IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2023-CF-183

STATE OF FLORIDA

vs.

BRENDAN DEPA,

Defendant.

APPEAL TRANSCRIPT
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CONTINUED SENTENCING HEARING
BEFORE THE HONORABLE TERENCE R. PERKINS
CIRCUIT COURT JUDGE

TRANSCRIPT OF PROCEEDINGS

(TRANSCRIBED VIA DIGITAL RECORDING)

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DATE TAKEN: AUGUST 6, 2024

TIME: COMMENCED 8:39 A.M.
CONCLUDED 5:53 P.M.

PLACE: KIM C. HAMMOND JUSTICE CENTER
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* *

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August 6, 2024

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P R O C E E D I N G S

THE BAILIFF: All rise.

THE COURT: All right. Good morning. Please be seated.

All right. We have a full courtroom this morning.

All right. Madam clerk, will you call our case, please?

THE CLERK: Brendan Depa, 2023-CF-183.

THE COURT: All right. Let me have counsel make their appearance on the record. We'll start first with the State, please.

MS. CLARK: Melissa Clark on behalf of the State Attorney's Office.

THE COURT: And for Defense?

MR. TEIFKE: Kurt Teifke, Judge.

THE COURT: All right. Good morning.

MR. TEIFKE: And Maria Ford.

THE COURT: All right. Good morning.

MS. FORD: Good morning.

THE COURT: And I see Mr. Depa is here and joined us in court this morning.

Good morning, sir. Mr. --

THE DEFENDANT: Good morning.

THE COURT: Did you have a chance to meet with

your client this morning?

MR. TEIFKE: I did.

THE COURT: Okay.

All right. So when we stopped the phase one, if you will, of the sentencing hearing, I believe that we had concluded the State's expert at that time. So we are still in the State's case, I believe.

Ms. Clark.

MS. CLARK: I don't have any further witnesses at this time other than possible rebuttal.

THE COURT: Okay. All right. Very good.

Mr. Teifke, are you ready to proceed?

MR. TEIFKE: I am, Judge. The first witness is Leanne Depa.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

LEANNE DEPA,

called by the Defense as a witness, was duly sworn and testified as follows:

THE COURT: Mr. Teifke.

MR. TEIFKE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please?

A Leanne Depa.

Q Okay. And you are Brendan's mother?

A I am Brendan's mother.

Q Okay. Where do you live, generally?

A I live in near Tampa.

Q Near Tampa?

A Uh-huh.

Q What is the current household composition?

A Currently, it's my husband and me and my 24-year-old son.

Q Okay. And how long have you lived there, ma'am?

A About 20 years.

Q Twenty years.

What do you do for work?

A I'm an occupational therapist.

Q Okay. What is that?

A It depends on what environment you work in. I originally worked with children with medical disabilities, children --

Q Okay.

A -- that have cerebral palsy, require oxygen,

ventilators, and things like that.

Q How long have you done that?

A Over 30 years.

Q Thirty years. Okay.

Tell me how Brendan came into your life.

A Brendan came into my life through foster care, that we were looking to adopt. We had already adopted once. He was -- he was like five months old when we got him.

Q Okay. What, if anything, at that point did you learn about his biological mother or otherwise his upbringing?

A At that point I knew that Brendan had been in hiding, that somebody -- when he was born, he was supposed to be taken from his birth mother and placed in a foster care. We had had his sister. And they -- they snuck him, and they hid him with the family. I do know during that time that his father had severely beat his mother when he was like two weeks old. So I know he was like in a really unstable environment for the first five months.

He hadn't had his vaccinations, hadn't been do a doctor. Nothing had been done.

Q Are these all the reasons he's even in the foster care system, correct?

A Prior children had been taken before. And so he was supposed to be taken at the hospital and immediately put into foster care.

Q Okay. Do you have any specific information at this time about any mental health disorders, issues, with his biological mother?

A Not at that time.

Q Or --

A I found out later on, but not at that time.

Q Okay. And we now, of course, and we'll talk about it, have several diagnoses for Brendan.

A Uh-huh.

Q But at this time, you're none the wiser, so to speak?

A Oh, no.

Q All right.

A Huh-uh.

Q I want to kind of chronologically go through this for the judge. So as a young child --

A Uh-huh.

Q -- that's from the time you get into the kindergarten-ish --

A Uh-huh.

Q -- what type of kid was he?

A He -- he -- he was -- not that children

aren't needy, but he needed a lot of attention, that he cried a lot and constantly needed to be comforted. When he went to daycare, he struggled in daycare, that if he was there for any longer than, you know, four hours or so, I would get a call to come pick him up, that the noise was really difficult for him there, all the -- the activity of the kids around him was really difficult.

Q Okay. The environment of daycare?

A Yeah, the environment of daycare was -- he -- he struggled majorly with that. I would frequently get calls to come pick him up.

Q All right.

A We had one daycare when he was four that I put him in, that it was recommended, this program called the Tucker Turtle Program that USF had developed, where it was a different type of daycare where they focused in on, you know, social-emotional needs. The teachers all wore bracelets to show the children what they could do if they got upset. There were posters all over the walls. It was a totally different kind of daycare than the average daycare. And he -- he did well there.

Q So there -- there's been --

A I --

Q -- certain interventions from a very early age, it sounds like?

A Uh-huh.

Q What else can you tell us about, like, his temperament and personality, to the extent that a five-year-old has that?

A He just, you know, his emotions were always really big, that if something was funny, it was hysterical, just these big belly laughs. And if something was upsetting, he could just sob and sob and sob. He could easily get overwhelmed and have a meltdown. Frequently it seemed like, and I couldn't grasp what was going on, but frequently it seemed like hunger and having to go to the bathroom. He wouldn't be able to interpret those signals, and he would starting acting out. And then, you know, when you would get ahold of him and -- and grab him, he'd say, I'm hungry, I'm hungry, I'm hungry or I've got to pee, I've got to pee, I've got to pee.

And so he frequently, his -- just things going on inside of his body would cause him to act out.

Q See, these are things that I'm -- it sounds to me, like struck you as atypical --

A Uh-huh.

Q -- and that need to be addressed, right?

A Right.

Q What other sort of interventions, if any, at this point were -- were needed, were sought after?

A Well, I tried using all my skills as an OT, the things that I knew. When I took him to daycare, I would do sensory brushing with him before I dropped him off. And I would do joint compressions. And I would educate the staff.

And then I -- I pulled in other occupational therapists and speech therapists. I tried taking him to a chiropractor. I took him, and we -- we worked with different diets.

Q Okay. And just remind me of what age specifically we're talking about right now.

A It all kind of runs together. You have to forgive me.

Q Sure.

A I mean, this has been a lot of years.

But this, all this was around, you know -- I mean, we were constantly trying. So, you know, probably between the ages of -- of like three and, you know, all the way up. We never stopped.

Q Very early on?

A Yeah.

Q Okay. What diagnoses, if any, were made at

this time?

A At that time, ADHD and mood -- mood disorder. I can't think of the name -- I can't think of the DMDD.

Q Disruptive mood dysregulation?

A Uh-huh, yeah.

Q Okay. And -- and that is that --

A That actually -- that actually was not made until he was almost five, that diagnosis, when I first took him to a psychiatrist.

Q All right. But certainly, ADHD is implicated early here?

A Uh-huh.

Q Anything else?

A No. And, you know, and at that time, too, I -- I didn't know if it was adoption-related stuff, that when I got him, he was sickly. He was, you know, just needed a constant -- a lot of attention. I -- he needed to be held all the time. So I didn't know what was adoption-related, what was, you know, anything else. And -- and I --

Q Sure.

A And being an OT, I was not one to want to put labels. I wanted to work on what was the issue and how to help him get what he needs versus labels. Because at that time labels were not a good thing to have.

Q Was medication a part of the mix at this age?
A Not until -- we tried at four, almost five, but he couldn't swallow pills. And we had a hard time finding any medication that he could take. That they had, at that time, had said, you know, maybe Abilify, that that could be sprinkled. And then I read all the side effects on Abilify, and I want him to go on it because the -- the side effects were too scary.
Q The ADHD and then bleeding into I guess the DMDD, the subsequent diagnosis, what -- besides what you've described, what did this look like to the untrained eye?
A I mean, it just could -- he could go from zero to a hundred in a second, that, you know, he could just be totally fine. And then you wouldn't -- you wouldn't know why, and all of a sudden he would react. You know, usually like with another child, you know.
Q Okay. It -- it -- it was usually a factor of some sort of engagement with --
A Yeah.
Q -- persons or environments?
A Yeah.
Q All right.
A I do like, you know, noise was always a big issue for him. I remember that there was a little girl

that was yelling and screaming and -- and on the ground, you know, crying at daycare. And they -- he went over and told her, he was tell -- putting his hands over his ears and telling her, be quiet, be quiet, be quiet. And then when she wouldn't quit screaming, he kicked her.

Q Okay. You alluded to daycare and how that didn't seem to have any sort of, you know, enduring success.

A Uh-huh.

Q At some point he had to tap out basically --

A Right.

Q -- right?

And can the same be said for early school years? Did you try him in school?

A I tried him. So like, after he had had a successful -- after he had the successful period at the one daycare that, like I said, was geared -- that was structured for his needs, he was going to go to a charter school. And I had an evaluation done by a school psychologist. And I brought it to the charter school asking, you know, them to read it and to see what we saw so they knew how to work with him.

And I got a call the first day to come pick him up. And I got called in like three times that week

to come get him. And I -- so I went and I got him and I brought him home and I put him into the public school and tried there. And he didn't last until even October. I went to the school volunteering to read on a particular day. And I was in the school. And I could see all the kids were like shoving each other and handsy and everything like that. And I know how he just, he doesn't handle that.

Q Okay.

A And -- and on the way back to class, the kids were shoving and stuff. And he got back to class, and he started running around knocking over all the chairs and the tables. And -- and they called me to classroom where I helped to corral him. And I sat down on the floor and just held him.

Q Okay. So when you -- when you say, this didn't last until October, are you talking about it began in September, and then it gets into October --

A Yeah.

Q -- before it --

A Like, he only --

Q -- fails?

A -- lasted --

Q So --

A -- like a couple months. We -- we tried all

kinds of things. He failed -- they had -- like, the school psychologist would come and pick him up and take him around the school with her and, you know, walk him around to try to help him, you know, regulate. I went in and I, you know, had like bands tied around the bottom of his -- of his chair so he could push against him and do stuff to try to help calm him down, but I could just see that he never did well with children that are pushing each other and that are handsy and that are -- you know, he just didn't do well in that environment at all. And I knew I had to pull him out.

Q And then the noise, as well?

A And the noise. Yeah, the noise was major.

Q So it sounds like you attempted some lay-interventions, and --

A Uh-huh.

Q -- there was also some professional attempted --

A Uh-huh.

Q -- interventions?

A Uh-huh.

Q Both to no success?

A Right.

Q All right. So you -- at that point you take him out of school?

A I take him out of school.

Q Is there an effort at homeschooling?

A Yeah. So we -- we started with -- I worked very part time. I only worked like 15 hours a week. And I had a college student who was helping me. And so when I was working, she would be with him. And he did really well during that time when it was him and me or -- or him and the babysitter. A lot of, like, learning through listening to DVDs and --

Q Right.

A -- CDs in the car. And he -- he loved to work with me. He was great.

Q Is -- is the narrow engagement with others what you think most mattered there, or was it something else? Was it the comfort of the, you know, being home? What was it that, your estimation, that worked?

A I think it was decreasing the noise level and -- and taking him away from the environment with the, just the busyness. You know, busyness on the walls. Busyness with the kids. Busyness with the bushing. And, you know, at that age kids are very hands-on with each other.

Q Had you seen enough at this point from the experiment of going to public school to handicap it as something that likely would never work?

A Yeah, I didn't ever want to put him back in public school.

Q All right. All right. So he's -- it sounds like there's some success --

A Uh-huh.

Q -- with homeschooling.

A Uh-huh.

Q How else is he doing? How, otherwise, was he doing at home during this time?

A He's still like, you know, like he still would have his moments to where I would have to intervene, you know, which mostly him and his siblings, but I mean, you know, and -- you know, I tried a lot of different things with him. I tried all kinds of like reward systems. And, you know, I had him involved in co-op classes. I took him around other children.

In that environment where you had a bunch of moms all there that were with their kids and controlling their kids, he did pretty good, but it was smaller. I typically put him with younger children or with teens. So he was never really age -- with his age group a whole lot.

