined setting that itself suppresses  
4 excitement, that the removal from all of the stimuli that  
5 exists in the free setting outside the jail and whatever  
6 may have been the compounding influence of the Paxil in  
7 the real world setting being combined with whatever else  
8 he may have taken.

9 Q. I guess my point --

10 A. Let me continue. The other thing that he had  
11 been in the habit of taking had never resulted in any of  
12 the -- any shooting sprees or any of the hypomanic-type  
13 behavior that was described until Paxil came into the  
14 picture.

15 Q. But my point is, sir, if you have admitted here  
16 that while he was solely on Paxil in the jail he's not had  
17 any problems, correct?

18 A. None are mentioned.

19 Q. None are mentioned and none are documented?

20 A. Right.

21 Q. Correct?

22 A. Correct.

23 Q. And my understanding of your testimony or the  
24 purpose of it is to tell this jury or try and convince  
25 them that the Paxil is the impetus or the cause of him

1 having these unusual behaviors if he has them, correct?

2 A. Correct.

3 Q. But that's misleading, isn't it?

4 A. I don't think so.

5 Q. Well, sir, you know he was abusing all these  
6 other drugs and alcohol, and you have just told us that  
7 yes, if he was ingesting all these other items along with  
8 the Paxil it could cause that behavior, correct?

9 A. It could contribute to the overall picture is  
10 all I said. I didn't say the other things could have been  
11 the basis.

12 MR. FORAN: Can we have a minute, Your  
13 Honor?

14 Q. (BY MS. HARTMANN) During your 20-minute  
15 interview with the Defendant, what did you speak about?

16 A. I remember asking him about his experience with  
17 various medications as at best he can recall and not just  
18 medications, but medications and street drugs.

19 Q. What else?

20 A. And about the offense he's charged with.

21 Q. What did he tell you about that?

22 A. He didn't seem to get it. He -- he said he  
23 didn't really regard what he had done as a robbery because  
24 he didn't get much money when he took the wallet from the  
25 person that he robbed.

1 What I was looking for in talking with him  
2 was to see if he seemed to have an appreciation about the  
3 consequences of his behavior on other people. He seemed  
4 to have an oblivious disregard for the impact of his  
5 behavior on other people.

6 Q. You are certainly not here to offer any type of  
7 opinion on sanity, are you?

8 A. No, not at all. What I'm talking about is the  
9 disinhibition of social judgment. That's one of the  
10 adverse effects of Paxil.

11 Q. Did you prepare any type of report for this  
12 case?

13 A. No.

14 Q. Why not?

15 A. I wasn't asked to.

16 Q. Do you know why?

17 A. No.

18 Q. Is that unusual for you to be hired to examine  
19 an individual and make an assessment and render a  
20 professional opinion and not be asked to write a report?

21 A. No, it is not unusual in criminal cases.

22 Q. And you do a lot of work in civil cases, don't  
23 you?

24 A. Yes.

25 Q. You testify frequently on behalf of the

1 plaintiffs against large drug companies, don't you?

2 A. I think I have testified in about 18 cases like  
3 that.

4 Q. All right. And you have testified on behalf of  
5 the defense in criminal cases on how many occasions?

6 A. Not very many. I think five or six. I'm not  
7 certain.

8 Q. Okay. Can you give me the names of any of  
9 those?

10 A. The most recent I recall was the Archiaga case  
11 in Orange County, California.

12 Q. Okay. On whose behalf were you called to  
13 testify?

14 A. The Alternate Defender's Office of Orange  
15 County. The Gleason case out of Louisiana for an attorney  
16 named Mr. Kidd, K-I-D-D, and the Michael Armstrong case  
17 out of Galveston are cases where I testified for the  
18 defense in a criminal case.

19 Q. How about the State versus John Paul Marsh out  
20 of Harris County?

21 A. Yes.

22 Q. You testified on behalf of defense in that case  
23 too?

24 A. Yes.

25 Q. And testified in regards to Paxil, correct?

1 A. In that case, yes.

2 MS. HARTMANN: May I have just a moment,  
3 Your Honor?

4 THE COURT: Yes.

5 (Pause in the proceedings)

6 Q. (BY MS. HARTMANN) You said you reviewed the  
7 reports from various doctors that were provided to you by  
8 Mr. Westfall?

9 A. If they were included in the medical records I  
10 was looking through, yes.

11 Q. Did you speak with any of those doctors?

12 A. No.

13 Q. Did you feel it was important to talk to them  
14 over the phone and question them about their experiences  
15 and their knowledge of Mr. Gaines' history?

16 A. What was your assertion?

17 Q. You didn't feel that it was important in helping  
18 you to, I guess, render an opinion to call the doctors and  
19 speak with them over the phone?

20 A. I didn't do it.

21 Q. That wasn't my question, sir.

22 A. Well, I'm trying to address your question, but  
23 your question implies things that -- I didn't know about  
24 the feasibility even of doing it.

25 Q. Did you even check into it?

1 A. No.

2 Q. So it wasn't important enough to you in your  
3 determination to even check into the possibility of doing  
4 that?

5 A. Right. I thought I would go on the basis of  
6 what the medical records showed.

7 Q. And you didn't perform any testing on your own  
8 to confirm or rule out any of these prior diagnoses  
9 rendered by other doctors, correct?

10 A. Correct.

11 Q. You never conducted any specific testing or  
12 analysis to determine exactly what drugs had been ingested  
13 the night of this offense to help determine whether anyone  
14 contributed to his behavior, did you?

15 A. No.

16 MS. HARTMANN: Pass the witness, Your  
17 Honor.

18 THE COURT: We'll stand in recess about 15  
19 minutes and then we'll bring the jury out.

20 MS. HARTMANN: The State will lodge an  
21 objection to his testimony.

22 THE COURT: What is it?

23 MS. HARTMANN: well, Your Honor, he's  
24 testified that he had no personal testing done on this  
25 Defendant, that there was never any determination on his

1 part of exactly what the Defendant has specifically  
2 ingested, and he's going to try and render some type of  
3 scientific opinion that's not based upon factual data.

4 THE COURT: I will find that goes to the  
5 weight rather than the admissibility of his opinion.  
6 We'll be in recess.

7 (Recess taken)

8 (Jury not present)

9 THE COURT: Are we ready?

10 (Jury present)

11 THE COURT: You may proceed.

12 Whereupon,

13 PAULA ADAMS-THOMAS,  
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MINICK:

17 Q. Ms. Adams, could you state your name for the  
18 record, please?

19 A. Paula Thomas -- Adams-Thomas.

20 Q. Could you explain how it is that you know Bart  
21 and his family?

22 A. Well, I first met Bart when he was about ten  
23 years old. My son and he played on the same little league  
24 football team and baseball team. That's where I met his  
25 mother Missy. She and I became good friends and Bart and

1 Justin hung out together, played together.

2 Q. Could you explain the relationship between Missy  
3 and you and Justin and Barton?

4 A. Bart is Justin's stepbrother. Missy is married  
5 to my ex-husband, and Bart is just more or less a part of  
6 our family, as I am his. We are just kind of blessed that  
7 way.

8 Q. So in your opinion are there conflicts --

9 A. Conflict?

10 Q. -- in between the two sets of families?

11 A. No.

12 Q. Would it be fair to say y'all pretty much work  
13 in conjunction with each other?

14 A. Yes, pretty much.

15 Q. Would it be fair to say you have virtually  
16 watched Bart grow up?

17 A. Yes.

18 Q. And helped raise him?

19 A. Yes.

20 Q. How old was Bart when you said you met him?

21 A. He was nine, ten, right around there.

22 Q. Could you describe for the jury how Bart was or  
23 what he was like as a young child.

24 A. Bart's always been a very shy child, very  
25 respectful. I can remember telling Justin, my son, I wish

1 you would be more like Bart. He would say yes, ma'am and  
2 no, ma'am and do what he was told and was always very  
3 quiet and timid, wouldn't look you in the eye, would  
4 always kind of look down. A very loving child.

5 Q. Is there anything that comes to your mind that  
6 would demonstrate the qualities in Bart that you are  
7 talking about?

8 A. Bart now as I know him or --

9 Q. No, when he was a young child.

10 A. I can remember when I got a Dalmatian dog about  
11 six years ago, a puppy, Bart was there at the next-door  
12 neighbor's house where Bart lives and he helped me pick it  
13 out. He was real -- you know, just real sweet. My son  
14 won't have anything to do with dogs. He was real sweet in  
15 helping me pick out the puppy. And Bart was wearing a  
16 Nike shirt that day, so I named my dog Nike. Just always  
17 real helpful. If we needed something to be fixed, Bart  
18 was always the guy to fix it.

19 Bart wasn't always really brain smart, I  
20 will say, but he was good with his hands, building stuff  
21 or whatever.

22 Q. In his teen years, what was Bart like?

23 A. Teen years?

24 Q. Yeah, like at about 13 to 18.

25 A. About the same, just shy and modest, very good

1 with his hands. Everyone said he'll probably be a  
2 mechanic or something. Still not one to talk a lot. And  
3 seemed like he always wanted to be accepted or proved up.

4 Q. With regards to his respectfulness, was it  
5 common for him to use profanity?

6 A. No, never. Not around myself or any other adult  
7 that I saw.

8 Q. Did you ever have occasion to see Bart around  
9 his friends besides with Justin?

10 A. There was Tiffany, like I said, who was my  
11 niece. Not a lot. I can't really say that I would know  
12 who Bart's friends were in his teen years. I knew the  
13 guys he played ball with in the little league, but as he  
14 got older I didn't know them.

15 Q. Was the friends that he did see and the  
16 circumstances that you saw him with his friends, would you  
17 say that -- let me just ask you this. How was he treated  
18 by them?

19 A. I can remember one time Bart was out working  
20 on -- he was making a go-cart. He had made a go-cart out  
21 of a lawn mower or something. They were making fun of  
22 him. **Little rich boy, you don't need this. You can get**  
23 **whatever you want and you are out here messing with a**  
24 **go-cart.** But that's what he liked to do. Bart liked  
25 working with his hands.

1 He always seemed like he always wanted to  
2 be accepted. But I can't really think of a lot of  
3 instances where I was around his friends or what I thought  
4 was probably his friends.

5 Q. Let me ask you this: If I told you that he was  
6 callous or indifferent, what would you say to that?

7 A. No, he's not.

8 Q. Why not?

9 A. Because he's not that way. I've known him since  
10 he was ten years old. He's a very loving person and  
11 that's just not the way he is.

12 Q. Okay. Now, let me ask you this: Do you go to  
13 church?

14 A. Yes.

15 Q. Where is it that you attend church?

16 A. University Park Church in Fort Worth.

17 Q. Is that the same church that Tiffany and Bart's  
18 family attend?

19 A. Yes. And the same church that Cory and Missy  
20 attend.

21 **Q. On Sunday, February 17, did you attend church?**

22 **A. Yes.**

23 **Q. Was that at the University Church?**

24 **A. Yes.**

25 **Q. When you were in church, was Bart there that**

1 **day?**

2 **A. He did come to church that day.**

3 Q. In relation to where you were sitting, where was  
4 Bart sitting?

5 **A. It was myself, my mother, Tiffany and then**  
6 **Bart.** He was at the other end.

