

COPY

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
2 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATE OF IDAHO }
COUNTY OF KOOTENAI }
FILED: 7-3-14 }
AT 2:50 O'CLOCK PM }
CLERK, DISTRICT COURT }
Christine Campbell }
DEPUTY }
}

5 STATE OF IDAHO,)
6 Plaintiff,)
7 vs.)
8 ELDON GALE SAMUEL, III,)
9 Defendant.)

Case No. CR-2014-5178
(VOLUME II)
TRANSCRIPT:
Preliminary Hearing

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AT: Kootenai County, Coeur d'Alene, Idaho
ON: Thursday, June 12, 2014
BEFORE: Honorable Barry Watson, Magistrate Judge

APPEARANCES:

For the Plaintiff: Office of the Kootenai County
Prosecuting Attorney
By: Art Verharen
Deputy Prosecuting Attorney
501 Government Way
Coeur d'Alene, ID 83814

For the Defendant: Office of the Kootenai County
Public Defender
By: John Adams
Linda Payne
Deputy Public Defender
400 Northwest Boulevard
Coeur d'Alene, ID 83814

1 PROCEEDINGS ON THURSDAY, JUNE 12, 2014

2 THE COURT: We are back on the record in Case
3 Number CR-2014-5178, State versus Eldon Gale Samuel,
4 III. Mr. Verharen is here representing the State. With
5 him is Lieutenant Turner, the State's main investigator
6 here. Representing Eldon -- Eldon's present this
7 morning. We have Mr. Adams, Ms. Payne, Ms. Fisher's
8 also here from their public defender staff, and the two
9 young ladies that were here on Tuesday are here as well.
10 Officer Nick --

11 OFFICER LOWRY: Lowry.

12 THE COURT: -- Lowry is present. He's your
13 first witness; is that right?

14 MR. ADAMS: Yes, sir.

15 THE COURT: Okay. And Denise Rosen is here,
16 the Deputy Attorney General representing folks from
17 Health and Welfare Department?

18 MS. ROSEN: Yes, Judge. Yes, they're
19 subpoenaed.

20 THE COURT: Okay. And she was kind of in and
21 out on Tuesday when we had our hearing on Tuesday, and
22 then Mr. Romero, you weren't here on Tuesday. What's
23 your part in this matter?

24 MR. ROMERO: Representing Eldon as the
25 guardian ad litem, Judge.

1 THE COURT: GAL? Okay.

2 MR. ROMERO: Yes.

3 THE COURT: All right. And based on prior
4 order of Judge Peterson, the evidentiary portion of this
5 hearing is closed. Any objection to any of the folks
6 being here that are here?

7 MR. VERHAREN: No, Judge.

8 MR. ADAMS: No, sir.

9 THE COURT: Mr. Adams? Okay. At the end of
10 Tuesday the State had rested. Mr. Adams, are you ready
11 to proceed at this time?

12 MR. ADAMS: I am, Your Honor.

13 THE COURT: Okay. Any other preliminary
14 matters that Mr. Verharen has at this time?

15 MR. VERHAREN: No, Judge.

16 THE COURT: Any other preliminary matters that
17 Mr. Adams has?

18 MR. ADAMS: Yes, Your Honor. Could we have
19 Eldon's left hand --

20 THE COURT: Oh, yeah.

21 MR. ADAMS: -- uncuffed so he can take notes?

22 THE COURT: Yeah. If we could assist in that
23 so he can take some notes if he would like to do that,
24 that'd be great.

25 MR. ADAMS: The other is before we went on the

1 record Madam Clerk kindly marked defendant's next,
2 Exhibit C.

3 THE COURT: Yeah, we did mark something as
4 Defendant's C.

5 MR. ADAMS: And that is the toxicology report
6 performed by blood taken from Eldon's dad, one of the
7 decedent's named victims in the Complaint in this case
8 at his autopsy, and I've offered that under 5.1 as
9 evidence of medical findings.

10 *(Exhibit Defendant's C offered)*

11 THE COURT: Any objection to the admission of
12 Defendant's C?

13 MR. VERHAREN: No, Judge.

14 THE COURT: All right. Defendant's C is
15 admitted.

16 *(Exhibit Defendant's C admitted)*

17 MR. ADAMS: That's all I had before
18 proceeding.

19 THE COURT: All right. You may call your
20 next -- your first witness then I should say.

21 MR. ADAMS: Thank you, Your Honor. Nick
22 Lowry.

23 THE COURT: Officer Lowry, if you could step
24 forward, raise your right hand and be sworn.

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NICK LOWRY,

called as witness at the request of the
Defendant, being first duly sworn, was
examined and testified as follows:

THE COURT: Have a seat right up there. Got
your phone turned off?

THE WITNESS: Yep.

THE COURT: Okay. Go ahead.

BY MR. ADAMS: Thank you, sir.

DIRECT EXAMINATION

QUESTIONS BY MR. ADAMS:

Q. Could you tell us your full name and spell
your last name, please?

A. It's Nick Lowry, L-o-w-r-y.

Q. And how are you employed?

A. I'm currently employed as a detective with the
Coeur d'Alene Police Department.

Q. And could you tell His Honor, please, about
background, experience, education and training that
qualifies you for that position and how long you've been
there?

A. I've been there for thirteen years. I've been
a patrolman, a field training officer, been in the
detectives for the last three years. I've been to
numerous training classes in detectives, POST-certified,

1 went to POST Academy in 2001, numerous patrol training.

2 I think I have about 3,000 hours of training.

3 Q. So you're a professional police detective?

4 A. Correct.

5 Q. And you on March 24th were called by other
6 policemen of the Coeur d'Alene police and asked to
7 respond to a killing on First Street in Coeur d'Alene?

8 A. Yes.

9 Q. And that was a Monday evening?

10 A. I believe so, yes.

11 Q. And just after midnight into Tuesday morning
12 about one o'clock you proceeded to the house on First
13 Street?

14 A. Yes, I did.

15 Q. And did a search of the house?

16 A. Yes, I did.

17 Q. And in that house there were a lot of
18 prescription drug bottles, correct?

19 A. Yes, there were.

20 Q. Okay. Could you describe to His Honor that,
21 about the prescription drug bottles? How many, where
22 they were, anything you saw there?

23 A. At that time we just kind of were collecting
24 the evidence. I didn't go through them all, but they
25 were found in the kitchen in a cupboard, and there was

1 about three rows high and, just a rough estimate in my
2 head, probably about twenty different bottles.

3 Q. Did you find pills, prescription drugs or
4 bottles anyplace other than those three shelves in the
5 kitchen cabinet?

6 A. I think that we did, but I don't specifically
7 recall. There was a couple of us in there searching
8 through the house in different rooms and taking
9 different things so --

10 Q. And I talked to you earlier, Detective, and
11 you have your police report with you. If you need to
12 refresh your recollection, just say so. That's fine.

13 A. Okay.

14 Q. How about cleaning solvents? Did you notice
15 cleaning solvents in the home?

16 A. Yes, there were.

17 Q. Would you tell His Honor about that, please?

18 A. Specifically which ones they were I didn't
19 make any notes of them, if it was like Clorox versus
20 Windex or anything like that. I didn't make any notes
21 of those.

22 Q. How about quantities? Did you notice
23 quantities?

24 A. Um, to give you a good estimate, no.

25 Q. Is it fair to say there was a lot more

1 cleaning solvents in the house than appeared to be
2 necessary for a house that size?

3 A. Um, I'd have to go back and look at the photos
4 to get a good estimate of how many cleaning supplies
5 were in there to give you an accurate.

6 Q. Did the house appear clean, that cleaning
7 solvents had been used in that house for their intended
8 purpose, cleaning?

9 A. At the time that we went in there, no, it was
10 not clean.

11 Q. I'm gonna move now to the 26th of March.
12 That's Wednesday --

13 A. Um-hmm.

14 Q. -- okay? You had a phone call with Eldon's
15 mom?

16 A. Correct.

17 Q. And do you recognize Eldon to know who I'm
18 talking about?

19 A. Yes, I do. I recognize Eldon.

20 Q. Okay. And he's the little boy sitting right
21 here next to me?

22 A. Yes, he is.

23 Q. How did you come to know that he had a mom
24 that was alive and where she was? How did you figure
25 that out?

1 A. I think I was looking through some records on
2 Eldon, Jr. and came across a name of Tina Samuels, and
3 in conversation with other detectives we determined that
4 Tina was the mom that was living in California. She had
5 given me a call that morning.

6 Q. And Eldon, Jr.'s this Eldon's dad, one of the
7 decedents?

8 A. Correct.

9 Q. Let's just call him dad, okay?

10 A. Okay.

11 Q. When you and the other detectives had
12 discovered that information, when was that compared to
13 when you had the telephone call with her?

14 A. I couldn't tell you. Most of those days kind
15 of blended together because we were working straight
16 through and took a little bit of a break so --

17 Q. So we're talking Monday, Tuesday, Wednesday
18 right now. Do you think that information was had Monday
19 night or the next day Tuesday, or was it only that day
20 Wednesday that you had the phone call?

21 A. Well, we were searching the house basically
22 Tuesday morning and going into that, and so it probably
23 wasn't until Tuesday afternoon that we knew about
24 Eldon's mom.

25 THE COURT: Excuse me, counsel. I see a

1 person that I don't know in the back of the courtroom.

2 MR. ADAMS: That's my office manager, Jamie
3 Woods.

4 THE COURT: Okay. All right.

5 MR. ADAMS: She might be -- Jamie, did you
6 bring something for us or just observing?

7 THE COURT: Okay. When we have a closed
8 hearing, I have people coming and going, I need you guys
9 to help me out with that, all right? Go ahead.

10 Q. (BY MR. ADAMS) We're talking about the phone
11 call on Wednesday. The first contact between you and
12 Eldon's mom Tina was she calling you; is that correct?

13 A. Correct.

14 Q. Okay. And do you remember about what time of
15 day that was on Wednesday, the 26th?

16 A. I think it might have been in the morning
17 time.

18 Q. And you wrote a report about that telephone
19 call and you recorded it, correct?

20 A. Yes, I did.

21 Q. And you've had a chance to review at least
22 your report this morning?

23 A. Yes, I have.

24 Q. And your report was true and correct about
25 what was said between the two of you?

1 A. Yes.

2 Q. One of the things she told you is that she
3 didn't want anybody talking to Eldon without his
4 attorney being present, correct?

5 MR. VERHAREN: Objection, hearsay.

6 THE COURT: Sustained.

7 MR. ADAMS: Judge, they've offered you a
8 Miranda rights form without laying much foundation on
9 whether it was voluntary on a fourteen-year-old boy.
10 Under 5.1 I'm entitled to have you look at the
11 admissibility of the statements given by Eldon. This
12 goes to the circumstances under which those Miranda
13 rights waivers were signed. The statutes call for when
14 somebody's fourteen years old, a lawyer could be
15 present, a parent being present.

16 THE COURT: I understand where you're going
17 with that, but you still need to follow the rules of
18 evidence. It's hearsay and I'd sustain the objection.

19 BY MR. ADAMS: I'm offering under 808(23),
20 other sources guaranteeing trustworthiness of this,
21 Judge. It goes to facts that we can't otherwise
22 reasonably present to you.

23 THE COURT: 808(23)? Is that the so called
24 catch-all provision --

25 MR. ADAMS: I think it is, Judge.

1 THE COURT: -- under the hearsay exception?

2 MR. ADAMS: I have to make sure it's number
3 twenty-three. It's the last one.

4 THE COURT: And that requires notice, does it
5 not? What number did you say it was again? 804 --

6 MR. ADAMS: 804(23).

7 THE COURT: Is that what you're talking about?
8 There's an 804 that's declarant unavailable. I don't
9 think your numbers right there unless I heard it wrong.
10 And then there's 803(24).

11 MR. ADAMS: 803(24).

12 THE COURT: 803(24).

13 MR. ADAMS: Having equivalent circumstantial
14 guarantees of trustworthiness, statements offered as
15 evidence of a material fact, more probative than other
16 evidence after reasonable efforts, the general purposes
17 and interests of justice will be served. This is
18 foundational for --

19 THE COURT: Okay. Well, the -- this
20 subsection has been tried to be used many times, and the
21 tripping point for everybody is that it says that a
22 statement may not be admitted under this section --
23 under this exception unless the proponent of it makes
24 known to the adverse party sufficiently in advance of
25 the trial or hearing to provide the adverse party with a

1 fair opportunity to prepare to meet it, the proponent's
2 intention to offer the statement and the particulars of
3 it, including the name and address of the declarant.

4 Did you do that?

5 MR. ADAMS: Well, this report was provided to
6 me by the government so they gave me the notice of it.

7 THE COURT: Any other comments, Mr. Verharen?

8 MR. VERHAREN: Judge, I don't believe it fits
9 under that exception.

10 THE COURT: Well, we've got a couple of
11 problems here with this. It doesn't sound to me that
12 the notice requirements have been met under Subsection
13 24. There's also another problem in that, you know,
14 when you get a phone call from somebody, there's --
15 there's a foundation that needs to be laid for, you
16 know, how do you know the person making the call is who
17 they say they are, voice recognition, particulars, all
18 that. None of that has been met, so the objection is
19 sustained.

20 Q. (BY MR. ADAMS) You've had contact with police
21 in Modesto?

22 A. Correct.

23 Q. Tell us about that contact.

24 A. Um, I contacted a deputy who worked with the
25 coroner's office to advise them to go out and make

1 notification with the last known address of what we
2 believed was the grandparents and what we believed was
3 Tina Samuels.

4 Q. And was it after you talked to the police in
5 Modesto that you got the phone call from Tina?

6 A. Yes, it was.

7 MR. VERHAREN: Objection. Lack of foundation
8 that you got a phone call from Tina.

9 THE COURT: Well, he indicated he got a phone
10 call from someone identifying themselves as that.
11 Overruled.

12 Q. (BY MR. ADAMS) I want to talk to you a little
13 bit more about that conversation. Tina told you some
14 stuff about Eldon's dad, correct?

15 MR. VERHAREN: Objection, hearsay and leading.

16 THE COURT: Is this foundational?

17 MR. ADAMS: It is, Judge.

18 THE COURT: Overruled.

19 THE WITNESS: Yeah, I -- refresh the question,
20 please.

21 Q. (BY MR. ADAMS) You and the person who
22 identified themselves as Tina talked -- she gave you
23 some information about Eldon's dad?

24 A. Yes, she did.

25 Q. She told you about some of his habits?

1 MR. VERHAREN: Same objections.
2 THE COURT: Overruled.
3 THE WITNESS: Correct.
4 Q. (BY MR. ADAMS) And some of his routines?
5 MR. VERHAREN: Same two objections, hearsay
6 and leading.
7 THE COURT: Overruled.
8 THE WITNESS: Correct.
9 Q. (BY MR. ADAMS) And she talked to you about --
10 about their marriage?
11 MR. VERHAREN: Same objections.
12 THE COURT: Overruled.
13 THE WITNESS: Yes, she did.
14 Q. (BY MR. ADAMS) And she told you that one of
15 his habits was that he was abusive towards her?
16 A. Yes, she did.
17 Q. And he was abusive towards the children, one
18 of whom was Eldon?
19 MR. VERHAREN: Same objections.
20 THE COURT: I'll sustain that objection.
21 MR. ADAMS: This is offered under 404,
22 character of the victim. Evidence of a pertinent trait
23 of character of the victim offered by an accused in a
24 homicide --
25 THE COURT: So we're going beyond foundation

1 on who the phone call was from. Now we're getting into
2 the 404? I'll sustain the objection.

3 Q. (BY MR. ADAMS) Did you do anything to
4 investigate whether the person saying that they were
5 Tina was in fact Eldon's mom?

6 A. No, I did not.

7 MR. ADAMS: I want to get an offer of proof on
8 the record, Judge.

9 THE COURT: You may certainly do so.

10 MR. ADAMS: And what she told you was that
11 Eldon's dad was physically abusive towards her and
12 towards Eldon, correct?

13 THE COURT: Well, hang on. An offer of proof
14 is you tell me what you anticipate the witness would
15 testify to, if permitted.

16 MR. ADAMS: All right. If permitted, his
17 answer would be yes to that question, that Eldon's mom
18 told him that Eldon's dad was physically abusive to her,
19 was physically abusive to Eldon, that he abused
20 prescription drugs and he abused nonprescription drugs,
21 and that she didn't want anybody talking to Eldon
22 without a lawyer being present.

23 THE COURT: All right.

24 MR. ADAMS: That's my offer of proof.

25 THE COURT: And the State objects to that line

1 of questioning?

2 MR. VERHAREN: Yes.

3 THE COURT: All right. The objection is
4 sustained. You made your offer of proof.

5 MR. ADAMS: I think that's all I have for you
6 then, Detective.

7 THE COURT: All right. Mr. Verharen?

8 MR. VERHAREN: No questions, Judge.

9 THE COURT: All right. Officer Lowry, you may
10 step down. May he be excused?

11 MR. ADAMS: Yes.

12 MR. VERHAREN: No objection.

13 THE COURT: Okay. You are excused. Thank
14 you, Officer. Who would you like to call next?

15 MR. ADAMS: Officer Cohen. Judge, while we're
16 waiting, to complete my record, it was offered under,
17 excuse me, 404(a)(2), character of victim, 405(b),
18 specific instances of conduct in which character of a
19 person's an essential element of a defense, 406, habit,
20 routine practice of a person, and the marriage exception
21 under 803(19) and 803(8), police reports admissible when
22 offered by a defendant in a criminal case.

23 THE COURT: All right. Thank you for that
24 additional information. Officer, if you could step
25 forward, raise your right hand, my clerk will swear you

1 in.

2

CODY ROBERT COHEN,

3

called as witness at the request of the

4

Defendant, being first duly sworn, was

5

examined and testified as follows:

6

THE COURT: All right. Have a seat right up

7

here.

8

THE WITNESS: Thank you.

9

THE COURT: Go ahead, Mr. Adams.

10

MR. ADAMS: Thank you.

11

DIRECT EXAMINATION

12

QUESTIONS BY MR. ADAMS:

13

Q. Officer, would you tell us your full name and

14

spell your last name, please?

15

A. Yes. It's Cody Robert Cohen. Last name is

16

C-o-h-e-n.

17

Q. Would you kind of scoot up so we make sure

18

that microphone picks you up? Thank you. And how are

19

you employed?

20

A. The City of Coeur d'Alene as a patrol officer.

21

Q. And please tell His Honor what qualifies you

22

to do that and how long you've been doing it.

23

A. I was hired full-time November 1st, 2013,

24

after completing the POST certification for Idaho, and

25

then going through the FTO program within the

1 department.

2 Q. And tell us what that is.

3 A. It's field training, and you have to pass
4 certain criteria and evaluation standards for the
5 certification of Idaho, which I received in May.

6 Q. Thank you. Have you worked as a policeman in
7 any other place other than what you've just told us
8 about for Coeur d'Alene?

9 A. No, I have not.

10 Q. I want to ask you about Monday, 24 March of
11 this year. Do you recall that?

12 A. Yes.

13 Q. Okay. And you have your report with you that
14 you wrote about that?

15 A. I do.

16 Q. Okay. And if you need to refer to that to
17 refresh your recollection, just tell us, okay?

18 A. Okay.

19 Q. You responded to the house on First Street
20 where the killings had taken place?

21 A. Yes.

22 Q. And do you recognize the young man seated here
23 in the green shirt next to me?

24 A. I do.

25 Q. Okay. And how do you recognize him?

1 A. How do I recognize him?

2 Q. Yeah. I could lead you through it. You saw
3 him that night in the front yard of the house?

4 A. I did.

5 Q. And you had contact with him?

6 A. Yes.

7 Q. What did you do?

8 A. Uh, I was asked to take him over to the patrol
9 vehicle by the sergeant, and that's where my contact
10 with him began.

11 Q. When you first saw Eldon that night, he was in
12 the front yard of the house on First Street?

13 A. He was.

14 Q. And he was in handcuffs?

15 A. Yes.

16 Q. And his hands were cuffed behind his back?

17 A. Correct.

18 Q. And you had a video camera that you were
19 wearing?

20 A. Yes.

21 Q. And what do you call that?

22 A. It's called a VIEVU.

23 Q. VIEVU. And have you reviewed that?

24 A. I have.

25 Q. Okay. I reviewed it, too, and I wanted to

1 talk to you about that, your interaction with Eldon,
2 okay? At one point you were talking to Eldon and -- or
3 you were talking to another policeman and you said that
4 we needed to change Eldon's cuffs, correct?