Q Okay.

A He was more with either older or younger people.

And -- and then I picked classes that he was interested in versus something that would be difficult for him to be with the others.

Q Sure. And then academically, how -- how did he do?

A Academically, he -- so he definitely has his strengths. That he was reading before he turned four. He could write in complete sentences. He became fascinated with the dictionary. And his vocabulary quickly surpassed mine. He -- he -- he was constantly reading. And he -- and I -- I -- I could get him to sit down and -- and work for me, and he did great.

Q Now, during these years, they -- let's call them the early homeschool years, are there still medical interventions, the medication, counseling, is there any of that in play at this point?

A Not so much counseling, but, you know, taking him to -- you know, again, continuing with occupational therapy. I became certified in therapeutic listening. I would use therapeutic listening device with him. Continuing taking him to somebody who counseled us on the nutrition and what to put into his diet and not put into his diet. With that -- with the chiropractor. You know, we kept trying all kinds of things --

Q All right.

A -- during that time.

Q Were there any additional diagnoses beyond ADHD and the DMDD at that point during these years?

A I think anxiety and OCD also got added in during that time.

Q Okay. And it -- it might seem obvious, but like how did -- what did that look like to the untrained eye?

A One of the things that he was doing all the time is he was constantly picking his skin. He would pick his skin to the point to where he would bleed. And he just was always really anxious. Like, he had to know what we were doing before we did it, you know. And -- and just, you know, you could -- you could never do anything by surprise. It always -- he always had to know things ahead of time what was going to happen.

He had a lot of fears. He was afraid of flies. And the sound of flies would drive him insane.

Q Uh-huh.

A He was afraid of stickers on bananas. He was afraid of if there was a sticker on the floor. Or if there was like a -- my daughter had these little black rubber bands. If they were on the floor, he was afraid of them. So he had a lot of fears.

Q Okay. And so what interventions on offer

there besides not buying bananas? I mean, like what -- how do you deal with that?

A I just, I thought a lot out of the box. And I would do stuff like try to find something that was a reenforcer for him to earn by -- I would put stickers on the floor or I would put rubber bands on the floor and try to get him like, you know, you can earn this if you can pick up this many stickers or if you can pick up this many rubber bands, you know, but kind of along those lines.

Q It -- it sounds like a very specific knowledge of Brendan is necessary to kind of modulate all this, right?

A Uh-huh.

Q Is that fair?

A Yeah, absolutely.

Q What about autism?

A Uh-huh.

Q When was he diagnosed?

A Well, they -- you know, some of the medications they wanted to put him on for autism -- from the age of four was for autism. And the ones that I didn't want -- and I remember at that time the psychiatrist saying something about autism. And I didn't want her to put that in the notes for the

insurance company and everything, that at that time I still felt like autism was such a harmful diagnosis for, you know, following along with you throughout life, that -- and the fact that we were homeschooling him, I didn't really want him to have that diagnosis.

Q Okay. So whether or not you wanted it reduced to paper --

A Uh-huh.

Q -- you observed those --

A Uh-huh.

Q -- characteristics that are --

A Yeah.

Q -- consistent --

A The --

Q -- with that?

A The sensory issues. The being inflexible in his thought process, everything black-and-white. Yeah.

Q So as we're progressing here --

THE COURT: Mr. Teifke --

MR. TEIFKE: Yeah.

THE COURT: -- let me interrupt you for just a second.

MR. TEIFKE: Sure.

THE COURT: I apologize.

So on the Zoom connection, we have a

Dr. Schlepper.

MR. TEIFKE: What's the last name, Judge?

THE COURT: Schlepper. If you look third from the bottom.

MR. TEIFKE: Okay.

THE COURT: Is that a witness? Schlepper.

MR. TEIFKE: Schlepper, no.

I have Dr. Julie Harper as a witness who will be on Zoom, but no --

THE COURT: Okay.

MR. TEIFKE: -- other expert.

THE COURT: All right. I just wanted to make sure that wasn't an expert witness you were expecting to testify.

It's not for you, as well?

MS. CLARK: No, not my witness.

THE COURT: Okay.

MR. TEIFKE: Huh-uh.

THE COURT: Okay. All right. Very good thank you.

MR. TEIFKE: All right. Sure.

THE WITNESS: If I can say something? That there's been a bunch of behavioral analysts that have been following this. And so a lot of them have their doctorate degrees. It's probably one of them.

THE COURT: Okay. Sure. I mean, it's a -- it's an open proceeding. I just wanted to make sure that it wasn't going to -- we weren't accidentally admitting people that were going to be --

MR. TEIFKE: Uh-huh.

THE COURT: -- testifying in the case without the attorneys knowing.

MR. TEIFKE: Sure. Thank you, Judge.

THE COURT: Uh-huh.

BY MR. TEIFKE:

Q So how is home life, otherwise, during these -- these years, the homeschooling years?

A We -- you know, so I started off with him, just him.

Q Uh-huh.

A And then I was taken into a lot of co-op programs, and we got involved with other homeschool families where we were wanting to do stuff like go camping and -- and, you know, do things to bring the children and families together. And so I was struggling with getting my other kids in time from school and everything. And so I pulled them to -- to pull them out and started homeschooling them, as well.

And --

Q Okay.

A And that became more of a challenge, trying to homeschool three children and get three children to various co-ops and things like that.

Q Sure.

A But again, everybody -- everybody just kind of knew Brendan and kind of watched out for him. You know, you had the mothers that watched out for him. You know, multiple homeschool mothers who knew him and watched out for him, ones we even went to church with and that would sit and hold his hand in church and stroke his hand in church, get him a blanket and cover him up in church. So we had a very tight homeschool community that we were involved with that -- that really helped to support us, as a family.

Q Okay. Now at this point, I suppose here into 2016, '17, '18-ish, are there any medications that are being attempted with Brendan?

A We had tried like various like ADHD-type meds as he got to where he could swallow, but he had some horrible side effects from them. There was a particular medication where he felt like he was being swarmed by flies, which was one of his biggest fears. And he would have to wear a towel or a hoodie over his head and hold it on real tight. The doctor, instead of taking him off the medication, prescribed us to giving

50 milligrams of Benadryl along with it.

Q Okay.

A So we eventually moved away from meds because we could just see the meds were -- at that time what was available was, it was causing so many side effects like that.

Q So no single medication, in and of itself, or any combination of medications --

A At that time, but we were still real limited because of his age, you know, what could be given and also limited. And, you know, just that when he would try something, he would just have a severe reactions to it.

Q And what sort of doctors, or professionals, are in his life at this point? Is there a primary care? Is there other --

A He had a psychiatrist. He had primary care. He had a psychiatrist at that point.

Q Is there -- was he ever prescribed, by the psychiatrist, any sort of medication, antipsychotic medication, anything like that?

A Yeah. So in 2017, my family went through a major crisis. I had avoided, like, all of the -- I had avoided all of the -- the scarier medications that had been recommended until that happened. That my -- my

mother, I could feel, was dying. I didn't know what was wrong with her. I was trying to figure it out. After months of going back and forth, figuring out she had pancreatic cancer.

So I was dividing my week between my parents' home, four hours away, and my home. Trying to still homeschool. Trying to still help my mom, save my mom. And so she had to have a couple of hospital stays. At that same time -- at the same time, my -- my daughter, she had a mass in her brain, and she had to have emergency surgery to have it removed.

Q And this is 2018, '17, '18 --

A Yeah, '17 --

Q -- or something?

A -- '18, it was all just kind of back to back. And after her surgery, she was -- she was more impulsive. And so I agreed to put him on the medications that I had avoided.

Q Okay. A lot of challenges on the home front.

A Uh-huh.

Q And you're -- you're -- it sounds like you're trying to manage the best you can. And so part of that mix is attempting some medications with --

A Uh-huh.

Q -- Brendan?

A Uh-huh.

Q Now, was that to any success or no?

A No. So with these medications, like you can't just like stop anything cold turkey. Everything has to be weaned on and weaned off.

Q Sure.

A And I saw -- you know, when we were going through this and I was calling for Baker Acts because the medications weren't working, I went back and I looked, and over that time period, he was on 17 different cocktails of medications because of all the professionals involved.

Q Wow.

A That, you know, each time he went into a Baker Act, I asked the psychiatrist, please talk to his psychiatrist out in the community who's treating him, find out what they've used, what they want to try next. And they would never talk to them. I mean, that's just standard, they don't talk to them. And so they would put him on a medication. And I would get him. And sometimes just to turn around and go right back in because it was the wrong medication.

And but it was constant, the in and out that year with all these doctors doing opposite of each other --

Q Right.
A -- and adding on to each other.
Q And what did -- if we're saying medications are not working, what does not working look like?
A What it looks like is just, you know, being so overemotional, reacting really fast. You know, can quickly go from being happy to being upset. Just, you know, his mood was not stable.
Q Was there --
A And --
Q -- also -- and I'm sorry.
A Uh-huh.
Q Were there also additional diagnoses at the time of oppositional defiant disorder --
A Uh-huh.
Q -- intermittent explosive disorder, et cetera?
A It would depend on, you know, which ever time you go into a place to stay, that doctor would go on another (indiscernible).
Q Okay. But those were (indiscernible) at the time --
A Yeah.
Q -- was well?
A (Indiscernible).

Q And it sounds like you're describing a behavioral reflection of these disorders, right?
A Yeah.
Q Okay.
A Yeah.
Q Is aggression any part of that?
A Absolutely aggression is a part of it.
Q Okay. Do you think you've learned a thing or two about these disorders in your --
A Yeah. And I think I've -- I've -- I've learned what I was doing wrong and what I can do differently now.
Q Okay.
A That at that time I was not able to regulate my own emotions, that I was dealing with so much between my mother and my daughter --
Q Right.
A -- I was overwhelmed, and I couldn't -- when he would ratchet up and -- and he would escalate, I -- my emotions would escalate. I could feel my heart pounding. I could feel, you know, struggling with, you know, how to get the situation in hand, especially seeing as my daughter was recovering and her brain was so fragile, that I was just -- I was trying to manage the best I can. And I was failing.

Q And if we're talking narrowly about aggression or anger --
A Uh-huh.
Q -- or maybe just overly emotional --
A Uh-huh.
Q -- do you fear that that can be mistaken to someone that doesn't -- by someone who doesn't know him as just abhorrent behavior?
A Oh, yeah. Because I mean, like, you know, somebody with autism looks just like you and me. You know, they -- we -- we -- they -- you can't look at somebody and say that person doesn't look like they have autism. And so and it was another thing like when it would -- when it would happen out in public that, you know, he has two white parents and we have a black child, and the fear of when we were out in public that, you know, people would think that we're kidnapping him --
Q Uh-huh.
A -- or that, you know --
Q Right.
A -- something, you know -- and -- and yeah, I always had fears.
Q And what have you done specifically to educate yourself about autism?

A Well, I mean, throughout the years I continued. You know, and I -- like I said, I took classes in therapeutic listening and early on and did these kind of things. And those things worked for him while he would let me use them with him. I since then -- you know, my specialty is not autism as an OT, but I have access to all the courses that therapists and even psychologists have.

Q Okay.

A And so I've been taking courses. I took a master class in autism. I've taken training in helping your clients with emotional regulation -- emotional regulation. I've been reading all kinds of books on the polyvagal theory and internal family systems. So I've been spending my time educating myself further.

Q Does that education, what you've learned about autism, help inform how you view behaviors?

A Oh, absolutely. That -- what is going on below the surface, what need is not being met, and what is he trying to communicate.

Q All right. You had mentioned Baker Acts.

A Uh-huh.

Q Now, when was that first done?

A Those were first started, I believe, in 2018.

Q Okay. Now, it -- it wasn't clear to me, was

there a precipitating event or it -- it sounds like it's in the timeframe of chaos on the --

A Uh-huh.

Q -- home front, were there also events that caused you to do that or is this some sort of tool?

A It all blurs together. I'll be honest, it --

Q Okay.

A -- blurs together. But a lot of it was aggression between him and his sister --

Q Okay.

A -- and calling in.

Q And so the -- how did it come to pass that you avail yourself of this option, of a Baker Act, a mental health intervention?

A The professionals would tell me, the professionals would say --

Q Uh-huh.

A -- if he acted out, call 911.

Q All right. So on the advice of professionals?

A Yeah.