7 Q. Okay. Was he close enough such that you could  
8 see him?

9 A. I could see him and I could see -- my mother had  
10 motioned to Bart or talked to Bart a few times. I saw her  
11 doing that.

12 Q. What was his behavior?

13 A. He was very fidgety, very -- getting out his  
14 wallet, showing pictures to Tiffany, doing his legs up and  
15 down. Just could not sit still. My mother got onto him a  
16 couple of times. Usually that would have been enough, but  
17 it was just like he couldn't help himself.

18 Q. Even after -- you said your mother got onto him?

19 A. Yes.

20 Q. Even after your mother got on him, Bart's  
21 behavior was --

22 A. He would try, but you could just tell he  
23 couldn't. He was just messing with stuff, getting  
24 information out of things, the Bible.

25 Q. Did it become destructive at a point?

1 A. Yes.  
 2 Q. What happened then?  
 3 A. I can't recall what happened -- I just know it  
 4 was going on the whole time during the church service.  
 5 Q. Did at some point Tiffany take him out?  
 6 A. I believe so. I don't really recall that for  
 7 sure. I do remember at the end of the service they have  
 8 an alter call where you ask those who want to be received  
 9 or who need prayer to come down front, and Bart grabbed  
 10 Tiffany's hand to go down front. And I assumed it was for  
 11 prayer because I knew he and Justin had already been saved  
 12 and baptized together when they were 13.  
 13 Q. With regards to him going up front and this call  
 14 to prayer, how long had you been going to church with  
 15 Bart?  
 16 A. Probably at least six years.  
 17 Q. Had he ever done that before?  
 18 A. No. That's why I remember that one incident. I  
 19 thought that was really out of character for him to make  
 20 the lead to go up front. But I was happy about it. I was  
 21 happy that, for whatever reason, he needed prayer and he  
 22 was going down front to get it.  
 23 Q. But Bart did ultimately end up having to leave  
 24 church?  
 25 A. Yes.

1 Q. I guess that was before services were done?  
 2 A. I think they actually left from the alter -- and  
 3 just left.  
 4 Q. In the days following this Sunday, did you ever  
 5 learn or come to know of any other strange behavior that  
 6 was exhibited by Bart?  
 7 A. I knew of it from what I was hearing from Missy  
 8 and from Tiffany.  
 9 Q. Okay.  
 10 A. But actually witnessing it, no.  
 11 Q. Okay. Without relating exactly what was said,  
 12 what was it that you learned?  
 13 MS. HARTMANN: Your Honor, I will object.  
 14 That calls for an answer based on hearsay and not personal  
 15 knowledge.  
 16 THE COURT: Sustained.  
 17 Q. (BY MR. MINICK) So your testimony would be that  
 18 Bart is shy?  
 19 A. Yes.  
 20 Q. And modest?  
 21 A. Very modest.  
 22 Q. And you know why we are here?  
 23 A. Yes, I do.  
 24 Q. Okay. Did that really change your opinion of  
 25 who you think he is?

1 A. No.  
 2 MR. MINICK: No further questions.  
 3 CROSS-EXAMINATION  
 4 BY MS. HARTMANN:  
 5 Q. Is it Ms. Thomas?  
 6 A. Yes.  
 7 Q. What is your understanding of the nature of the  
 8 charges that Mr. Gaines has pled guilty to?  
 9 A. My understanding is that he assaulted two  
 10 individuals with a weapon of some sort.  
 11 Q. Were you told -- do you know that a shotgun was  
 12 used by him?  
 13 A. I don't have any idea what type of weapon it  
 14 was.  
 15 Q. The fact that Mr. Gaines fired a shotgun at  
 16 three different people, that doesn't change your opinion of  
 17 him?  
 18 A. No, ma'am. I know it is not right, and I  
 19 believe Bart probably knows it's not right. But it  
 20 doesn't change my opinion of him.  
 21 Q. You know he's pled guilty and admitted to doing  
 22 that, correct?  
 23 A. Yes.  
 24 Q. Do you know that prior to firing that shotgun at  
 25 at least two of those individuals, he robbed them?

1 A. I have no knowledge of that.  
 2 Q. The fact he's pled guilty to committing that  
 3 particular conduct, does that change your opinion of him?  
 4 A. No, ma'am.  
 5 Q. Could Mr. Gaines basically go out and take  
 6 another human life and your opinion wouldn't change?  
 7 A. I can't say that, but to this point, to this  
 8 day, from the time I have known Bart, nothing has changed.  
 9 Q. All right. So the fact that he actually injured  
 10 three different people with a shotgun doesn't affect your  
 11 perception of him?  
 12 A. No, ma'am, it does not.  
 13 Q. You have a son Justin?  
 14 A. Yes.  
 15 Q. Was Justin one of his friends that was making  
 16 fun of him?  
 17 A. No.  
 18 Q. So your son didn't make fun of him?  
 19 A. Not that I'm aware of. Well, maybe in child  
 20 play growing up.  
 21 Q. In context of what the -- the line of  
 22 questioning that Mr. Minick was asking you about these  
 23 friends that would -- he would be out and they would tease  
 24 him for being a little rich boy. Was your son a  
 25 participant in that?

1 A. Not that I'm aware of.  
 2 Q. And Tiffany certainly wasn't?  
 3 A. No.  
 4 Q. If in fact, he was made fun of, it certainly  
 5 wasn't by all his friends, was it?  
 6 A. Well, from what I have heard, it is.  
 7 Q. Was Justin one of his friends?  
 8 A. Justin was his stepbrother. The type of  
 9 relationship between brothers and friends, I believe, are  
 10 different, at least in my perspective.  
 11 Q. Would you say that you know Mr. Gaines fairly  
 12 well?  
 13 A. Yes.  
 14 Q. Are you able to tell the jury about his alcohol  
 15 and drug abuse?  
 16 A. From what I know, yes.  
 17 Q. Okay.  
 18 A. I do know he had some problems with that.  
 19 Q. You know he's had problems with marijuana?  
 20 A. I know he's used marijuana.  
 21 Q. And narcotics?  
 22 A. I have never seen him do any kind of drugs. I  
 23 just heard of him having problems taking those type of  
 24 drugs.  
 25 Q. Cocaine, methamphetamine?

1 A. Again, I have heard about it. He's never  
 2 actually been stoned or under the influence around me.  
 3 Q. All right. Finally, Ms. Thomas, you at no time  
 4 on the days of February 21, 2002 ever saw Mr. Gaines, did  
 5 you?  
 6 A. No, ma'am.  
 7 Q. You couldn't tell the jury anything about the  
 8 way he behaved on that particular day, specifically during  
 9 the evening hours?  
 10 A. No, ma'am.  
 11 MS. HARTMANN: Pass the witness.  
 12 MR. MINICK: No further questions.  
 13 THE COURT: You may step down, ma'am.  
 14 MR. WESTFALL: Your Honor, may I approach  
 15 for a second?  
 16 THE COURT: Yes.  
 17 MR. WESTFALL: Defense calls Dr. Edwin John  
 18 Stone.  
 19 THE COURT: Ladies and gentlemen, this  
 20 witness was placed under oath outside of your presence.  
 21 Whereupon,  
 22 **EDWIN JOHN STONE, M.D.,**  
 23 having been first duly sworn, testified as follows:  
 24 DIRECT EXAMINATION  
 25 BY MR. WESTFALL:

1 Q. Doctor, would you please state your name for the  
 2 ladies and gentlemen of the jury.  
 3 A. Edwin John Stone, M.D.  
 4 Q. And you live in Houston?  
 5 A. Yes.  
 6 Q. And have you come up from Houston today?  
 7 A. Yes.  
 8 Q. Are you a psychiatrist in private practice?  
 9 A. Yes, I am.  
 10 Q. Is part of the practice that you have testifying  
 11 in court?  
 12 A. Some of it, yes.  
 13 Q. And in that capacity, have I hired you on this  
 14 case to look at the facts, look at the circumstances, look  
 15 at the records, look at the materials and speak with me  
 16 and speak with the jury about this case?  
 17 A. Yes, you have.  
 18 Q. How much per hour do you charge for your  
 19 services as a witness?  
 20 A. For time that I spend reviewing documents, I  
 21 charge \$40 an hour. For time spent testifying in court,  
 22 \$500 an hour.  
 23 Q. When did you graduate from medical school?  
 24 A. In 1964.  
 25 Q. Where did you go?

1 A. Baylor College of Medicine.  
 2 Q. When you graduated from medical school, what did  
 3 you do as the residency or an internship?  
 4 A. I went to the Methodist Hospital in the Texas  
 5 Medical Center, did what's called a straight medicine  
 6 internship, and I followed that with a three-year  
 7 residency in psychiatry through the Baylor affiliated  
 8 hospital in and around Texas Medical Center.  
 9 Q. Have you been a practicing psychiatrist since  
 10 then?  
 11 A. Yes, since -- I completed that in 1968.  
 12 Q. Are you board-certified in psychiatry?  
 13 A. Yes, I am.  
 14 Q. Let's talk a little bit about your experience.  
 15 You have worked with the Texas Research Institute of  
 16 Mental Sciences. Could you tell us about that?  
 17 A. That is an institute that was originally named  
 18 the Houston State Psychiatric Institute, a facility in the  
 19 Texas Medical Center. I worked there for about 16 years.  
 20 I got some of the last part of my training there, and then  
 21 I took a staff position there.  
 22 It was an institute that had three  
 23 purposes, to do patient care, to do research and to do  
 24 teaching. So my jobs there involved all of the different  
 25 things.

1 In the patient care area, I became  
2 responsible or in charge of all of the outpatient clinics.

3 In regard to teaching, the last seven years  
4 I was there, I was in charge of a residency training  
5 program to teach doctors to be psychiatrists.

6 In regard to my research activities, I  
7 worked alongside Dr. James Claghorn there conducting  
8 clinical trials, testing out potential new drugs that had  
9 been developed and that had reached a certain point in  
10 their testing on patients.

11 Q. What is a clinical drug trial?

12 A. A clinical drug trial is a part of the testing  
13 of a possible new drug that goes on just prior to the drug  
14 going on the market. The drug will first have been tested  
15 for its effects on animals, then its effects on human  
16 volunteers who are healthy and then it will be tested in  
17 an uncontrolled way on some patients who have certain  
18 conditions to find out what doses might be effective. And  
19 then when it comes down to the clinical trials, the  
20 potential new drug is usually matched up against the  
21 standard drug and against a sugar pill in a disguised way  
22 so that testing can be done to see if there is  
23 effectiveness and safety of the drug in a way that tries  
24 to protect against any bias in the observation.

25 Q. So you have worked in research and private

1 practice as a psychiatrist?

2 A. Right.

3 Q. In your work, have you published any peer review  
4 journals?

5 A. Yes.

6 Q. What is a peer review journal?

7 A. A peer review journal is one where reports and  
8 manuscripts are submitted to an editorial board and  
9 analyzed by designated members on that board to determine  
10 if the article really has scientific merit and accuracy,  
11 meets the standards that deserve to be published in that  
12 particular journal.