5 A. Yes.

6 Q. And why did you want to change his cuffs?

7 A. Um, he was wearing (*unintelligible*) cuffs, and
8 since I was asked to transport him, I just decided to
9 change out his handcuffs so it was my equipment.

10 Q. Okay. And how far away was Eldon from you
11 when you stated to the officer that you wanted to change
12 out Eldon's cuffs?

13 A. He was within an arm's reach.

14 Q. I'm sorry?

15 A. Within arm's reach. He was probably within
16 three feet.

17 Q. And did Eldon do anything in response to your
18 comment to the police officer about changing his cuffs?

19 A. Yes. He began to move.

20 Q. Okay. He kind of turned to expose his hands
21 behind his back towards you, right?

22 A. Yes.

23 Q. Okay. To assist you in changing his cuffs?

24 A. Well, initially out of my peripheral vision I
25 wasn't entirely sure what he was doing, but yes, he

1 ultimately turned, exposing his back to me.

2 Q. And you said something to him?

3 A. Yes.

4 Q. And what did you tell him?

5 A. I asked him not to move until I tell him to.

6 Q. What you said was, "I didn't tell you to move,
7 you don't move unless I tell you to move." That's what
8 you said, right? You said it in a loud, commanding
9 voice?

10 A. I think that --

11 THE COURT: What was your answer? I couldn't
12 hear you.

13 THE WITNESS: I can't remember exactly what I
14 said, but it was along those lines. I definitely said
15 in a commanding voice to tell him not to move until I
16 tell him to.

17 Q. (BY MR. ADAMS) Okay. Could you stand up,
18 please? How tall are you?

19 A. Six-foot-six.

20 Q. And how much do you weigh?

21 A. Two twenty.

22 Q. Okay. Consider yourself bad or in good shape
23 because, you know, the record has to describe you. We
24 can't see you on the recording, so describe your body
25 for us.

1 A. Consider myself average.

2 Q. Okay. A big strong fella, aren't you?

3 A. It's a relative term, but I try to stay fit.

4 Q. Relative to fourteen-year-old Eldon you're a
5 big strong fella, aren't you?

6 A. Yes.

7 Q. When you were with Eldon, about where did he
8 come up to you on your body in waist, chest, stomach,
9 shoulders? Tell us that.

10 A. Chest.

11 Q. Can you describe for the record Eldon's
12 stature? You can stand up if that will help you.

13 A. Maybe five-foot-six, five-foot-eight at best.
14 He's probably more five-six, 110 pounds maybe, 130
15 pounds.

16 Q. Maybe more like five-two and a hundred pounds?

17 A. Yeah. That'd be fine.

18 Q. And when you commanded him to do what you told
19 him to do and nothing else, he obeyed your commands,
20 right?

21 A. He did.

22 MR. ADAMS: Thank you, Officer. I don't have
23 any other questions.

24 THE WITNESS: Okay.

25 THE COURT: Mr. Verharen, did you have any

1 questions for Officer Cohen?

2 MR. VERHAREN: No, Judge.

3 THE COURT: All right. Officer, you may step
4 down. May he be excused at this time?

5 MR. ADAMS: Yes, sir. Thank you.

6 THE COURT: Any objection?

7 MR. VERHAREN: No, Judge.

8 THE COURT: You are excused. Thank you. Do
9 you have another witness?

10 MR. ADAMS: Yes, sir. Gus Wessel, please.

11 THE COURT: Good morning, Officer Wessel. If
12 you'd come around front here, raise your right hand, my
13 clerk will swear you in.

14 AUGUST BRADLEY WESSEL,
15 called as witness at the request of the
16 Defendant, being first duly sworn, was
17 examined and testified as follows:

18 THE COURT: Have a seat right there. Go
19 ahead, Mr. Adams.

20 MR. ADAMS: Thank you.

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. ADAMS:

23 Q. Officer, would you please tell us your full
24 name and spell your last name?

25 A. It's August Bradley Wessel, W-e-s-s-e-l.

1 Q. And tell His Honor, please, how you're
2 employed, how long you've been so employed, and what
3 qualifies you for that position.

4 A. I'm a police officer with the City of Coeur
5 d'Alene. I've been a full-time officer since 2007 in
6 August. I started as a reserve officer with City of
7 Coeur d'Alene in 2005, January. I've been through the
8 POST Academy equivalent at N.I.C. That was 2003 through
9 2005. In 2007 I went to the POST Academy in Meridian.
10 Since then I've continued my education in law
11 enforcement-specific classes. I'm a Field Training
12 Officer. I also have an Associate's in Law Enforcement
13 and a Bachelor's degree in Justice Studies through Lewis
14 & Clark.

15 Q. Okay. Thank you. I want to direct your
16 attention to last August 23rd, August 23rd of 1913.

17 THE COURT: Is that the right date, counsel?

18 MR. ADAMS: Yes, sir.

19 THE COURT: I heard August --

20 MR. ADAMS: 1913.

21 THE COURT: All right. Okay.

22 THE WITNESS: 2013, correct.

23 Q. (BY MR. ADAMS) Last August, August 23rd of
24 2013. You brought a report with you today?

25 A. I did.

1 Q. Is that a report that addresses an incident
2 that occurred on that date?

3 A. It is.

4 Q. And you and I talked a little bit out in the
5 hallway. Is your report true and correct?

6 A. It is.

7 Q. And if you need to refer to that to remember
8 what happened last August, just say so and we can do
9 that, okay?

10 A. Okay.

11 Q. Tell us what this report is about. What
12 happened on August 23rd of '13?

13 A. I was in the Kootenai, now Kootenai Health
14 E.R. for an unrelated situation. I was contacted by a
15 doctor and a nurse employee of the E.R., and they had
16 some concerns about some children which were with one of
17 their patients.

18 Q. Do you recognize anyone in this courtroom
19 that's one of those children?

20 A. I do.

21 Q. And tell His Honor who that is.

22 A. That would be Eldon Samuel, III. He's in the
23 green T-shirt at the defense table.

24 Q. What was the concern about the children?

25 A. The concern was Eldon, Jr., the father, was

1 unconscious and appeared to be unresponsive in the
2 hospital room. They didn't know at that time what was
3 wrong with him or if he was going to be admitted, and
4 these children didn't have anybody in the area that they
5 could be relinquished to or anywhere for them to go
6 safely.

7 Q. Did you at that time do any investigation into
8 whether Eldon, the little boy sitting here, had any
9 family in this area other than his dad and his brother?

10 A. I did. I spoke with -- spoke with him, asked
11 any family, friends, friends of his dad, school friends,
12 anyone that he could safely stay with for the night if
13 need be.

14 Q. And based on your investigation did you reach
15 a conclusion on whether there was any family in the
16 area?

17 A. I did. I could not locate or determine if
18 there was anybody for them to go with.

19 Q. Okay. Did you try to determine whether there
20 was a mother involved anywhere? And if so, what did you
21 do?

22 A. Very briefly. Learned the mother was still in
23 California but they didn't have a way to contact her.

24 Q. So is it fair to say then that last August the
25 Coeur d'Alene Police Department had information that

1 Eldon, his brother and his dad were alone here, and his
2 mother was in California?

3 A. Yes.

4 Q. Tell us what happened further at the emergency
5 room that evening last August.

6 A. I had some, again, conversation with Eldon,
7 III, and Jonathan as well as conversation with
8 Dr. Seely. Dr. Seely advised me that at this point he
9 thought he was going to have to admit Eldon, Jr., into
10 the I.C.U. because they had no -- or into the hospital
11 because they didn't know what was wrong with him or how
12 long he would be incapacitated. He said he would
13 contact me and let me know if that was the case.

14 At the same time, the nurse was on the phone
15 back and forth, and she told me Health and Welfare was
16 kinda asking that I initiate a case and shelter the
17 children if there was something going on. At that point
18 I hadn't determined anything illegal other than just a
19 certain medical issue with the father, so at that point
20 I drove to the address that the children had given me.

21 Q. Is that the house on First Street?

22 A. Correct. Went to that house, walked around,
23 peeked in the windows best I could. I noticed some
24 disarray, some laundry, things were disheveled in the
25 house, but nothing that rose to the level of neglect or

1 abuse in my opinion.

2 I noticed in a garage that was detached an
3 abundance of food and other dry goods. There was an SUV
4 parked in the driveway, and it had three or four cans of
5 what appeared to be a cleaning solvent of some sort,
6 like an aerosol can in the front seat of the car.

7 At that point continued on with my duties. I
8 returned back to the hospital early hours of the 24th
9 and again spoke with Dr. Seely. Dr. Seely said they
10 were still waiting on labs and some medical stuff, but
11 at that point he wasn't sure.

12 I think Eldon, Jr., was starting to come
13 around but wasn't quite making sense. We entered the
14 room again. Dr. Seely started asking Eldon, Jr., some
15 questions. At that point he was giving normal
16 statements. He was able to tell where he was, who he
17 was, the kids were his, and wanted to leave. At that
18 point I believe he took the children and left.

19 Q. And you had some interaction with Eldon and
20 Eldon's brother, Jonathan, at the emergency room that
21 evening?

22 A. I did.

23 Q. And you wrote about your interaction with them
24 in your police report?

25 A. Correct.

1 Q. And your conclusion was that it appeared to
2 you that Eldon was the one that took care of Jonathan?

3 A. I did.

4 Q. And Jonathan in your opinion was acting
5 inappropriately?

6 A. He made statements and was asking questions
7 that seemed off. They seemed inappropriate in social
8 context.

9 Q. Questions of a sexual nature, things like
10 that?

11 A. Correct.

12 Q. You had experience as a policeman with
13 intoxicated people, people under the influence of drugs
14 and intoxicants at that time?

15 A. Correct.

16 Q. August 23rd? And you told us about the
17 solvents. Did you reach a conclusion of what your
18 impression of what was the matter with the father that
19 night?

20 MR. VERHAREN: Objection. Lack of foundation,
21 relevance, calls for speculation.

22 THE COURT: I'll sustain the objection at this
23 time.

24 Q. (BY MR. ADAMS) Tell us about the experience
25 you've had as a policeman in Coeur d'Alene about

1 encountering people that are under the influence of
2 drugs.

3 A. Starting out as a reserve officer in the bike
4 patrol unit, I worked summer, specifically in the
5 downtown corridor, dealing with intoxicated persons,
6 people under the influence of drugs and other substances
7 nightly. Since then I've taken a few classes
8 specifically toward DUIs or drug impairment recognition
9 type classes. One of those would be ARIDE, Advanced
10 Roadside Impairment Detection Education I believe is the
11 acronym, and that was basically a broad spectrum on the
12 drug classifications, alcohol, being able to recognize
13 those and what to look for.

14 Additionally, over the last -- well, since
15 I've been hired full-time, 2008 on I was within the top
16 three most DUI arrests. The last three years I've had
17 the top DUI arrests for our agency, and I think that
18 probably speaks best to my experience with intoxicated
19 subjects is that.

20 Q. Familiar with the term huffing?

21 A. I am.

22 Q. Tell us what that is.

23 A. It's the inhalation of aerosol propellants
24 used in canned air, cleaning solvents, paint, and it's
25 getting high off inhalation of those chemicals.

1 Q. You've had experience with people that huff
2 solvents?

3 A. I have.

4 Q. Tell us about that.

5 A. When -- seeing someone who has recently
6 huffed, generally you can see if they've paint or other
7 chemicals around their face. Sometimes canned air will
8 leave burns from the refrigerant. Additionally, with
9 the impairment side it mimics high intoxication, can
10 cause people to pass out.

11 The difference is once introduced to fresh
12 air, they generally come out of it very quickly with the
13 oxygen and can return to a normal level of functioning
14 within a very short matter of time.

15 Q. Based on your experience, your training that
16 you've told us about, your observations of Eldon's dad
17 at the emergency room that night and your observations
18 of the solvents that you found that night, did you reach
19 a conclusion of what was the matter with this dad?

20 MR. VERHAREN: Objection. Calls for
21 speculation, lack of foundation, relevance.

22 THE COURT: Overruled. You may answer.

23 THE WITNESS: With the totality of what I'd
24 seen, I suspected at some point that he had been huffing
25 the cleaning solvents or under the influence of the

1 cleaning solvents based on the location in the car.

2 Q. (BY MR. ADAMS) And that's what you wrote in
3 your police report, that you thought that he'd been
4 huffing the solvents?

5 A. Correct.

6 Q. And did Eldon seem surprised that his dad was
7 in this condition?

8 A. No.

9 Q. Seemed like something he was used to?

10 MR. VERHAREN: Objection, leading.

11 THE COURT: Sustained.

12 Q. (BY MR. ADAMS) Did it seem like he was used
13 to that?

14 MR. VERHAREN: Objection, leading.

15 THE COURT: I'll sustain the objection. Why
16 don't you rephrase it?

17 Q. (BY MR. ADAMS) Did you notice anything about
18 Eldon's feelings, about his emotional state about his
19 dad's condition?

20 A. He appeared --

21 MR. VERHAREN: Objection, non-responsive.

22 THE COURT: Just answer "yes" or "no", please.

23 THE WITNESS: Can you restate that or --

24 Q. (BY MR. ADAMS) Did you notice something about
25 how Eldon's emotional condition, his mental state in

1 relation to his dad's condition that night?

2 A. Yes.

3 Q. And what was that?

4 MR. VERHAREN: Objection. Calls for
5 speculation into Mr. Adams' client's state of mind.

6 THE COURT: Overruled. You may answer.

7 THE WITNESS: He appeared calm.

8 Q. (BY MR. ADAMS) Did it appear to you that he
9 was used to his dad being like this?

10 MR. VERHAREN: Objection, leading.

11 THE COURT: Sustained.

12 Q. (BY MR. ADAMS) Did it appear to you whether
13 he was surprised that his dad was in this condition?

14 A. No.

15 MR. ADAMS: Hold on. Let me ask if we have
16 any other questions for you.

17 Q. (BY MR. ADAMS) You had information that night
18 about a person being found unconscious before you went
19 to the emergency room?

20 A. Correct.

21 Q. Did you ever tie that information with the
22 incident you've told us about?

23 A. I did. Based on the -- on my MDC I noticed a
24 medical call show up in the 1300 block of North First
25 Street. Based -- a male had been passed out in a yard.

1 At the time I didn't think much of it. Later, based on
2 the relative time, location and general description, I
3 tied that back to Mr. Samuel.

4 Q. Did you in your dealing with this incident
5 that night discover how Eldon's dad came to be at the
6 emergency room? How'd he get there?

7 A. He was transported there by Coeur d'Alene
8 Fire.

9 Q. Did your investigation show you how Coeur
10 d'Alene Fire was notified to come and pick him up?

11 A. I didn't specifically locate that.

12 MR. ADAMS: Okay. Thanks, Officer. I don't
13 have any other questions.

14 THE COURT: Mr. Verharen?

15 MR. VERHAREN: Thank you, Judge.

16 **CROSS-EXAMINATION**

17 **QUESTIONS BY MR. VERHAREN:**

18 Q. So in your interaction with Eldon Samuel, the
19 defendant here, you noticed that he was older than his
20 brother Jonathan, right?

21 A. Correct.

22 Q. You noticed that he was larger than his
23 brother Jonathan, correct?

24 A. I don't recall which one was larger.

25 Q. But it was obvious to you that the defendant

1 here was the person in charge of the situation, in
2 charge of his brother, right?

3 A. Correct.

4 Q. And in speaking with the defendant, you had no
5 trouble communicating with him, did you?

6 A. Correct.

7 Q. He appeared to you to be at least average
8 intelligence, right?

9 A. Yes.

10 Q. He appeared to you to be independent enough to
11 take care of his younger brother, correct?

12 A. Could you rephrase the question?

13 Q. Jonathan Samuel had an obvious disability, did
14 he not?

15 A. Correct.

16 Q. And that was obvious to you when you met the
17 child there in the hospital?

18 A. Correct.

19 Q. It was obvious to you that he had some sort of
20 intellectual problem that separated him from his
21 brother, the defendant, correct?

22 A. Yes.

23 Q. And it was obvious to you that his brother,
24 the defendant, didn't suffer from that intellectual
25 problem, correct?

1 A. Correct.

2 MR. ADAMS: Objection. That's a really vague
3 question. What does that mean?

4 THE COURT: Overruled. The answer will stand.

5 THE WITNESS: Yes.

6 Q. (BY MR. VERHAREN) And it was obvious to you
7 that the defendant was used to taking care of his
8 brother, right?

9 A. Yes.

10 Q. You had, what, a five, ten-minute conversation
11 with the defendant?

12 A. In totality I'd say that'd be fair.

13 Q. Okay. And did you ever at any time have any
14 problems communicating with him?

15 A. No.

16 Q. When you spoke to him did he ever indicate to
17 you that he didn't understand a word that you spoke to
18 him?

19 A. Not at all.

20 Q. Was it obvious to you that the defendant was
21 educated?

22 MR. ADAMS: Again --

23 THE WITNESS: Yes, it was --

24 MR. ADAMS: That's vague. I object to that.

25 What does that mean? He's thirteen.

1 THE COURT: I'll sustain that objection.

2 Q. (BY MR. VERHAREN) You noticed that the
3 defendant was frustrated with his brother Jonathan,
4 didn't you?

5 A. I did.

6 Q. How did that manifest itself?

7 A. Jonathan would ask questions relating to my
8 age, marital status, where I lived, things of that
9 nature, as well as other people in the room. When
10 Jonathan would begin asking questions, Samuel would --
11 excuse me, Eldon would try to either shush him or tell
12 him to shut up or be quiet, kind of get him to not
13 interact with people.

14 Q. So it seemed to you then the defendant was
15 acting almost like a parent to his brother Jonathan?

16 A. Correct.

17 Q. He was telling him not to do things like a
18 parent would?

19 A. Correct.

20 Q. He was basically telling him to behave
21 correctly?

22 A. Correct.

23 Q. Like a parent would?

24 A. Yes.

25 Q. And when you left the hospital to go check the

1 house, you left the defendant with his brother, correct?

2 A. Correct.

3 Q. And did you do so because it appeared to you
4 that the defendant had taken care of his brother before?

5 A. That didn't play necessarily into my decision
6 at that point.

7 Q. All right. So you go to the house, and you've
8 seen a lot of houses that are pretty bad in terms of the
9 conditions that the children live in, right?

10 A. Correct.

11 Q. And you've been in a number of houses where
12 you can look at that house and in your personal opinion
13 feel that it's a situation where those children are
14 neglected, right?

15 A. Correct.

16 Q. You looked into this house, into the windows
17 of this house, and you didn't feel that, did you?

18 A. No.

19 Q. You would've done something about a situation
20 you found there was abuse, wouldn't you?

21 A. Correct.

22 Q. You didn't find in your investigation any
23 indication of abuse in this situation, did you?

24 MR. ADAMS: I'll object to that, Judge. What
25 does that mean? You've got a guy passed out huffing

1 with two little children, and that's not abuse? I
2 object to the form of the question.

3 THE COURT: Overruled.

4 THE WITNESS: No.

5 Q. (BY MR. VERHAREN) You didn't find any
6 evidence of neglect, did you?

7 A. No.

8 MR. ADAMS: Again, objection to the form of
9 the question, Judge.

10 THE COURT: Overruled. The answer will stand.

11 Q. (BY MR. VERHAREN) So, uh, you go back to KMC,
12 and at some point Eldon Samuel, II, the defendant's dad,
13 he was awake?

14 A. Correct.

15 Q. And you had a conversation with him, right?

16 A. I did.

17 Q. Did you see paint on his face?

18 A. I did not.

19 Q. Did you see any physical signs that he had
20 been huffing?

21 A. No.

22 Q. You never got a chance to talk to him when he
23 was unconscious or before he was unconscious, right?

24 A. Correct.

25 Q. You never had a chance to observe his physical

1 mannerisms before he was unconscious, right?

2 A. Correct.

3 Q. So typically when you would render an opinion
4 about whether or not someone was under the influence
5 you'd do those things, right? I mean, you see them
6 while they're under the influence, correct?