Q Was that at all a way to access, to open any doors that were otherwise closed to services or --

A I -- so as we started -- as it started, I just thought, okay, it would be a medication change,

but then as it was going on and there was more and more medications added in and these huge cocktails to where he was gaining 10 pounds a month. He had been an average-sized kid. And he started gaining 10 pounds a month. And he was hungry all the time. And that had been one of his triggers also, was being hungry. And so these medications made him just starving to where he would just hoard food.

And -- and so I -- I knew that we needed residential, we needed to figure out medication, we needed a medication watch and with the goal of taking him off all the medications and starting over because these doctors were just piling one on top of another. And -- and so I was told the only way to get him to residential was to have a paper trail, to call every single time he acted out so we could get the paper trail.

Q I see. Okay.

So developing some sort of history --

A Uh-huh.

Q -- that could thereafter be relied on by a residential facility --

A Uh-huh.

Q -- and greasing the wheels of the admission?

A Uh-huh.

Q Okay. And be sure to say yes or no.
A I'm sorry.
Q It doesn't pick up uh-huhs very good.
A Yeah, I'm sorry.
Q That's all right. I understand.
Now, so at this point were -- were you, and to the extent that you can speak for family members, afraid of Brendan?
A I was more afraid for Brendan and his sister together, how they were going at each other. And -- and I just could see -- I couldn't see a way out with treating him in the home at that time with the medications.
Q All right. So I might have lost the chronology here, but if we're talking like middle school years --
A Uh-huh.
Q -- we're still in the homeschool?
A Yeah.
Q Okay.
A Yes.
Q Is that working?
A It was working.
Q Okay. For the --
A It was.

Q -- same reasons that you talked about before?
A The same reasons. There was -- there was just as many moms as there were kids everywhere I took him. And so every mom was responsible for her child and -- and -- and making sure that her child was behaving. And so we didn't run into the issues.
Q All right. But and you hadn't tried the public school again, right?
A I tried it one time at eighth grade.
Q Okay. And --
A And that was on the --
Q -- what --
A -- recommendation of another expert.
Q Okay. To no success?
A To no success.
Q All right. And we've heard, on day one, testimony about a residential placement in South Carolina --
A Uh-huh.
Q -- Springbrook.
A Springbrook.
Q How did that come about and when?
A So, you know, we -- through the adoption support system that I had, they helped me with trying to get coverage for -- through Medicaid --

Q Uh-huh.

A -- to help him, but our insurance company wasn't going to pay for much of anything. And it was -- you know, there was nothing in the state.

Q Okay.

A And so the only place that both our insurance and Medicaid covered was in South Carolina. You know, we would have liked for him to have been closer to home.

Q Sure.

A But so it was in South Carolina. We transported him there in November of 2019.

Q Okay.

A And the plan was that we would -- my husband and I were going to alternate going to see him once a month, to fly up there and spend time with him once a month. Because, you know, the residential is also about bringing families working well back together again.

Q Sure.

A And so being able to spend time with him, you know, both there at the facility and then also time apart, you know, taking him places. And then eventually, you know, work up to, you know, spending weekends together and things like that.

Q And what was the overarching goal here in your estimation? What -- what would --

A My -- my goal --

Q -- be the best case scenario?

A My goal that I wanted was a complete medical watch. I wanted him taken off of all of his medications and -- and work on the coping skills.

Q Uh-huh.

A And -- and see, you know, after taking him off his medication and working with him with coping skills, working him -- with him with OT, and all these kind of things, see if he really needed medication and how much to put him on and start kind of him at baseline again. Because like I said, this kid had gone through over 17 medications that were mixed back and forth before that.

Q And from what you had learned about this facility and the lead up to the placement, did it seem like they'd be equipped to deal with this?

A I just went based on what my insurance company would say --

Q Okay.

A -- on where to go. That it was an autism behavioral hospital.

Q Right.

A That there were things I didn't think about in the planning of it and everything that later on, you know, I saw why it wasn't necessarily a great placement.

Q Right?

A But --

Q At the time, it seemed --

A At the time --

Q -- right?

A At the time it seemed right.

Q Okay. And I'm sorry, you -- I think you said this, the plan on frequency of contact with him was going to be you're alternating with your husband --

A Going up every --

Q -- monthly?

A -- month, like monthly.

Q Monthly. Okay.

A Uh-huh.

Q And did that proceed as planned?

A We started out, but then COVID hit. And --

Q Yes.

A And everything got shut down to where we couldn't go see him. We couldn't spend any time with him. The facility like -- I mean, if you remember COVID, it just shut down facilities --

Q Right.

A -- where families were torn apart, and you couldn't see each other. And during that time, a lot of staff was getting COVID. And the clients there were getting COVID. They were being isolated in their rooms.

Q Right.

A It was just a really chaotic time. And we lost the ability to be with him.

Q Okay. Before that --

A Uh-huh.

Q -- and that certainly sounds like a significant point in time, but before that, was there any sort of assessments of his progress, any feedback you were getting? How was he doing?

A I know like -- I think, like, in the first month that he was there, they talked about he had a hallucination, that he was seeing something and -- and saying, oh, keep it away from me, keep it away from me.

I know his -- his behavior was enough to where we could go and take him out. My aunt and I would drive to see him. I flew into Atlanta. And my aunt and I would go and see him. And --

Q Uh-huh.

A And we took him to the zoo.

But again, we always did well when he was with a trusted adult. So --

Q The -- so it sounds like some degree of progress, perhaps?

A Uh-huh.

Q COVID, that limits your contact -- or it eliminates --

A Uh-huh.

Q -- family contact.

A Uh-huh.

Q It throws the staff into disarray. And it sounds like it further isolates the people that are residents.

A Uh-huh.

Q Okay. After that -- and so it sounds like things probably changed. What -- how -- how did it look after that? Was he -- did he remain at Springbrook?

A So the original plan would have been for him to come straight back home from Springbrook, had it gone according to plan. Had --

Q Okay.

A -- we been able to go and do weekends and spend time with him and -- and we would have gotten an Airbnb and stayed with him, even for like a week, up

there; he would have come home. But because we didn't have that, we felt like we needed a step down. So that plan would be for him to step down and then come home.

The Medicaid case manager had recommended connected with APD and using a group home as a step down.

Q Okay. Agency for Persons with Disabilities?

A Yes.

Q So based on that recommendation, is -- is that the next step? Is that where he goes, to a --

A That was --

Q -- group home?

A That was the next step. And then while all that was -- all that planning was going on and everything, to even further cement that that was what was going to happen, my husband suffered a massive heart attack. And we were dealing with his health, as well.

Q Okay. If we can, just back up one minute to Springbrook. Do you feel like they ever got that medication combination correct, or was it still, there's something off --

A No.

Q -- about that?

A He was still off. He was still --

Q Okay.
A -- off. And -- and again, I mean, it was just such a time. I mean, COVID was such a factor in all of this. He -- but no. I -- they never did the medication wash. They never took him off of all those medications. They just added to it.
Q You probably heard about some behavior problems while he was at Springbrook.
A Uh-huh.
Q Do you have any sense of what undergirds that? Is it -- is it medication not being right, or do you know?
MS. CLARK: Objection, Judge.
THE WITNESS: I think --
MS. CLARK: She's not qualified to answer that question.
THE COURT: Sustained.
MR. TEIFKE: That was an objectionable question. I agree.
BY MR. TEIFKE:
Q So let go back to the group home. Okay. Where --
A Uh-huh.
Q -- is that?
A The group home is in Palm Coast.

Q Okay. What is it? Describe it a little bit.
A It's an intensive behavioral group home. He was -- when he was assessed, he was a level six. And -- and they were able to accept level six clients.
Q What's your understanding of what that means? What's level six?
A Level six means that he needs the most support.
Q Okay. Substantial support?
A Substantial support.
Q All right. And did you concur with that, that that's -- that sounds right, he needs --
A Yeah.
Q -- that?
A I did.
Q All right. You probably heard Dr. Prichard's assessment of the level of support needed.
A Uh-huh.
Q He handicapped it as low.
A Uh-huh.
Q Do you disagree with that?
A I absolutely --
MS. CLARK: Objection, Judge.
THE WITNESS: -- disagree with --
MS. CLARK: She's not qualified --

THE WITNESS: -- that.
MS. CLARK: -- to answer.
Excuse me.
THE COURT: Yeah.
MS. CLARK: Objection. She's not qualified to answer that.
THE COURT: Sustained.
BY MR. TEIFKE:
Q Did Dr. Prichard interview you as part of his background work here?
A No, he never reached out.
Q Would you have been available for that purpose?
A I would have.
Q Okay. So ECHO begins -- the group home begins --
A Uh-huh.
Q -- when?
A November of 2020.
Q November of 2020.
And it lasts until?
A Until his arrest.
Q Okay. Are you visiting him? Are you seeing him in the group home? What's the extent of your engagement with him during this timeframe?

A My husband and I would alter every two weeks. That I would go one, and then two weeks later, he would go.

Q All right.

A I would go and -- and bring my mother with me. She and I would take him out to eat. We would take him shopping. Sometimes back to her house.

My husband would take him and get a hotel room for the weekend and spend weekends with him. When we had holidays, we would rent Airbnb for three to four days and as a whole family, go together to the Airbnb.

Q It -- it sounds like he was getting along okay --

A Uh-huh.

Q -- at ECHO?

A He was.

Q All right. I don't remember when along the timeline it is, but at some point it is, he's back in the public school system while at ECHO; is that correct?

A That's correct.

Q When did that begin and why?

A So when ECHO accepted them, and I met with ECHO and everything, they told me that he would have to go to a public school. And I -- I was terrified of

that. I didn't want him to go into a public school. But that's -- they force all of their clients to go to public school. They have --

Q It's --

A -- like eight or nine group homes.

Q Okay. So it's a requirement to even be a resident?

A It is. It's a requirement to be a resident.

Q All right.

A And they assured me that they worked well with the public school, that they were within 10 minutes if they needed to be called. It took -- he moved there in November. It took the school system until March to place him.

Q What -- well, were there concerns about public school, the same as we've already talked about?

A It is that he is easily -- easily overwhelmed and needed substantial support.

Q Okay. ECHO, it sounds like, tries to give you some assurances. They say, wait, we have a support team --

A Uh-huh.

Q -- on -- on standby?

A They did.

Q Okay. So the public school experiment begins

when? I'm sorry.

A In March of 2021.

Q In March. Okay.

Otherwise at ECHO during this timeframe, was he doing okay? Is the feedback still decent?

A They were managing him. I mean, he definitely, in the beginning when he first went there, had more behaviors where they had to restrain him. But then he would go through periods where he would do okay. But there was a definite progression in -- in doing better. Like, when he first started out there, he needed a lot more restraints.

Q A lot more restraints. Okay.

A And then he needed less as time moved on.

Q Well, did you feel that, you know, if he's going to be in public school, did you feel like that their assurance to you that they were right on standby, do you -- did you feel that that was a very important measure to have in place?

A Yeah. I even asked if somebody from ECHO could go to school with him.

Q Okay.

A My preference would have been an ECHO staff member attending with him, but I was told that wasn't an option.

But again, my hands are kind of tied. This is the place that accepted him, and this is what they told me was going to happen.

Q Okay. At this point, what about, are there additional medical doctors in his life? Are there additional diagnoses?

A He had a -- he had a psychiatrist that met through virtual. Because again, remember COVID.

Q Yeah.

A So everybody was doing virtual then. So he had a virtual psychiatrist. You know, ECHO set him up with a primary doctor.

Q It sounds like we've talked about several diagnoses.

A Oh, I'm sorry.

Q Now, what --

A And then also he had a private therapist.

Q A private therapist. Okay.

A That met with him weekly.

Q Okay. And who as that?

A Tanya Gilchrist.

Q Right. Okay.

Besides what we've already talked about as far as the actual diagnoses, are there any additional at this point?

A Not that I'm aware of. But I mean, like I said, every single time he met with somebody, they added a new diagnosis to the mix.

Q Is there any progress on the medication front? Is it getting closer to right, or is it still just off?

A So ECHO was the one that would meet with the psychiatrist and Brendan because of the telehealth. So they would like tell them what was going on. And I know the doctor was switching things back and forth. But I do know that he still was on six psychiatric medications.

Q Okay. Is there a -- at ECHO, itself --

A Uh-huh.

Q -- is it -- there's a counseling component to it?

A Yeah. They --

Q And so --

A -- have --

Q -- is it one --

A They have a --

Q -- on one --

A -- behavioral analyst.

Q Okay.

A And so they had behavioral goals. The -- the

technicians that worked there, they were trained in how to manage his behaviors. They were trained in how to deescalate.