13 Q. You and I have known each other for a month. In  
14 that time, have I sent you information to look at?

15 A. Yes, you have.

16 Q. Have you spoken with members of Bart's family?

17 A. Yes, I have.

18 Q. The information that I sent you, does that  
19 include medical records, in particular the TRC records?

20 A. Yes, it does.

21 MS. HARTMANN: Your Honor, may I approach?

22 THE COURT: Yes.

23 Q. (BY MR. WESTFALL) I am showing you what's  
24 already been admitted into evidence as State's Exhibit 40,  
25 State's Exhibit 19, Defendant's Exhibit 20. Those look

1 like the TRC records that you saw?

2 A. If this is the report from Dr. Warren -- yeah,  
3 right.

4 Q. Is there a letter from Dr. Ouseph in there also?

5 A. Right.

6 Q. Would you please look in there -- into that TRC  
7 record and find Dr. Warren's report?

8 A. (Witness complies) I have it.

9 Q. What sort of testing was done on Bart by Dr.  
10 Warren?

11 A. This is a battery of psychological tests. He  
12 administered the Wexler Adult Intelligence Scale, the Wide  
13 Range Achievement Test, the Personality Assessment  
14 Inventory and conducted a clinical interview.

15 Q. What were the conclusions that Dr. Warren  
16 arrived at based upon those things that he did?

17 A. He concluded that Bart had a learning  
18 disability; that he had attention deficit hyperactivity  
19 disorder; and that he had been overusing alcohol and  
20 marijuana.

21 Q. Let me talk --

22 A. Let me continue.

23 Q. Okay.

24 A. He did not conclude as to whether there was a  
25 personality disorder or not. He deferred that

1 determination.

2 Q. I want to talk to you about the ADD, ADHD.

3 A. All right.

4 Q. Is attention deficit disorder/attention deficit  
5 hyperactivity disorder, are these disorders that you have  
6 studied or that you have clinical experience with?

7 A. Yes.

8 Q. Tell me about ADD/ADHD. What are the effects on  
9 a person having that disorder?

10 A. These are conditions that someone is born with,  
11 and they have to do with, first of all, difficulty in  
12 keeping attention focused. Persons are subject to  
13 distractable attention. It makes it difficult for them to  
14 concentrate and follow through on task or even to pay  
15 consistent attention. That's why it is called attention  
16 deficit.

17 In addition to that, the persons have a  
18 tendency to act on impulse, a tendency to respond  
19 rampantly with strong emotional responses to things that  
20 they encounter. Some of them actually experience a kind  
21 of driven, fidgety, overenergized state that causes them  
22 to be antsy and on the move and unable to hold themselves  
23 still for -- in most situations.

24 Q. Is there -- well, first of all, washing one's  
25 hands a lot, doing some compulsive-type behaviors, is that

1 something that ADHD can explain?

2 A. It might, but it might -- I mean, there are  
3 other ways that somebody frequently washing their hands  
4 might have some reason for doing it. It might be a ritual  
5 superstition that they have like as part of an  
6 obsessive-compulsive disorder. But fidgeting around with  
7 things, never being able to be still, fiddling with  
8 things, some people would describe as energized as if they  
9 had the motor going that would never seem to stop.

10 We subdivide attention  
11 deficit/hyperactivity disorder into ones where it is  
12 predominantly the problem about the scattered distractable  
13 attention or the ones where it is predominantly motor  
14 driven, impulsive, hyperactive or somewhere there was the  
15 combination of both features.

16 It appeared from all of the observations  
17 here that Bart has probably the combination of the  
18 features.

19 Q. Dr. Warren found that Bart has ADHD?

20 A. Yes.

21 Q. And based upon his report, did that seem like a  
22 proper diagnosis?

23 A. Yes, it did.

24 Q. You have also seen a lot of school records?

25 A. Yes.

1 Q. Didn't I provide you with the school records?

2 A. Yes.

3 Q. Do you see evidence in there that might lead you  
4 to believe that Bart has ADHD?

5 A. Yes.

6 Q. Does somebody with untreated ADHD have a hard  
7 time in school?

8 A. Oh, yes. They always have a hard time in  
9 school.

10 Q. Is there treatment for ADHD?

11 A. Yes, there is.

12 Q. What is that?

13 A. Well, a combination of things. There is  
14 medication and then there is the consistent educational  
15 approach. There are a number of medications that may  
16 enable the person to be able to sustain their focus not be  
17 so distractable. There are also medications that may stop  
18 that driven, restless, fidgety motor activity and there  
19 may be medications that sort of stabilize the intense  
20 emotionality that these youngsters have. Those are the  
21 medication approaches.

22 There are certain other things such as  
23 smaller classroom sizes and lack of distracting things in  
24 the environment that can be brought into play to try to  
25 work with these youngsters so that their learning

1 handicaps that result from this don't interfere with their  
2 ability to learn material.

3 Q. These sorts of treatments and in particular the  
4 pharmaceutical like Ritalin or Adoral, did all these  
5 things exist in the mid to late '90s?

6 A. Yes.

7 Q. Did they exist in the early '90s?

8 A. Yes.

9 Q. In looking through all these records before Dr.

10 Warren -- what day was Dr. Warren's report?

11 A. I believe it was December of '01, December 17 of  
12 2001.

13 Q. Okay. So prior to almost right at a year ago  
14 now, have you ever seen any diagnosis or any mention in  
15 any of those records of Bart having ADD?

16 A. Yes, there was actually one at the Excell  
17 Center. The diagnosis was included of ADD.

18 Q. Did you see any evidence whatsoever that he was  
19 treated or that any follow-up was done on that?

20 A. No. Unfortunately, he never did receive any  
21 treatment.

22 Q. Now, looking at his records and all the records  
23 that you have reviewed, is there doubt in your mind that  
24 Dr. Warren's diagnosis is correct?

25 A. No.

1 Q. Did Dr. Warren measure Bart's IQ?

2 A. Yes.

3 Q. What was the number he came up with?

4 A. He came out with a full scale of 85, I think.

5 Q. Check and make sure.

6 A. It's either 85 or 86. Let me see where he  
7 covered that. Yeah, verbal IQ, 84; performance IQ, 86;  
8 full scale IQ of 84 plus or minus 5 points.

9 Q. And an IQ of 84 plus or minus 5, so I guess that  
10 could be a 79 to an 89. An IQ of 84, what sort of IQ is  
11 that characterized as?

12 A. We usually refer to that range, 80 to 90 as dull  
13 normal range. If we are talking about the bottom end of  
14 it where there is overlap in the low 80s, it is bordering  
15 with the next category, which basically we routinely are  
16 like 70 to 80 as being borderline intelligence and  
17 anything below 70 being retarded. So it is just at the  
18 boundary between dull normal and borderline intellectual  
19 potential.

20 Q. One more thing about the ADD. Is it unusual to  
21 find somebody with untreated ADD to have a -- to have say  
22 a persistent drug problem?

23 A. Is it unusual -- what?

24 Q. For a person who has ADD/ADHD that's not  
25 treated, is it common to find one of them that has like a

1 street drug or an illicit drug problem?

2 A. It is not unusual.

3 Q. Any reason?

4 A. They are impulsive, and it is difficult for them  
5 not to act on their impulses. And they also may have  
6 found that some things that they can get ahold of make  
7 them feel better in one way or another.

8 Q. What is it like for a person with ADD? Why  
9 can't they do the work? Why can't they do school work?  
10 Why can't they hold jobs?

11 A. Well, to be able to follow through and get an  
12 assignment done, you have to hear the assignment, keep  
13 sustaining that in your mind and then follow through and  
14 do what the teacher tells you to do. What happens with  
15 them is they hear it, a second or so later they hear  
16 something else or some other stimulus that happens to  
17 exist and the situation captures their attention. And the  
18 first thing that was heard and thought about is lost.  
19 They are often regarded as if they have trouble with their  
20 memory because they have to be told things over and over  
21 again. It isn't really that they can't record memories.  
22 It is a problem with being able to keep something  
23 sustained in their attention long enough to follow through  
24 with it.

25 It is not a matter of how much intelligence

1 they have. There are some people with ADD who have very  
2 high intelligence, but they are hampered as well by the  
3 scattered attention that doesn't allow them to pursue  
4 something in an orderly way and get to a conclusion.

5 Q. The proper medicine can help that?

6 A. Yes.

7 Q. Did you also see evidence of dyslexia?

8 A. Yes.

9 Q. Now, dyslexia had been mentioned a couple of  
10 times in different records. Is dyslexia something that  
11 can exist side by side with ADHD or is that a  
12 misdiagnosis?

13 A. Dyslexia and other learning disorders very often  
14 do accompany ADHD. They are not a part of it, but they  
15 are very, very commonly found together. He has two  
16 learning disorders. Dyslexia has to do with reading, and  
17 he has a specific disorder that -- learning impairment in  
18 regard to reading and one with regard to mathematics as  
19 well.

20 Q. What is that called?

21 A. Well, it is called mathematics disorder. Not a  
22 very catchy name, but --

23 Q. That actually is in the record.

24 A. Oh, yes. And he was -- should I go on? He was  
25 qualified for and enrolled in learning disabled classes

1 because of these two learning disabilities that he has.

2 Q. I want to talk to you, Doctor, about social  
3 inhibitions. It may be it's an id and an ego and a super  
4 ego thing, but what is it if I see a car and I would like  
5 to have that car, what is it that keeps me from stealing  
6 that car?

7 A. Well --

8 Q. Besides good common sense, what is the little  
9 barrier there?

10 A. It depends on one's level of maturation. At a  
11 very early age, someone might not do it because they know  
12 they would be punished for it. As a more sophisticated  
13 level of development, you might not do it because you have  
14 developed a refined sophisticated capacity to know why it  
15 is not a good thing in general for people to behave that  
16 way. But it has to do with some regard for the social  
17 consequences of behavior.

18 Q. Is that impulse control?

19 A. It has to do with impulse control, yes.

20 Q. Well, somebody who's intoxicated will say things  
21 they wouldn't say if they weren't intoxicated?

22 A. That's true.

23 Q. What's the effect of the intoxication that makes  
24 that condition exist?

25 A. Well, the frontal lobes of the brain are the

1 place where as we learned about social consequences a set  
2 of influences keep our impulses in check. And it has been  
3 kind of said jokingly that the frontal lobe of the brain  
4 is the part that dissolved in alcohol. A person  
5 intoxicated will not have the effect of the frontal lobes  
6 causing inhibitions on the impulse to do improper things.

7 Q. Can a person with any one or this bundle of  
8 special characteristics have kind of the same problem with  
9 impulse control?

10 A. Same kind of problem as a person on alcohol you  
11 mean?

12 Q. Well, the problem being it is hard to control  
13 his impulses. I mean, you can -- this person might say  
14 things that Person B who doesn't have any of the  
15 conditions wouldn't say. Well, this person here has quite  
16 possibly an impulse control problem?