7 A. Correct.

8 Q. You didn't see this in this situation, did
9 you?

10 A. Other than him unresponsive and passed out.

11 Q. Unconscious?

12 A. Yeah.

13 Q. And he could've been unconscious from
14 anything, right?

15 A. Correct.

16 Q. You never read any medical reports pertaining
17 to his condition, have you?

18 A. I did not.

19 Q. And you're not a doctor, right?

20 A. No.

21 Q. When you spoke to the defendant's father, he
22 appeared to be calm?

23 A. Eldon, Jr.?

24 Q. Yeah. Eldon Samuel, II?

25 A. Correct. A little confused about why he was

1 there but overall calm.

2 Q. Okay. He certainly wasn't verbally abusive to
3 his sons, was he?

4 A. No.

5 Q. In your presence?

6 A. No.

7 Q. And he wasn't physically abusive to his sons
8 in your presence --

9 A. No.

10 Q. -- was he? When you spoke with the
11 defendant's father, Eldon Samuel, II, did he indicate to
12 you that they had a grandfather in town?

13 A. No.

14 Q. Okay. Well, you know now that there is a
15 grandfather that lives in Coeur d'Alene, right?

16 A. I did not know that.

17 MR. ADAMS: Objection, lack of foundation.

18 THE COURT: Sustained.

19 MR. VERHAREN: No further questions.

20 THE COURT: Mr. Adams, any redirect?

21 **REDIRECT EXAMINATION**

22 **QUESTIONS BY MR. ADAMS:**

23 Q. These were two little boys at the hospital,
24 right?

25 MR. VERHAREN: Objection, leading.

1 THE COURT: Sustained. Rephrase, please.

2 Q. (BY MR. ADAMS) Tell us about the boys you've
3 spoken to us about. Were these adult men, infants?

4 A. Two early teen, pre-teen males, juvenile
5 males, yes.

6 Q. And again, why were you brought into the
7 situation if you're not a doctor, don't have medical
8 training? Why were the police brought in?

9 MR. VERHAREN: Objection, asked and answered.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: The E.R. staff had concerns
12 about their inability to contact a responsible party for
13 the boys to take care of them.

14 Q. (BY MR. ADAMS) And policemen don't let boys
15 that age just go off on their own and take care of
16 themselves, do they?

17 MR. VERHAREN: Objection, leading.

18 THE COURT: Sustained.

19 Q. (BY MR. ADAMS) Do policemen like you let
20 little boys like this go off and take care of
21 themselves?

22 MR. VERHAREN: Objection, relevance.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: Every situation's different.

25 Q. (BY MR. ADAMS) If the dad hadn't have come

1 around, you would've let these guys just take off, John
2 and Eldon?

3 A. No.

4 Q. Because they're not adults and they're not
5 capable of taking care of themselves in a policeman's
6 view, right?

7 MR. VERHAREN: Objection, leading.

8 THE COURT: Sustained.

9 Q. (BY MR. ADAMS) Have you arrested people for
10 abusing children?

11 A. Yes.

12 Q. Do you consider huffing solvents 'til you pass
13 out and leaving little boys to fend for themselves child
14 abuse?

15 A. I would --

16 MR. VERHAREN: Objection. Relevance,
17 argumentative.

18 MR. ADAMS: He asked about abuse and neglect.

19 THE COURT: I'll sustain that objection.

20 Q. (BY MR. ADAMS) Do you consider that neglect,
21 huffing intoxicants 'til you pass out and leaving your
22 children to fend for themselves? Do you consider that
23 neglect?

24 MR. VERHAREN: Same objections.

25 THE COURT: Sustained.

1 Q. (BY MR. ADAMS) You said that Eldon was
2 frustrated with Jonathan. Did that seem appropriate to
3 you, his frustration?

4 A. I -- I guess I have a little issue with the
5 word appropriate.

6 Q. Did it seem an unreasonable response from
7 Eldon based on how his brother was behaving?

8 A. No. It seemed like normal brother's
9 reactions.

10 Q. Tell us about Jonathan's behavior that you
11 testified frustrated Eldon. Tell us about that.

12 MR. VERHAREN: Objection. It's asked and
13 answered already. He's already described the behavior.

14 THE COURT: Overruled. You may answer the
15 question.

16 THE WITNESS: Jonathan asked questions of
17 almost everyone entering the room while I was there
18 relating to their age, their address, marital status,
19 things of that nature, things that were personal and
20 shouldn't pertain to either their role in the medical or
21 law enforcement field at that time or even just socially
22 acceptable to ask strangers.

23 Q. (BY MR. ADAMS) How about some of the other
24 questions that Jonathan asked, for instance, of the
25 nurse that was attending to his dad?

1 A. He asked those same sort of questions to her.

2 Q. Did he ask her anything about her clothes?

3 A. No.

4 Q. Did he ask her what she looked like without
5 clothes on?

6 A. Not to her, no.

7 Q. Okay. Well, did he ask somebody about being
8 naked?

9 A. Yes.

10 Q. Tell us about that.

11 A. He asked or made a comment to Dr. Seely,
12 indicating that he wanted to see the nurse without her
13 clothes on.

14 Q. And, uh, his brother found those to be
15 embarrassing questions?

16 MR. VERHAREN: Objection. Calls for
17 speculation into Mr. Adams' client's state of mind.

18 THE COURT: I'll sustain that objection.

19 Q. (BY MR. ADAMS) Were those the kind of
20 questions you told Mr. Verharen that caused Eldon to be
21 frustrated with his brother, asking doctors and nurses
22 about what they looked like naked? Are those the kind
23 of things you're talking about?

24 A. Yes.

25 MR. VERHAREN: Objection, leading.

1 THE COURT: Overruled. The answer "yes" will
2 stand.

3 Q. (BY MR. ADAMS) As a matter of fact,
4 Jonathan's behavior at the hospital was significant
5 enough for you to note it in your police report?

6 MR. VERHAREN: Objection, leading.

7 THE COURT: Overruled. You may answer that.

8 THE WITNESS: Yes.

9 MR. ADAMS: Thanks, Officer. I don't have any
10 other questions.

11 THE COURT: Mr. Verharen, any other questions?

12 MR. VERHAREN: No, thank you.

13 THE COURT: All right. Officer Wessel, you
14 may step down. May he be excused at this time?

15 MR. ADAMS: Yes, sir.

16 THE COURT: Any objection?

17 MR. VERHAREN: No, Judge.

18 THE COURT: You are excused.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Do you have another witness to
21 call?

22 MR. ADAMS: I do, Your Honor. Officer Nye.
23 The bailiff's telling us that he says he's an hour away,
24 Judge, so --

25 THE COURT: Do you have another witness to

1 call in his place?

2 MR. ADAMS: I don't. Linda might. Do you
3 need a --

4 MS. PAYNE: Yes. Just one moment.

5 THE COURT: Sure.

6 MS. PAYNE: Defense calls James Knott.

7 THE COURT: James Knott? Okay. Good morning.
8 If you could step forward here, sir. If you could raise
9 your right hand, my clerk will swear you in.

10 JAMES CECIL KNOTT,
11 called as witness at the request of the
12 Defendant, being first duly sworn, was
13 examined and testified as follows:

14 THE COURT: All right. Have a seat right up
15 here, please. Go ahead, Ms. Payne.

16 MS. PAYNE: Thank you.

17 DIRECT EXAMINATION

18 QUESTIONS BY MS. PAYNE:

19 Q. Mr. Knott, could you please state your name
20 for the record and spell it?

21 A. It's James Cecil Knott, J-a-m-e-s C-e-c-i-l
22 K-n-o-t-t.

23 Q. Thank you. Mr. Knott, where do you live?

24 A. [REDACTED] directly across from
25 the house where the murder happened.

1 MS. PAYNE: Okay. Your Honor, I'm gonna
2 object to the use of the term "murder".

3 THE WITNESS: Oh.

4 MS. PAYNE: That's a factual finding so --

5 THE COURT: Sustained.

6 MS. PAYNE: Okay. Thank you.

7 Q. (BY MS. PAYNE) I'm gonna bring your attention
8 to March 24th, 2014. That's a Monday. Do you recall
9 that evening?

10 A. Was that the evening -- I don't know the exact
11 date of the -- I don't remember. Is that the date it
12 all happened?

13 Q. That's what we're discussing here today.

14 A. Yes, I know, but I just want to make sure.

15 Q. Right, right.

16 A. Yes, I do.

17 Q. Okay. And bringing your attention to that
18 evening, what were you doing that evening?

19 A. At, uh -- at that moment we were putting the
20 kids to bed, getting them ready, doing their baths and
21 watching T.V. and working on my computer.

22 Q. What time was that?

23 A. Around about seven-thirty-ish. In between
24 7:30 and eight o'clock our kids go to bed every night
25 and take a bath, so it's pretty routine.

1 Q. Okay. And did you see or hear something?

2 A. We, uh --

3 Q. Just -- yeah, just you.

4 A. I did see -- earlier that day I saw the dad
5 outside briefly, about an hour prior maybe, not even
6 that, half hour, 45 minutes, I don't want to say exact
7 time, and then right around 7:30 I heard one single
8 gunshot.

9 Q. Did you see who made that gunshot?

10 A. No, ma'am.

11 Q. Do you know where the gunshot came from, what
12 direction?

13 A. No, ma'am. I couldn't say for sure.

14 Q. Okay.

15 A. I mean, it was -- well, I wasn't even a
16 hundred percent sure it was a gunshot, but I had a
17 pretty good idea it was.

18 Q. Why would you know -- how can you tell that
19 it's a gunshot?

20 A. I spent eight years in the Army.

21 Q. Okay.

22 A. Did a couple tours in Afghanistan and Iraq,
23 and I know what a gunshot sounds like.

24 Q. Okay. Could you tell what type of weapon
25 would've made that gunshot?

1 A. The sound I thought -- I thought it was a
2 pistol of some type, um, higher caliber, definitely not
3 like a .22 sound or anything like that.

4 Q. By a higher caliber, what do you mean?

5 A. Nine millimeter and above, at least like a .45
6 maybe even or something like that.

7 Q. Okay. And you said this occurred around what
8 time?

9 A. Seven-thirty.

10 Q. Did you do -- did you hear anything after
11 that?

12 A. No. In fact, when I heard it, um, I -- my
13 wife had came out and asked if I heard it. I confirmed
14 that I did. I said it might even have just been a
15 firework or something, and I didn't really jump up
16 because if I jumped up for every sound I heard, you
17 know, you'd be non-stop, and when I looked -- when I
18 finally did get up, which was probably about a minute
19 later, I looked outside my bay window which looks
20 directly across the street, and I have a pretty good
21 view of the neighborhood, and nobody was running. There
22 was no people. I didn't see anybody, not one single
23 person, so there wasn't any alarm for me to think that
24 something, you know -- that that's what it was or that
25 if it was, that it was serious.

1 Q. Okay.

2 A. Yeah, so --

3 Q. And so when you say you looked outside, are
4 you saying you looked across the street to the address
5 where the Samuels lived?

6 A. Yes. There and every other place that I could
7 see within my peripheral vision.

8 Q. Okay. And how do you know that the Samuels
9 lived at that street address?

10 A. I've seen them for I would say around six-plus
11 months coming and going from that residence.

12 Q. Did you ever notice anything particular about
13 the -- that particular household, comings and goings?

14 A. Uh, very recluse. You know, it was -- never
15 outside very much, I mean, almost ever. It seemed like
16 if they were there, they came -- they got right out of
17 either the school bus or right out of the -- usually the
18 black pickup, the Dodge pickup, and it was straight in
19 the house and that was it. There was no outside playing
20 or really -- the father, um, would come outside, and he
21 chain smoked and he was out every fifteen or twenty
22 minutes, um, on the porch, just would squat there or
23 stand there and smoke a cigarette, then go right back
24 inside, and I did notice he left throughout the day
25 because I was working from home quite a bit at that

1 time, but he would come and go fifteen, twenty times a
2 day for fifteen minutes at a time.

3 Q. Just inside and out the house you mean?

4 A. No. He would actually leave the place. He
5 would come in and out of the house and smoke, but he
6 would -- when he wasn't doing that, he was getting in
7 his truck and he would leave for ten, fifteen minutes,
8 and he'd come right back and then he'd go inside, and
9 then I'd noticed that he would leave again, and I mean,
10 it was just -- and it would just seem odd that -- you
11 know, most people don't leave that many times in a day
12 for that short a period of time.

13 Q. Was there any other people besides the dad and
14 the two boys that lived in that house that you ever saw?
15 At the same time with them, not --

16 A. That lived there? I couldn't say for a
17 hundred percent sure whether they lived there, but it
18 appeared that one time there was at least one other
19 person, maybe even two that seemed like they were there
20 for a -- their vehicles were parked out and they didn't
21 move for a couple days.

22 MS. PAYNE: I have no further questions.
23 Thank you.

24 THE COURT: Mr. Verharen?

25 / / /

1 CROSS-EXAMINATION

2 QUESTIONS BY MR. VERHAREN:

3 Q. So you knew that it was a single dad with his
4 two sons living across the street?

5 A. Yes.

6 Q. Okay. And there was no mom in the picture,
7 right?

8 A. No, sir.

9 Q. And that single dad made sure his kids got to
10 school every day or at least tried to, right?

11 A. It did appear so, right.

12 Q. He got them on the bus every day, correct?

13 A. I -- every morning the bus stopped out there,
14 and I could not say for sure they got on there because
15 when the bus stops, it stops right in my view of the
16 house, but it did stop.

17 Q. You made the assumption that that was
18 happening though, correct?

19 A. Yes, absolutely.

20 Q. And you know Mr. Samuel, the defendant, by
21 sight, I imagine?

22 A. By sight, yes.

23 Q. And you also knew his younger brother Jonathan
24 probably by sight, correct?

25 A. Yes. I wouldn't say -- I could not tell the

1 two apart very well from just seeing them apart from
2 that far though.

3 Q. And you knew his younger brother was autistic,
4 right?

5 A. I heard after the fact.

6 Q. You didn't know from watching across the
7 street that he had some developmental problems?

8 A. I had had my suspicions that, uh -- I'd made
9 comments to my wife and other people that I thought
10 there was one of the boys -- like I said, I don't know
11 them personally. Um, I could just hear it more, just
12 the talk and things, that I thought one of them had some
13 type of mental illness, or I don't know what that
14 categorizes, but yes.

15 Q. All right. You thought maybe somebody stayed
16 there a day or two for a while; is that right?

17 A. It seemed like that. I watched that
18 neighborhood just because it's not -- the St. Vincent
19 DePaul guy and I don't see eye to eye on a lot of stuff,
20 and I noticed that there was -- you know, they had
21 twelve people living in that house last summer, you
22 know, and so I noticed that there was a couple cars, and
23 I watched -- I'm a very suspicious person by nature, and
24 I watched some cars come and go and, uh -- which was
25 rare, but there was particular ones, and at one time it

1 seemed like there was one or two vehicles or people that
2 stayed there for a short period of time, and they didn't
3 go anywhere.

4 Q. Do you know if that was the defendant's
5 grandfather that was staying there?

6 A. I could not say that. I don't know what he
7 looks like.

8 Q. All right. So now let's -- about these shots,
9 this shot that you heard you think around --

10 A. It had to be about 7:30.

11 Q. -- 7:30, did that appear to you -- you were
12 inside your house when you heard it, right?

13 A. Correct.

14 Q. And did it appear to you to be a shot that was
15 outside or a shot that was in a house outside of --

16 A. I thought it was outside --

17 Q. Okay.

18 A. -- because it did not sound muffled at all.
19 It was a pretty distinctive sound.

20 Q. Okay. And you don't know what house, if any,
21 it came from?

22 A. I couldn't say for sure.

23 Q. Okay. So it could've been in the 360-degree
24 radius --

25 A. Yes, sir.

1 Q. -- from your house? All right. It sounds
2 like, um --

3 A. Well, I would take that back. I would say
4 that it came from at least the -- would be the west side
5 of my house which is facing First Street.

6 Q. Hundred and eighty degrees?

7 A. Yes, because where I was sitting in my house
8 and with my hearing loss and things like that I would've
9 not said that it came from the back part of my house.
10 It had to come from the 180 degrees.

11 Q. Fair enough. But you looked out your window
12 and didn't see anybody?

13 A. No, sir.

14 Q. Okay. So later on I imagine you went to bed
15 at some point that evening yourself?

16 A. Uh, no. Actually I was -- I was up when
17 everything took place.

18 Q. Okay. So at some point police arrived --

19 A. About 9:00.

20 Q. -- across the street?

21 A. 9:07. It was like something out of a movie.
22 I mean it just came from -- from the sirens and came
23 from a couple different directions, and I actually
24 thought the -- I didn't know what was going on.

25 Q. So in the time before that, from 7:30 until

1 the police arrived at nine-oh whatever, did you hear any
2 other shots?

3 A. Amazingly, no.

4 Q. So I imagine you've heard shotguns go off
5 before, right?

6 A. Yes. My -- the reason why I believe I didn't
7 hear anything else was, um, as I have mentioned before
8 is that I had -- I was watching a television show,
9 Walking Dead, and I have a pretty good surround sound
10 system, and that's -- I'm still to this day baffled how
11 I never heard anything else, but that's the truth. I
12 don't know how I missed it but --

13 Q. You didn't hear any pistol or shotgun blasts?

14 A. I heard nothing after that one solitary shot.

15 MR. VERHAREN: All right. No further
16 questions.

17 THE COURT: Ms. Payne, any redirect?

18 MS. PAYNE: Yes, just a few, Your Honor.

19 Thank you.

20 REDIRECT EXAMINATION

21 QUESTIONS BY MS. PAYNE:

22 Q. How loud was your television?

23 A. It was -- I have to turn it up pretty loud
24 because I'm hard of hearing.

25 Q. Okay. What's the Walking Dead show about?

1 A. Uh, zombies.

2 Q. Okay. Is your television visible from the
3 street?

4 A. Yes.

5 Q. Prior to the shot that you heard about 7:30,
6 did you see the dad, Junior, outside the house?

7 A. I saw him very briefly. I looked across the
8 street and saw him, thought nothing of it, went back to
9 my business.

10 Q. Okay. About how long before you heard the
11 shot did you see him outside?

12 A. Maybe a half hour.

13 Q. Okay.

14 A. But I did see him prior earlier that day that
15 I would like to mention. I don't want to forget
16 anything. I did see him outside talking to somebody for
17 the first time. I -- the first time I'd ever seen him
18 talk to anybody outside, earlier that day around
19 probably eleven o'clock in that morning.

20 Q. Okay. Did you have any interactions with the
21 dad?

22 A. Zero.

23 Q. None?

24 A. Zero.

25 Q. Did you ever see if the kids had any friends

1 over?

2 A. I never saw any friends.

3 Q. Okay. And did you say you saw the kids get --
4 actually get on the bus?

5 A. I could never see the kids. I did see them
6 get off, but I never could see them get on.

7 Q. They both get on at the same time or off at
8 the same time?

9 A. It seemed like it. No, there was -- my wife
10 could say it better because my son always -- he always
11 runs to the bay window when the school bus stops in
12 front of my house, and I'm usually busy in the morning,
13 not as focused as I am in the afternoon. I can -- so it
14 appeared that at least -- I mean that it stopped and
15 somebody got on the school bus. Whether it was both of
16 them or one of them, I couldn't tell you.

17 Q. Could it be other neighbor kids that were
18 getting off?

19 A. Not right there. There's not really any kids
20 in that neighborhood.

21 MS. PAYNE: Thank you. No further questions.

22 THE COURT: Mr. Verharen?

23 **RECROSS-EXAMINATION**

24 **QUESTIONS BY MR. VERHAREN:**

25 Q. From the sound -- the time of the sound of the

1 shot around 7:30 until the police came, no one arrived
2 at the Samuel residence, correct?