Q Okay. It -- it sounds like with medication, professionals in his life, counselors --

A Uh-huh.

Q -- that were talking about optimizing the management --

A Uh-huh.

Q -- right?

A Right, the --

Q Rather --

A -- management.

Q Rather than stumbling upon some --

A No.

Q -- cure?

A There's no cure for autism.

Q All right. While in the public school system, he is -- there is an IEP, right, an --

A Uh-huh.

Q -- individualized -- individualized education program put into place, right?

A Correct.

Q When was that?

A Well, he had to have one before he could

start school. So the first one took place in March before he started.

Q Okay. And you're a participant in this --

A I was.

Q -- process, as a parent?

A I was.

Q Okay. And what do you understand an IEP to even be?

A An IEP is a document that is -- that is federally mandated through the IDA, which for him was like, in layman's term, for him that was what supported his disability.

Q Okay.

A And it was documented, his strengths and his weaknesses and where he needed help. And then frequently there's a behavioral plan attached to that.

Q Okay. A requirement under federal law to provide targeted --

A Correct.

Q -- intervention services --

A Correct.

Q -- plan? Okay.

And you -- the IEP process, because it is individualized, tell me a little bit about the process. You're a participant.

A Uh-huh.
Q What are we talking about in those meetings?
A So anybody involved in his care is in the meetings. That ECHO would have three or four people there at the meeting. I was there. His private therapist was there. The school counselor. The -- the -- ECHO's behavioral analyst. The school's behavioral are analyst. The district's behavioral person. The dean frequently. The -- the -- his teacher. The ESE director for the county.
Q Okay.
A It's a big process.
Q Oh, okay. A lot of -- a lot of stakeholders in there?
A Yeah.
Q And this is a process -- this is an IEP process that evolves, right? The IEP, itself, changes as --
A It does.
Q -- needs become apparent?
A It does.
Q Okay. And were there, in fact, changes over the years?
A There were changes over the years, yes.
Q Okay. And what are the goals -- what's the

goal when there's changes? It a new need identified, or is it something --

A Yeah, so --

Q -- else?

A -- it's a minimum of once a year that there's a meeting. And then in between, if there's any issues come up, any changes in the IEP, you have to meet and discuss what those changes are going to be. And it has to be agreed upon and documented.

Q I see. All right.

And you're -- you're a voice in that, like you said --

A I am.

Q -- right? All right.

Do you believe that you were heard? I mean, did what you -- was what you offered accepted? Was it placed into the IEP?

A So, you know, I -- I expressed my concerns about him attending public school.

Q Uh-huh.

A I was assured that they had all the techniques to work with him. They had, you know, specialized skill training. That they assured me they would be able to meet his needs.

Q In your estimation, what was most needed, I

guess, just big picture? What was most needed from a behavioral standpoint?

MS. CLARK: Objection, Judge.

THE WITNESS: Uh-huh.

MS. CLARK: She's not qualified to answer that.

THE COURT: Sustained.

BY MR. TEIFKE:

Q What were you certain to mention in the IEP meeting so that it was included?

A I have always been very open and up front with the issues that Brendan was going through. I informed the school of his verbal and physical aggression. I also told them about all of his triggers.

Q Okay. Well, let's talk about that, triggers. I think we all know what we're talking about, but what --

A Uh-huh.

Q -- what -- what are you talking about when you say, triggers?

A It was told to them that being hungry was a trigger. It was told to them being corrected in front of other people was a trigger.

Q But let's go back even further --

A Uh-huh.
Q -- before that. What do you understand a trigger even is?
A A trigger is something that -- particular to an individual, that can easily cause them to escalate their behavior.
Q I see. Okay.
So now continue.
A Okay. So I had told the school, you know, that being hungry was a trigger, that noise was a trigger, that being told no was a trigger, that being corrected in front of other people was a trigger --
Q Okay.
A -- and electronics was a huge trigger.
Q Okay. And the IEP, in turn, seeks to take into account what triggers are and approach them from a certain angle?
A That's correct.
Q All right. There's also a behavior plan, that --
A Uh-huh.
Q -- I don't know if it's in the IEP or it's incorporated into it, but that's part of this, correct, a separate --
A That's right.

Q -- document?
A It's a separate document as part of the IEP.
Q Okay. And are you part of whatever process produces that document?
A The school's behavioral analyst is the one who formulated the document. And then we had to read it and agree to.
Q All right. So you -- you've read it, you're aware of its --
A Uh-huh.
Q -- contents?
A I am.
Q All right. And were there also multiple behavior plans?
A There were.
Q Okay. Throughout the --
A As time went on, yeah. If any behavior needed to be addressed, then they would call a meeting and add it to it.
Q And you -- you said one thing, everyone who -- you said everyone signs it, but I didn't --
A Uh-huh.
Q -- catch what the everyone was that you're referring to.
A So the everyone is the -- the team, the IEP

team, which, you know, typically is somewhere between 14 and 16 professionals.

Q Okay. They have an opportunity to review it and --

A That's correct.

Q -- in fact, must view it if --

A Correct.

Q -- they're signing it, right?

A Correct.

Q All right. I think you just talked about what you believed were the most important aspects of this plan --

A Uh-huh.

Q -- by virtue of the things you were talking about, the things you were most concerned about, right?

A Correct.

Q Okay. And there are preventative strategies --

A There are.

Q -- that are part of the behavior plan --

A There are.

Q -- and, hence, part of the IEP, right?

A Uh-huh. Correct.

Q What -- you've alluded to a few, but --

A Uh-huh.

Q -- what other preventative strategies are important here, in your estimation?
A May I read what was on there?
Q I certainly don't mind. Are you reading from the behavior plan?
MR. TEIFKE: It's admitted into evidence, Judge.
MS. CLARK: I don't know what she's reading from.
THE COURT: All right. She --
MS. CLARK: I don't know what she's reading from. If she can show us.
THE COURT: All right.
BY MR. TEIFKE:
Q Would it be the behavior plan? Because it's --
A I have --
Q -- Exhibit Number 3.
A Yeah, I copied it. If you want me to read directly from it from there, I copied -- I handwrote exactly what was on there, but if you want me to read it directly from there, I can.
MR. TEIFKE: Whatever makes the State feel more comfortable.
THE WITNESS: I --

MS. CLARK: She can read what's in evidence. That's fine.

MR. TEIFKE: Can I approach?

THE COURT: You may.

THE WITNESS: Okay.

BY MR. TEIFKE:

Q All right. I've handed you the aforementioned behavior plan.

A Use --

Q Preventative strategies, we're talking about --

A Preventative --

Q -- correct?

A -- strategies.

Q All right.

A Use humor with Brendan and build a positive rapport. Avoid negative corrective statements, even after behaviors targeted for reduction have occurred. Do not talk about his behaviors in front of him. Avoid correcting, reprimanding, or redirecting Brendan in the presence of peers, as student has a history of becoming verbally aggressive and defiant when approached this way.

Emphasize with Brendan, I can see you're frustrated, is there something I can help you with. Do

not take comments personally and use plan ignoring. Use a token economy and allow him opportunities to earn tokens. Remind him of the strategies he can utilize to cope before transitioning into activities and locations. Example, remember, if you need one, ask -- you can ask for a break.

Reduce transitions across school setting into locations, such as the cafeteria, as peers easily trigger severe behaviors.

That is just a few of the 25 that were on here.

Q Okay.

A Well, oh, here's another one here. Utilize a calm neutral tone of voice when communicating with Brendan across all settings and situations.

Q And you believe these to all be important directives --

A Absolutely.

Q -- and strategies?

A Absolutely.

Q And is your assessment of their importance based on your firsthand experience with him and employing those strategies?

A It is. And for the times I didn't employ those strategies.

Q Let me talk about the incident a little bit and why we're here.
A Uh-huh.
Q Here's one aspect of it first. You saw the -- were you here when the video was played, the body-worn camera?
A I was.
Q Okay. And did you see and hear Brendan being quite upset?
A I did.
Q Okay. Have you ever seen him like that before? Have you ever seen him use profanity, be that upset?
A I've seen him use profanity when he's upset. And I've seen him say things like, I'm going to kill you, when he's upset. All very transient.
Q Do you -- if -- if you've experienced this --
A Uh-huh.
Q -- before, something like this before, let's start with, I'm going to kill you; I'm assuming that was never followed through on, right?
A Never.
Q Do you view it was part in parcel with these disabilities we're talking about?
A I do.

MS. CLARK: Objection, Judge.

THE WITNESS: I mean, it was --

MS. CLARK: She's not qualified to answer that.

THE COURT: Sustained.

MR. TEIFKE: Okay.

BY MR. TEIFKE:

Q There's a manifestation meeting that's held in the wake of this; is that correct?

A That's correct.

Q All right. What is, for starters, your understanding of what a manifestation meeting is?

A My understanding is that when a behavior occurs in the school, that a typical student could -- could -- could stand before a discipline for possibly suspension, expulsion, that the student with the IEP and a disability, there is a manifestation meeting where all of the team members come together and discuss the incident, discuss his behavior and his responses, staff's responses, to determine whether or not the behavior was a manifestation of his disability.

Because if it is a manifestation -- if it is a manifestation of his disability, the school cannot expel.

Q Okay. And it -- all the aforementioned

persons --

A Uh-huh.

Q -- that we talked about, they're all part of this, as well?

A There were 14 professionals in that meeting.

Q The manifestation meeting?

A Yes, there were.

Q And when, just roughly, was that held?

A That was held -- I've got to -- I wrote it down. I believe it was the 23rd.

Q Of February?

A Of February.

Q Okay. I --

A A couple of days -- a couple of days after the incident.

Q All right. That's -- that's what I was getting at there.

A All right.

Q Shortly thereafter.

So is -- is there discussion in the manifestation meeting of how the events unfolded? Like who is --

A There was and --

Q Okay.

A -- all what had happened, had occurred.

Q All right. And who is -- is there a chair, is there someone who's leading that discussion? Or where is this information generally coming from?

A I don't recall who chaired it. It's in the documents. But I just know like the -- the people that were present.

Q Okay.

A I don't know if it was the dean that chaired it or if it was the director of ESE services.

Q All right. And then there is a conclusion drawn, a manifestation determination --

A That's correct.

Q -- review conclusion?

A That's correct.

Q And what was the conclusion here?

A That the behavior was a manifestation of his disability.

Q Okay. And that is reduced to a document, correct?

A It is.

Q Okay. Was there, to the extent that you can recall, specific discussion about why that conclusion was drawn? Did the professionals weigh in, do you remember, or --

A There were a couple of behavioral analysts in

there. There was the school counselor, school psychologist, his psychologist. Based on how the event occurred, what was reported to the -- the group, these were all targeted behaviors, and it was obvious his behavioral plan had not been followed.

Q Okay. And there is, of course, mentioning, or underscoring, at this point of his several significant diagnoses, correct?

A Yes, that's correct.

Q To include ADHD --

A Yeah.

Q -- right?

A That's correct.

Q And sensory disorder?

A That's correct.

Q Behavioral impulse control disorder, right? And yes or no?

A Yes.

Q Okay. Mood disorder?

A Yes.

Q And autism?

A Yes.

Q It's all part of this mix from which this conclusion is drawn?

A That's correct.

Q All right. There was -- there was a mention of also a history of seizures, correct?
A There is a mention of that, but he has not had any seizures.
Q Okay. And then there is lastly mentioned, discussion of, in reaching this conclusion, medication and side effects from medication?
A That's correct.
Q All right. Do you have any way of assessing his emotional maturity?
MS. CLARK: Objection. She's not qualified for that, either. She's not a psychologist. She's his mother.
THE COURT: Sustained.
You can restate it.
BY MR. TEIFKE:
Q He's been in your life since he was how many months old?
A Five months old.
Q Okay. And you've seen his physical, emotional development, correct?
A That is correct.
Q Okay. As a result of that years of experience with Brendan, do you have a way to handicap, or assess, his emotional maturity?

MS. CLARK: Objection, Judge. She's not a psychologist. She's his mother.

THE COURT: Sustained.

MR. TEIFKE: Okay.

THE WITNESS: I do have reports.

MS. CLARK: Objection.

BY MR. TEIFKE:

Q Well, what about just his sophistication --

A Uh-huh.

Q -- what can you tell us about that?

A Well, I can tell you that, you know, he's always had difficulty with making friends. He had difficulty with sharing and cooperation and following rules; all the things that I typically -- I don't -- I'm trying not to --

Q That's fine.