17 A. Oh, yeah, an impulse control problem is part and  
18 parcel. The second part of the term ADHD, the H stands  
19 for hyperactive -- impulsive hyperactive. That means they  
20 tend to blurt out things instead of staying quiet when  
21 they are supposed to be quiet in class. They may get up  
22 and get out of their chair when they know -- have been  
23 told they are supposed to stay in the chair. They are  
24 always getting into trouble and often disrupting the other  
25 people in the class with that sort of behavior. His

1 school records reflect this consistently.

2 Q. Will the simple addition of Ritalin basically  
3 eradicate that problem?

4 A. I wouldn't want to imply that particular drug is  
5 a panacea or the only thing to give, but it is a good  
6 example because it often does work. Yes, stimulant  
7 medication given to these people oddly enough, instead of  
8 making them get very enlivened and wild usually causes  
9 them to be able to calm down and focus and contain their  
10 impulses. Instead of making them more jumpy and  
11 impulsive, it makes them less impulsive.

12 Q. I want to talk to you about how we process  
13 stress and the stressors in our life. Let me just first  
14 ask you. Will a person who does not have those conditions  
15 process life's stressors differently than a person who  
16 does?

17 A. Yes. People with ADHD are more disrupted by  
18 stress than someone who doesn't have it. They're more  
19 excitable. They have -- as events happen to these  
20 youngsters, either a happy event will just sweep through  
21 them or an unhappy event -- what might be thought of as a  
22 minor disappointment might go as human waves through them.  
23 Their capacity to respond proportionately to the stressful  
24 events that come along is not to modulate that. It is not  
25 as good as it is in people who don't have this disorder.

1 Q. These conditions, these things have been in  
2 Bart's history since Bart has existed.

3 A. Right.

4 Q. And up until about a week before he shot three  
5 people, he wasn't shooting anybody. Let me ask you. Even  
6 with a bundle of conditions like this, are people able to  
7 compensate or reach some level of equilibrium where they  
8 are able to conform to society's forms?

9 A. Well, yeah. It is not as if they don't learn  
10 anything. It is not as if they don't gain mastery over  
11 it. They have a struggle that the rest of us don't have,  
12 but over the years of their maturation they tend to gain  
13 better control over their impulses than they do when they  
14 are in the second grade or third grade.

15 Q. And they're able to, I guess, ultimately carry  
16 on with life at some level.

17 A. At some level but they are at a risk of becoming  
18 sort of an undisciplined misfit because of the problems  
19 with their attention and their impulses. It makes it hard  
20 for them to hold down a job for a long span of time, to  
21 make headway in school and training. The kind of things  
22 that are going to profit somebody and make a success for  
23 most of us are particularly difficult for them.

24 Q. Is someone like this necessarily dangerous?

25 A. No.

1 Q. Why?

2 A. Well, they -- part of it has to do with there is  
3 a value system that they are raised within, and if they  
4 are taught what are the right ways to behave, they gain an  
5 understanding of that, and they don't just go out and act  
6 as some menace to society.

7 Q. Do they learn how to cope?

8 A. Yes.

9 Q. And based upon what you have heard, is it your  
10 opinion that Bart prior to, say, first couple of weeks of  
11 February of this year had learned to cope?

12 A. It is my opinion that he had. He had not done  
13 well in school and had gotten a GED and then had gotten  
14 started in a job that he was enthusiastic about and he was  
15 pursuing some vocational assistance because he felt he had  
16 lost his previous job because of his scattered attention.  
17 And at that time period that you are talking about, early  
18 February, he was applying himself to that job and looking  
19 for some help with keeping his attention focused.

20 Q. These things that you have just testified to,  
21 you got this information from the TRC records?

22 A. Yes.

23 Q. Did Dr. Warren talk about how Bart is himself as  
24 a historian?

25 A. Yes, he did.

1 Q. What is a historian to a psychologist?

2 A. That means that as we get the story from  
3 somebody, somebody gives us his personal history, we try  
4 to make a judgment about whether that person is a very  
5 good provider -- very accurate provider or thorough  
6 provider or capable of sophisticated understanding of past  
7 events or describing and explaining his own behavior.

8 Dr. Warren did comment on that and felt  
9 that Bart was not a good historian, not capable of a  
10 sophisticated understanding of his own role in some of the  
11 difficulties that he had experienced.

12 Q. And you have personally spoken with Bart for a  
13 short time?

14 A. Yes.

15 Q. Was that your experience as well? Was that the  
16 impression you came away with as well about Bart being a  
17 bad historian?

18 A. Yes, it was. As I tried to gain some  
19 information from him, his material seemed to be very  
20 superficial and lacking any depth of reflection and so  
21 hastily provided that I got the impression he was not a  
22 good historian and not going to be a reliable informant to  
23 me.

24 Q. Through TRC Bart went to see two different  
25 doctors or went to see a psychologist, Dr. Warren, but

1 also saw a psychologist, Dr. Ouseph?  
 2 A. Yes.  
 3 Q. Do you remember that?  
 4 A. Yes.  
 5 Q. Dr. Ouseph's report is quite a bit different  
 6 from Dr. Warren's?  
 7 A. Yes, it is.  
 8 Q. What did Dr. Ouseph say?  
 9 A. Dr. Ouseph took Bart's comments really as if he  
 10 were a good historian and picked up on his terminology as  
 11 if it were accurate. And basically what it came down to  
 12 is he described this restlessness that's the  
 13 hyperactivity. Dr. Ouseph regarded that as anxiety, and  
 14 he described the kind of emptiness that is characteristic  
 15 of the other condition as the borderline personality  
 16 disorder. He used the word "depression" for that and Dr.  
 17 Ouseph accepted that as if that were sufficient to make a  
 18 diagnosis of the clinical condition depression.  
 19 Those are really two entirely different  
 20 things and this is an important distinction, and Dr.  
 21 Ouseph just did not stop and reflect about what quality of  
 22 an informant she was dealing with and took his remarks at  
 23 face value as if he actually had a mood disorder rather  
 24 than a persisting sense of emptiness within himself.  
 25 Q. Did you see any evidence in Dr. Ouseph's report

1 that she did any testing?  
 2 A. No.  
 3 Q. Did you see any evidence in Dr. Ouseph's report  
 4 that she reviewed the testing that was done by Dr. Warren?  
 5 A. No.  
 6 Q. Is there any evidence that would lead one to  
 7 believe -- in fact, they didn't even look at each other's  
 8 reports?  
 9 A. I don't believe she could have read Dr. Warren's  
 10 report because Dr. Warren --  
 11 MS. HARTMANN: I'm going to object to  
 12 speculation and lack of personal knowledge.  
 13 THE COURT: Sustained.  
 14 A. There is no indication --  
 15 MS. HARTMANN: Excuse me. Objection. I  
 16 believe the objection was sustained.  
 17 THE COURT: It was.  
 18 Q. (BY MR. WESTFALL) Nonetheless, Dr. Ouseph wrote  
 19 a prescription?  
 20 A. Yes.  
 21 Q. And what did Mr. Ouseph prescribe?  
 22 A. She prescribed Paxil.  
 23 Q. I want to talk to you about Paxil. What is  
 24 Paxil?  
 25 A. Paxil is a brand name for a chemical called

1 paroxetine.  
 2 Q. Paroxetine is a what?  
 3 A. Paroxetine is an antidepressant. It is in the  
 4 category of -- they are called SSRIs. It stands for  
 5 selective serotonin reuptake inhibitor. Basically it  
 6 means a category of antidepressant that exerts its actions  
 7 by boosting up the activity of serotonin circuits in the  
 8 brain.  
 9 Q. Have you prescribed Paxil yourself?  
 10 A. Yes.  
 11 Q. When you are going to prescribe Paxil, what is  
 12 your procedure with the patient?  
 13 MS. HARTMANN: Object to relevance.  
 14 THE COURT: Overruled.  
 15 A. I will see to it that I am able to stay in close  
 16 contact with that patient for a follow-up observation and  
 17 what the effects are that occur, and generally will inform  
 18 someone around the patient as well, a family member, to  
 19 stay in touch with me to -- in case things don't go as we  
 20 wish.  
 21 I would presumably be prescribing it to  
 22 someone in hopes that it would lift their spirits and make  
 23 them aware that it is a mood -- it is a mind-altering  
 24 substance that's going to modify more than just mood.  
 25 And there are a number of undesirable

1 consequences that may happen, and I want them to be alert  
 2 to that, stay in touch with me so that we can take action  
 3 if that's necessary.  
 4 Q. Would you prescribe Paxil to somebody who has  
 5 ADD?  
 6 A. I probably would not. I would not prescribe it  
 7 to someone with ADD without other precautions already  
 8 being employed and without the patient already being on  
 9 some mood stabilizing agent.  
 10 Q. Was Bart Gaines on any other mood stabilizing  
 11 agent?  
 12 A. No, he was not.  
 13 Q. In the material that comes with Paxil what's  
 14 called the package insert, all the warnings that are in  
 15 very small print, takes them about four pages, is one of  
 16 those warnings in there, one of those dangers, hypomania?  
 17 A. Yes.  
 18 Q. Would you please tell the ladies and gentlemen  
 19 of the jury what hypomania is?  
 20 A. It is sort of the opposite of depression. It is  
 21 where the person's mood is high instead of low. The  
 22 person is in an overenergized state. The elevated mood  
 23 might be very happy and cheery and euphoric, but most of  
 24 the time actually the mood is sort of a driven, irritable  
 25 state. That's what hypomania is, if someone has a

1 sustained state of mood that stays up in that excited  
2 way.

3 Q. And just quite simply, Paxil affects the level  
4 of serotonin in the brain?

5 A. It affects the level of activity of the circuits  
6 that use serotonin for a neuro transmitter.

7 Q. And if more serotonin is available, the neurons  
8 pass easier?

9 A. Yeah. Presumably it is easier for the circuits  
10 to transmit electrical signals.

11 Q. You have heard, and the testimony in this trial  
12 has been that Bart Gaines is going along, he's got a job  
13 that he seems to be getting a handle on. He's getting up  
14 in the morning, going to work, getting off work. He's  
15 hanging around the house more.

16 All of a sudden he goes to TRC, gets a  
17 prescription for Paxil and sometime around the first part  
18 of February to the end of the first week of February,  
19 somewhere in that range, his mother starts giving him the  
20 Paxil according to the prescription that Dr. Ouseph wrote.

21 A. Right.

22 Q. And then the 14th and 15th of February, a  
23 Thursday, Friday, Valentine's Day and the day after, Bart  
24 is doing things which are normal, but he seems a little  
25 happier than normal. The next day, Saturday, Bart is

1 close to them, and he's walking around in a very agitated  
2 way.

3 Thursday, the next day, he shoots two young  
4 men in the midst of a robbery and then 36 hours later

5 shoots at a person out on the highway and a fragmented

6 bullet actually hits him. Directly after that he shows up  
7 at his girlfriend's house where her mother lives and his  
8 eyes are still wide as saucers. He's still speaking very  
9 slurry and loud. He seems obsessed. He walks in like he  
10 owns the place, like he lives there. He is speaking so  
11 loud he wakes her mother up.

12 Then once he leaves there, he comes home  
13 and comes into the garage dressed in just a towel where he  
14 used to be very modest and basically bragging about the  
15 fact that he's got a truck full of stolen tools.