3 A. Not that I saw.

4 Q. It was only dad and the two sons there, right?

5 A. Yep.

6 Q. And you would've noticed if someone arrived in
7 a car --

8 A. Absolutely.

9 Q. -- in that time period, right?

10 MR. VERHAREN: No further questions.

11 MS. PAYNE: I do have one more, Your Honor.

12 THE COURT: Go ahead.

13 **FURTHER REDIRECT EXAMINATION**

14 **QUESTIONS BY MS. PAYNE:**

15 Q. Did you ever try to interact with Mr. Samuel,
16 the dad?

17 MR. VERHAREN: Objection. Beyond the scope of
18 cross.

19 THE COURT: Sustained.

20 THE WITNESS: What's that mean?

21 THE COURT: That means you don't answer.

22 THE WITNESS: Just want to make sure.

23 MS. PAYNE: Okay. Thank you.

24 THE COURT: Any other questions, Ms. Payne?

25 MS. PAYNE: No.

1 THE COURT: Mr. Verharen?

2 MR. VERHAREN: No, thank you.

3 THE COURT: All right. Thank you, Mr. Knott.

4 You may step down. May he be excused at this time?

5 MR. ADAMS: Thanks a lot, Mr. Knott.

6 THE COURT: Any objection? Okay. You are

7 excused. Thank you, Mr. Knott.

8 MS. PAYNE: Leann Knott.

9 THE COURT: Okay. So Mr. Knott's wife you're
10 calling; is that right?

11 MS. PAYNE: Yes.

12 THE COURT: Hi there. Come on forward up here
13 and we'll have you sworn in. Raise your right hand,
14 please.

15 LEANN KNOTT,

16 called as witness at the request of the
17 Defendant, being first duly sworn, was
18 examined and testified as follows:

19 THE COURT: All right. Have a seat right up
20 there.

21 MR. ADAMS: Judge, I do notice that another
22 one of my staff is present in the courtroom. You asked
23 us to tell you.

24 THE COURT: Yes. I saw Ms. Pearson come in,
25 and she's fine. I recognize her.

1 MR. ADAMS: Thank you, Judge.

2 THE COURT: Go ahead.

3 MS. PAYNE: Thank you.

4 DIRECT EXAMINATION

5 QUESTIONS BY MS. PAYNE:

6 Q. Ms. Knott, would you please state your name
7 for the record and spell it?

8 A. Leann Knott, L-e-a-n-n, Knott, K-n-o-t-t.

9 Q. Thank you. Could you either move the
10 microphone closer or move up?

11 A. Sure.

12 Q. This is recorded.

13 A. Okay.

14 Q. Okay. Thank you.

15 A. Sure.

16 Q. Mrs. Knott, could you please tell us where you
17 live?

18 A. Um, [REDACTED] in Coeur d'Alene.

19 Q. In Coeur d'Alene?

20 A. Um-hmm.

21 Q. Okay. Do you know the neighbors across the
22 street from you, the Samuel family?

23 A. I didn't know them, no. I'd seen them many
24 times, but, no, I didn't know them.

25 Q. Did you have any interaction with them at all?

1 A. Huh-uh.

2 Q. No?

3 A. I'm -- no.

4 Q. Okay. Sorry. When we record, it has to say

5 "yes" or "no".

6 A. I'm sorry.

7 Q. "Huh-uh" doesn't -- isn't clear. Thank you.

8 A. Gotcha.

9 Q. On March 24th of this year did you hear or see

10 anything in particular in the evening hours?

11 A. I heard, uh, what I know now is a gunshot. I

12 lived close to downtown. We hear firecrackers all the

13 time. I heard one, you know, pop. I don't know -- I

14 can't remember the time now, but it was right after my

15 kids were taking a bath. That's what I remember.

16 Q. What time do your kids take a bath?

17 A. Um, it was close to probably in between 7:30

18 and 8:00 --

19 Q. All right.

20 A. -- that night.

21 Q. And could you -- were you inside or outside

22 the house when you heard this?

23 A. We were inside.

24 Q. What, um -- do you know what a gunshot sounds

25 like?

1 A. Yeah.

2 Q. You do?

3 A. Yes.

4 Q. Okay. How do you know that?

5 A. Um, I grew up with a family that hunts and
6 target shoots.

7 Q. Could you tell at the time you heard that that
8 that was a gunshot as opposed to a firecracker or --

9 A. Well, I did -- I did say something to my
10 husband. I go, "Did you hear that?" And I remember my
11 kids both -- they had just gotten out of the bath, and I
12 was cleaning up the bathroom, and I don't know,
13 something just made me feel weird, so I went into the
14 bedroom. They were both looking out the window, and my
15 four-year-old had heard it, too, and I hurried up and
16 shut the blinds. Um, you know, beyond that we didn't
17 really think much.

18 Q. Okay. So when you say they were looking out
19 the window, who was looking out the window?

20 A. My children.

21 Q. Okay. And how old are they?

22 A. Two and four.

23 Q. Which direction were they looking out the
24 window?

25 A. Um, straight towards the street.

1 Q. Towards the First Street?

2 A. First Street.

3 Q. And so your bedroom faces -- or their bedroom
4 faces that?

5 A. Yes.

6 Q. Did you hear -- after you heard that shot that
7 evening, did you hear anything else?

8 A. We didn't hear anything else.

9 Q. Okay. I have to ask about you.

10 A. I did not, no.

11 Q. Okay. Did you go outside and listen for
12 anything?

13 A. No.

14 Q. Did you happen to see Mr. Samuel, the dad, in
15 the yard that night?

16 A. Yes.

17 Q. When was that?

18 A. Um, it was probably about 5:30, right as I got
19 home, and I -- you know, I normally wouldn't really
20 think anything of it, he's out there quite a bit, but I
21 did see him just pacing back and forth in the driveway.

22 Q. Okay. Could you describe the pacing, please?

23 A. Um, I mean it wasn't quick pacing, but he was
24 just -- he was smoking, and he was kind of kicking the
25 gravel and just walking right back and forth in between

1 his vehicles.

2 Q. Were his vehicles located where?

3 A. In the driveway.

4 Q. In the driveway itself?

5 A. Um-hmm.

6 Q. Okay. Is it -- is that a customary thing that
7 you see him do? Is that something normal?

8 A. Um, I hadn't seen him do that. He was outside
9 very often just standing on the porch or crouching down
10 on the porch smoking. Um, I hadn't really seen him, you
11 know, pacing like that before.

12 Q. Did he have any particular gait about him?
13 What I'm getting at is from his movements could you tell
14 that he was in a particular mood?

15 A. Um, yeah. He did seem upset. I mean, just
16 the way he was just kicking the rocks kind of and, yeah,
17 he did seem like he was a little upset.

18 Q. Did you ever attempt to have any contact with
19 Mr. Samuel?

20 A. Several times. Um, I felt pretty
21 uncomfortable actually most of the time when he was out
22 on the porch. Um, I had attempted to -- you know, he
23 just stared straightforward at us, and, you know, my
24 kids like to play in the yard, and he just really --
25 just stared straight at us most of the time he was out

1 there, and I tried to, um, just give like a little wave
2 or, you know, acknowledgement, and I never got anything
3 back from him.

4 Q. Okay. Excuse me, Your Honor. What -- did you
5 have any particular feelings when he was staring at you?

6 MR. VERHAREN: Objection, relevance.

7 THE COURT: Sustained.

8 MS. PAYNE: I have no further questions, Your
9 Honor.

10 THE COURT: Mr. Verharen?

11 CROSS-EXAMINATION

12 QUESTIONS BY MR. VERHAREN:

13 Q. You never saw anybody arrive in between what
14 was the sound of this gunshot around 7:30 p.m. and when
15 the police came, right?

16 A. No.

17 Q. You were awake with your husband when the
18 police came?

19 A. Yes.

20 Q. And you never heard any gunshots in that time
21 period?

22 A. No.

23 Q. You never saw anybody drive up to the house at
24 that time?

25 A. No.

1 Q. You never heard anybody arrive at the
2 residence?

3 A. No.

4 Q. And as far as you know, it was simply
5 Mr. Samuel and his two boys there at the time of --

6 A. Yes.

7 Q. -- the killings, right?

8 A. Um-hmm, yes.

9 Q. You knew that Mr. -- the defendant's younger
10 brother was autistic, right?

11 A. I did.

12 Q. You knew that he had some severe developmental
13 problems, correct?

14 A. That's all that I had heard is he was
15 autistic.

16 Q. You picked that up just from watching him
17 across the street, didn't you?

18 A. Right, yes.

19 Q. And you knew that, uh, the father was trying
20 to raise two teenage boys, one of which was autistic,
21 correct?

22 A. Yes.

23 Q. And at this time that you saw him what you
24 inferred to be upset when he was kicking rocks --

25 A. Um-hmm.

1 Q. -- that was around 5:30?

2 A. I -- yeah, I believe so, 5:30 -- in between
3 5:30, 6:00.

4 Q. You have no idea what caused him to be upset,
5 if he was upset, right?

6 A. No.

7 Q. Okay. And then the police came about, what,
8 6:30, 7:30, 8:30 -- three and a half hours after that?

9 A. Um-hmm, yes.

10 Q. And you never saw him in that three and a half
11 hours?

12 A. No.

13 MR. VERHAREN: Thank you. No further -- no
14 other questions.

15 THE COURT: Ms. Payne, any other questions for
16 Ms. Knott?

17 **REDIRECT EXAMINATION**

18 **QUESTIONS BY MS. PAYNE:**

19 Q. Between the time you heard the shot and the
20 time the police came what were you doing?

21 A. Um, just getting my kids ready for bed. Once
22 they were in bed, me and my husband were just watching
23 T.V. in our living room.

24 Q. Okay. And how loud was your T.V.?

25 A. Um, I wouldn't say overly loud. Just --

1 Q. Do you think it was loud enough that if
2 something else had happened outside you'd been able to
3 hear it?

4 A. I can't really say. We were watching an
5 action show with gunshots in it and stuff so I -- I
6 can't really say.

7 MS. PAYNE: Thank you. I have no further
8 questions, Your Honor.

9 THE COURT: Mr. Verharen?

10 MR. VERHAREN: Nothing in light of that.

11 THE COURT: All right. Thank you, Ms. Knott.
12 You may step down. May she be excused at this time?

13 MS. PAYNE: Yes, Your Honor.

14 THE COURT: Any objection?

15 MR. VERHAREN: No objection.

16 THE COURT: All right. You are excused. You
17 have a good day, Ms. Knott.

18 THE WITNESS: Thank you.

19 THE COURT: Do you have another witness to
20 call?

21 MS. PAYNE: Yes, Your Honor. I'd call Mike
22 Daly.

23 THE COURT: Who?

24 MS. PAYNE: Mike Daly.

25 THE COURT: Mike Daly, okay. Hi, sir. If you

1 could step forward here, please, and if you could raise
2 your right hand, my clerk will swear you in.

3 MICHAEL DALY,
4 called as witness at the request of the
5 Defendant, being first duly sworn, was
6 examined and testified as follows:

7 THE COURT: All right. Have a seat right over
8 here, please.

9 DIRECT EXAMINATION

10 QUESTIONS BY MS. PAYNE:

11 Q. Hi. Mr. Daly, would you please state your
12 name and spell it for the record?

13 A. My name is Michael Daly, M-i-c-h-a-e-l
14 D-a-l-y.

15 Q. Thank you. And Mr. Daly, how are you
16 employed?

17 A. I work for the Coeur d'Alene School District.

18 Q. Okay. What school do you work?

19 A. Lakes Middle School.

20 Q. Okay. How long have you worked there?

21 A. Uh, this next year will be my tenth year.

22 Q. All right. Do you happen to know -- do you
23 happen to know Eldon Samuel, III?

24 A. Yes, I do.

25 Q. How do you know him?

1 A. I had him in my sixth period shop class.
2 Q. What semester did you have him? What time
3 frame?
4 A. Uh, from January until March.
5 Q. 2014?
6 A. Yes. Sorry.
7 Q. All right. How was Eldon -- well, let me back
8 up. How often did Eldon come to class?
9 A. Uh, sparingly. I mean, it was hit and miss.
10 Q. What does -- when you say "hit and miss", um,
11 do you have class five days a week normally?
12 A. Uh, yes, yes so --
13 Q. Okay.
14 A. -- two to three times a week.
15 Q. Do you know why he was gone from class?
16 A. I do not.
17 Q. When Eldon was in class how did he behave?
18 A. Uh, he was -- he kept to himself and he was
19 really quiet.
20 Q. Did he do what you asked of him?
21 A. Uh, yes.
22 Q. Did he ever have any homework?
23 A. Uh, no. In shop class we didn't have
24 homework.
25 Q. No homework. Okay. Do you believe -- do

1 you -- how did he complete his assignments?

2 A. Shop class you -- it's independent work, so
3 when he was there he worked on his own, didn't talk to
4 too many kids, but they kind of worked in groups.

5 Q. Did he do what he was supposed to do --

6 A. Yes.

7 Q. -- in terms of his work?

8 A. Yes.

9 Q. Are you familiar with Eldon's brother
10 Jonathan?

11 A. I was not aware, no.

12 Q. Okay. Do you have any knowledge about school
13 buses and which kids -- if kids with special needs take
14 a different bus than kids with -- without special needs?

15 A. Well, being a former special education
16 teacher, I do know that sometimes they have special
17 bussing for special ed. students.

18 Q. Okay. Do you know if Lakes Magnet School has
19 special bussing for special students?

20 A. Um, usually, because that school works with
21 the higher-end special needs. Usually those that need
22 more -- I guess you would call severe cases would go to
23 Canfield.

24 Q. I'm sorry. The special cases go to Canfield?

25 A. Yes.

1 Q. Okay.

2 A. Those that need life skills.

3 Q. Life skills?

4 A. Yes.

5 Q. You mean like for teenagers or -

6 A. Yes, but, uh, like at our school the special
7 ed. students are usually those with like A.D.H.D. or,
8 you know, on the spectrum, some of them. It depends on
9 what their school functioning is, their I.Q. levels and
10 the needs that they have.

11 Q. Do you know if Canfield has special buses?

12 A. Yes.

13 Q. How long had Eldon been in school, do you
14 know, when he started Lakes Magnet?

15 A. I do not. I just know from the second
16 semester when he was in my class it started late January
17 until March.

18 Q. Okay. When he was in your class did he ever
19 cause any trouble?

20 A. Um, no. Not that I saw.

21 Q. All right. Did he get along with the other
22 children?

23 A. He didn't talk to too many kids, um, but they
24 didn't ever come up to me and say that they had an issue
25 with him.

1 Q. Okay. And when he worked in groups did you
2 perceive any problems within the group --

3 A. No.

4 Q. -- attributable to Eldon?

5 A. No.

6 MS. PAYNE: Okay. Thank you. No further --
7 I'm sorry. Excuse me.

8 THE COURT: Take your time.

9 Q. (BY MS. PAYNE) Do you know how many days
10 Eldon missed school?

11 A. I do not.

12 MS. PAYNE: Thank you.

13 THE COURT: Mr. Verharen?

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. VERHAREN:

16 Q. I take it -- is this wood shop or metal shop?

17 A. It's wood shop.

18 Q. All right. So in wood shop you have power
19 tools there or not?

20 A. Yes.

21 Q. Okay. And Mr. Samuel was in what grade?

22 A. He was in my sixth period afternoon class.

23 Q. I know, but what grade is that?

24 A. Oh. Um, seventh and eighth grade.

25 Q. So was he seventh or eighth?

1 A. He was an eighth grader.

2 Q. Eighth grader, okay. So as an eighth grader
3 then they can handle power tools in your class?

4 A. Yes. We do safety tests on band saw, disc and
5 belt sander.

6 Q. All right. And Mr. Samuel, he was capable of
7 operating a power tool by himself?

8 A. Yeah. He -- he completed all the three safety
9 exams.

10 Q. All right. And to do those safety exams what
11 does a person have to accomplish?

12 A. Um, well, they take a written test, and they
13 must pass the test with a hundred percent.

14 Q. Okay. How many questions on this written
15 test?

16 A. Um, the three are different, but they're
17 roughly twenty questions.

18 Q. And anything else to pass or just the written
19 test?

20 A. The written test and then I do observations
21 the first time they use the machine.

22 Q. So if you had the slightest feeling that
23 someone wasn't capable of handling a power tool, you
24 wouldn't let them, right?

25 A. That's correct.

1 Q. You felt Mr. Samuel was perfectly capable of
2 handling power tools, right?

3 A. Yes.

4 Q. Because he passed this test with a hundred
5 percent, right?

6 A. Yes.

7 Q. You had to interact with Mr. Samuel, I take
8 it?

9 A. Yes, I did.

10 Q. You've found him to be at least of normal
11 intelligence?

12 A. Yes.

13 Q. You didn't question -- it never even entered
14 your mind that he might have an I.Q. that is lower than
15 average, right?

16 A. No, sir.

17 Q. He appeared to you to be of average or higher
18 intelligence?

19 A. He appeared to be normal.

20 Q. Okay. You had no problems communicating with
21 him in the English language, did you?

22 A. No.

23 Q. To get to be an eighth grader one at least has
24 to be able to write, correct?

25 A. Yes.

1 Q. To be an eighth grader one has to be able to
2 spell, right?

3 A. Yes.

4 Q. To be an eighth grader one has to be able to
5 read, right?

6 A. Yes.

7 Q. There was never any doubt in your mind that
8 Mr. Samuel could do all those things as an eighth grader
9 there, right?

10 A. Uh, I felt like he could do all of that, yes.

11 Q. To do these projects that you would assign
12 students, they'd have to think by themselves?

13 A. Yes.

14 Q. They have to think independently?

15 A. Yes.

16 Q. They have to work independently?

17 A. Yes.

18 Q. They have to make decisions on their own?

19 A. Yes.

20 Q. They have to make decisions that might not
21 involve you?

22 A. Yes.

23 MR. VERHAREN: No further questions.

24 THE COURT: Any redirect?

25 MS. PAYNE: Yes.

1 REDIRECT EXAMINATION

2 QUESTIONS BY MS. PAYNE:

3 Q. Do you have to report the number of days that
4 Eldon or that any student missed in your class?

5 MR. VERHAREN: Objection. Beyond the scope of
6 cross.

7 THE COURT: Sustained.

8 Q. (BY MS. PAYNE) How did Eldon do in the
9 Constitutional law arena --

10 MR. VERHAREN: Objection.

11 Q. (BY MS. PAYNE) -- in the class?

12 MR. VERHAREN: Beyond the scope of cross.

13 THE COURT: Sustained.

14 MS. PAYNE: Your Honor, he asked him about his
15 intelligence, his know-how, his knowledge, his ability.

16 THE COURT: I'm gonna sustain the objection to
17 that question. You may ask a different question.

18 Q. (BY MS. PAYNE) Did you talk about any type of
19 law or any other type of subject other than shop in your
20 classes with him?

21 A. Uh, no.

22 MR. VERHAREN: Objection, relevance.

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: Uh, no, I did not.

25 Q. (BY MS. PAYNE) Did you ever talk about

1 Miranda rights with him?

2 MR. VERHAREN: Objection. Beyond the scope of
3 cross.

4 THE COURT: Overruled. You may answer that.

5 THE WITNESS: No, I did not.

6 MS. PAYNE: No further questions.

7 THE COURT: Mr. Verharen, anything else?

8 MR. VERHAREN: No, thank you.

9 THE COURT: All right. Mr. Daly, you may step
10 down. Thank you. May he be excused at this time?

11 MR. VERHAREN: Please.

12 MS. PAYNE: No objection, Your Honor.

13 THE COURT: All right. You are excused. Have
14 a good day.

15 THE WITNESS: Thank you.

16 THE COURT: It's about twenty minutes 'til
17 noon. Do you have a witness we can fit into that time
18 frame?

19 MR. ADAMS: Officer Nye ever come?

20 MS. PAYNE: Ronald Meier, please.

21 THE COURT: Ronald Meier. Good morning.
22 Mr. Meier?

23 THE WITNESS: Yes, sir.

24 THE COURT: Hi. If you can come on around up
25 front here, we'll have you raise your right hand, my

1 clerk will swear you in.