A Things that I typically would see with my younger clients.

Q Okay. Younger than 18 years old?

A Correct.

Q All right.

A I worked with mostly birth to three --

MS. CLARK: Objection, Judge.

THE WITNESS: -- up to eight.

MS. CLARK: There's not a question at hand.

THE COURT: Okay. Restate, please.

BY MR. TEIFKE:

Q Has anyone -- since February of 2023, has anyone reached out to you about this case?

A Lots of people.

Q What's lots?

A Hundreds of people across the country. I've had behavioral analysts. I've had people in -- in education, especially special education, reach out to me. Families with children with autism.

Q Okay. People, it sounds like, that know a thing or two about the topic?

A They do.

Q Okay. Some of these, of course, have already been submitted as an exhibit, but do you -- do you find that there's been a lot of support coming your way?

A I've had a lot of support from the autism community, from the -- from behavioral analysts, and from the special ed community.

Q Okay.

A The Arc of Florida also reached out to me.

Q All right. The State of Florida wants to put Brendan in prison. Do you think that's a good fit?

A No, I don't.

Q Why?

A Because I don't think he'll survive prison. That he's either going to be kept in confinement, or he's going to be put in general population. He spent six months in confinement in Jacksonville where he was allowed out one hour a day.

Q What's wrong with confinement?

A It's not good for mental health. That's a well-known, that confinement is not good for mental -- mental health, not to spend six months in a row where his medications were stopped cold turkey. Each time he ran out of the medication, the jail wouldn't reorder it, and they just stopped his medication cold turkey. He went through withdrawals in isolation.

Q Why would a general prison population be a good fit then?

A General population is not going to be a good fit, because the inmates, they see that he's different, and -- they see that he's different, and they are either going to use him to accomplish things that they want to accomplish --

MS. CLARK: Objection, Judge.

THE WITNESS: -- by trying to be his friend.

MS. CLARK: Objection. She has no foundation for this. She doesn't work in the Department of Corrections. She's never worked in a prison system.

She has no basis for her opinion.

THE COURT: Sustained.

BY MR. TEIFKE:

Q Do you feel he would be vulnerable in the Department of Corrections?

A I do.

Q Okay. And you heard some testimony from the first State witness, Suzonne Kline, were -- you were here for that, correct?

A I was.

Q The personnel from the Department of Corrections --

A I was.

Q -- talking about mental health services, I guess. Let's --

A Correct.

Q -- call it that. Why wouldn't that work?

MS. CLARK: Objection, Judge. She is not a psychologist. She can't render treatment for patients. She doesn't know what would or would not work for a mental health patient.

THE COURT: Mr. Teifke, you're going to have to establish a better predicate than --

MR. TEIFKE: That's -- that's --

THE COURT: -- that.

MR. TEIFKE: -- fine.

THE COURT: Sustained.

BY MR. TEIFKE:

Q Did hearing the testimony of Suzonne Kline allay all your concerns?

A No, it did not.

Q Did it allay any of them?

A No, it did not.

Q You fear that Brendan might not even survive --

MS. CLARK: Objection as to leading.

THE COURT: Sustained.

Restate.

BY MR. TEIFKE:

Q You -- you testified that you -- you fear for his very survival?

A I do.

Q The judge has an option here of committing him to the Department of Juvenile Justice. Are you aware of that?

A I am.

Q Do you feel differently about a commitment program to the Department of Juvenile Justice as opposed to prison?

A I'll be honest that I've researched prison a

lot more than I have the -- the juvenile justice. I'm in Facebook groups with families of inmates, so I understand that system a lot better than I do the juvenile.

Q Okay. Fair enough.

Have you made any efforts to explore community-based optioned?

A I have.

Q What type of efforts have you made?

A I got a list of APD group homes, and I started calling to see if there was one that would be willing to take him.

Q Okay.

A I reached out to residential facilities to see if there was any residential facility that he would be a fit for.

Q Let's -- let's stick on group homes for one minute.

A Okay.

Q Any luck there?

A Yes. I found an intensive behavioral group home 20 minutes from my house that has agreed to take him who says that they have a bed for him.

Q Available when, though?

A Now.

Q Okay. And this is in the -- on the west coast --
A It is.
Q -- of Florida?
A It is.
Q Tampa area?
A It is.
Q Okay. With an awareness of Brendan's needs?
A Yes. They've -- they've screened him. They've met with him on -- online. And they've talked to him. They, I believe, I'm not positive, but I thought they had talked to his tutor. And then they talked to me. And they know all of his needs.
Q Okay. And he's been in -- Brendan has been in custody since February of 2023. So --
A That's correct.
Q -- 18 months or so?
A That's correct.
Q Okay. Have you explored any transition-type options, moving from incarceration to community-based?
A I have.
Q Okay. And what -- I think you started to talk about this. What were those efforts?
A Yeah. So there is a residential facility in Florida through Flyland where they've agreed, they've

-- they've sent me an acceptance letter that they would accept him. And then if need be after that, they have -- they have another facility in New Jersey that has a possible -- has a partial hospitalization program where he would live on campus. They also will take him. And then another residential facility, Onyx, has agreed to take him.

Q Okay.

A Along with there's another program called Harmony that is matched up with them.

Q Harmony?

A Harmony.

Q That's some sort of --

A Harmony Recovery Health, I believe it is.

Q That's some sort of offshoot of Onyx, is -- do I understand that --

A Yeah.

Q -- right?

A Well, they're -- they're not together. But the -- the person who set us up with Onyx is also setting us up with Harmony.

Q Okay. These -- these, to my understanding, though, at least from a residential aspect, are short term; is that right?

A Like six to eight weeks.

Q Okay. If --
A And the hospitalization, partial hospitalization could be months.
Q Okay. So if Brendan were given an opportunity for a community-based sentence, we talked about a group home that has committed him.
A That's correct.
Q What about returning home? That didn't work at some point --
A Uh-huh.
Q -- along the way here. So is that an option?
A It's definitely an option.
Q And --
A We want him to come home.
Q Okay. What's different?
A One is we're not in the crisis that we were in before. Things have kind of settled down a little bit. My daughter doesn't live at home anymore. I am -- I'm taking more classes. And this last year and a half -- year and a half, I have walked through so many fires. And I've come out stronger to where -- I -- I talk to Brendan every day. And when Brendan and I talk, if he's upset about something, he calms down by the time he gets off the phone.
The periods he was in jail when there were

some behaviors were periods where he was kept away from me, that he didn't have access to a phone for weeks. And -- and that was when some of the behaviors occurred. I feel like Brendan and I have such a bond and that I -- I think that Brendan will do well with me.

Q And he would be welcome home at this point?

A He would be welcomed home.

Q How else might that be structured? What other adults would be in his life?

A My husband is there, as well as my 24-year-old son.

Q Okay.

A And my husband and I both work from home.

Q Okay. So if this were structured as a community control, which is like a house arrest --

A Uh-huh.

Q -- or which is house arrest, excuse me, could that work?

A It absolutely could work. That -- like I said, my -- my husband and I both work from home. We have another man that has been in Brendan's life since this happened. He's a school resource officer. He lives 15 minutes away from us.

Q Okay.

A He also will remain a constant in Brendan's life. We have --
Q Is that -- before we move on from him, is that Jerome Powell we're speaking --
A Jerome --
Q -- about?
A -- Powell, uh-huh.
Q Okay.
A We have --
Q Who else?
A We have Tara and Rob Ferry that are here with us that live in our neighborhood. They have a son with autism.
Q Okay.
A And they are also support system. Rob, he educates -- or he tutors students in computer science. He has offered to work with Brendan.
Q Okay. So, so far, these aren't just hypothetical adults in his --
A No.
Q -- life, they're in?
A They're in his life. He talks to Jerome pretty much daily.
Q Okay.
A Sometimes multiple times a day.

Q You're familiar, of course, he's working locally in the school with his teacher, Eugene Lopes --
A I --
Q -- correct?
A -- am.
Q Is --
A Uh-huh.
Q Would there be any continuing engagement there possible or --
A I would hope so. I hope that Gene will remain in our life forever.
Q Okay. Any other adults there that could have some sort of meaningful impact here?
A We have Peggy and Doug Harward (phonetic) that were here last time --
Q Okay.
A -- that helped with homeschooling Brendan. They also are a fine Christian family with strong faith, who couldn't be here today, but have written a letter in support of Brendan, and that they also will remain in his life.
Q Okay. Everyone is -- will be part of this apparatus if it comes --
A Everyone.
Q -- to that?

A Everybody wants the best. My entire family is here supporting us.

Q Let's go back to Jerome Powell for a minute. Is that also a placement option?

A Jerome has offered to take Brendan.

Q Okay.

A He wants to take Brendan. He -- he feels led by God to be in Brendan's life. Jerome has worked as a paraprofessional. And he has worked as a school resource officer. And he has a son with autism. He's married to an RN. They have committed to being in Brendan's life.

Q Do you feel that -- that this number of people, and perhaps more --

A Uh-huh.

Q -- that this number of people can allay any concerns for public safety that might be held?

A I think we can, because Brendan is always going to be with one of us. He's not going to be out in public on his own. He will be with one of us.

Q Okay. And do you envision continuing to, you know, pull the levers on medication and counseling, et cetera?

A I do. His therapist that's been with him for the last -- since 2020, has --

Q Ms. Gilchrist.
A -- said -- Ms. Gilchrist said that she will continue working with him.
Q Okay.
A She's talked to him a couple of times on the phone since he's been in jail. And she looks forward to would go with him.
Q And she's a therapist?
A She is a therapist.
Q And that's -- her willingness to engage is based on knowing everything, and having --
A No. She knows -- yeah, she knows everything, but she's also my personal therapist. She's seen how I've grown over the last year and a half. And she sees that we are able to manage Brendan and that she would remain a constant. She -- she is a wonderful woman that's available at a phone call.
Q All right. As the judge decides what to do here today, is there anything else you feel he needs to know?
A Brendan has -- he's had a hard life. He started out as a foster care baby who struggled. And he's felt abandoned by his birth family. And he felt abandoned by us when I sent him to South Carolina. He struggles with autism and behavioral issues. But other

than that year, where we had just extreme chaos from medical stuff going on, I was able to manage Brendan, because I knew Brendan and I knew his triggers and I knew his needs and his strengths.

And I beg you to let him come home with me. I want my son back. Thank you.

MR. TEIFKE: I don't got other questions.

THE COURT: Let's take a break.

MS. CLARK: That's fine, Judge.

THE COURT: Let's take a 10-minute break. The Court will be in recess 10 minutes.

(A recess was taken at 10:02 a.m., and proceedings resumed at 10:16 a.m.)

THE COURT: All right. Ms. Depa, if you'll come back.

All right. Ms. Clark, you may proceed.

MS. CLARK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. CLARK:

Q Good morning, Mrs. Depa.

A Good morning.

Q I wanted to go back through some of what Mr. Teifke had talked to you about. He kind of went through a timeline with you.

A Uh-huh.

Q It's my understanding that, as you've indicated, your son was -- started the Baker Acts, what, 2018, was it?

A Yes.

Q Okay. And eventually, you moved him to Springbrook in November of 2019?

A That's correct.

Q And he stayed there almost a year?

A That's correct.

Q Okay. So he was out November of 2020, and then went into ECHO here in Flagler County in November of 2020?

A That's correct.

Q Okay. Now, going back to when Brendan was living at home, there were several violent outbursts at home, correct?

A Throughout his life he had problems with aggression. When he would become -- when -- when he would have like an emotional meltdown, he would become aggressive.

Q And he'd been aggressive with you?

A Yeah. Not to the point of causing any bruises, but more like pushing and stuff like that.

Q Okay. But aggressive with his dad?

A Maybe pushing.

Q Okay. With his sister?
A Pushing, hitting. He and his sister both with hit each other.
Q Okay. And I knew you had mentioned that you were fearful of Brendan around his sister; that right?
A At that time around -- both of them around each other, that she was very impulsive, as well, having just gone through brain surgery.
Q And she's no longer living with you?
A No, she's not.
Q And where is she living?
A She has her own housing. She's working. She's going to church. She's doing very well.
Q Okay. And how old is she? What's the age difference?
A She's 20.
Q So she's, what, about a year older?
A A little bit more than a year, about 18 months older.
Q Okay. And once he got to Springbrook, I know you said initially you and your husband would try and visit, was it once a month?
A We were -- we were trying to, yes.
Q And then obviously COVID hit, and that disrupted?