16 Now, behavior like this in a person with  
17 Bart's history, do you have an opinion as to whether that  
18 is a hypomanic state?

19 A. Yes.

20 Q. What is that opinion?

21 A. It is my opinion that does describe hypomanic  
22 state.

23 Q. Further, do you have an opinion as to whether or  
24 not Paxil contributed to that hypomanic state?

25 A. Yes.

1 agonizing over his girlfriend Tiffany that he had broken  
2 up with two weeks before and he's pulling on his hair, his  
3 legs are bouncing around. He's sitting at the table and  
4 seems to be really obsessing about Tiffany to the point  
5 where his mother becomes concerned, and Bart is speaking a  
6 little bit faster and little bit louder than normal.

7 The next day, Sunday, Bart shows up at  
8 church and is whispering loudly to Tiffany, and the people  
9 around him can hear the loud whispering. He's fidgeting.  
10 His eyes are getting strange, his voice is loud and fast.  
11 He then goes home and washes his truck two or three times  
12 and then cleans up the garage so that it is completely  
13 spic and span, two things that have been testified to are  
14 unusual for him and then vigorously lifts weights and  
15 watches TV in 15-minute intervals until he goes to bed.

16 The next day, he gets up, goes to work,  
17 gets off work, goes to Discount Tire and then comes home,  
18 lifts weights at 15-minute intervals between watching TV  
19 and goes to bed, does that exact same thing three days in  
20 a row.

21 By the end of that third day, his eyes are  
22 wide as saucers so that you can see the whites around  
23 them. His voice is very loud and very fast, and he  
24 appears to have lost his ability to gauge what personal  
25 space is. He's getting in people's faces and talking too

1 Q. What is your opinion?

2 A. My opinion is that Paxil did contribute to the  
3 state, induced it.

4 Q. How?

5 A. It is a well-known hazard of every  
6 antidepressant that a certain number of people who take it  
7 for a mood lift may develop hypomanic reaction to it  
8 rather than just the desired mood lift they were going  
9 for. I don't know any other way to respond to your  
10 question than that.

11 Q. Well, Bart seemed to have been getting along  
12 just fine, and then we have Paxil and Bart is not fine any  
13 more. Is that kind of what the facts show?

14 A. That's what the flow of events was, yes.

15 Q. A person in this position, does this person --  
16 they have the ability to cope with the stress of every day  
17 to reach an equilibrium. Can Paxil affect that  
18 equilibrium?

19 A. Oh, yes.

20 Q. Is that what happened in this case?

21 A. Yes, I believe it is what happened.

22 Q. Explain how.

23 A. Well, it's been found in some published research  
24 studies that depressed young men who also have ADD tend to  
25 respond -- as a group tend to respond poorly to the SSRI,

1 antidepressant Prozac and Paxil, that not only do they  
2 tend to have a problem of being prone to hypomanic kind of  
3 loss of inhibitions, they undergo a relapse of their own  
4 hard-fought self-control over their ADD. Whatever the  
5 degree of self-control they had learned to master over the  
6 years -- over the years of dealing with it, once they are  
7 put on this kind of antidepressant, there is a great  
8 likelihood that their progress with their ADD will be  
9 lost. They will relapse and it will be just as if they  
10 were as impulsive and scattered as they were when they  
11 were third graders.

12 Q. Here is something else the facts show. When  
13 Bart is arrested, Bart is taken to jail and Bart has never  
14 been out of jail. Aside from a period of lag time where  
15 Bart is calling his mother saying, Bring my Paxil up here,  
16 bring my Paxil up here, where he's not doing -- aside from  
17 a lag time, Bart's been using the Paxil in the jail for  
18 months.

19 A. Right.

20 Q. How do we explain the fact that Bart is not  
21 hypomanic in the jail?

22 A. There can be several things that help to explain  
23 that. Probably the most important element is the fact  
24 that confined tightly controlled situations like mental  
25 hospitals or jails or prisons are capable of diminishing

1 the excitement, and the environment itself is beneficial  
2 in calming down a hypomanic state. Also beneficial for a  
3 person who has got loss of control over his ADD, so  
4 probably the single most important thing there is that  
5 even though he continues on the Paxil while he's in the  
6 jail, the influence of the jail environment where there is  
7 very little stimulation going on, very few choices to be  
8 made, everything is kind of chilled out in the jail, that  
9 outweighs the inclination of the Paxil to induce the hypo  
10 state. Probably if you took the same person on the Paxil  
11 out of the jail setting, left them on Paxil, the hypomania  
12 would re-emerge.

13 Q. What if you took away the Paxil and started  
14 treating the ADD?

15 A. It would be very nice if that could occur. It  
16 would be -- if the Paxil were removed and the ADD were  
17 treated with the appropriate medication for it, he could  
18 be expected to have increasingly better concentration,  
19 attention, might become able to do some effective  
20 studying, would -- I don't know that you could say much  
21 over that unless you -- unless you had some way of  
22 measuring his studying performance. It would be expected  
23 that his standard attention would get better and his  
24 emotional reactivity should be diminished and his  
25 impulsiveness should also be diminished.

1 MR. WESTFALL: Your Honor, may I have just  
2 a moment?

3 (Pause in the proceedings)

4 MR. WESTFALL: Your Honor, we'll pass the  
5 witness.

6 **CROSS-EXAMINATION**

7 BY MS. HARTMANN:

8 Q. You said you had met the Defendant? How many  
9 times did you meet with him?

10 A. One time.

11 Q. How long a period of time?

12 A. I believe it was about 20 minutes.

13 Q. And giving your expert opinion to the jury is  
14 basically based upon a 20-minute conversation with this  
15 Defendant?

16 A. I am giving my expert opinion based on my review  
17 of all the materials and it included a 20-minute  
18 opportunity to get acquainted or to meet him.

19 Q. You didn't feel like you needed longer than 20  
20 minutes?

21 A. Well, actually, not because I didn't -- it  
22 appeared to me that longer than 20 minutes wouldn't be any  
23 more productive than the 20 minutes were.

24 Q. Did you conduct any tests of the Defendant?

25 A. No.

1 Q. Did you complete a final report based upon your  
2 review of the materials and your interview with the  
3 Defendant?

4 A. No.

5 Q. You have testified in court before, haven't you?

6 A. Yes.

7 Q. Many times, correct?

8 A. Yes.

9 Q. In fact, you testified quite frequently in civil  
10 trials, correct?

11 A. I have.

12 Q. And you testified on behalf of plaintiffs who  
13 are suing large drug companies, don't you?

14 A. I have.

15 Q. Have you ever testified on behalf of the drug  
16 companies?

17 A. I testified in behalf of some large  
18 corporations, I don't think on behalf of pharmaceutical  
19 companies that I can recall.

20 Q. And you have testified on behalf of other  
21 Defendants, correct?

22 A. Yes.

23 Q. And how much of your information is derived from  
24 testifying in court or attending depositions?

25 A. I think about a third.

1 Q. Approximately how much of your information comes  
2 from testifying in court or testifying at a deposition?  
3 A. How much of this information comes from --  
4 Q. I am asking about percentage of your yearly  
5 income.  
6 A. Comes from testifying?  
7 Q. From testifying, from reviewing reports,  
8 interviewing individuals in preparation for trial?  
9 A. About a third is what I'm saying.  
10 Q. My question was directed toward the percentage  
11 of your income.  
12 A. That's what my initial answer actually was. I  
13 think about a third of my income. I don't know what the  
14 percentage of my hours is.  
15 Q. Is it standard for you not to prepare a formal  
16 report in situations like this?  
17 A. I don't have any standard. If a report is  
18 requested, I provide a report. If I am not requested to  
19 provide a report, I don't.  
20 Q. And in this case you were not requested to  
21 complete a formal report?  
22 A. Correct.  
23 Q. All right. The time you met with this Defendant  
24 for 20 minutes, when did that take place?  
25 A. Last Saturday evening. I believe that was

1 Q. Is it possible?  
2 A. Certainly possible.  
3 Q. And did you ever -- let me ask you this: Did  
4 you ever determine from the Defendant what drugs or  
5 alcohol he had ingested on the 21st of February of 2002?  
6 A. No, I didn't.  
7 Q. Didn't ask him?  
8 A. No, I didn't ask him.  
9 Q. Didn't think it was important?  
10 A. No, that's not true. After I --  
11 Q. Is that yes or no?  
12 A. Huh?  
13 Q. You didn't think it was important?  
14 A. I didn't think it was going to give me an answer  
15 that I could find reliable.  
16 Q. Well, you didn't want to ask to see what he had  
17 to tell you?  
18 A. If I don't think the answer is going to be  
19 reliable, I don't see the point in asking the question.  
20 Q. So you're making that assumption based upon 20  
21 minutes that what he had to tell you would be unreliable?  
22 A. That's right.  
23 Q. Didn't ask him what drugs he had taken, if he'd  
24 had any alcohol, correct?  
25 A. I didn't ask him that, no.

1 December 7.  
2 Q. Two days before the trial started. If I told  
3 you we picked a jury on Monday, that would have been two  
4 days before the trial started, correct?  
5 A. Right.  
6 Q. When were you first contacted by Mr. Westfall?  
7 A. It was about mid-October.  
8 Q. Okay. And was it at that time that he sent you  
9 these medical records for you to review?  
10 A. He sent them to me shortly after we first spoke,  
11 yes.  
12 Q. It's been mentioned a number of these doctors'  
13 names. How many of those doctors did you speak with in  
14 person?  
15 A. None.  
16 Q. So you never spoke with any of the Defendant's  
17 doctors, the people who have been treating him and seeing  
18 him?  
19 A. Right.  
20 Q. Do you know how long they would have met with  
21 him for?  
22 A. No, I don't know.  
23 Q. They possibly could have met with him for more  
24 than 20 minutes, correct?  
25 A. I don't know.

1 Q. Well, the testimony is that his family didn't  
2 see him after Wednesday night. Who would be able to tell  
3 you other than the Defendant what drug or alcohol he had  
4 been taking?  
5 A. I think in some of the police reports other  
6 people who were around that night spoke about the  
7 ingestion of alcohol.  
8 Q. And marijuana?  
9 A. Right.  
10 Q. Okay. And as far as whether or not the  
11 Defendant was taking Paxil, his prescription, you never  
12 confirmed that with him either, did you?  
13 A. I did ask him about that during the 20 minutes.  
14 Q. Did you ask him if he took the Paxil on the date  
15 of February 21, 2002?  
16 A. I didn't ask him that specific question, no.  
17 Q. Did you ask him on what day he began taking the  
18 Paxil?  
19 A. I asked when he thought it was, and he thought  
20 it was from mid-February.  
21 Q. Mid-February being what to you?  
22 A. I would say that would be February 15 or so.  
23 Q. Didn't you testify at an earlier hearing he had  
24 never given you an exact day in which he started taking  
25 Paxil?

1 A. Right.

2 Q. So you don't know?

3 A. I know that's what he told me he thought that's  
4 when it was. I know that there was a lack of certainty  
5 about the exact beginning time but a general consensus  
6 that it was in the early to middle part of February.