2 THE WITNESS: Right here?

3 THE COURT: Right here is fine.

4 RON MEIER,

5 called as witness at the request of the

6 Defendant, being first duly sworn, was

7 examined and testified as follows:

8 THE COURT: All right. Have a seat right up
9 here, sir. You got your phone turned off?

10 THE WITNESS: Uh, no.

11 THE COURT: At least put it on vibrate.

12 THE WITNESS: It is on that.

13 THE COURT: All right. There you go.

14 THE WITNESS: It's a new phone, don't know how
15 to turn it off.

16 THE COURT: Okay. Go ahead, Ms. Payne.

17 DIRECT EXAMINATION

18 QUESTIONS BY MS. PAYNE:

19 Q. Hi, Mr. Meier. Would you please state your
20 name and spell it for the record?

21 A. Ron Meier, and it's R-o-n and then M-e-i-e-r.

22 Q. Thank you. How are you employed?

23 A. School District 271.

24 Q. What school do you work at?

25 A. Lakes Magnet Middle School.

1 Q. Are you familiar with Eldon Samuel, III, next
2 to me?

3 A. Yes.

4 Q. Is he one of your students?

5 A. He was for a short time, yes.

6 Q. All right. When was he a student of yours?

7 A. Uh, this last -- I think it was the fourth
8 quarter of this school year.

9 Q. Okay. When does fourth quarter start?

10 A. I don't know. I can't keep the dates
11 straight.

12 Q. Approximately?

13 A. Eight and nine weeks ago. He may have been
14 there the third quarter as well.

15 Q. Okay.

16 A. So half-way through the year, so mid-way
17 through January.

18 Q. Okay. And what do you teach?

19 A. Um, I'm a science teacher, seventh and eighth
20 grade science, but I did not have him for science.

21 Q. Okay. What did you have Mr. Samuel for?

22 A. Academic enrichment. Study hall.

23 Q. Study hall?

24 A. Yeah. Last period of the day.

25 MS. PAYNE: All right.

1 MR. ADAMS: I think our police officer's here
2 so I'm going to go check on that, Judge.

3 THE COURT: All right.

4 Q. (BY MS. PAYNE) How was Eldon's attendance in
5 your study hall class?

6 A. He wasn't there very often.

7 Q. All right. When you say he wasn't there very
8 often, could you give us an idea about how many -- how
9 many days a week was he there?

10 A. I can't -- I couldn't say that accurately. I
11 don't know.

12 Q. Okay.

13 A. I haven't looked back at that material.

14 Q. Okay. You, uh -- do you have to report to the
15 school district the absences?

16 A. Uh, it's kept electronically, and I try to do
17 mine in the first couple of minutes of each period
18 because if I don't, I never have time to get back to it.

19 MS. PAYNE: May I have a moment?

20 THE COURT: Sure.

21 Q. (BY MS. PAYNE) Does the school district
22 inform the parent if a child is missing classes?

23 A. I -- my understanding is yes, they do. Not
24 necessarily the district. Each building does that.

25 Q. Each --

1 A. Each building, each school.

2 Q. Each school, okay.

3 A. Yes.

4 Q. Is it fair to say that by mid-February that

5 Eldon had missed at least twelve classes of yours?

6 A. I don't know.

7 Q. What is your study hall set up for?

8 A. Kids are put into that class, uh, typically at

9 semester, that's why I was thinking he may have been

10 there the third quarter, so at semester who are failing

11 two or more core subjects.

12 Q. Do you know what subjects Eldon was failing?

13 A. Not offhand. I had access to it though.

14 Q. Okay. But you don't have that information

15 today?

16 A. No.

17 Q. How many subjects do the students take each

18 semester?

19 A. There's five classes, I believe.

20 Q. Does that include study hall or are those just

21 core?

22 A. That would be their whole schedule, and since

23 we're a magnet school, if a student is put into a study

24 hall, academic enrichment, then they wouldn't have their

25 typical magnet class --

1 Q. Okay.

2 A. -- which basically amounts to an elective is
3 what it really comes down to, an extra elective.

4 Q. Okay. Tell us what magnet means.

5 A. Um, like the idea of what a magnet school is?

6 Q. Yes.

7 A. A magnet basically is a school designed to
8 attract certain patrons, so if you're an art or a music
9 magnet, you would be trying to attract those students
10 that had an interest in going into those fields, so
11 we're a science -- basically a science and art magnet,
12 um, though it's kind of gotten washed down over the
13 years to like an elective.

14 Q. Okay. But you still teach the core subjects
15 for that particular age group, right?

16 A. Yes.

17 Q. Okay. And are you saying that outside of your
18 school district -- if you're a magnet, then students
19 outside the school district can go to your school
20 because it's a magnet?

21 A. I'm not sure of that. That's a district
22 policy thing. I don't know.

23 Q. Okay. While they're in your class, the
24 enrichment class, what are they supposed to do regarding
25 the classes they're failing?

1 A. Uh, they're supposed to bring work and work on
2 things that they should have been working on.

3 Q. Okay. And do you supervise that?

4 A. Uh, yeah, to a certain extent. I mean you've
5 got fifteen kids in a class, eighteen kids, and walk
6 around monitor. Basically my function is to help them,
7 and typically, because I'm a math teacher as well in the
8 past, so that was mainly the main focus, kids come in
9 there, they need help with math. That's always what
10 they need help with.

11 Q. Okay. Was there another teacher, say for
12 instance, if a student was failing English? Would they
13 go to someone other than you?

14 A. Uh, no. They would -- I can still help them,
15 you know, to a certain degree.

16 Q. Okay. So you were the academic enrichment
17 teacher for the entire school?

18 A. No. Just for the kids that are put into that
19 class.

20 Q. Right. But I mean if they're put into that
21 class?

22 A. Right.

23 Q. Okay.

24 A. So if they need help with English, I can help
25 a little bit.

1 Q. Okay. When Eldon was in your class, how did
2 he perform?

3 A. Um, if I recall, he didn't. He just didn't do
4 a lot.

5 Q. Okay. You indicated that he's -- that they're
6 supposed to work on whatever it is -- essentially
7 whatever they're failing and bring work?

8 A. Yes.

9 Q. Do you direct them as to what work to bring?

10 A. Uh, no. I kinda try to leave that up to them.

11 Q. Okay. And did he bring work to work on?

12 A. Not a lot, no, that I recall.

13 Q. Okay. Do you recall what kinds of things he
14 brought?

15 A. No.

16 Q. If he was in class and he wasn't working on
17 anything, what was he doing?

18 A. Sitting.

19 Q. Was he reading?

20 A. Not that I remember.

21 Q. All right. Was he a disciplinary problem in
22 class?

23 A. Not necessarily, no, other than if you're not
24 bringing work, then I have to say something. That's not
25 really a discipline issue; more of a management issue.

1 Q. Okay. How did he interact with the other
2 students in your class?

3 A. There -- that type of class is not a class in
4 which there's a lot of interaction. It's a study hall.
5 You're not there to interact. You're given another
6 opportunity, another hour of the day to get work done.

7 Q. Okay. Did he cause any problems while he was
8 in your class in terms of outbursts or violent problems,
9 anything like that?

10 A. Not that I remember, no.

11 Q. What was his general demeanor when he was in
12 your class?

13 A. Somewhat like it is right now.

14 Q. And could you describe that for the record?

15 A. Just quiet, kept to himself.

16 MS. PAYNE: No further questions.

17 THE COURT: Mr. Verharen?

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. VERHAREN:

20 Q. How long have you been a teacher?

21 A. I think this was my 22nd year.

22 Q. That's a long time.

23 A. It's a while.

24 Q. So in your experience, children who have
25 problems at home sometimes talk to their teachers, don't

1 they?

2 A. Most definitely.

3 Q. And they will talk to their teacher sometimes
4 if they have a situation at home that's abusive, right?

5 A. A lot, yes.

6 Q. Or if there's a situation at home that's
7 causing them frustration, right?

8 A. Definitely.

9 Q. And Mr. Samuel never came to you and talked to
10 you about any problems he might have?

11 A. He did not.

12 Q. As far as you knew, he didn't have any
13 problems at home, correct?

14 A. That is correct.

15 Q. And working that many years with children
16 you've probably come to recognize children who are, uh,
17 affected by, say, below-average issues, intelligence
18 issues?

19 A. Yes.

20 Q. You didn't see any of those in Mr. Samuel, did
21 you?

22 A. I did not.

23 Q. You have probably seen children in that period
24 of time who have other type of issues like autism,
25 things like that, right?

1 A. Yes.

2 Q. And you didn't see any kinds of those issues
3 with Mr. Samuel, did you?

4 A. No.

5 MR. VERHAREN: No further questions.

6 THE COURT: Ms. Payne, anything else?

7 MS. PAYNE: Yes. Thank you.

8 REDIRECT EXAMINATION

9 QUESTIONS BY MS. PAYNE:

10 Q. Mr. Verharen asked you that -- or indicated
11 that Mr. -- that students sometimes if have problems at
12 home they come and talk to their teacher.

13 A. Um-hmm.

14 Q. That isn't true all the time, is it?

15 MR. VERHAREN: Objection, leading.

16 THE COURT: Sustained. Why don't you rephrase
17 that, Ms. Payne?

18 Q. (BY MS. PAYNE) Is that true all the time?

19 A. Meaning that -- I guess I don't understand
20 your question.

21 Q. Meaning the students if they have problems at
22 home always talk to their teachers?

23 A. I would assume not.

24 Q. What would be some reasons that they wouldn't
25 talk to their teacher?

1 A. I don't know.

2 Q. If a student was -- had something going on at
3 home that caused them fear, would they talk to a teacher
4 about that?

5 A. Are you saying every student or just a -- have
6 they done that? Yes, they have. Has every? I don't
7 think so, no.

8 Q. Okay. But what I'm asking you is if they're
9 fearful at home, do they always talk to their teacher?

10 A. I -- I don't know how to answer that.

11 Q. In your experience have students sometimes
12 expressed fear in taking -- in talking with a teacher
13 about home life?

14 A. Yes.

15 Q. Mr. Verharen indicated that, uh, you -- let me
16 back up. Excuse me. Did you have any indication that
17 Mr. -- that Eldon had any problems in home life?

18 A. No.

19 Q. Did you have any indication that he did not
20 have any problems with his home life?

21 A. No.

22 Q. When a student is failing classes, what is
23 that an indication of to you?

24 MR. VERHAREN: Objection. Beyond the scope of
25 cross.

1 THE COURT: Sustained.

2 MS. PAYNE: No further questions, Your Honor.

3 THE COURT: Mr. Verharen, anything else?

4 MR. VERHAREN: No, thank you.

5 THE COURT: All right. Mr. Meier, I'm going
6 to have you step down. I will give you a homework
7 assignment though. You need to study your owner's
8 manual and figure out how to turn your phone off.

9 THE WITNESS: Thank you. My wife just --

10 THE COURT: When it's necessary to do so, all
11 right?

12 THE WITNESS: Thank you.

13 THE COURT: You may step down. May he be
14 excused at this time?

15 MR. VERHAREN: Yes.

16 MS. PAYNE: Yes.

17 THE COURT: All right. Thank you. You are
18 excused. Have a good day. It's right about noon.
19 Where do we stand?

20 MR. ADAMS: We do have Officer Nye here.
21 Could we get him on? He's going to be about ten minutes
22 on direct.

23 THE COURT: Okay. We can do that.

24 MR. ADAMS: Thank you, Judge.

25 THE COURT: Officer?

1 THE WITNESS: Yes, sir.

2 THE COURT: Step forward, raise your right
3 hand. My clerk will swear you in.

4 ANDREW NYE,

5 called as witness at the request of the
6 Defendant, being first duly sworn, was
7 examined and testified as follows:

8 THE COURT: Have a seat right up there. Go
9 ahead.

10 MR. ADAMS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. ADAMS:

13 Q. Deputy, please tell us your full name and
14 spell your last name.

15 A. Andrew Nye, N-y-e.

16 Q. And how are you employed, how long have you
17 been so employed, and what qualifies you to do that job?

18 A. I'm a patrol deputy at the Kootenai County
19 Sheriff's Office. I've been employed for just short of
20 five years. July 6th will be five years on the
21 anniversary date. I'm POST-certified. I went through
22 an extensive thirteen-week POST Academy, following a
23 two-week advanced academy in-service at our department
24 through a training program of, I believe, fourteen weeks
25 where I've been on my own since.

1 Q. Thank you. We spoke out in the hallway. I
2 noticed you have some documents with you. That's your
3 police report from the night of August 27th of 2013,
4 last August 27th, correct?

5 A. It is.

6 Q. And that's a true and correct copy of your
7 report?

8 A. It is.

9 Q. And if you need to refer to that to refresh
10 your recollection, go ahead and tell us, and then you
11 can do it, okay?

12 A. Okay.

13 Q. So I want to talk to you about an incident
14 that you wrote the report about from last August 27th.
15 Just after midnight that night did you go to a house on
16 First Street?

17 A. I did.

18 Q. And tell us why you did that.

19 A. I was working in the county on patrol, and we
20 received a call for service for a welfare check agency
21 assist for City of Coeur d'Alene Police Department. We
22 handle in-progress calls when Coeur d'Alene city police
23 are tied up on other calls, so being the fact that it
24 was a welfare check, possible DUI in progress, we
25 responded down there to assist and handle the call for

1 the city.

2 Q. And when you got there a little after
3 midnight, what did you find?

4 A. I arrived on the scene with my sergeant. We
5 arrived on scene within seconds of each other, and we
6 found a male lying in a grass of a residence off First
7 Street.

8 Q. In the front yard?

9 A. Yes.

10 Q. And did you identify the male?

11 A. I was able to verbally identify him as Eldon
12 Samuel, Jr.

13 Q. Okay. Do you recognize the young man sitting
14 right here, the young fellow with the green shirt on?

15 A. I do.

16 Q. And did you see him there that night?

17 A. I did. He was outside.

18 Q. Fair to say that this was his dad and Eldon
19 and his brother that you met there at that scene that
20 night?

21 A. Yes.

22 Q. It was his dad that was in the grass?

23 A. Yes.

24 Q. Tell us the condition his dad was in when you
25 got there.

1 A. When I walked up to him, as I said, he was
2 laying on the ground. I attempted to talk to him. He
3 was slurring his words and just with that, his
4 exhibiting signs of being intoxicated, uh, almost to the
5 point of incoherent where I couldn't understand most of
6 what was coming out of his mouth, it was just hard
7 enough to get his name.

8 Q. Was he able to walk?

9 A. No, he was not.

10 Q. Uh, you've had a lot of training in people
11 being intoxicated, fair to say?

12 A. I have.

13 Q. Did you smell anything on him like alcohol or
14 paint fumes or gas, anything like that?

15 A. I did not.

16 Q. Did you at some point make any determination
17 about what, if anything, he was under the influence of?

18 A. I did. Prior to going inside the house I had
19 a conversation with his son, and he had said that his
20 father doesn't drink and it was a direct result of his
21 medication that he was prescribed.

22 Q. And "his son", you mean Eldon, the boy sitting
23 here?

24 A. Yes.

25 Q. Did you see another boy there, Eldon's brother

1 there that evening?

2 A. Initially on scene, no. Later that evening,
3 yes.

4 Q. And where'd you see him at?

5 A. He was hiding under the bed. He appeared to
6 be scared.

7 Q. And tell us where that bed was. Describe that
8 a bit for the judge, where you found Jonathan hiding.

9 A. Once you walk directly into the house, if you
10 kind of veer off to the right and in the back bedroom
11 there was a bed lying on the ground. It didn't even
12 appear that somebody could be under it, but I heard
13 noises coming from that room and saw a face sticking out
14 from underneath the bed.

15 Q. Did you make any observations, conclusions
16 about the little boy's state of mind that was under the
17 bed, and if so, what were they?

18 A. Based upon the little experience that I've had
19 and the training that I've had in mental health, he
20 appeared to be autistic, and, uh, I would say more
21 excessively autistic or from the higher end than mildly.

22 Q. Did he appear to be happy, frightened, scared,
23 things like that?

24 A. Scared.

25 Q. Could you tell what was making him afraid, why

1 he was afraid?

2 A. I couldn't. Uh, I have assumption as to why
3 when I arrived on scene.

4 Q. And what was that -- this assumption based on
5 your experience dealing with situations like this?

6 A. Yes. It seems like with people with mental
7 health --

8 MR. VERHAREN: I'm gonna object to
9 assumptions.

10 THE COURT: Sustained.

11 Q. (BY MR. ADAMS) Let's talk about the dad
12 again. You found he was highly intoxicated, couldn't
13 walk, couldn't talk. What did you do with him?

14 A. Sergeant Jovick and I were able to assist him
15 into the house and put him on a reclining chair in the
16 living room so we could talk to him further.

17 Q. And so were you able to have some
18 communication with him once you got him in the house?

19 A. Yes.

20 Q. And tell us about that.

21 A. He -- I had asked him if he had drank alcohol.
22 He had told me no. I had asked him if he had taken any
23 prescription medication, and he said yes. He explained
24 to me that he had taken three pills as prescribed that
25 day, and he told me where his pill bottle was, where I

1 ended up locating it and counting the pills.

2 Q. So he told you what meds he had, and you found
3 that medication bottle and you opened that bottle up and
4 counted the number of tablets in there?

5 A. I did.

6 MR. VERHAREN: Objection, leading.

7 THE COURT: Overruled.

8 Q. (BY MR. ADAMS) That's what you did?

9 MR. VERHAREN: Objection, leading.

10 THE WITNESS: I did.

11 THE COURT: He's just trying to clarify,
12 Mr. Verharen. Overruled.

13 Q. (BY MR. ADAMS) The answer's yes?

14 A. Yes.

15 Q. Okay, thank you. And were you able to read
16 the prescription on the bottle to determine how many
17 pills were supposed to be in there?

18 A. Yes.

19 Q. And the date that the prescription had been
20 filled?

21 A. I believe so. I'd have to refer to my report
22 if I put that in there.

23 Q. Go ahead and take a look at that. It's on
24 page -- the second page.

25 A. Yes, I did put that date in there.

1 Q. And what was the date that the pills had been
2 filled?

3 A. August 20th of 2013.

4 Q. And how many tablets?

5 A. There were -- bear with me one second.

6 Q. Ninety --

7 A. I see it now. Ninety tablets were prescribed
8 in that bottle.

9 Q. Seven days earlier 90 tablets?

10 A. Yes.

11 Q. And how many were left in the bottle?

12 A. Twenty-eight pills.

13 Q. And what was the script directions for how
14 many should be taken?

15 A. One pill three times daily.

16 Q. You looked around the house a bit, checked it
17 out to see how it was?

18 A. Yes.

19 Q. Why did you do that?

20 A. I do it whenever I go to a case where I
21 believe that, uh, children may or may not be in danger.
22 It's for my own peace of mind. I know that there's food
23 in the house and that there's -- it's a sanitary, safe
24 living condition.

25 Q. Is it fair to say that what you found there as

1 a police officer, you wanted to make sure these kids
2 were safe?

3 A. Yes.

4 Q. Did you have any concerns about the safety of
5 the children?

6 A. I had concerns for the safety of the younger
7 son, uh, based upon the current status of his father and
8 what I believed to be was a severe mental illness and if
9 he was getting the correct treatment.

10 Q. Did it appear -- do you know how the police
11 got the call to go to that house that night?

12 A. City of Coeur d'Alene received a call from
13 Eldon Samuel, III, stating that his father was
14 attempting to drive away in his truck intoxicated and
15 I -- if I remember right, was in his car and was not
16 able to drive away because Eldon Samuel, III, had
17 intervened.

18 Q. So Eldon, the boy sitting here, called 911 and
19 said my dad's intoxicated trying to drive, I can't stop
20 him, will you come and help?

21 MR. VERHAREN: Objection, leading.

22 THE COURT: Sustained.

23 Q. (BY MR. ADAMS) The information you had was
24 that the son Eldon, sitting here, had called about his
25 dad being intoxicated?

1 MR. VERHAREN: Objection, leading.

2 THE COURT: Overruled. You may answer that
3 question.

4 THE WITNESS: Yes.

5 Q. (BY MR. ADAMS) And did you talk with Eldon,
6 the boy, at the house that evening?

7 A. I did.

8 Q. Did you talk to him about his dad's condition?

9 A. I talked to him regarding his father either
10 consuming alcohol and/or what is causing the
11 intoxication, and that's when he told me that his father
12 does not drink and that he had -- the result of the
13 medication that he takes.

14 Q. Were you able to form an opinion about whether
15 Eldon was used to this sort of thing with his dad or if
16 this was an unusual thing?

17 A. He had told me it was not the first time.

18 Q. Did you know that four days earlier his dad
19 had been taken to Kootenai Emergency incoherent and
20 unresponsive?

21 A. I was not aware of that.

22 Q. Did you -- or you said your sergeant was there
23 with you. Did you guys do any investigation into other
24 family members that might be available to take care of
25 the kids?