A That's correct.
Q Were you made aware, while he was there, some of the issues he was having at Springbrook?
A I was.
Q And you agree that this particular program, as far as you understood it, they specialized with autism; is that correct?
A That's correct.
Q And it was a residential program, obviously --
A It was.
Q -- because he was up in South Carolina. But even while he was there, were you aware that he had attacked the staff?
A I was.
Q Physically attacked them?
A I was.
Q Were you aware that he was head-butting staff?
A I was aware.
Q And I think he had punched the doctor multiple times?
A I was aware.
Q Aware of that, as well.
Throwing chairs, other objects?

A I was aware.

Q Okay. And then you, as a family, decided to place him in ECHO when insurance would no longer let him stay at Springbrook; is that right?

A Correct.

Q And he moved into ECHO, you said, November of 2020?

A Correct.

Q And I think you indicated the plan was that was going to be a short-term placement with the hope of him coming home; is that right?

A That's -- that's correct.

Q Okay. But he ultimately, obviously, lived at ECHO from September of 2020 until, what, February, March of '23?

A That's correct.

Q Okay. And were you aware that while he was at ECHO, he continued to have problems with aggression?

A Well, it was an intensive behavioral group home, so I would expect him to have issues there.

Q Okay. Were you aware that he attacked other residents?

A I was aware that there were fights that happened. And most of that was -- happened in the very beginning when he first got there.

Q Okay. So were you aware in late August of 2022 that he had attacked a housemate physically, and that it required attention from the nurse, the other housemate?

A No, I was not aware of that.

Q Okay. Were you aware at -- in the end of August 2022 that he was groping female staff inappropriately?

A I -- so what I had heard about that situation is that he touched a female staff in the car, I think, and said something along the lines of she was pretty or something like that.

Q Right.

He touched her three different times on the way to school?

A I mean, I wasn't aware of how many times, but I was aware that he had touched her in the car as they were driving to school. And he said that she was pretty or something like that.

Q And then in March of 2022, he had ripped the door off of a wall and charged at staff. Were you aware of that?

A No.

Q All right. So fair to say that his aggressive behavior was continuing well into his stay

at ECHO; is that right?

A According to what you're reading, but yes, that he -- but again, it was an intensive behavioral group home where APD had determined, around December, that he no longer met being a level six and that was a level five. So he was definitely showing progress in that APD determined that he was no longer a level six, he was a level five.

Q And you said that while he was staying at ECHO, your family, I think it was you and your husband, would take turns and see your son about twice a month; is that right?

A Correct.

Q But you all never brought him home to visit? It was always you coming here?

A That's correct.

Q And why was that?

A I asked him. I wanted him to come home and spend a couple of weeks with us in the summertime, because I was hoping that that would be a good transition to start bringing him home. I requested it of Brendan, but Brendan was afraid that it would make him too emotional to come home and then turn around and have to go back.

Q Now, you --

A And --
Q -- had -- I'm sorry.
A I'm sorry.
Q You would agree that Brendan does not have any issues with drugs and alcohol; is that right?
A He does not.
Q Right.
He doesn't use any type of --
A He does not.
Q -- drugs?
Other than medications he's supposed to be taking from the doctors, he --
A Correct.
Q -- doesn't use drugs?
A That's correct.
Q Doesn't abuse alcohol?
A No, he doesn't.
Q Okay. And I know that you have tried to do some research for yourself to find placement for him --
A That's --
Q -- correct?
A -- correct.
Q And I think you mentioned two facilities. One was Flyland?
A Flyland.

Q Flyland. Okay.
A Yes.
Q And you would agree that Flyland is primarily treatment for drug addiction?
A No. I thought so, too. And when I reached out to my insurance company for things that they were sending me --
Q Uh-huh.
A -- and I said, you know, most of what you're sending me is saying drug abuse and addiction. And they're like, no. They all have -- all the ones that we're sending you and these places, they have a whole mental health portion that's separate from that. So I verified that there was a mental health track that had nothing to do with addiction.
Q Okay.
MS. CLARK: Your Honor, can I have the podium?
THE COURT: Yes. There you go.
MS. CLARK: Hold on.
THE WITNESS: And they do, I think, have --
MS. CLARK: Just give me one second. I don't have a question. I'm just trying to get my computer --
Okay.
BY MS. CLARK:
Q Okay. So I looked up Flyland. You would

agree that this is the facility that you had discovered?

A Well, Flyland has multiple facilities.

Q Right.

They have one in Florida and, I think --

A Uh-huh.

Q -- one out --

A Yeah, I can tell --

Q -- out of state.

A -- you the exact name if you need the exact name of the place.

Q No. My question to you is, because we can see right here, they have one in Boca Raton, West Palm Beach, Okeechobee, and then something out in California, Pompano Beach, correct?

A Uh-huh.

Q That's your understanding?

A Yes.

Q Okay. And so I'm looking at their website. When you look at their treatment, and they say what they treat; you would agree that's listing off, more or less, drug treatment?

A I can't see the screen from here.

Q There should be one right in front of you.

A It's not showing on it.

Q I don't know why. Is it working?
A It's starting to come on.
Q Okay.
A It's coming up.
Q Let me know when it's up.
A Okay. Can I turn it?
Q Sure, if it turns.
A I guess not. I have to move. Okay.
Q Is it working?
A Uh-huh.
Q And so can you see where it says, Flyland Recovery Network?
A I do see.
Q And then where it says, what we treat?
A Uh-huh.
Q And you would agree what's listed under there is drug treatment and alcohol treatment?
A That is true.
Q Okay. And then you also would agree that their facilities are not secure? What I mean, by that is they don't have fencing around their facilities. If a -- if a person wants to leave the facility, they just walk out the door?
A Well, there would be staff there to stop them.

Q Right.

But there's no gates. There's --

A Uh-huh.

Q -- no barbed wire. It is not a secure facility; is that correct?

A I don't know enough to tell you all the details of their facility. But we do have the rep on the Zoom. If you would like to ask the rep, he's on there.

Q I'm asking you because you researched it.

A Uh-huh.

Q And so my question to you is, this is not a secure facility, is it?

A I was told that it was a top of the level for residential, that I was told that it would meet his needs for residential.

Q Again, were you told it was a secure facility?

A I was told that it was a top of the line for residential.

Q Okay. You're not answering my question.

A I'm answering it the best I can.

Q Okay. In looking at their video where they show their facilities, we can clearly see their facilities are not gated. Would you agree?

A I can't see the facility.
Q Is it playing a video for you?
A No, it's not. Now it's -- it's kind of like -- there's no, like, picture of the outside. And this is California.
Q No, I know. Previously it was the Florida --
A Yeah, no --
Q -- facilities.
A -- I -- I don't know which building we're looking at, because I think we're looking at multiple different places. I see a wall.
Q And with Onyx, which can you see on your screen in front of you?
A I do.
Q Okay. This is the Onyx that you had looked into; is that right?
A That's correct.
Q Okay. And you would agree that this facility is also not a gated facility?
A I don't know that.
Q Okay. Now, when you talked about Brendan when he was younger, I got the impression early on, you didn't necessarily agree with some of the, I guess you called them labels, when he was being diagnosed with different things?

A I don't know that I didn't agree with them. I -- as an occupational therapist, our goal was always to treat clients with what their individual strengths and needs were.

Q Uh-huh.

A As -- as a professional, I am not about labels. And I did not want him to have a label that followed him throughout any kind of documentation and -- and insurance companies and everything else. I was more about getting to the bottom of what he needed and working on what he needed.

Q And so you were resistant to some of the diagnoses because you were afraid that that would be labeling him. Is that a fair statement?

A That's fair.

Q Okay. And I also got the impression, from your testimony with Mr. Teifke, that you were hesitant about medications, as well?

A I was.

Q That you didn't necessarily think that the medications were the best thing for him?

A I was -- wasn't hesitant about all medications, but his high -- the high dose psychiatric medications that have lots of side effects, a lot of the same side effects of the drugs, as far as what

they're supposed to treat, it can also cause the same exact thing. So something that's supposed to treat anxiety can cause anxiety. Something that's supposed to treat depression can cause hallucinations.

So all these drugs have side effects that I was concerned with.

Q And I'm assuming that this would just be you, I guess, Googling the drug and reading for yourself what possible side effects would be; is that right?

A That, and then when I would get pamphlets. So, you know, I would get pamphlets. Like, we -- we actually got the Abilify. And I read on there that it could cause all kinds of major neurological issues. And so after reading that and seeing that I was managing him through structure and through having a behavior plan that we followed at home and having him where he knew what his day was going to be like and I was there with him with homeschool families, I didn't feel at that time I needed to put him on that kind of medication when he was young. Because I was managing it.

Q But fair to say, as time went on, your ability to manage it wasn't working?

A And that's when I put him on the medication.

Q And again, you would agree that as time went

on, you, as a family, couldn't manage Brendan?

A We couldn't agree with all the chaos and -- and the crisis that was going on in my house with my mother and my daughter and then eventually my husband's heart attack.

Q Well, I would assume, as a mother, to make a decision to send your child to live --

A Uh-huh.

Q -- multiple states away --

A Uh-huh.

Q -- in a mental hospital would probably be a difficult one, a --

A It was extreme --

Q -- desperate one?

A It was extremely difficult. And I didn't expect it to be a year. I expected it to be a few months, not a year.

Q But I would assume, as a mother, that it's almost out of desperation that you would have to send him so far because you couldn't do it at home, you couldn't handle him anymore. Is that a fair statement?

A And that we had to send him so far away because the insurance companies didn't have anything local. And I was struggling with my daughter having had brain surgery and my mother going through

pancreatic cancer.

Q I'm not discounting --

A Uh-huh.

Q Please don't think that. I'm not discounting that you had --

A But I --

Q -- a lot going --

A -- want to --

Q -- on.

A -- make sure it's -- that it's known that it's not him. If this had not been going on, I could have managed him. I couldn't manage him because of everything else outside of him. It was not, I couldn't manage him if we hadn't gone through this.

Q I know you said your husband at some point had a heart attack. When was that?

A Yeah. He had a heart attack in September of 2020.

Q Okay. So during the pandemic?

A Yes.

Q And thankfully, I -- I believe, he fully recovered; is that right?

A He did.

Q And so after he recovered from his heart attack, Brendan, though, still remains at ECHO --

A Uh-huh.
Q -- correct?
A Correct. We -- well, I mean, it was a period of recovery that he was --
Q Sure.
A -- you know, going through cardiac rehab and medications and having to wear a machine. So we went through a long period of the recovery.
Q You would agree that didn't take three years?
A Brendan wasn't there for three years.
Q Brendan moves in September of 2020. And he is --
A No.
Q -- discharged -- into ECHO?
A No.
Q In November --
A November.
Q -- of 2020.
A Yeah, November of 2020.
Q And then discharged after this incident in February of --
A Correct.
Q -- '23?
A Yes.
Q And you said your husband had his heart

attack in September of --

A Uh-huh.

Q -- 2020.

A Uh-huh.

Q So we're talking about several years --

A Right.

Q -- that go by --

A Right.

Q -- but Brendan doesn't return home?

A I offered -- first of all, I wanted to do a step down procedure to where Brendan would start coming to our house and spending, you know, weeks during the summer and things like that with us so that we could transition to Brendan being home. I had offered -- Brendan didn't want to do that because Brendan was afraid it would be too hard for him to come and go. I offered to find him a group home closer to us so that we could spend more time together as a family. He didn't want to do that.

He wanted to stay at Matanzas High School. He wanted to graduate Matanzas High School. It wasn't because we didn't want Brendan closer to home. Brendan wanted to be there at Matanzas.

Q And you had mentioned that you found placement in a group home somewhere in the Tampa area?

A I did.
Q And this group home, is this similar to ECHO?
A It is.
Q In what way?
A It's an intensive behavioral group home.
Q And what level?
A He -- they can take a level six.
Q And was there a reason why you didn't place Brendan there back in 2020?
A I didn't know about them. And they weren't available back then. Back then there were -- so like what happens is, when they're looking for a group home, they put out -- APD puts out a statement to all the group homes who has availability, who has a bed. There were only a couple of places that had a bed, and ECHO was one of them. They interviewed Brendan, and they took him. I never wanted Brendan across the state. I would have much rather have been able to see Brendan weekly.
Q And you would agree that your son, Brendan, I think you had mentioned that when he was younger, is very intelligent? He was reading --
A Uh-huh.
Q -- at a young age?
A Uh-huh.