7 Q. Of course, this is from a source that you would  
8 consider unreliable, correct?

9 A. What?

10 Q. The information you got from Mr. Gaines about  
11 when he started Paxil. You have already told me you  
12 considered him an unreliable source, correct?

13 A. Right. I don't know that I would put a lot of  
14 weight on February 15 as the exact starting time. Other  
15 family members thought that he probably had begun taking  
16 it on the 5th or 6th.

17 Q. Any of the family members didn't have an exact  
18 date, did they?

19 A. No, they didn't.

20 Q. Wouldn't it be fair to say when he started  
21 taking it and if he took it every day is really rather  
22 vague? There is no certainty to it?

23 A. They are confident, whoever -- which of the  
24 family member it was that was discussing this with me  
25 explained that once he did start taking it, he took it

1 reliably every day.

2 Q. Who was that family member?

3 A. I am not certain whether that was the maternal  
4 grandmother or the mother.

5 Q. You don't know who it was?

6 A. They look a lot alike.

7 Q. You don't know who it was, do you, sir?

8 A. I don't know which one it was.

9 Q. Okay. And you told this jury that you believe  
10 that the Defendant's ingestion of Paxil caused the  
11 hypomanic episode, correct?

12 A. Yes.

13 Q. And wouldn't it be important for you to know,  
14 sir, before rendering that opinion whether or not the  
15 Defendant had ingested any alcohol, any other prescription  
16 drug or any street drugs?

17 A. It would be helpful to know those things.

18 Q. Wouldn't it be helpful, sir, because -- you are  
19 familiar with the DSM III, aren't you -- DSM IV?

20 A. Yes.

21 Q. What is that?

22 A. It stands for the Diagnostic and Statistical  
23 Manual of Mental Disorders.

24 Q. And -

25 A. Edition IV.

1 Q. All right. Is that a fairly reliable book of  
2 reference in your field?

3 A. Yes, it is our standard book that we use that  
4 defines the criteria that we make diagnoses from.

5 Q. All right. Isn't it true, sir, that the mood  
6 disturbances or other symptoms of a hypomanic episode  
7 cannot be due to the direct physiological effects of a  
8 drug of abuse, a medication, other treatment for  
9 depression or toxin exposure.

10 A. A plain manic episode cannot be, no.

11 Q. A hypomanic episode?

12 A. Let me see if I can clarify what you are not  
13 getting at.

14 MS. HARTMANN: May I approach the witness?

15 (Pause in the proceedings)

16 Q. (BY MS. HARTMANN) Sir, I am looking  
17 specifically at Page 335.

18 A. All right.

19 Q. I am looking at Page 335. Are you with me?

20 A. Yeah.

21 Q. I am specifically referring to the second  
22 paragraph on that page which starts off, the mood  
23 disturbance --

24 A. Down at the bottom?

25 Q. Down at the bottom.

1 A. Uh-huh.

2 Q. Uh-huh. Isn't it true, sir, that the mood  
3 disturbance and other symptoms of a hypomanic episode must  
4 not be due to the direct physiological effects of a drug  
5 of abuse, a medication, other treatment for depression or  
6 toxin exposure?

7 A. Well, you have to understand what that sentence  
8 means.

9 Q. I'm sorry. Is there a special understanding to  
10 that sentence?

11 A. Yes, there is. If one is going to categorize a  
12 period of behavior of elevated mood and define it as part  
13 of a bipolar disorder, a manic episode as a fundamental  
14 primary mood disorder, then it must not be that that manic  
15 behavior has been produced by these other things. It must  
16 be a spontaneous one for you to use the categorization in  
17 the diagnosis. That's not to say that these other kinds  
18 of things don't produce hypomanic types of responses. It  
19 is just a matter of which kind of diagnostic category you  
20 place it in, whether it is induced hypomanic-type response  
21 or whether it is an actual primary mood disorder.

22 Q. Well, let me ask you this: I guess my point is,  
23 sir, you obtained no information on what other drug or  
24 alcohol this Defendant had ingested at or on February 21  
25 of this year, correct?

1 A. Not entirely correct. There were reports  
 2 gathered by the police in their investigations indicating  
 3 consumption of alcohol on that night and consumption of  
 4 marijuana on that night.  
 5 Q. And you know from looking at the records that  
 6 were provided to you the Defendant also abuses such drugs  
 7 as Xanax, correct?  
 8 A. He has.  
 9 Q. Has used cocaine?  
 10 A. He has, yes.  
 11 Q. Has abused methamphetamines?  
 12 A. Yes, he has.  
 13 Q. And specifically with regard to Xanax, Xanax can  
 14 cause hypomanic episodes, can it not?  
 15 A. Sometimes in some people.  
 16 Q. Sometimes in some people.  
 17 A. He had taken Xanax and never had a manic  
 18 episode.  
 19 Q. When did you find that out, sir?  
 20 A. Huh?  
 21 Q. When did you find that out?  
 22 A. His medical records comment about how long ago  
 23 he had had amphetamines and how long ago he had had  
 24 Xanax. He had not had a hypomanic-type episode at any of  
 25 those previous times.

1 Q. You didn't question the Defendant as to whether  
 2 or not he abused Xanax at or about the time of his  
 3 offense, did you?  
 4 A. No, I didn't.  
 5 Q. And is it fair to say, sir, you were making a  
 6 lot of assumptions?  
 7 A. No.  
 8 Q. You don't agree with that?  
 9 A. No, I don't agree with that.  
 10 Q. So you never confirmed the Defendant's drug  
 11 usage with him?  
 12 A. No.  
 13 Q. He self reports a Xanax abuser, correct?  
 14 A. Past --  
 15 Q. In the medical records.  
 16 A. Past Xanax abuse, yes.  
 17 Q. And you have no way of knowing whether or not  
 18 any of his behavior, alleged behavior was due to the  
 19 ingestion of Xanax, do you?  
 20 A. No.  
 21 Q. Now, you told the jury that the Defendant had  
 22 been on Paxil probably the last seven or eight months,  
 23 correct?  
 24 A. Yes.  
 25 Q. And he's had no problems whatsoever, has he?

1 A. None.  
 2 Q. And he's in an environment where he can't obtain  
 3 alcohol, correct?  
 4 A. Right.  
 5 Q. Cannot obtain Xanax?  
 6 A. Right.  
 7 Q. Cannot obtain methamphetamines?  
 8 A. Right.  
 9 Q. Cannot obtain cocaine?  
 10 A. Right.  
 11 Q. Cannot obtain marijuana?  
 12 A. Right.  
 13 Q. And so he seems to do just fine on the Paxil  
 14 when he doesn't have any of these other things in the  
 15 picture, correct?  
 16 A. Well, he --  
 17 Q. Yes or no?  
 18 A. I don't think that's a yes or no kind of  
 19 question, the way it is put.  
 20 Q. Based upon the records that you have reviewed of  
 21 his taking Paxil in the past seven or eight months, he's  
 22 had no problems, correct?  
 23 A. He's had no incidents indicating any problem  
 24 adjusting in jail during that time.  
 25 Q. No documentation of any hypomanic episodes,

1 correct?  
 2 A. Correct.  
 3 Q. Now, is your testimony that some of these  
 4 doctors misdiagnosed the Defendant? Am I reading that  
 5 wrong?  
 6 A. No, you are reading that right. I think Dr.  
 7 Ouseph made a hasty inaccurate diagnosis.  
 8 Q. Yet you relied upon the data in their reports,  
 9 correct, to form -- to help form your opinion?  
 10 A. How do you mean?  
 11 Q. You testified to this jury that you've reviewed  
 12 these records and used that to help form your opinion.  
 13 These are doctors that you have never spoken with,  
 14 correct?  
 15 A. Correct.  
 16 Q. At least one of these misdiagnosed him, correct?  
 17 A. Correct.  
 18 Q. You met with him for 20 minutes?  
 19 A. Correct.  
 20 Q. And yet you're still relying on this information  
 21 that sounds like it is somewhat suspect to you?  
 22 A. You are turning things around there. I am not  
 23 relying on Dr. Ouseph being accurate. I think Dr. Ouseph  
 24 is inaccurate. I think her diagnosis was wrong and her  
 25 treatment prescription was inappropriate and that she -- I

1 am not relying on it as if I were considering it valid,  
 2 no.  
 3 Q. Well, the information in all of those records,  
 4 most of that information was self-reporting information  
 5 from the Defendant, correct?  
 6 A. Yes.  
 7 Q. And in your opinion the Defendant is a bad  
 8 historian, correct?  
 9 A. Correct.  
 10 Q. So you are relying upon information coming from  
 11 a bad historian in your opinion, correct?  
 12 A. I don't know how many times you're going to lay  
 13 this bunch of double negatives together, but it doesn't  
 14 add up to my relying on that content.  
 15 Q. Let's take Dr. Ouseph's report out because you  
 16 believe she misdiagnosed him.  
 17 A. Right.  
 18 Q. The other doctors you don't have any  
 19 disagreement with, correct?  
 20 A. I've -- the only other doctor that is mentioned  
 21 here is Dr. Warren.  
 22 Q. There were a number of medical records provided  
 23 to you, correct?  
 24 A. Right, there were.  
 25 Q. Isn't it fair to say most of the medical records

1 are comprised of self-reports histories by this Defendant?  
 2 A. Yes.  
 3 Q. Who you believe to be a bad historian, correct?  
 4 A. Correct.  
 5 Q. Would it have been helpful, sir, for you to have  
 6 spoken with the individual who actually personally  
 7 observed the Defendant's behavior on the evening of  
 8 February 21, 2002?  
 9 A. Might well have been.  
 10 Q. Those people could have told you how he'd been  
 11 acting that night, correct?  
 12 A. Well, depending on their capability of  
 13 description, sure.  
 14 Q. That would have been helpful for you to have had  
 15 in formulating your opinion, correct?  
 16 A. Maybe.  
 17 Q. Maybe? What about being able to actually view a  
 18 videotape showing the Defendant on the evening of February  
 19 21, 2002? Would that have been helpful to you?  
 20 A. It might be helpful; it might not be.  
 21 Q. Might not be important to actually see the  
 22 behavior being exhibited by the Defendant?  
 23 A. All depends on whether it, you know, was any  
 24 behavior of any consequence at all. I don't know.  
 25 Depends.

1 Q. Do you understand that you were provided copies  
 2 of the offense report in this case, correct?  
 3 A. Yes.  
 4 Q. And is it fair to say that in the commission of  
 5 this offense, the Defendant did quite a bit of planning?  
 6 A. Yes.  
 7 Q. In other words, he approached an individual and  
 8 asked to buy drugs from them?  
 9 A. Correct.  
 10 Q. And we know from subsequent actions he never  
 11 intended to pay for those drugs, correct?  
 12 A. Correct.  
 13 Q. We know that he arranged to follow someone over  
 14 to the house where the drugs were going to be purchased,  
 15 correct?  
 16 A. Correct.  
 17 Q. We know that on the way to that house, he made  
 18 the decision to make a detour and go to another location,  
 19 correct?  
 20 A. Right.  
 21 Q. We know that he lied to the victims by telling  
 22 him he was going into the other location to buy beer,  
 23 correct?  
 24 A. Right.  
 25 Q. When, in fact, he was going to get ammunition?