1 A. Initially on scene, no. Afterwards, my
2 sergeant went to central dispatch and coordinated with
3 them where they were able to learn of a mother located
4 down in California. We had gathered that information
5 with an attempt to maybe see if there are local family
6 members that could take care of the children.

7 Q. So it's fair to say then last August the
8 sheriff's department knew Eldon's mom was in California?

9 A. Yes.

10 Q. Did you have concerns about leaving the kids
11 there alone with the dad?

12 A. Again, I had the concern for the younger son
13 because of his mental illness and because of the state
14 of his father. What Eldon Samuel, III, had told me
15 prior to leaving is that he felt safe at the house that
16 night, and that is why my sergeant and I left without
17 any further action.

18 Q. Did you do anything further about this?

19 A. I requested my report be forwarded to Health
20 and Welfare for follow-up.

21 Q. Okay. You requested that your report be sent
22 to Health and Welfare --

23 A. Yes.

24 Q. -- for follow-up? Who did you request it
25 from?

1 A. Here's the line that our reports go. So I
2 write my written report. It goes to my sergeant. It is
3 signed by him and approved, where it goes up to our
4 records department. Our records department will go
5 through all of the reports and where we request that it
6 be sent to, it is their job to be forwarding on reports
7 to different jurisdictions.

8 MR. ADAMS: Thank you. I don't have any other
9 questions.

10 THE COURT: Mr. Verharen?

11 MR. VERHAREN: Thank you, Judge.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. VERHAREN:

14 Q. So when you spoke with the defendant, he told
15 you that he felt safe?

16 A. Yes.

17 Q. All right. And you were speaking to him in a
18 place where it was just you and he?

19 A. I don't remember.

20 Q. Okay. Well, you wouldn't have asked him if he
21 felt safe in front of his dad, would you have? That
22 wouldn't make any sense, would it?

23 A. No, it wouldn't.

24 Q. All right. So I mean, thinking about it on a
25 logical basis, you probably talked to him alone, didn't

1 you?

2 A. There -- there's a chance, yes.

3 Q. Well, it wouldn't make any sense to ask
4 somebody if they felt safe if another person was around
5 who might not make them feel safe, would it?

6 MR. ADAMS: Objection, Judge. He's arguing
7 with the witness.

8 THE COURT: It's essentially been asked and
9 answered.

10 Q. (BY MR. VERHAREN) In speaking with Mr. Samuel
11 after he told you he felt safe at the house, then you
12 left?

13 A. I did.

14 Q. You didn't have Health and Welfare come to the
15 house?

16 A. I did not.

17 Q. That's because you didn't see any -- anything
18 that rose to a concern where you thought Health and
19 Welfare should come right then, correct?

20 A. I did not see imminent danger.

21 Q. All right. You didn't see any abuse that rose
22 to the level that Health and Welfare needed to be
23 involved, right?

24 A. No.

25 Q. You didn't see any neglect that rose to the

1 level that Health and Welfare needed to be involved,
2 right?

3 A. Not immediate -- not immediately, no.

4 Q. When you were there you didn't see that,
5 right?

6 A. No.

7 Q. Okay. And had you seen those things, you
8 would've made sure Health and Welfare was there,
9 correct?

10 A. Absolutely.

11 Q. In speaking with the defendant, he appeared to
12 be intelligent?

13 A. Yes.

14 Q. He had no problem communicating with you?

15 A. No.

16 Q. You described the defendant's brother as being
17 scared; is that right?

18 A. Yes.

19 Q. And in that state of being scared you told us
20 that he was underneath his bed?

21 A. Yes.

22 Q. And this bed would be in the bedroom that was
23 on the northwest side of the house?

24 A. Correct.

25 Q. And he was laying on his stomach or his back

1 underneath this bed?

2 A. If I remember right, it was his stomach
3 because I was seeing his face.

4 Q. How long was Mr. Samuel's brother laying on
5 his stomach underneath his bed being scared that night?

6 A. I don't know how long he was under there. I
7 can tell you that I was in the house for about one to
8 two minutes before I found out that I -- or before I
9 heard sounds and saw him under there. I don't know how
10 long beforehand.

11 Q. You never saw any threatening gestures from
12 Mr. Samuel's brother, Jonathan, did you?

13 A. No.

14 Q. You never saw him be aggressive in any fashion
15 at all, did you?

16 A. No.

17 Q. You never saw him with any sort of weapon, did
18 you?

19 A. No.

20 Q. And you never saw Mr. Samuel's dad ever be
21 aggressive when you were there, did you?

22 MR. ADAMS: I'm gonna object to this, Judge.
23 I don't think this is within the scope.

24 THE COURT: Overruled. You may answer.

25 THE WITNESS: No.

1 Q. (BY MR. VERHAREN) You didn't see him be
2 abusive to his sons, did you?

3 MR. ADAMS: I'm gonna object to the form of
4 the question. Being passed out drunk in the front yard
5 with an autistic boy hiding under the bed some people
6 might consider abuse, so I'm gonna object to the form of
7 the question.

8 THE COURT: Objection's overruled. You may
9 answer the question.

10 THE WITNESS: Please repeat the question.

11 Q. (BY MR. VERHAREN) You didn't see the
12 defendant's dad be abusive to his two sons while you
13 were there, did you?

14 A. No.

15 Q. When you were looking for family members, did
16 you locate the grandfather that lives here?

17 MR. ADAMS: Objection. Assumes facts not in
18 evidence, Judge.

19 THE COURT: Sustained.

20 MR. VERHAREN: No further questions.

21 THE COURT: Mr. Adams, anything else?

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. ADAMS:

24 Q. You were concerned enough that you wanted
25 Health and Welfare to know about what was going on with

1 those little boys and their dad, right?

2 A. Yes.

3 MR. VERHAREN: Objection, leading.

4 THE COURT: Sustained. Rephrase, please.

5 Q. (BY MR. ADAMS) Were you concerned enough to
6 do anything about the situation you found at that house?

7 A. Yes.

8 Q. And what was that?

9 A. To have Health and Welfare follow up at a
10 later date with the family.

11 MR. ADAMS: Thank you. I don't have any other
12 questions.

13 THE COURT: Mr. Verharen, anything else?

14 MR. VERHAREN: No, Judge.

15 THE COURT: All right. Deputy Nye, you may
16 step down. May he be excused at this time?

17 MR. ADAMS: Yes, sir.

18 THE COURT: Any objection?

19 MR. VERHAREN: No.

20 THE COURT: All right. You are excused. How
21 many additional witnesses do we have?

22 MS. PAYNE: Your Honor, we have four more
23 witnesses, all should be fairly brief.

24 THE COURT: Okay.

25 MS. PAYNE: I'm sorry, seven more.

1 THE COURT: Seven more.

2 MS. PAYNE: Sorry.

3 THE COURT: I heard four but it's really
4 seven.

5 MR. ADAMS: Judge, would you give me five
6 minutes, and we'll come back and let you know where
7 we're at?

8 THE COURT: Sure.

9 *(Recess taken)*

10 MR. ADAMS: We've got three witnesses, Judge.

11 THE COURT: Three? Okay.

12 MR. ADAMS: Two people that heard gunshots
13 and --

14 THE COURT: Well, I don't need to know what
15 they're gonna say. I just need to know how many and --
16 but they're going to be fairly brief?

17 MR. ADAMS: Yeah, that's what I'm telling you.
18 It would be like, yeah, I heard a gunshot, two more
19 people like that, so about that same length of time.

20 THE COURT: Okay.

21 MR. ADAMS: And, uh, I think the clerk from
22 the Army-Navy store who sold some of the weapons we're
23 talking about.

24 THE COURT: All right. Does the State
25 anticipate calling any other witnesses?

1 MR. VERHAREN: No.

2 THE COURT: All right. So we're going to have
3 three witnesses after lunch and then closing arguments
4 and we'll go from there, so how about we resume here at
5 1:30? Does that work for everybody?

6 MR. ADAMS: Yes, sir.

7 THE COURT: All right. We'll see you back
8 here at 1:30 then. Thank you.

9 *(Lunch recess taken)*

10 THE COURT: We are back on the record and
11 court is in session in State versus Samuel, 2014-5178.
12 Counsel is present. Mr. Samuel's present. Looks like
13 we have the same folks here. Do you have another
14 witness to call?

15 MS. PAYNE: Yes, Your Honor.

16 THE COURT: Which one of you will be calling
17 that witness?

18 MS. PAYNE: I will, Your Honor.

19 THE COURT: Go ahead, Ms. Payne.

20 MS. PAYNE: Pam Moist.

21 THE COURT: Good afternoon. If you step
22 around up front here, please, and is your telephone off?

23 THE WITNESS: Yes.

24 THE COURT: Okay. If you could raise your
25 right hand, my clerk will swear you in. Just say "yes"

1 or "I do" at the end of the oath.

2 PAMELA MOIST,

3 called as witness at the request of the
4 Defendant, being first duly sworn, was
5 examined and testified as follows:

6 THE COURT: All right. Have a seat right up
7 here. Go ahead.

8 MS. PAYNE: Thank you.

9 DIRECT EXAMINATION

10 QUESTIONS BY MS. PAYNE:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Could you state your name and spell it for the
14 record, please?

15 A. Pamela Moist, M-o-i-s-t.

16 Q. Okay. And it's pronounced Moist?

17 A. Yeah.

18 Q. Okay. Thank you.

19 THE COURT: Spell it again for me?

20 THE WITNESS: M-o-i-s-t.

21 THE COURT: S-T. Okay, thank you.

22 Q. (BY MS. PAYNE) Could you move a little closer
23 to the microphone or pull it to you? Thank you. We're
24 recording this and so any transcript would have to be
25 based on your oral testimony.

1 A. Okay.

2 Q. How should I refer to you? Ms., Miss, Mrs.?

3 A. Pam.

4 Q. Okay, Pam. All right. Pam, where do you
5 work?

6 A. Phil's Army-Navy store.

7 Q. Where is that?

8 A. 1620 Government Way.

9 Q. Okay. In Coeur d'Alene?

10 A. Yes.

11 Q. How close is that to First Street, the 1300
12 block of First Street in Coeur d'Alene?

13 A. I have no clue.

14 Q. Okay. Are you familiar -- are you familiar
15 with the Samuel family?

16 A. Yes, I am.

17 Q. Who are you familiar with in that family?

18 A. Uh, Johnny, Eldon and his father.

19 Q. Okay. By "Eldon", you mean Eldon who's
20 sitting here --

21 A. Yes.

22 Q. -- at defense table in the green?

23 A. Yes.

24 Q. Okay. So how is it that you're familiar with
25 them?

1 A. Uh, I started work there last spring -- at the
2 Phil's Army-Navy, and they started coming in in the
3 summertime. I can't remember if it's in the middle of
4 summer or late summer.

5 Q. Okay.

6 A. That's how I met the family.

7 Q. Did you know them by name?

8 A. Not the first day, no.

9 Q. Okay.

10 A. If you're asking me that.

11 Q. All right. After that did you come to know
12 them by their first name?

13 A. I knew Johnny, and I wasn't sure of the
14 father's name, and he always called Eldon Eldon.

15 Q. Okay. So you knew it in that sense?

16 A. Um-hmm.

17 Q. All right. How often did they come in?

18 A. There for a while at least once a week before
19 school had started.

20 Q. All right. Did they make purchases?

21 A. Uh, once in a while.

22 Q. All right. What types of things did they
23 purchase?

24 A. Uh, the last thing I remember being purchased
25 was a knife.

1 Q. A knife?

2 A. Yes.

3 Q. What type of knife?

4 A. I -- a knife. That's --

5 Q. Okay. Can you describe how long it was?

6 A. No. No. Do you know how many I sell?

7 Q. All right. Fair enough. Did you have an

8 opportunity -- if you said that they came in and they

9 bought something once in a while, what did they do other

10 times they'd come in when they didn't purchase anything?

11 A. Um, Johnny would stand up and talk -- stay

12 with me, and then, uh --

13 Q. Stay with you where?

14 A. Up front at the cash register.

15 Q. Okay.

16 A. And the father and the son would walk around

17 the store.

18 Q. Okay. So Eldon and his dad --

19 A. Yes.

20 Q. -- would walk around the store?

21 A. Yes.

22 Q. Okay. How were they dressed?

23 A. Well, there were a few times Eldon was in a

24 long black coat, and I thought because of the weather

25 that was oddly strange to be wearing a black coat like

1 that.

2 Q. Did you have a chance to watch Eldon and his
3 father interact?

4 A. Eldon wouldn't speak. Young Eldon would not
5 say a word. I've never heard him speak except one time
6 when he was -- when they were getting a knife and his
7 dad had asked him, "Is this the one that we want to
8 get," and he just -- that was it.

9 Q. He nodded you mean?

10 A. Yeah, just --

11 Q. Okay. Did you, uh --

12 A. I talked more with the father --

13 Q. Oh, okay.

14 A. -- excuse me -- and Johnny. I mean, Johnny
15 came in and the first thing he said to me was, "What's
16 your name," and I told him, and he said, "How old are
17 you," and he always remembered that every time he came
18 into the store. He would say you're Pam so and so,
19 you're -- this is when you were born.

20 Q. Okay. And about your conversations with, uh,
21 with Mr. Samuel, the dad --

22 A. He came in a few times by himself, and, uh, he
23 told me he was in the Army --

24 Q. Um-hmm.

25 A. -- you know, and who am I to judge whether

1 somebody is or isn't, you know, and just -- everything
2 that he said he knew he taught Eldon, young Eldon.

3 Q. In terms of everything he knew what?

4 A. Military-wise. How to shoot guns, how to do
5 whatever military-wise to defend himself.

6 Q. Okay. Um, have you -- did it appear to you
7 that he was supportive or encouraging or in any other
8 fashion instructive to Eldon in this regard?

9 MR. VERHAREN: Objection. Lack of foundation
10 as to when.

11 THE COURT: Overruled. Do you understand the
12 question?

13 THE WITNESS: No. Repeat it again.

14 THE COURT: She doesn't understand.

15 THE WITNESS: I -- never mind.

16 THE COURT: Why don't you rephrase?

17 Q. (BY MS. PAYNE) Okay. What I'm asking you is
18 when you saw the, basically the interaction dad talking
19 to the son, did it seem to you that he was attempting to
20 teach him or encourage him that, uh --

21 A. Yeah, yeah.

22 MR. VERHAREN: Objection, leading.

23 THE COURT: Overruled.

24 Q. (BY MS. PAYNE) As to what aspect did you
25 think he was encouraging him or teaching him?

1 A. Eldon always looked at his dad, and it was
2 like whatever dad says goes.

3 MR. VERHAREN: Objection, non-responsive.

4 THE COURT: Sustained.

5 Q. (BY MS. PAYNE) Try again. How did you
6 perceive that he was teaching Eldon or encouraging him?

7 A. What I would say is how I -- what I perceived
8 when they walked in --

9 MR. VERHAREN: I'm gonna object to this
10 witness' subjective feelings about what she's perceiving
11 from an interaction between two people.

12 THE COURT: Sustained. She's just asking you
13 what you observed.

14 THE WITNESS: When they would walk around the
15 store, Eldon would follow his father, and there was one
16 time during --

17 MR. VERHAREN: Objection, non-responsive.

18 THE COURT: Sustained.

19 Q. (BY MS. PAYNE) Were there any times that you
20 saw Eldon copy what his father did or in that sense?

21 A. He did whatever his dad told him to do.

22 MR. VERHAREN: Objection, non-responsive.

23 THE COURT: Sustained.

24 Q. (BY MS. PAYNE) Did you see Eldon mimic his
25 father in any way?

1 A. No. He -- like I said, he'd follow him around
2 and he wouldn't speak. He never spoke.

3 MS. PAYNE: No further questions. Thank you.

4 THE COURT: Mr. Verharen?

5 **CROSS-EXAMINATION**

6 QUESTIONS BY MR. VERHAREN:

7 Q. So the person that bought the knife was the
8 defendant or his dad?

9 A. His father.

10 Q. But he bought it for his son, the defendant?

11 MS. PAYNE: Lack of foundation. Objection,
12 Your Honor.

13 THE WITNESS: I -- I --

14 THE COURT: Overruled.

15 THE WITNESS: I don't know. I sold to the
16 father. I sold that knife legally.

17 Q. (BY MR. VERHAREN) Okay. But before you sold
18 the knife, the defendant's father asked him if this
19 was --

20 A. Asked him, "Is this the knife?"

21 Q. And the defendant, he responded in the
22 affirmative?

23 A. He did not speak. He just went like this.

24 Q. He nodded yes. Is that your --

25 A. Yes, yes.

1 Q. Okay. Indicating that was the right knife?
2 A. Um-hmm.
3 Q. Yes?
4 A. Yes.
5 MS. PAYNE: Objection, speculative.
6 THE COURT: Overruled.
7 Q. (BY MR. VERHAREN) And when was this?
8 A. That I can't say for sure. It was last year.
9 Q. Okay.
10 A. When --
11 Q. So do you think it was in the winter or the
12 fall or summer?
13 A. I sell so many knives a week.
14 Q. And you don't know whether it was a Swiss Army
15 knife or a dagger?
16 A. We don't have Swiss Army knives.
17 Q. You don't know whether it was a pocket knife
18 or a dagger?
19 A. I'm going to have to go with a dagger.
20 MS. PAYNE: Objection, speculation.
21 THE WITNESS: It's -- yeah, I'm just -- I'm
22 taking a guess of what's --
23 THE COURT: Sustained. We don't want her to
24 speculate.
25 Q. (BY MR. VERHAREN) So Johnny would be the

1 younger brother of the defendant?

2 A. Yes.

3 Q. And he obviously had autism?

4 A. Yes.

5 Q. You noticed that right off the bat?

6 A. Yes.

7 Q. And he was not an aggressive --

8 A. No.

9 Q. -- young person, was he?

10 A. Not -- not when he was around me. I can't say
11 what he does outside of the store but --

12 Q. You never witnessed him being aggressive?

13 A. No.

14 MS. PAYNE: Objection, asked and answered.

15 THE WITNESS: Not at the store.

16 THE COURT: Overruled. The answer will stand.

17 Q. (BY MR. VERHAREN) He was always friendly with
18 you?

19 A. Yes.

20 MR. VERHAREN: No further questions.

21 THE COURT: Any redirect?

22 MS. PAYNE: Thank you.

23 REDIRECT EXAMINATION

24 QUESTIONS BY MS. PAYNE:

25 Q. Did Johnny ask you any inappropriate

1 questions?

2 A. Little Johnny?

3 Q. Yes.

4 A. No.

5 Q. When you purchased -- pardon me. When the dad

6 purchased the knife, what he said was, "This is the

7 knife we want," correct?

8 A. Um-hmm, yes.

9 MS. PAYNE: All right. Thank you. No further

10 questions.

11 THE COURT: Anything else?

12 MR. VERHAREN: No, thank you.

13 THE COURT: All right. Ms. Moist, you may

14 step down. May she be excused at this time?

15 MS. PAYNE: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. VERHAREN: No, Judge.

18 THE COURT: All right. You are excused.

19 Thank you. Who would you like to call next?

20 MS. PAYNE: Mellisa Estrada.

21 THE COURT: Ms. Estrada, if you'd come on up

22 front here, please? Hi. Just come on around up front

23 here. Raise your right hand. My clerk will swear you

24 in.

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MELLISA ESTRADA,

called as witness at the request of the
Defendant, being first duly sworn, was
examined and testified as follows:

THE COURT: All right. Have a seat right up
here. Go ahead.

MS. PAYNE: Thank you.

DIRECT EXAMINATION

QUESTIONS BY MS. PAYNE:

Q. Good afternoon. Would you please state your
name and spell it for the record?

A. Mellisa Estrada, M-e-l-l-i-s-a E-s-t-r-a-d-a.

Q. Thank you. Ms. Estrada, how are you employed?

A. I'm the Director of Emergency Shelters with
St. Vincent DePaul.

Q. Okay. Back on March 24th of this year were
you still so employed?

A. Yes.

Q. Where is the -- that shelter --

A. Which one?

Q. -- physically? The one that you're in charge
of.

A. I'm in charge of three of them.

Q. Okay. Which three are you in charge of?

A. The women's, the family and the men's

1 shelters.