Q Is that a yes, ma'am?
A Yes, it --
Q Okay.
A -- is.
Q And I apologize, but we have to make sure to --
A I'm sorry.
Q -- get it on the record. That's okay.
So he sounds like he's a very intelligent young man; is that correct?
A He had his strengths along with his weaknesses.
Q Sure. I think everybody does.
A Uh-huh.
Q But my impression from you was, even at the age of four, he was reading, writing --
A Uh-huh.
Q -- sentences.
A He was.
Q Which you would agree is atypical for a four-year-old?
A Yes. I think that he's twice exceptional.
Q Okay. And he always did well with you through homeschooling academically?
A Correct.

Q And even when he transitioned eventually to Matanzas, the public school, academically, he was doing pretty well?

A I think that he was, like, behind a lot, and I think he needed a lot of prompting. From my understanding, he frequently had -- he would avoid doing his work. He would put his head down and go to sleep. Some of that could have been the medications that he was on that made him real sleepy. So he frequently would lay his head down, or he would avoid doing the work. He was behind.

He did well in a computer class, but in the rest of the classes, in his IEP, they stated that he was behind in his work. And we were thinking it was going to probably take him another year or two just to get caught up from being behind.

Q And you mentioned the computer class. He was actually in a mainstream, I think, advanced computer class; is that correct?

A Right.

Q Yes. Because again, he is an intelligent young man. That was not so -- as --

A Well, yeah, but that's --

Q -- much of a concern?

A -- one of his strengths.

Q Okay. And you had mentioned when he was at ECHO, that they would have periodic, I don't know if they were meetings or what have you with the psychiatrist; is that correct?

A That's correct.

Q And then ECHO participated in those meetings, but you didn't necessarily --

A That's --

Q -- participate?

A -- correct. Because it was how they did the telehealth. And he was physically there, and I wasn't.

Q Okay. So you didn't participate in the -- the, I guess, progress meetings with the psychiatrist while he was at ECHO?

A No, I did not. But that, again, I said it was a telehealth, and I was physically over on the other side of the state. I always talked to Donna before and afterwards, but being there on the call, I was not on the call.

Q Okay.

A If there was ever an issue, we would ask -- you know, I would -- I would call the psychiatrist and set up the call.

MS. CLARK: All right. Thank you. I don't have any other questions.

THE COURT: Mr. Teifke, any redirect?

MR. TEIFKE: No redirect.

THE COURT: All right.

You may step down. Thank you.

Mr. Teifke, you may call your next witness.

MR. TEIFKE: Eugene Lopes.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

THEREUPON,

EUGENE LOPES,

called by the Defense as a witness, was duly sworn and testified as follows:

THE COURT: All right. You may proceed.

MR. TEIFKE: Thank you, Judge.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please?

A Eugene Lopes.

Q And where do you reside, sir?

A I reside in Palm Coast.

Q Okay. And what do you do? What -- where do you work?

A I am a retired special education teacher.
Q Okay. How long have you been retired?
A I've been retired for four years now.
Q Four years.
A Uh-huh.
Q How long did you do that?
A I -- I taught in the public schools for a little bit less than 30 years. I also was adjunct professor -- professor at Kean University in New Jersey for 20 years.
Q Okay. How did you first become involved with Brendan? I'm assuming you know him.
A Well, I didn't know him before. I -- I got to know Brendan -- I -- I became involved the same way pretty much everyone in this room has, is that I saw the video. And personally, I had the same visceral reaction to it as everyone else.
Q And you've had a chance to work with Brendan since, correct?
A That's correct.
Q We'll talk about some more specifics in a mandatory. But just a little more on your -- your chops, your educational background. Explain a little more.
A Okay. I have a BA and teacher of the

handicapped is what it was called when I got it in the -- in 1993.

Q Okay.

A I have an MA in special education with a specialty in learning facilities. Again, I taught for 20 years at Kean University. And there I thought graduate -- undergraduate classes for people who were going into the field of special education, or who were already teaching and wanting to become special ed teachers.

Q What is your interest in special education from -- from the start? It sounds like you enjoy the challenge.

A Absolutely. I -- I think like, you know, anything in life, we get into positions. And people -- people look at it as a challenge. I enjoy it immensely. But I will tell you that all of my experience has really come from a personal standpoint. I was a commodities broker making a very, very good salary, and I hated every second of it. I had a friend who had a child born. And when we went to the hospital, he told us that his child was born with Down Syndrome.

And if you believe in, you know, those moments that give you highlight into where you should go, a

week later, I sold my seat on the commodities exchange and found a school to go to finish my college and become a special education teacher.

Q Okay. Interesting.

So Bachelor's in Special Education, right, and then Master's in Learning Disabilities?

A It's -- it -- yeah. It's -- it's special ed, and then you get a -- learning disabilities was my, you know, different places you could go.

Q Okay. We, as attorneys, have continuing education requirements. Is there same?

A Yeah, absolutely. In New Jersey, we had a requirement of 100 hours of training every five years. And in -- or in -- in my district, we also had meetings, department meetings, twice a month that were specific to what we were doing as special educators.

Q Okay. And the CLE, the continuing education, itself, was like an ala carte menu? You can pick what you --

A Most -- mostly, that was -- that was things that were -- that would be brought to us in the school.

Q Okay.

A The -- the -- the -- every school district in New Jersey is required to provide 20 hours a year to all their teachers. And so most of that was done in

our in-service days. And -- and sometimes it involved us being part of the gen ed. Because, as special education teachers, we were working with both populations, the gen ed and the special ed populations. So we had this combination where we were doing a couple different jobs.

Q Okay. Do you feel that your educational and employment background equipped you well to engage with Brendan?

A Oh, absolutely, absolutely. You know, I -- I was -- I was actually part of the first school that, in 19, I want to say 94, we were the first school who actually brought an autistic child back into district. At the time, in the early nineties, autistic kids who were classified, not that -- that there weren't autistic kids in school, there were, but they weren't classified as autistic. Were we the first school at that time that brought an autistic child back into district. And -- and it was an -- an -- an enlightening moment.

Since then --

Q Uh-huh.

A -- you know, my -- my guess would be I've worked with, you know, 80 to a hundred students with autism and then much, much more with different

disabilities.

Q And viewed in retrospect, was your education and the beginnings of your employment a good foundation for this? Or I guess the -- let me ask this, if you hadn't had that -- that specialized education and employment and training, would you feel like you were in a different place to be able to deal with this?

A Oh, completely. We --

Q How so?

A The -- the -- the training we got was a broad umbrella. And -- and so the way I like to look about it -- look at it is you have professional responsibility and you have professional curiosity. The professional -- professional responsibility is, you know, what's in your job description. You've go to do this, this, this, and this, and these are all the things there. Your professional curiosity is -- are those things that aren't there, that you just all of a sudden come on.

Particularly, when we first started bringing autistic kids back into school, none of us had really any experience with that population. So that curiosity were -- was not always things that you were told --

Q Yeah.

A -- you know, get training on this. You just

did it because it -- it -- it was interesting and, you know, you needed it to do your job.

Q And I'm supposing somewhere along the way there's people who realize that they simply don't have that curiosity?

A Oh, you know, absolutely. And if you don't have the -- if you don't have the curiosity, you -- you're -- you're not going to survive, you know, in that -- in that setting.

Q Can you estimate how much time you've been able to spend with Brendan since you've first engaged?

A Yeah. I -- I -- I was trying, as -- as we were thinking about it, you know, how many -- how many hours. I started in November, the end of November --

Q Okay.

A -- last year. So it's been seven-plus months. You know, we had, you know, some hiccups in there, but for the most part early on it was three days a week for a minimum of two hours a day. I also -- there were also weeks where I did five days a week when -- on Fridays when there was no one there, I could stay a little bit longer with him. So I mean, my guess is, I -- I was -- I've been at the -- and the jail would have the records of how many times I was in and out, but --

Q Sure.

A -- my guess is I was at the -- the building 80 to a hundred days and probably spent somewhere around 200 hours --

Q Okay.

A -- (indiscernible).

Q Very good. And of course it's an estimate. And we'll get into the weeds a little more as far as what you actually did with him in a minute. But lastly on that topic, is this compensated?

A No, no. This was not -- this -- this was all voluntary. I -- I -- I'm guessing you'll ask me later on, you know, about how it came about; but it's all voluntary. And, you know, and -- and to be clear to -- to everyone here, I am not complaining, but it really costs -- it costs me money to do it. And -- and it also cost me opportunity, because I did -- I would really love to be working in the Flagler school system right now. And I -- and while I do sub there, and they have been extremely generous in allowing me to do that, knowing my involvement with Brendan --

Q Sure.

A -- I have applied for a couple of jobs that I have, I believe I am highly qualified for; and a couple of times I was offered positions that seemed to

disappear, I think, after things were --

Q I see.

A -- you know, more information. And I -- and which I understand from the standpoint of the district, not knowing what --

Q Sure.

A -- I will say or --

Q Okay. Fair enough.

So Flagler County School District, specifically, how -- historically, what is your (indiscernible)?

A I -- I've been subbing there for the past two years.

Q Okay.

A I did have a moment where I -- I was being -- I had been interviewed about Brendan. And -- and -- and so I was called in by Mike Rinaldi about it and, you know, to -- you know, to make it clear that this was -- I was an at-will employee.

Q Uh-huh.

A And Mr. Rinaldi was extremely generous with his time, spent about an hour with me that day where we talked over, you know, how I felt about Brendan and how I felt about the school. And in the end, and I'm paraphrasing him, he -- he felt that what I was doing

was the best thing and what he would hope all of his teachers would be doing in advocating for a student.

Q Well, just so I understand that, right, excuse me, the two-year run up to February 2023, you had been embedded in the Flagler schools as a sub?

A I -- I -- I had been a sub, yes. I -- I would work usually a couple days a week, two, three days a week.

Q Okay. And so you'd get to know other personnel, teachers --

A Yes.

Q -- other subs --

A Yes.

Q -- et cetera?

A Yes.

Q Okay.

A And -- and -- and I -- and I -- I would like to say, too, that I am tremendously impressed by their work ethic. They're -- they're -- you know, they are overwhelmed. It's -- it's -- you know, I -- I believe the -- the school board would love to pay them what they're worth. What I will say is that particularly with -- I -- I -- I started to get more involved in doing the self-contained classes, the special ed classes. And I greatly enjoyed it to the point that

with the para -- you get -- you get less money to be a para subbing than you do for a teacher.

I became close enough with the paras that I offered to sub for them for the less money, because a lot of them were coming in when they were sick and because they knew that -- that no -- people weren't picking up the para jobs when there was a sub needed.

Q Okay. Resources are stretched pretty thin, it sounds like?

A Yeah, yeah. You --

Q Okay. So are you specifically working as a sub exclusively with this subset of students, special need or no?

A No. I -- I -- I will -- I will work in the building. Whenever there is an opportunity for me to be in the -- the special ed classes, I -- I actually will jump on it. I have the -- the teachers and the paras have my phone number and will often call me and say that they're taking off, you know, in two weeks, can I sub for them --

Q I see.

A -- or would I be able to sub. And then we would have to do a -- play a game of putting it in one place where I catch it. And --

Q I see. Okay.

So you've seen it from kind of both sides? It's --

A I've seen -- I've seen the whole.

Q Okay. Are there special challenges in dealing with special education students?

A Absolutely. And -- and -- and you have -- it -- it's -- it's why, you know, having the -- an IEP is so important. What happens is, though, as a sub coming in, you have to rely on -- you're walking into a room with --

Q Sure.

A -- sometimes no idea about what's going on in that classroom. And often in these special ed classes, I would have -- the teachers would leave me notes to say, talk to the -- talk to Sandy, you know, she's the --

Q Uh-huh.

A -- when she was a para. Each class had a -- one para that was in the class at all -- you know, talk to Sandy, she'll fill you in on, you know, on what kids -- because there's -- you know, special ed has -- the confidentiality of special ed is a -- is a sacred thing, particularly being someone who lives in the community. So but you don't want to be blindsided by a kid that you shouldn't, you know, put even a comforting

hand on, that that would set that kid off. So --

Q Okay. Let's define some things here. So when you say para, we're talking about paraprofessional?

A Paraprofessional.

Q And --

A Yeah.

Q -- based on you -- how long you've been doing this and what you've seen, what do you -- what do you see as the role there?