1 A. Right.  
 2 Q. For a gun that he had in his truck with him?  
 3 A. Yes.  
 4 Q. And this was a gun that he owned, correct?  
 5 A. Right.  
 6 Q. And we know that he got back in the car and  
 7 followed the victim over to where the drugs were going to  
 8 be purchased, correct?  
 9 A. Right.  
 10 Q. And we know that there was some talking back and  
 11 forth about wanting to see the drugs before he paid for  
 12 them, correct?  
 13 A. Right.  
 14 Q. Does that indicate to you that he was wanting to  
 15 get ahold of those drugs so he could take off with them  
 16 without having to pay for them?  
 17 A. Right. I thought that's what his intent was.  
 18 Q. Okay. Are you aware of the conversations that  
 19 Mr. Gaines had with two young ladies that were present  
 20 during the early part of the evening?  
 21 A. Yes.  
 22 Q. And that he told them that he was on his way to  
 23 buy ammunition?  
 24 A. Yes.  
 25 Q. And you're aware of the fact that when the drugs

1 weren't going to be purchased, he and some friends of his  
2 physically began assaulting the victims?  
3 A. Yes.  
4 Q. And in the process demanded their wallets?  
5 A. Right.  
6 Q. You are aware that after obtaining the wallets,  
7 they got back in the truck and shot these two young men as  
8 they were driving off?  
9 A. Well, I'm not sure about that exact sequence.  
10 Q. You are aware, sir, that the young men gave up  
11 their property and then were shot?  
12 A. Yes.  
13 Q. They weren't resisting?  
14 A. Yeah.  
15 Q. They weren't fighting back.  
16 A. Right.  
17 Q. They weren't putting up a struggle?  
18 A. Right.  
19 Q. Weren't getting in the Defendant's face?  
20 A. Right.  
21 Q. Fighting with them?  
22 A. Right.  
23 Q. They were being compliant?  
24 A. Right.  
25 Q. Are you aware, sir, that a number of witnesses

1 witnesses as it is with anything else, isn't it?  
2 A. It could be.  
3 MS. HARTMANN: We pass the witness.  
4 **REDIRECT EXAMINATION**  
5 BY MR. WESTFALL:  
6 Q. Doctor, were you aware that Michael Williams  
7 testified that Bart was sitting up board straight on his  
8 seat, and that got his attention because it looked  
9 strange. Are you aware of that?  
10 A. Yes.  
11 Q. Were you aware that Mindy Keisel that testified  
12 yesterday said that it seemed awkward to her the way Bart  
13 walked up to these people and asked for a pound of weed.  
14 Are you aware of that?  
15 A. Yes.  
16 Q. And were you aware that Tara Green testified  
17 yesterday said that Bart had been acting very strange  
18 lately and that she thought he was insane?  
19 A. Yes.  
20 MR. WESTFALL: We'll pass the witness, Your  
21 Honor.  
22 **RECROSS-EXAMINATION**  
23 BY MS. HARTMANN:  
24 Q. Dr. Johnston, do you think Tara Green was using  
25 the phrase insane the way she would use it?

1 have testified to this jury that the Defendant was acting  
2 completely normal that evening?  
3 A. Well, that's --  
4 Q. Are you aware of that?  
5 A. I'm aware some people say he was, yes.  
6 Q. These were people that are not family members,  
7 correct?  
8 A. Right.  
9 Q. They have known the Defendant for a good while,  
10 some of them, correct?  
11 A. Some, yes.  
12 Q. And in fact, two of them view him as a friend,  
13 correct?  
14 A. Yes.  
15 Q. The two young ladies?  
16 A. Yes.  
17 MS. HARTMANN: May I have just a moment,  
18 Your Honor?  
19 THE COURT: Yes.  
20 Q. (BY MS. HARTMANN) Dr. Johnston, I guess, in a  
21 nutshell the Defendant's actions on the night of 21 --  
22 February 21, his actions in planning this all out,  
23 planning a robbery, taking a gun, buying ammunition for  
24 that gun to use, those actions are just as consistent with  
25 wanting to rob someone of their drugs and then kill the

1 A. I think she went on to say should be put in a  
2 mental hospital.  
3 Q. Don't you think, sir, it was because he had just  
4 told her that he had robbed and shot some people, and this  
5 was someone that she knew and couldn't believe it?  
6 A. I don't know.  
7 Q. That doesn't seem reasonable to you?  
8 A. I don't want to speculate about it.  
9 Q. So your position is that she was using "insane"  
10 in the same way you might use it?  
11 A. Not in some real precise way that the Court  
12 would use it.  
13 Q. Fair enough.  
14 MS. HARTMANN: Pass the witness.  
15 MR. WESTFALL: We have nothing further,  
16 Your Honor.  
17 THE COURT: You may step down, sir.  
18 MR. WESTFALL: Your Honor, we ask the  
19 doctor be excused.  
20 MS. HARTMANN: We have no objection.  
21 THE COURT: Okay.  
22 MR. WESTFALL: Your Honor, the Defense  
23 rests.  
24 MR. FORAN: May I have just a moment?  
25 We call Lieutenant Christian.

1 (Witness Sworn)

2 Whereupon,

3 SCOTT CHRISTIAN,

4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FORAN:

7 Q. Tell the jury your name.

8 A. Scott Christian.

9 Q. How are you employed?

10 A. Tarrant County Sheriff's Department.

11 Q. And what is your current rank?

12 A. Lieutenant.

13 Q. And what particular department do you work  
14 within the Tarrant County Sheriff's Department?

15 A. Classification, disciplinary, grievances.

16 Q. Can you tell us what that is?

17 A. Classification is when an inmate is brought into  
18 custody, they are ID'd based on their weight and  
19 classified. They have a Social Security number similar to  
20 a credit card number, like an associate number. Every  
21 subject that comes into custody has that ID number. We  
22 have an evaluation sheet that we look at, and we interview  
23 each person that comes in based on his behavior. Then we  
24 classify them based on their behavioral. If they are  
25 mentally stable, then we will house them in a regular pod

1 housing unit. If they have a mental disability or MHMR  
2 behaviors then we will place them in a housing unit  
3 accordingly.

4 The disciplinary and grievance section is  
5 an employee who's assigned to a housing unit, has control  
6 of an inmate's housing unit. We have rules that the  
7 inmate are supposed to follow. When these inmates violate  
8 those rules, that employee will write a report and  
9 disciplinary report. This disciplinary report will be  
10 then forwarded to someone for review. He will sign off on  
11 the report discipline and submit it to the disciplinary  
12 office.

13 We have a committee in the disciplinary  
14 office that reviews the disciplinary and the report takes  
15 the report from the disciplinary office, conducts like a  
16 hearing of the inmate on what rule the inmate has  
17 violated.

18 We'll ask him if he's guilty or not guilty  
19 based on the disciplinary. Then they let him make a  
20 statement about what impression he did and he's able to  
21 call case witnesses. They find him guilty or not guilty.  
22 He's placed into segregation, let him serve the time in  
23 there.

24 Grievances is where an inmate has a  
25 complaint about housing, whether it be feeding, not having

1 medical attention, and that will be forwarded in writing

2 to our office and we go investigate the grievance.

3 Q. Lieutenant Christian, Barton Gaines is No.  
4 057972. Did you bring the files with you today?

5 A. I brought a file.

6 Q. The disciplinary file?

7 A. Yes, sir.

8 Q. Since February of this year until the present  
9 date, he's been in continuous care of the Tarrant County  
10 Sheriff's Department; is that right?

11 A. Yes, sir.

12 Q. Throughout that time, he had one disciplinary  
13 for house play, that was it?

14 A. Yes.

15 Q. That was dismissed?

16 A. Yes, sir.

17 MR. FORAN: Pass the witness.

18 MR. WESTFALL: No questions.

19 THE COURT: You may step down, sir.

20 MR. FORAN: Your Honor, at this time we  
21 call Mimi Parks.

22 (Witness Sworn)

23 Whereupon,

24 MIMI PARKS,

25 having been first duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. FORAN:

3 Q. Ma'am, would you tell the jury your name?

4 A. Mimi Parks.

5 Q. How are you employed?

6 A. I was employed with the MHMR as a case worker.

7 Q. Are you still currently employed with them?

8 A. Yes, sir.

9 Q. How long have you worked there?

10 A. Six years.

11 Q. For 16?

12 A. Six years.

13 Q. What is it that you do?

14 A. As a case worker, my job is conducting mental  
15 health assessment and suicide assessments and maintaining  
16 account management.

17 Q. As part of your job duties and responsibilities,  
18 do you conduct interviews to assist the doctors in their  
19 medical assessments?

20 A. Yes, sir.

21 Q. Do you also keep a file as part of your duties  
22 for each patient?

23 A. Yes, sir.

24 Q. Do you have care, custody and control of those  
25 files and maintain them for purpose of treating those

1 individual prisoners?

2 A. Yes.

3 Q. Let me show you what's been marked as State's  
4 Exhibit No. 41. And do you recognize this file here?

5 A. Yes, sir.

6 Q. Whose file is that?

7 A. That's Mr. Barton Gaines.

8 Q. Is that somebody who you have personal contact  
9 with?

10 A. Yes, sir.

11 Q. Do you see him in court today?

12 A. Yes, sir.

13 Q. Where is he sitting? If Ms. Hartmann is No. 1  
14 and we go 1, 2, 3, 4 and 5, what number is he?

15 A. From --

16 Q. From this end.

17 A. He's the third.

18 Q. Third man? Westfall!? Guess all white

19 A. Third man. people look the same.

20 MR. FORAN: May the record reflect the  
21 witness has identified the Defendant?

22 THE COURT: It will.

23 Q. (BY MR. FORAN) Did Dr. Woo also make notations  
24 concerning this Defendant's treatment in the records?

25 A. Yes, sir.

1 Q. All of the notations are made at or near the  
2 time, one with personal knowledge, either yourself or Dr.  
3 Woo; is that right?

4 A. Yes, sir.

5 Q. Now, there are some yellow stickies I put on  
6 there. Other than that, these records appear to be the  
7 same as the ones you have maintained?

8 A. Yes, sir.

9 Q. Now, we are going to eventually move those  
10 yellow stickers. I just flagged them so when we talk, I  
11 can refer you to those pages.

12 MR. FORAN: Tender State's Exhibit No. 41.

13 MR. WESTFALL: I have no objection.

14 THE COURT: 41 is admitted.

15 (State's Exhibit No. 41 received)

16 Q. (BY MR. FORAN) Let's begin with what is marked  
17 as progress notes dated April 17. Do you see those notes  
18 there?

19 A. Yes, sir.

20 Q. Dr. Woo has made a notation on May 17 of this  
21 year concerning a prescription of Paxil?

22 A. Yes, sir.

23 Q. And who's requested the Paxil according to his  
24 notation?

25 A. Dr. Woo.

1 Q. Dr. Woo has prescribed it for this individual;  
2 is that right, on May 17?

3 A. Yes, sir.

4 Q. Okay. Now, going to May 20, did you also do an  
5 assessment as part of the Intake process for this  
6 individual to determine his medical needs?