2 Q. All right. On the evening of March 24th were
3 you on shift?

4 A. I was on site, um, assisting.

5 Q. On site which?

6 A. At the women's shelter.

7 Q. And where is that located?

8 A. [REDACTED].

9 Q. Okay. And how is that -- where is that in
10 proximity to 1311?

11 A. Right nextdoor.

12 Q. That evening did you hear or see anything out
13 of the ordinary?

14 A. Um, yes. Around 7:30 p.m. I heard what
15 sounded like a gunshot.

16 Q. What made you think it was a gunshot?

17 A. I'm a hunter.

18 Q. You're a hunter?

19 A. Yeah.

20 Q. Okay.

21 A. So I'm familiar with it.

22 Q. So you're familiar with the sound of a
23 gunshot?

24 A. Yes.

25 Q. Could you tell what type of gun was shot?

1 A. No.

2 Q. Could you tell whether it was a large-caliber
3 or small-caliber?

4 A. It was really loud so I would assume it was a
5 large-caliber.

6 Q. Okay. Could you tell whether it was a shotgun
7 or a handgun?

8 A. No.

9 Q. When you heard the shot did you do anything?

10 A. Yes. I was standing in the front living room
11 of the women's shelter, and I stepped outside and looked
12 around to see if I could see anything, but I couldn't.

13 Q. Okay. Did you look at the property on 1311?

14 A. No.

15 Q. Can you see 1311 from where you were standing?

16 A. Yes.

17 Q. And did you --

18 A. It's to the left.

19 Q. Did you look there or did you not see --

20 A. I looked out across the street towards the
21 help center.

22 Q. Okay. Do you know who lives at 1311 North
23 First?

24 A. The Samuels' family.

25 Q. And you saw no one in the yard at that point

1 after you saw the shot?

2 A. I didn't -- I didn't look over there.

3 MS. PAYNE: Okay. No further questions.

4 Thank you.

5 THE COURT: Mr. Verharen?

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. VERHAREN:

8 Q. How long were you at the women's shelter after
9 you heard the shot?

10 A. Um, no more than fifteen minutes.

11 Q. And then you went to some other place?

12 A. I went home.

13 Q. Which is a ways away from that location?

14 A. Yes.

15 Q. Okay. So you weren't around that area when
16 this incident happened?

17 A. I was not.

18 Q. Okay. Are you the person then that rented the
19 1311 address to Mr. Samuel?

20 A. The 1311 address was not a rental. It was
21 converted from a rental to an emergency shelter because
22 of grant purposes, but yes, I was the case manager for
23 that family.

24 Q. So you were familiar with Eldon Samuel, II,
25 Eldon Samuel, III, and Jonathan Samuel?

1 A. Not the boys but the father, yes.

2 Q. And he began living there in when?

3 A. I don't know exactly when he began living

4 there. When it was converted from his rental to an

5 emergency shelter was January.

6 Q. Of 2014?

7 A. Yes.

8 Q. Okay. So he was living there at least from --

9 he and his boys were living there from January until

10 March two thousand and --

11 A. Under the shelter, yes, but they had lived

12 there before as a rental.

13 Q. Okay. So back on March 24th, 2014, the people

14 that were living there that you knew were living there

15 are Mr. Samuel the dad, as well as his two sons?

16 A. Correct.

17 Q. And no one else, right?

18 A. Correct.

19 MR. VERHAREN: No further questions.

20 THE COURT: Ms. Payne, any redirect?

21 MS. PAYNE: No, Your Honor.

22 THE COURT: All right. Ms. Estrada, you may

23 step down. Thank you. May she be excused at this time?

24 MS. PAYNE: Yes.

25 MR. VERHAREN: No objection.

1 THE COURT: All right. You are excused.

2 Thank you. Do you have another one?

3 MS. PAYNE: Denee Dye.

4 THE COURT: Hi. If you can come on around up
5 front here, please. It's kind of a big courtroom. And
6 when you get around up front, raise your right hand. My
7 clerk will swear you in.

8 DENEEN DYE,

9 called as witness at the request of the
10 Defendant, being first duly sworn, was
11 examined and testified as follows:

12 THE COURT: Okay. Is your phone turned off?

13 THE WITNESS: Yes, it is.

14 THE COURT: Okay. Why don't you come on up
15 here, have a seat? Go ahead.

16 DIRECT EXAMINATION

17 QUESTIONS BY MS. PAYNE:

18 Q. Good afternoon.

19 A. Hi.

20 Q. Would you please state your name and spell it
21 for the record?

22 A. Yeah. It's Denee Dye. D-e-n-e-e, last name
23 Dye, D-y-e.

24 Q. Thank you. Ms. Dye, how are you employed?

25 A. Um, I have two different employers. I have

1 St. Vincent DePaul and I'm women's shelter house
2 manager, and I'm a sales representative at T Mobile.

3 Q. Okay. Let's focus on the women's shelter
4 St. Vincent's aspect of your employment, okay?

5 A. Okay.

6 Q. All right. Were you so employed back on March
7 24th of this year?

8 A. Yes, I was.

9 Q. Okay. Are you familiar with an address of
10 1311 North First Street in Coeur d'Alene?

11 A. Yes, I am.

12 Q. Okay. And what do you know that to be?

13 A. That was what we would call the daily house.
14 It is a residential property owned by St. Vincent
15 DePaul.

16 Q. Okay. Do you know who lived in that house?

17 A. I do.

18 Q. Okay. In terms of your duties through
19 St. Vincent's, what are they?

20 A. Like my job description?

21 Q. Um-hmm.

22 A. Um, I manage and facilitate a house where up
23 to thirteen women stay and live at with their children,
24 and I make sure that it's a safe environment for them to
25 live in, and that all recommended rules are followed and

1 house chores are completed at the scheduled time.

2 Q. Okay. In relation to the daily house, do you
3 have any, um, duties that require you to provide certain
4 items to the house?

5 A. Or engage with them?

6 Q. Yes.

7 A. Yes. Yeah, usually we do a purchase order,
8 and a purchase order's usually done weekly, and the
9 purchase order in which I acquire does get delivered to
10 the daily house where they resided at, and that's what I
11 would deliver there once a week.

12 Q. Okay. And what kind of purchases would you
13 make?

14 A. The purchase orders are strictly for like, um,
15 things that are needed, bare essentials for the house,
16 such as laundry soap, dish soap, toilet paper, things of
17 that nature.

18 Q. Cleaning supplies?

19 A. Correct.

20 Q. Did you order cleaning supplies for Mr. Samuel
21 in that house?

22 A. I ordered cleaning supplies for the house, and
23 whichever was on his list I would deliver.

24 Q. Okay. Do you recall anything related to
25 cleaning supplies on his list?

1 A. They usually were everything to that nature.
2 Dish soap, laundry soap. Everything.

3 Q. Okay. Was there anything on that list that
4 was asked for regularly?

5 A. Just the usual. Sponges, toilet paper,
6 laundry soap, um, the dish soap, uh, Windex, toilet bowl
7 cleaner, paper towels.

8 Q. Was there any concern that you had regarding
9 an excessive request for a particular item?

10 A. Yeah, the toilet bowl cleaner. There --

11 Q. What's that called? Do you know what the
12 toilet bowl cleaner was?

13 A. Yeah. It's a spray substance. It's Scrubbing
14 Bubbles automatic toilet bowl cleaner, I think.

15 Q. Okay. That's fine. What caused you concern
16 about that?

17 A. Um, well, like I was saying, you know, I
18 facilitate a house that has thirteen-plus women and
19 children located in it, and at that particular time
20 frame there had been a delivered amount of substance
21 that was given to the household more than what we would
22 utilize with triple the people located in that
23 residence.

24 Q. Are you talking about the Scrubbing Bubbles?

25 A. Yes.

1 Q. And is what you're saying that there was three
2 times as much given to that house than --

3 A. Not three times. Um, usually when you order
4 stuff you just put it on there, you know, and he had
5 made a request of it and -- but at that time we weren't
6 delivering the actual liquid toilet bowl cleaner, and
7 it's an all-purpose cleaner so it's used for the whole
8 bathroom, but, yeah, it did arise concern.

9 Q. Okay. Thank you. On the night of the 24th of
10 March were you -- of this year were you in the proximity
11 of that house there at 1131 (sic) North First?

12 A. I was located directly next door at 1301 East
13 First Street.

14 Q. Okay. And what were you doing around 7:15,
15 7:30 that night?

16 A. There was not an incident with their house,
17 but there was something that had arose at our house
18 where I was there facilitating with my supervisor,
19 Mellisa Estrada --

20 Q. Okay.

21 A. -- and we were just -- had went inside the
22 residence located at 1301 East First Street.

23 Q. And did you hear anything that was out of the
24 ordinary?

25 A. I did. However, I didn't think it was out of

1 the ordinary at the time. It didn't sound like a
2 gunshot to me.

3 Q. Okay. What did you hear?

4 A. It was a simple pop and it -- I personally
5 thought -- because, I mean, the neighborhood where it's
6 at, you never know what's gonna happen, so I just
7 thought it might have been a firecracker or something of
8 that nature.

9 Q. Okay. Do you have any experience with guns?

10 A. I do.

11 Q. And so you couldn't tell the difference
12 between the gun and a firecracker?

13 A. It wasn't a bigger rifle, that's for sure. It
14 was something smaller.

15 Q. Smaller than a big rifle?

16 A. Yes. Bigger rifles is what I'm familiar with.

17 Q. Okay. In terms of the Scrubbing Bubbles that
18 you gave, did you ever change the amount --

19 A. Yes.

20 Q. -- that you were providing or permitting them
21 to have?

22 A. Yes, I did. About, um -- I would say towards
23 the later part of February there was a request for it so
24 I had delivered a three-pack. Towards the beginning of
25 March there was another request for it so I had

1 delivered another three-pack. Um, about a week and a
2 half previously to the 24th of March there was another
3 request for it. However, I made it just a single can as
4 opposed to a full three-pack.

5 Q. Okay. Why did you do that?

6 A. Because we weren't going -- we weren't
7 utilizing that much within our house.

8 MS. PAYNE: Okay. Thank you very much. No
9 further questions.

10 THE COURT: Mr. Verharen?

11 MR. VERHAREN: I don't think I have any
12 questions.

13 THE COURT: All right. Ms. Dye, you may step
14 down. May she be excused at this time?

15 MS. PAYNE: Yes, Your Honor.

16 THE COURT: Any objection?

17 MR. VERHAREN: No objection.

18 THE COURT: All right. You are excused,
19 Ms. Dye. Thank you. Any other witnesses to call at
20 this point?

21 MS. PAYNE: No, sir.

22 THE COURT: Do you rest your case?

23 MR. ADAMS: Yes, Judge. Defense rests.

24 THE COURT: Okay. Any rebuttal, any other
25 evidence from the State?

1 MR. VERHAREN: No, Judge.

2 THE COURT: All right. Argument?

3 MR. VERHAREN: In regards to the necessary
4 elements that I'm required to prove on a probable cause
5 level for the Court, I think obviously the Court here
6 has sufficient evidence that there was a killing. I
7 think the Court has sufficient evidence that the person
8 that killed Jonathan Samuel and Eldon Samuel, II was
9 Eldon Samuel, III.

10 Perhaps the remaining issue for the Court or
11 the issue the Court is most interested in is that of
12 premeditation, and in that regard, I think you can find
13 premeditation in two sources: The audio recording or
14 the transcript as well as the physical evidence.

15 And in terms of the audio recording with the
16 interview of the defendant in looking at premeditation
17 in terms of his father, I had basically summarized a
18 couple of places that are located within the transcript.
19 I'm not gonna quote them verbatim, but what I would like
20 to do is essentially summarize some of these things and
21 the pages that I found them on the transcript for the
22 Court that I believe are evidence of premeditation.

23 On Page 166 there were words to the effect
24 from Mr. Samuel that he knew he had to do it tonight
25 because he could not wait anymore. On the next page,

1 167, there were words to the effect that he thought
2 about it every time he beat him. He imagined killing
3 him and ending it all. On Page 140 there were
4 statements from Mr. Samuel to the effect that he was
5 scared that his dad was gonna kill him from pushing him,
6 so he got the gun, took a clip out of the gun, took a
7 bullet out of the gun and put it back, in which I think
8 again goes to premeditation. On Page 141, a page after
9 that, words to the effect that he got the gun, he
10 unloaded it. He put it back in the gun and he racked a
11 round and put on the safety. Those things all talk
12 about acts that happened before he shot his father.

13 On Page 14 in the initial part of the
14 interview he told detectives that he told his father to
15 stop. His dad pushed him a second time. He told him to
16 stop again, and then he shot him in the belly.
17 Obviously there's a sequence of time and a sequence of
18 actions here that I think you can draw the inference
19 that there was premeditation from.

20 After he shot his father in the stomach,
21 Mr. Samuel on Page 144 made reference to his father
22 making it to his brother's room and then sitting up on
23 his butt against his brother's desk, and that from there
24 it took two more shots. On Page 145 Mr. Samuel said
25 words to the effect that that did not do the job because

1 he didn't hit the brain, so he took a higher shot to hit
2 the brain, and on the next page, 146, Mr. Samuel made
3 the statement or words to the effect that when he walked
4 to his brother's room after his father had gone there,
5 he did so knowing he had to kill his dad. That was his
6 only option.

7 THE COURT: What was that last page number
8 again you referred to?

9 MR. VERHAREN: One forty-six.

10 THE COURT: One forty-six.

11 MR. VERHAREN: And then on the next page, 147,
12 that he shot him in the head with the intention of
13 killing him. All those things I think are evidence of
14 premeditation that are found within the transcript or
15 the recording, whichever you prefer.

16 Those are all corroborated by the evidence
17 that the Court took in over the last couple of days. By
18 that I'm referring to the photographs that show blood in
19 the south bedroom, a trail of blood into the northwest
20 bedroom, the location of the two bodies, speaking of his
21 father leaning against a desk with two bullet holes in
22 his face and one in his head and another one in his
23 belly. All of those things obviously corroborate what
24 Mr. Samuel told the detectives.

25 They also -- the physical evidence by itself I

1 think is evidence of premeditation because it's a
2 continuous course of action. It's not simply one action
3 and that's it. It's a number of actions put together.
4 It's taking a gun. It's making sure it's loaded. It's
5 making sure there's one in the chamber. It's shooting
6 his father for pushing him. It's following his father
7 when his father crawls from the bedroom where Mr. Samuel
8 shot him until -- into his other son's bedroom, and then
9 shooting him two more times in the face and one more
10 time in the head. All of those things speak towards
11 premeditation, and I think on a probable cause level
12 that's met as far as Eldon Samuel, II, goes.

13 In regards to premeditation for Jonathan
14 Samuel, again looking at the interview, and I'm not
15 pretending that I'm quoting these completely and
16 accurately, I'm summarizing here, on Page 131 Mr. Samuel
17 told the detectives that he had been thinking about
18 hurting his brother for a long time, that he just didn't
19 want him here anymore. On Page 147 he said words to the
20 effect that he killed his brother because his dad cared
21 for John, his brother, more than anybody. On Page 151
22 and continuing into 152 he said words to the effect that
23 he hates his brother enough to kill him. On 152 he said
24 words to the effect that he did it tonight based on
25 that, to which I just referred, plus John his brother

1 was the reason his mom left and his dad was taking
2 medication, and he blamed John for the family not being
3 together. On Page 107 he indicated that he shot his
4 brother with a shotgun first and then used the machete.
5 He told detectives that he had to reload the shotgun a
6 couple of times. That's found on Page 109 and running
7 into Page 110, and he went into more detail on Page 123
8 about that and said words to the effect that the shotgun
9 was in a corner, he had to put shells in it, and then
10 shot his brother who was under the bed and went back for
11 more shells, loaded it up and went back and shot his
12 brother again; that he, on Page 110, used the shotgun to
13 shoot his brother four times; that after he used the
14 shotgun, on Page 123, he said words to the effect that
15 he then used the machete about 30 times all over his
16 brother's body because he hated his brother for years;
17 that when he used the machete, this is on 116, he used
18 both hands, one hand over the other as hard as he could.
19 He told the detectives, on 162, words to the effect
20 that -- that he was stabbing his brother with a knife as
21 well and stabbed him fifteen to fourteen times. On 174
22 he said to the detectives words to the effect that his
23 brother was alive after the shotgun part of this
24 incident and after the knife part, but he was quieter
25 after the machete, and then on Page 146 he told

1 detectives that he had to go to a room to get the
2 machete and get the knife from the top of the
3 refrigerator, and that this was after the shotgun, and I
4 think from that evidence you can certainly draw
5 premeditation.

6 It's corroborated to the extent that's
7 necessary by the physical evidence at the scene. Again,
8 I'm speaking to the location of the bodies, the blood,
9 the weapons that were found, the machete, the knife, the
10 .45, the shotgun, those types of things. That evidence
11 itself also is proof of premeditation. The, uh -- the
12 shotgun, having to get the shotgun and reloading it is
13 obviously a sequence of events. Using a machete
14 multiple times is a sequence of events. The knife,
15 those types of things, they're all actions that occur
16 one after the other. They're not one single action in
17 an instant. It's many different actions over a course
18 of time that is evidence of premeditation, so based on
19 the evidence that you have, Judge, I think you have a
20 sufficient basis to bind him over. Thank you.

21 THE COURT: Thank you. Who will be closing
22 for Mr. Samuel? Mr. Adams, go ahead.

23 MR. ADAMS: Thank you, Judge. Let's talk
24 about the interrogation. Five point one, as you know,
25 says that if it's clearly suppressible, you shouldn't

1 consider it. This is a clearly suppressible
2 interrogation. You saw the size of the policeman who
3 first took him in custody compared to the size of Eldon,
4 and he admitted he commanded him -- when he moved to try
5 to adjust himself so that the officer could help him
6 with his cuffs, he told him, "Did I tell you to move?
7 You don't move until I tell you to." At that time we
8 know he was surrounded by several police officers. You
9 know what they look like. It was clear that they were
10 police. They were armed. You had the one witness
11 describe it looked like something out of T.V. He was
12 clearly in custody at that point. He's clearly being
13 commanded what to do, when to do it, where to do it.

14 If you've watched the video -- I don't know
15 whether the video started with him in the back of the
16 patrol car, but he's -- you know, he's clearly in
17 custody. They strip search him. They don't want to
18 say -- when you take off a fourteen-year-old boy's
19 clothes and you get him naked because you're looking at
20 him to photograph him to strip search, that's a strip
21 search. If that's not a strip search, I don't know what
22 it is in thirty-five years of criminal defense work.
23 They strip searched him in a little room. He said it's
24 about the size of the jury box. You've seen the video.
25 It doesn't look anywhere near that size to me, but I

1 wasn't there. Well, not in the interrogation room
2 because I was there outside.

3 He's surrounded again by armed police. He's
4 in the police station. He's a little boy. They tell
5 him what to do, when to do it and how to do it, and they
6 make it clear to him. "You do what I tell you to do, do
7 you understand?" You heard the sergeant tell you that
8 that's what they commanded him to do. This is for some
9 substantial amount of time before they started
10 Mirandizing him. I mean, they had him under their
11 control just acquiescing to authority for a substantial
12 amount of time, up to about an hour before they bothered
13 to Mirandize him. They have him for five hours. The
14 Miranda lasts -- and you watched it, he thought it
15 lasted about five minutes.

16 THE COURT: I haven't watched the video yet.

17 MR. ADAMS: Okay.

18 THE COURT: I will though.

19 MR. ADAMS: Or read the transcript then.

20 THE COURT: I have not read the transcript.

21 MR. ADAMS: Well, good because you shouldn't
22 because they shouldn't be in evidence. You can't
23 consider those, and I'm telling you why. That's my
24 point of this. He admits it's five minutes at the most
25 out of a five-hour interrogation. They've got this boy

1 that they Mirandized, a fourteen-year-old boy.

2 You're familiar with the law. You're familiar
3 with Title 20 which was just amended this year after a
4 five-year study by a group appointed by the Supreme
5 Court and the Governor to revise these things because
6 one of the concerns that we had as a bar association, as
7 a Supreme Court, as a governor, was the treatment of
8 youths. That's why we amended Title 20, to give them
9 the same rights as adults when they're in custody, to
10 make it clear to law enforcement when you take somebody
11 fourteen years of age in custody, they're entitled to
12 the same rights an adult would. If an adult in that
13 situation would be entitled and would want an attorney,
14 you've got to give the child that, and if there's no
15 parent around, you can call the public defender.

16 Now, I got a call that they had a
17 fourteen-year-old boy out there and they were gonna
18 interrogate him for the killing of his brother and his
19 dad, and I went out there with a copy of Title 20 and a
20 copy of Title 18 about these things, and I gave them to
21 the sergeant. He says he gave them to the lieutenant,
22 and what does the lieutenant do? He threatens me.
23 "You're impeding my investigation by being here."
24 They've got two prosecutors out there they can talk to.
25 They've got a judge out there, but they ignore this.

1 You know, they can't just go along --

2 THE COURT: Which code sections did you bring
3 to their attention? You say Title 20. What is the
4 subsection?

5 MR. ADAMS: I don't have it off the top of my
6 head. I can certainly get it to you unless somebody's
7 got a Title 20 here, we can look it up. It's the
8 section that applies to when juveniles are entitled to
9 attorneys. It was amended this year --

10 THE COURT: Here you go.

11 MR. ADAMS: -- to comport with -- to comport
12 with the adult section which is I think 19-853. Do you
13 want to find that for me?

14 THE COURT: Yeah. Why don't you have
15 Ms. Payne look for that and you can continue? Go ahead.

16 MR. ADAMS: So the point I'm getting to is
17 they don't do anything to respect his Constitutional
18 rights. They do everything to get him to waive them.
19 In fact, they tell him, "I have a right to question
20 you." They don't have a right to do that. I mean
21 that's how misleading they were on letting this
22 fourteen-year-old boy, who doesn't have any family
23 around, know what his Constitutional rights are. "I
24 have a right to talk to you." It's kind of like when we
25 were in school and I'd bring one of the kids in and I

1 say, oh, maybe I'd better tell them about this so I can
2 talk to the parents. That's not Constitutional law.
3 That's not the underpinnings of Miranda is I'm gonna
4 tell a kid this in school as an SRO so I can talk to his
5 parents.

6 What is the other thing he explains to him his
7 rights? Well, you know, if my boss wanted to talk to
8 me, I'd kind of have these rights, and I wouldn't do it,
9 but I'd have these rights. That's not true. None of
10 that is true. That's totally misleading. Those are not
11 fundamental Constitutional rights under the Fifth, Sixth
12 and Fourteenth Amendments as enunciated by our Supreme
13 Court under Miranda and its progeny. That's rubbish.
14 You cannot call this a knowing, intelligent and
15 voluntary waiver by this boy.

16 He asked them after they get him to
17 acknowledge that he understands them, that takes about
18 thirty seconds, they say, "Well, having these rights in
19 mind, would you like to talk to me now? You know, I
20 have the right to talk to you, you've got a right to
21 talk to me, so just sign here," and his response is,
22 "Well, where will I stay? Where are you gonna take me?"
23 He thinks he's still gonna go home. He thinks they're
24 gonna call his mom in Modesto to come and get him, and
25 they say, "Well, you know, we'll talk about that in a

1 little bit, maybe a half hour, and then we'll get you
2 out of here." That's how confused he is about his
3 rights. How long? Where am I gonna go? Can I call my
4 mom? By the way, can I have some underwear and some
5 socks? I'm cold.

6 You'll notice in there at one point he says,
7 "I've got to go to the bathroom," and the policeman
8 says, "Well, so do I and I'm gonna go first and you
9 wait," and they leave him in there alone for twenty
10 minutes. That's coercion, Judge. That's coercion.
11 They take his clothes away from him. They won't let him
12 go to the bathroom. They won't give him socks. They
13 won't give him underwear. They won't give him shoes.
14 They tell him, "I have a right to talk to you and it
15 will just take a little bit. It's kind of like when I
16 talk to my sergeant."

17 Under 5.1 and the Constitutional law that
18 you're sworn to uphold, don't consider that video, don't
19 consider the transcript. They're gonna be suppressed.
20 They're clearly suppressible, and I ask that you do
21 that. Without those, there's no evidence of
22 premeditation. There's no evidence of murder. There's
23 no even evidence of manslaughter. There's just the
24 evidence that Eldon's dad and brother were found dead in
25 his house. There's certainly no evidence of first

1 degree murder. Mr. Verharen's argument is totally based
2 on the results of this interrogation which, again, are
3 not admissible in law. I guess we're looking at --

4 MS. PAYNE: 508 I think is what you -- 509.

5 MR. ADAMS: No. The section where he's
6 entitled to have an attorney when he's in custody the
7 same as an adult. Those are the waiver statutes. I
8 might have to, when I'm done, find it, Judge --

9 THE COURT: Sure.

10 MR. ADAMS: -- but it's in there. I was on
11 the committee so I know it's in there. Do you have any
12 questions for me on the Miranda issue, Judge, you want
13 me to address or answer?

14 THE COURT: Have you looked at **JDD v. North**
15 **Carolina** --

16 MR. ADAMS: Yes, sir.

17 THE COURT: -- a Supreme Court decision in
18 2011? Any comments on that?

19 MR. ADAMS: I do, and I think they say you
20 gotta look at the totality of the circumstances of the
21 child, and we look at a later case that just came out of
22 the Ninth Circuit probably two weeks ago, and, uh, the
23 person that was supposed to bring that to me is not here
24 so I don't have that cite for you, but they reiterated
25 you've got to look at the totality of the circumstances,

1 and you've got to look at it -- not only the totality
2 from an objective view, but you've got to look at the
3 totality from the subjective view of the person in
4 custody to see how they would react, how a reasonable
5 person in that position would react, and I think when we
6 look at the **North Carolina** case you cited, the Supreme
7 Court is very concerned that children are different.
8 Children are different than adults, and their decision
9 goes to the point that courts have to protect children
10 different than they protect adults.

11 Because he knows how to use a power saw
12 doesn't mean he understands his Constitutional rights.
13 They go even so far as to say, "And by the way, if you
14 think you know because you've seen it on T.V." -- which
15 is one of the arguments they always make for adults,
16 you've seen a thousand movies, you're 30 years old,
17 clearly you understand Miranda rights -- one of the
18 things they tell the boy is, by the way, that's not what
19 we're doing here, so anything you saw on T.V., that's
20 not the kind of rights we're talking about, and I think
21 in the **North Carolina** case the Supreme Court Justices
22 would say that's exactly what we're talking about a
23 judge shouldn't consider.

24 With adults you consider that they have this
25 education, which includes a social education. They've

1 seen enough T.V., they've seen enough movies that they
2 have a better understanding of Miranda because they see
3 it so much. With a fourteen-year-old boy you have to
4 look at his social life experience, his response to
5 authority different than you do an adult, and one of
6 those social things you have to look at is when the
7 police tell him it's not like you see on T.V., it's not
8 like you see in the movies. These aren't those rights.
9 Again, misleading. I don't know if that addressed your
10 question.

11 THE COURT: It did.

12 MR. ADAMS: All right. That case is about
13 judges protecting kids in a different way than you
14 protect adults. Take a look at -- it's your book --
15 20-514. A juvenile who is being detained by a law
16 enforcement officer or who is under formal charge of
17 having committed, or who's been adjudicated for
18 commission of, an act, omission or status that brings
19 him under the purview of the act, is entitled: A, to be
20 represented by an attorney to the same extent as an
21 adult having his own counsel is so entitled pursuant to
22 section 19-852. That's the adult section.

23 THE COURT: 19-852. Okay.

24 MR. ADAMS: Right. Title 20 was amended to
25 bring those rights for juveniles into those adult rights

1 under 19-852. B, To be provided with the necessary
2 services and facilities of representation and other
3 preparation; subpart two, A juvenile who is entitled to
4 be represented by an attorney under subsection one, one
5 that I just read to you, is entitled: A, to be
6 counseled and defended at all stages of the matter
7 beginning with the earliest time and including
8 revocation of probation or recommitment at all stages of
9 the matter beginning with the earliest time.

10 I'll bring this, at the courtesy of the
11 bailiff, give that back to the judge.

12 THE COURT: All right.

13 MR. ADAMS: But that's the section I brought
14 out, Judge.

15 THE COURT: All right. I will -- okay. I
16 will look at that in that light. Thank you. Anything
17 else, Mr. Adams?

18 MR. ADAMS: I didn't read the whole thing, but
19 I do know it's either in that section or close because,
20 again, I was on this committee that amended it, talks
21 about persons under the age of fourteen as a matter of
22 law in Idaho can no longer waive their Miranda rights,
23 and you ought to consider that, that if Eldon had been
24 just a few months younger, as a matter of law in Idaho
25 he cannot waive his Miranda rights.

1 The statute goes on to talk about the police,
2 they should contact a parent or an attorney, so we're
3 talking just a matter of a few months as a matter of law
4 he's unable to waive his Miranda rights, so you ought to
5 consider this when you consider under 5.1 whether this
6 is clearly suppressible. I believe it is.

7 Did you want me to address anything else on
8 that Miranda issue, Judge?

9 THE COURT: I don't think so, no.

10 MR. ADAMS: Okay. Let's move on to the
11 premeditation argument. Again, if you don't consider
12 the interrogation, then there is no evidence of
13 premeditation, but I'm going to address it arguendo in
14 case you do decide that you're gonna listen to these
15 tapes, read the interrogation, okay? So I'm not, by
16 presenting you this argument, waiving my right that it's
17 suppressible. I'm just giving it to you arguendo, okay?

18 So let's talk about the premeditation. I
19 think you've seen the transcript that was admitted.
20 It's, what, an inch and a half, two inches tall, five
21 hours long. The State gives you a half a dozen
22 sentences out of that. That's not fair. We have a rule
23 of evidence, 106, that says when one party offers just a
24 snippet out of a page, the other party in all fairness
25 ought to be introducing the rest, so you've got to

1 consider this thing as a whole, and you've got to look
2 at the way the police manipulated him.

3 You heard him testify, yes, I know what
4 elements are. Yes, part of my goal was to get him to
5 admit elements. These are professional policemen.
6 They've been through interrogation training. They know
7 what they're doing. He's a fourteen-year-old boy that's
8 been living in this shelter with the dad who they find
9 passed out on the lawn who's got these cleaning supplies
10 and these pills. These policemen are professional
11 interrogators, so when you look at the half a dozen
12 sentences out of this five-hour interrogation, you gotta
13 consider the whole thing.

14 You've got to look at how they manipulate him
15 into saying what they want to get him to say. They're
16 taking several breaks, leaving him in there alone. I
17 had a reasonable belief that since they had two
18 prosecutors there and they're taking pads in and out of
19 there and coming back and asking questions about
20 elements that they're getting advice or at least they're
21 discussing among themselves we gotta get him to say
22 things that we can call premeditation, and when you
23 watch and listen to this thing, you can see how they
24 manipulate him.

25 He says, "Well, about eight months ago I

1 decided I hated my dad." What fourteen-year-old boy
2 hasn't said, geez, I hate my parents? And so from that
3 they manipulate him into saying, oh, so you've been
4 thinking about your dad, and they just lead him down the
5 garden path. This isn't a voluntary, intelligent
6 statement he's making. You've got to read this as the
7 sober, step-back judge, not an advocate. You've got to
8 look at this stuff objectively and know what they told
9 you they were trying to do based on their experience and
10 training and who they had in there and the circumstances
11 under which they had him.

12 Premeditation is not only having the intent to
13 kill. That's a separate element. Intent to kill is a
14 separate element. Premeditation is weighing the pros
15 and cons of it. I want to kill. Should I or shouldn't
16 I? Here's the pro and cons. That's different than
17 intent to kill. That's different than deliberation.
18 That's a separate element entirely. Almost everything
19 that Art argued to you goes to the element of
20 deliberation, not to premeditation, and I'll quote some
21 Idaho law on what deliberation means.

22 Deliberation as charged by the State is an
23 intent to kill executed in a cool state of blood, not in
24 sudden passion, engendered by lawful or some just cause
25 or provocation. Done with reflection. A dispassionate

1 weighing process consideration of consequences before
2 acting. That's *State v. Dong Sing*, 35 Idaho 616, 1922;
3 *State v. Koho*, 91 Idaho 450, 1967; *Sheahan v. Smith*, all
4 we have is a Westlaw cite, 211 Westlaw 1219681 Idaho,
5 March 28, 2011; *Polk v. Sandoval*, 503 F. 3d, Ninth
6 Circuit case from 2007; *Elliot v. Williams*, Westlaw cite
7 4436648, District of Nevada, September 23rd, 2011,
8 citing *Chambers v. McDaniel*, 549 F. 3d 1191, Ninth
9 Circuit, 2008.

10 They're clearly distinguishing between
11 deliberation, which is alleged as an element in the
12 Complaint, and premeditation which is a second element,
13 so you have to distinguish between the reflective
14 weighing in cool blood this deliberation, yes, I want to
15 kill, and the premeditation that is yes, I want to kill,
16 but should I or shouldn't I? Those are two separate
17 things.

18 The State -- you know, when they argue to
19 juries, jurors aren't lawyers. You are. These are
20 separate elements with separate connotations.
21 Premeditation is the weighing. Should I or shouldn't I?
22 Deliberation is the weighing, should I shouldn't I? The
23 premeditation is what are the pros and cons. Two
24 separate elements.

25 The vast majority of the wounds to John and

1 Eldon's dad are post-mortem. He went on and on and on.
2 That's rage. That's anger. That's not cool -- cool
3 state of blood, not in sudden passion. That's not
4 reflection. That's rage. That's passion. That's not
5 cool blood. That's a kid out of control that would do
6 that much to dead bodies. That's not first degree
7 murder. That's manslaughter.

8 Now, the difference between manslaughter and
9 first degree murder is hot blood versus cold blood. How
10 you could look at this evidence, how you could look at
11 this autopsy and not see hot blood here is beyond me.

12 Cool blood is plotting to kill your neighbor
13 so you can get his truck, is plotting to kill your
14 business partner so you can take over the business.
15 That's cold blood. That's premeditation. That's first
16 degree murder. This is a killing done in passion with
17 hot blood, so again, I don't think you can consider the
18 interrogation results because it's clearly suppressible.
19 They clearly manipulated a fourteen-year-old boy into
20 waiving his rights, rights he didn't understand, and
21 agreed to talk when he didn't understand that he didn't
22 have to acquiesce to authority. It's not a knowing and
23 intelligent and voluntary waiver.

24 If, however, you do consider that, you have to
25 consider the whole thing, not just snippets of it, and

1 the dad.

2 Eldon was afraid for his life, and you've
3 heard evidence that this is how the man acted. He
4 encouraged, he facilitated and he enabled Eldon to be
5 around weapons. They've got games all over the house
6 about killing, about zombies, and he's in there that
7 night. He's got a history of huffing, taking
8 medication. He's got hydrocodone, he's got Dilaudid,
9 and he's got Lorazepam in his system that night. He's
10 already shot once. Eldon's got a right to be afraid.

11 Samuel -- with Jonathan, that's manslaughter,
12 that's rage, and that's what you ought to, if you're
13 gonna consider the interrogation, bind over on, not
14 premeditated first degree murder. Thank you, Judge.

15 THE COURT: Thank you. Mr. Verharen, any
16 response or any specific comments relative to the
17 admissibility of the statements of the defendant?

18 MR. VERHAREN: Thank you, Judge. In regards
19 to the issue of coercion here, I think there's
20 essentially three things that at least come to my mind
21 that the Court should consider thinking about. That
22 would be the evidence you have about Mr. Samuel
23 essentially as a person. You know that he's fourteen
24 years old, that he's an eighth grader, that he did read,
25 that he can write, that he can communicate normally with

1 teachers, people in the community, police officers. You
2 know that he does not appear to have any deficits in
3 terms of his cognitive abilities. He doesn't have any
4 perceived mental illnesses. He doesn't have anything
5 that would lend itself to, besides age, to someone being
6 able to overwhelm him in terms of his ability to make a
7 responsible choice. All of that evidence came in.

8 You know from the evidence as well that he
9 waived Miranda, and that's an important consideration
10 when you're thinking about coercion. The part about the
11 Miranda waivers contained on the transcript in Pages 29
12 to 32, you have a written waiver that's been admitted
13 into evidence, and the basis for that written waiver is
14 in the transcript. I think that's an important
15 consideration for the Court as well.

16 The third thing is the conduct of the
17 officers. The Court can see for itself and make your
18 own determination of whether or not their conduct was
19 coercive, but there was no pointed weapons. There was
20 no yelling. There was no conduct that would lend itself
21 to a belief that they used coercion on Mr. Samuel. They
22 made him comfortable. They got him water. They got him
23 food. They let him go to the bathroom. They did all
24 the things that they would with an adult person which,
25 as Mr. Adams points out with the statute -- statutes

1 that he guided the Court to, that's an important
2 consideration, so I think when you weigh all those
3 factors, the subjective factors surrounding Mr. Samuel
4 and his status as a fourteen-year-old, an eighth grader,
5 the fact that you did have a Miranda waiver in this
6 particular case as well as the conduct of the officers,
7 I do think those statements are gonna be admissible at
8 trial, and I don't think you should suppress them.

9 THE COURT: All right. Thank you, counsel.
10 Question here. Judge Peterson's ruling closing the
11 evidentiary portions of this, that did not include the
12 closing arguments, did it? And it doesn't include the
13 Court's pronouncement of the decision?

14 MR. ADAMS: I can't answer that, Judge.

15 THE COURT: Mr. Verharen?

16 MR. VERHAREN: I think I'd be going out on a
17 limb if I tried to interpret that as well, Judge.

18 THE COURT: Let me just double-check here.

19 MR. ADAMS: I don't think I was present in
20 court when he gave his decision.

21 THE COURT: Well, he filed a written order on
22 April 25th.

23 MS. PAYNE: He was clear, Your Honor -- I
24 don't recall if it's in the order, but I do know that on
25 the record he said that the transcript of the

1 preliminary hearing, the evidentiary portion of the
2 transcript would also be sealed.

3 THE COURT: Right. Page 2 of the order it
4 says, "Defendant's motion to seal is granted in part and
5 denied in part. To the extent defendant's motion seeks
6 to seal the entire record of proceedings, such request
7 is denied. However, the Court grants the request to
8 close the evidentiary portion of the preliminary hearing
9 and seals that portion of the record. The file remains
10 open, though documents previously filed under seal shall
11 remain under seal. Status hearings or other hearings
12 shall remain open. When -- additionally, when the
13 preliminary hearing is eventually held, any proceedings
14 before the taking of evidence as well as the Court's
15 announcement of its decision regarding bind over to
16 District Court shall be open, though the argument of
17 counsel, because it relates to evidence from the sealed
18 portion, shall be closed."

19 Okay. Well, that answers my question there,
20 so the closing arguments would remain closed. The
21 evidentiary portion of the preliminary hearing and any
22 transcript or audio of said hearing shall remain closed
23 until further order of this court or the District Court.

24 All right. So what I need to do is review the
25 evidence that has been admitted, review some additional

1 statutes and case law, and I should be able to do that
2 the rest of this afternoon and better portion of
3 tomorrow morning, and so I have a 1:30 hearing, Nancy,
4 on another matter? Real short hearing.

5 Now, is everybody available to come back here
6 tomorrow at 3:00 for the Court to put a decision on the
7 record?

8 MR. ADAMS: I'm not, Judge, but I believe that
9 some of Eldon's lawyers are.

10 THE COURT: Okay. So Mr. Verharen, you or
11 somebody from your office available?

12 MR. VERHAREN: Yes, Judge.

13 THE COURT: Does that create any problem for
14 the staff, the jail staff at three o'clock tomorrow?

15 UNIDENTIFIED SPEAKER: We can make the
16 arrangements to have Eldon be here, Judge.

17 THE COURT: Okay. All right. I mean it
18 should take maybe half an hour, 45 minutes or something
19 like that so -- now, if there's any change, I'll make
20 sure and let you know; like if I get into it and find
21 that I'm having a difficulty with a particular issue and
22 it's gonna take more research or whatever on my part,
23 I'll let you know, but I'm gonna try to have you back
24 here at three o'clock tomorrow with a decision on the
25 record, and we'll see what happens from there, okay?

1 MR. ADAMS: Thank you, Your Honor.

2 THE COURT: I want to thank counsel for doing
3 a professional job on this matter, it's a tragic
4 situation, and we are adjourned for this afternoon.
5 Thank you.

6 (Matter adjourned)

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