7 A. Yes, sir.

8 Q. Let's begin here with your report on May 20. Do  
9 you see this?

10 A. Yes, sir.

11 Q. Okay. On that self-reporting document there,  
12 does the Defendant report that he abuses Xanax?

13 A. Yes, sir.

14 Q. Okay. Now, I will draw your attention to the  
15 tenth page of that report. On that report, does he report  
16 that he abuses marijuana and Xanax?

17 A. Yes, sir.

18 Q. Now, also on the next page, does he report to  
19 you that he suffers from depression, anxiety and ADHD?

20 A. Yes, sir.

21 Q. Now, all of this information is there in the  
22 chart -- in the case file for Dr. Woo to review; is that  
23 right?

24 A. Yes, sir.

25 Q. And it was reported he suffered from anxiety; is

1 that right?

2 A. Yes, sir.

3 Q. Now, on this last page here up here at the  
4 top -- I will show you this. Can you see that there,  
5 what's written up here at the top?

6 A. Yes, sir.

7 Q. Does he tell you he had been abusing Xanax for a  
8 year?

9 A. Yes, sir.

10 Q. How long had he been abusing marijuana?

11 A. According to my notes, since age 14.

12 Q. Since the age of 14?

13 A. Yes, sir.

14 Q. How about alcohol?

15 A. Since age of 15.

16 Q. Of 15?

17 A. Yes, sir.

18 Q. And did he also tell you when was the last time  
19 he had used alcohol and Xanax?

20 A. According to my notes, before coming to the  
21 jail.

22 Q. Before coming to the jail.

23 And I guess he hadn't abused marijuana  
24 according to his report since December?

25 A. Yes, sir -- no, I am sorry, sir. Here except

1 marijuana.  
 2 Q. Except marijuana?  
 3 A. Yes.  
 4 Q. Okay. What does that mean? Last used before  
 5 coming to jail. What does December mean?  
 6 A. Last used marijuana was in December.  
 7 Q. December. Okay. Now, you also made some  
 8 progress notes or at least the doctor did, I guess, on May  
 9 20 also. Let's turn back here to the front. And let me  
 10 direct your attention to your typewritten notes. Okay?  
 11 Dr. Woo prescribed -- he wrote another prescription for  
 12 Paxil, right?  
 13 A. Yes, sir.  
 14 Q. Does Dr. Woo have the benefit of your notes?  
 15 A. Yes, sir.  
 16 Q. Okay. So he knows that he reports being ADHD  
 17 and depressed?  
 18 A. Yes, sir.  
 19 Q. You also note that the patient again, he abuses  
 20 Xanax and that this medicine helps him a bit; is that  
 21 right?  
 22 A. Yes, sir. Paxil helps him.  
 23 Q. Okay. Now, I want to draw your attention to an  
 24 entry that was made on May 28. Okay? Is that Dr. Woo's  
 25 handwriting on May 28?

1 A. Yes, sir.  
 2 Q. Dr. Woo reports that that patient told him about  
 3 being ADHD, right?  
 4 A. Yes, sir.  
 5 Q. And he increases the dosage to 30 milligrams of  
 6 Paxil; is that correct?  
 7 A. Yes, sir. Yes, sir.  
 8 Q. He doesn't indicate that he's having any  
 9 problems with the Paxil at this time, does he?  
 10 A. Dr. Woo wrote no side effects.  
 11 Q. No side effects. So he wasn't having any side  
 12 effects from it either.  
 13 A. I would have to check my spelling on that later.  
 14 Q. He talk to him about substance abuse. He talked  
 15 about alcohol; is that right?  
 16 A. Dr. Woo notes say yes.  
 17 Q. He put ETOH for alcohol?  
 18 A. Yes, sir.  
 19 Q. He reported that he drank seven beers twice a  
 20 week for the last four years; is that right?  
 21 A. She wrote down twice per week, seven to eight  
 22 beers twice per week.  
 23 Q. Did Dr. Woo report he had been using Valium and  
 24 Xanax for the last year?  
 25 A. Yes, sir.

1 Q. Now, let's turn to April -- July 18, which is  
 2 back here a little bit. July 18, right?  
 3 A. Yes, sir, yes, sir.  
 4 Q. Continuing him on Paxil?  
 5 A. Yes, sir.  
 6 Q. Back on May 28 she increased it to 30?  
 7 A. She increased it.  
 8 Q. Dr. Woo increased it to 30 and she continued him  
 9 on 30 milligrams of Paxil, right?  
 10 A. Yes, sir.  
 11 Q. Then on 8-26 of this year, Mr. Gaines reports to  
 12 you that he's doing fine with the medication and wants to  
 13 take it continuously, right?  
 14 A. Yes, sir.  
 15 Q. Okay. Then as late as September 26, he reports  
 16 again to Dr. Woo; is that right?  
 17 A. Yes, sir.  
 18 Q. He tells her he's doing fine and he's pleased  
 19 with Paxil?  
 20 A. According to the doctor notes, yes, says  
 21 everything is fine.  
 22 Q. Pleased with Paxil. Everything is fine?  
 23 A. Yes, sir.  
 24 Q. And then she orders another milligram of Paxil  
 25 for him on that same day?

1 A. Yes, sir.  
 2 Q. And the entire time that you have been Barton  
 3 Gaines' caseworker, has he reported any side effects to  
 4 you from Paxil?  
 5 A. I don't remember, sir.  
 6 Q. You would have recorded it, wouldn't you, to  
 7 inform the doctor?  
 8 A. Yes, sir.  
 9 Q. So it would be in the medical records at least  
 10 if he had reported it to you that this medication  
 11 disagreed with him in any way, right?  
 12 A. Yes, sir.  
 13 Q. And if it was somehow causing him any problems,  
 14 physical or mentally, and he reported it to you, you would  
 15 have told the doctor or made a record somehow in these  
 16 notes.  
 17 A. Yes, sir.  
 18 MR. FORAN: Pass the witness.  
 19 MR. WESTFALL: Your Honor, may I approach?  
 20 THE COURT: Yes.  
 21 CROSS-EXAMINATION  
 22 BY MR. WESTFALL:  
 23 Q. I'm Greg Westfall. I am going to hand you an  
 24 item that's already in evidence as Defendant's Exhibit 20,  
 25 and these are records from the Texas Rehabilitation

1 Commission. Like I said, this is already in evidence.  
 2 What I would like you to do, if you don't mind, is look at  
 3 this report right here. This report -- I don't --  
 4 MR. WESTFALL: May I approach, Your Honor?  
 5 Can I just have her step down --  
 6 MR. FORAN: I would rather see it. I may  
 7 have some objections.  
 8 MR. WESTFALL: It is already in evidence.  
 9 MR. FORAN: May I take the witness on voir  
 10 dire?  
 11 THE COURT: For what purpose?  
 12 MR. FORAN: She's not the custodian of the  
 13 record for work done for that age.  
 14 THE COURT: The records are in evidence.  
 15 MR. WESTFALL: Could I have her step down,  
 16 Your Honor?  
 17 THE COURT: You may.  
 18 Q. (BY MR. WESTFALL) Step down here. And real  
 19 fast, this is a medical record that's been entered. It is  
 20 by a doctor named Ouseph. Does that show that the patient  
 21 was Barton Gaines?  
 22 A. Yes, sir.  
 23 Q. Does this show that the date of examination is  
 24 January 10, 2002?  
 25 A. Yes.

1 Q. What kind of doctor is Dr. Ouseph?  
 2 A. Looks like a medical doctor, a psychiatrist.  
 3 Q. Psychiatrist. Thank you. You can take your  
 4 seat.  
 5 So on 1-10 of '02, psychiatrist 1-10-01,  
 6 Bart's psychiatrist. Is that fair?  
 7 A. Yes, sir.  
 8 Q. And one more second. Does it show in here under  
 9 the -- does it show, "give a plan of antidepressant  
 10 medication, Paxil, 20 milligrams?  
 11 A. Yes, sir.  
 12 Q. So Dr. Ouseph prescribed Paxil, 20 milligrams.  
 13 Okay.  
 14 Now, one of the records that Mr. Foran  
 15 referenced you to was a 5-20 of '02 progress report. I  
 16 want to also reference you to that and -- where are your  
 17 records? Here they are.  
 18 Where is the 5-20 of '02? Here it is.  
 19 Look at this report right there. This is y'all's record,  
 20 right?  
 21 A. Yes.  
 22 Q. Put your finger right there. That's the  
 23 sentence on -- does it say there, never seen by a  
 24 psychiatrist?  
 25 A. Yes, sir.

1 Q. This is 5-20 of '02 and this is information  
 2 gathered from Bart. Bart is the historian of this  
 3 information?  
 4 A. Yes, sir.  
 5 Q. It says never seen a psychiatrist, and that his  
 6 family doctor prescribed any medicine he got. Isn't that  
 7 what it says?  
 8 A. Yes, sir.  
 9 MR. WESTFALL: Your Honor, we'll pass the  
 10 witness.  
 11 MR. FORAN: No questions.  
 12 THE COURT: You may step down, ma'am.  
 13 MS. HARTMANN: May I have one moment, Your  
 14 Honor?  
 15 The State rests.  
 16 MR. WESTFALL: Defense closes.  
 17 MS. HARTMANN: The State will close.  
 18 THE COURT: Ladies and gentlemen of the  
 19 jury, both sides have rested and closed, so that's all the  
 20 testimony you will hear in THE trial.  
 21 I'll have the charge ready at 9:00 o'clock tomorrow  
 22 morning. I will read it to you, you will hear summations  
 23 of counsel, and then the case will be yours for  
 24 deliberations.  
 25 We will be in recess until 9:00 o'clock in

1 the morning. Please remember and follow your  
 2 instructions. The bailiffs will meet you in the usual  
 3 spot in the morning. Have a good evening.  
 4 Either side want anything special in the  
 5 charge?  
 6 MS. HARTMANN: I would like a charge on  
 7 voluntary intoxication.  
 8 MR. WESTFALL: Does that affect  
 9 punishment -- I thought that was a guilt-innocence issue.  
 10 If there is a guilt-innocence issue in the charge, they  
 11 will be asked to find him guilty.  
 12 THE COURT: Anything else?  
 13 MR. WESTFALL: Not that I can think of  
 14 right now.  
 15 THE COURT: I will have it ready at 8:30.  
 16 (Proceedings recessed)  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 STATE OF TEXAS I

2 COUNTY OF TARRANT I

3 I, Steve Schiller, Official Court Reporter for the  
4 213th District Court of Tarrant County, Texas, do hereby  
5 certify that the above and foregoing contains a true and  
6 correct transcription of all portions of evidence and  
7 other proceedings requested in writing by counsel for the  
8 parties to be included in this volume of the Reporter's  
9 Record, in the above-styled and numbered cause, all of  
10 which occurred in open court or in chambers and were  
11 reported by me.

12 I further certify that this Reporter's Record of the  
13 proceedings truly and correctly reflects the exhibits, if  
14 any, admitted by the respective parties.

15

16 WITNESS MY OFFICIAL HAND this the 10th day of April,  
17 2003.

18

19

20



21

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