A The para -- the paraprofessional, I -- I would say that -- and I -- and I believe I was a very successful teacher over -- and left with a very good reputation. And I would say the paraprofessionals are, with our more difficult students, are the backbone to how it works. They are with those students the entire day. You know, for instance, when Brendan would go to another class -- you know, when I would -- when -- and I had students like that, they would go to different classes, but the paraprofessional would remain.

So those are the people who had the most information on that student, had the most day-to-day contact, minute-to-minute contact, would eat lunch with them. So -- so the most knowledgeable about -- when they're a one-on-one para, the most knowledgeable about

that student.

Q Okay. And is there -- excuse me. Is there plenty of information on offer for the para?

A Yes. The -- the -- you know, a para should, number one should see the goal -- should understand the goals and objections. There are -- there are a number of parts to an IEP. Some of them are confidential and don't get shared with the para, and that's more of the background information; but there are things, like goals and objectives, you know, what -- and -- and that's more the educational part of it. You know, because that para is working one-on-one with that student, they need to know what the goals are. And the behavior plan is what the paraprofessional is going to be mostly responsible for keeping intact, doing.

Q That's kind of the toolkit, itself --

A Yeah.

Q -- right, the -- the behavior plan?

All right. The IEPs, let's talk about that a little bit. You're familiar with these, obviously having been --

A Yeah.

Q -- doing what you --

A I -- I --

Q -- do?

A I -- I would guess that -- that over the years, I probably were involved in 1,500 IEPs and 800, maybe more, IEP meetings.

Q So okay. The generation of the IEP, itself, you're --

A The -- the --

Q -- boots on the ground?

A The teacher who is responsible, if I was teaching a student in science, I would be responsible for that part of it.

Q Sure.

A And in each one, in science, there would also be behavioral goals in there, that as the teacher, I would be responsible. So at the end of the year -- I -- let -- let me just -- initially, an IEP team with the parents put the IEP together. Once the teacher is involved, now the teacher and -- has the most knowledge of that student. So it is the teacher who writes the goals and objectives and works with the child study team to put together an inclusive behavior plan.

Because sometimes there's -- like, in -- in Brendan's, Brendan's has 25 things in his behavior plan. And that's a lot for a teacher or a para to keep track of. So you try to -- you try to make sure there's not stuff in there that's not necessary.

Q So the IEP is a means by which to not only optimize educational achievement, but also behavior; is that fair?

A Yes. And -- and it's important that -- that -- I think this sometimes gets lost in the general public, an IEP is a legal document. It is a document that, as a teacher, I sign that IEP saying, I am going to follow this as is. And if I think there's something wrong with it, I have to go back to the child study team, who has to go back to the parent or guardian and say, we want to amend this, we want to fix this. There's -- there's something in here that's not working.

Or I can't just unilaterally change that.

Q It's a requirement of federal law itself, right?

A Yes, yes.

Q All right. The I in IEP, individualized --

A Individualized.

Q -- right?

It has to be narrowly tailored to the person -- the kid?

A Correct.

Q All right. And that takes into account lots of information; is that fair?

A Yes. And -- and information that, you know, goes back years. It's -- it's not like, you know, while -- while -- an -- an IEP is a living document. We call it as living document because it can be changed at any point. And it's always one of the things at an IEP meeting when you're talking to a parent who maybe a little uncomfortable with something in there, you -- you make sure that they understand that this is can be changed. Right now this is what we believe, but it -- it's not in here forever. There's not -- it's not in permanent ink. You follow me?

Q Yeah.

In your experience, how successful can students be when the IEP is designed well and followed?

A Designed well, followed, and modified when --

Q Uh-huh.

A -- needed; it -- it -- it -- look, it's been around for -- we -- we've had that, this law in place, for 25 years. About 20 -- no, more. I'm sorry. And we're going to be closing in on 50 years, it's 1975. So --

Q I'm sorry, you said we have what in place for --

A The -- the law.

Q The --

A The law.
Q Oh, I'm sorry, I didn't catch the word.
A Oh, I'm sorry.
Q Okay.
A Yeah, the law has been --
Q Okay.
A -- in place for -- and this part of it, the IEP part of it, hasn't changed in all that time. For a reason, it works. And it works when we -- when we are diligent about following it and diligent about making changes when necessary and that we don't go off and just say, well, let me try this, no, let me try that. And -- and as someone who, you know, has gotten caught a couple of times, you know, when you try to do the right thing, it blows up in your face. So it -- there's a reason.

And the success rate, it -- it doesn't -- you know, nothing works a hundred percent. But I can tell you that for me, personally, the majority of my students went to college, worked jobs.

Q So you've tracked some of these -- these --
A I -- I am --
Q -- stories?
A I have -- I have one student I talk to almost every day, who I had, who he's 32 now. I have another

student who, you know, called me a month ago to let me know that her boyfriend had broken up with her and that she was upset and she just wanted to talk to me. I -- I -- I am in touch with a number of my students, even though I've been retired for quite awhile now.

Q Okay. Okay. When we talk about disability, that's a pretty big intent. More specifically to these circumstances, have you had any experience with autistic children?

A Yes, yes. So and like I said, earlier, I -- you know, I -- in 1994 was the first time we were introduced in public schools to having autistic children in the schools. But since then, you know, my -- my last couple years teaching here, I've probably had more autistic children in my classes than -- than not.

Q Do you find that it -- it often overlaps with other disorders?

A Yes. And -- and it -- it's -- it's just a, you know, and -- and you can see it's often not the autism that is the most debilitating part of, you know, debilitating aspect of that -- that person, it can be the comorbid circumstances that come in. And attention -- attention deficit disorder, ADHD, emotional issues. You know, there's -- there's -- sometimes, I -- I

think, you know, the greatest -- the greatest quote I've ever heard about autism, and apologize for not remembering the person's name who said it was that, when you've met one person with autism, you've met one person with autism.

Q All right.

A And it's because it -- it is not -- we -- we try to -- even using that umbrella term, you know, the -- in the spectrum disorder --

Q -- sure.

A -- it doesn't work because, you know, there's millions of different ways we can go inside of that.

Q You've -- you're probably aware that Brendan also has been diagnosed along the way with disruptive mood dysregulation disorder, intermittent explosive disorder. You mentioned ADHD. You've also had experience in your career and learning path with those disorders, as well?

A I -- I will be honest, the explosive disorder was the first time I had heard it.

Q Oh.

A But I -- I have had students who have had, you know, clearly behavioral issues that -- that impacted their ability to learn and their ability sometimes to be in a classroom.

Q When, in your experience, are things most likely to go awry when you're dealing with someone that has disability, be it on numerous fronts or a single disability, to the extent that that is a thing? Where are things most likely to go off the rails in your experience?

A You -- you know -- you know, it -- it -- most likely when -- well, I'll -- I'll say early on in the -- when -- when we first get introduced, when we don't know the person that well. And then when we stray from what we are supposed to be doing. When we -- we -- we take paths that are a little bit different. Again, you know, doing things for the right reason --

Q Right.

A -- you know, with the -- with the -- the right goals. And, you know, with the hopes and the --

Q Right.

A -- dreams, that -- that's when -- when we -- we move --

Q Yeah.

A -- off and -- and that's when things kind of can fall off the rails on it.

Q And I'm imagining it's a temptation of sorts. I mean --

A It's --

Q -- look, I think in this situation this is going to work, but it's just not in the IEP, it's not a suggested approach?

A Yes.

Q It's got to be tempting.

A Yes. And -- and -- and it is -- it is why we -- in -- in the -- you know, in special ed why the personal connection is -- is so important.

Q Personal connection, you said --

A A personal connection with the student.

Q Sure.

A That -- that when you have that personal connection, you -- you learn. And -- and then it doesn't mean that you can change things. Again, that means you go back and say, you know, I'd like to try this with whoever. But you -- you need to talk to your teammates, who -- who you work with that student, the child's study team, the parents. It's a -- it's not a simple process -- process where one day you go, wow, I've got a great idea.

And having burnt by that great idea more than once --

Q Right.

A -- I -- I will tell you, it's never a great idea.

Q Okay. Okay. How do you feel, if at all, that your understanding of autism, or any of these comorbid conditions, a view -- affects how you view behavior? Does it affect it?

A Personally, for me?

Q Yeah. As opposed to --

A Oh.

Q -- someone like me who has no knowledge of the subject matter viewing the --

A Again, this --

Q -- same thing here.

A -- goes back, this really goes back to the curiosity part, that, you know -- you know, when you -- when you come up, again, with something -- and, you know, it's like anything, you know, in any profession, when you come up against something you haven't seen before, it's the curiosity that should drag you in. And it's the -- the -- that part of it that -- that helps you to pinpoint what will work, what won't work, what I need to stay away from. I mean, it's usually staying away from things that are more important that, you know, getting close.

And but -- but when you start injecting your own feelings into --

Q Uh-huh.

A -- that without vetting it, it becomes a problem.

Q Have you ever been on the wrong end of student behavior?

A At a number of times. And I've -- I've been spit on. I've been kicked. I've been punched. I've been called fat a couple times. And I've thinned out. But I've also -- you know, I've also been -- I've been bit. I -- I -- I had an incident where I was walking -- I was -- I wasn't even doing anything with -- I was helping the student in that he was having a very difficult time just getting to the bus, and so I would walk him out to the bus. And all of a sudden, I feel on my arm, and I lift up and the kid is hanging from my arm having bitten. That meant six months where the school district required me to go for HIV testing --

Q Uh-huh.

A -- because the kid broke my skin. And, you know, and -- and it wasn't for any reason. I was just walking alongside him.

Q Right.

A Yeah, so it -- it happens. Computers thrown at me, you know.

Q And I guess this might close the loop on my last question, what you -- how you just answered, but

does your knowledge going into that of special needs inform how you react to that?

A Oh, I --

Q Because I can tell you, someone like me, I have a certain predictable reaction.

A Yeah, yeah. And -- and -- and in -- in those circumstances, it is so important to -- to kind of go back into your training. And -- and it doesn't come automatic. You know, when somebody -- when a kid is hanging from your arm, it's not automatic that you -- that you don't want to, like, slap and say, get off; but in that case, I had a walkie-talkie with me, too, and where I was able to call the principal and say, Ed, we might -- we have a little issue out here. But not escalate it. That is -- that is the thing you want to avoid at all costs. Don't escalate.

Q Training and experience matter there?

A Absolutely.

Q Now, in your experience when the right approach is taken, and the -- the people engaging with these students employ the right approach, can it work and that be --

A It -- it --

Q -- successful?

A It -- it --

Q How much can it be modulated?

A It -- it -- it works. Does it work a hundred percent of the time? No. Because we -- we can't anticipate everything that --

Q Of course.

A -- that -- that -- that might happen. And -- and -- and we are, you know -- people have this impression of special ed teachers as some sort of above the fold, but we're people. We like what we do. We -- we love what we do. You know, so when it goes -- when we move -- when things happen, it's falling back on the experience and just making sure that -- that you don't make it worse.

Q Okay. Let's talk about Brendan specifically. You first met him when?

A I first met Brendan in November of last year.

Q Okay.

A And just as a very quick back story, like everyone else, when I saw the video, I was appalled. I had a visceral reaction to it. And I've told Brendan this, and I have told his mother this, that I -- my initial response was pretty much the same as everyone -- everyone, that how -- how can this happen.

And then I'm guessing a month, six weeks after the incident take place, was when I read Leanne Depa's

article in the paper about Brendan. I cried when I read it. I cry now when I think about it. I also was ashamed of myself, that as someone who has dedicated my adult life to working with children with disabilities, that I didn't even think further into it, deeper into it to see, you know, that -- that things happen for reasons.

And -- and so what I did was, that day I -- because it was pretty -- pretty easy to track down Leanne, since she did write that she was an occupational therapist, and I called her that day, and -- and I'm going to guess this was March, April, and asked her if there was -- and explained what I just said and -- and asked her if there was something I could do. Because I realized that she was in Tampa --

Q Right.

A -- and I was here in Palm Coast.

Q Okay. I've managed to go 18 months without consuming any of noise on this, media, nothing. So what was it in that, what you read, that so radically shifted your -- your perspective from this visceral reaction to a video to sympathy? Was it the mention of disability? Or you tell me.

A No, no. I -- I -- I will tell you that my empathy and sympathy towards parents who have kids who

have disabilities started with that first student. And that first student, Anthony, we had him for three years. And he was still the only autistic kid included in school. We finished in the school he was in, and he went to another school. That lasted two months before he was sent back to an out-of-district placement. His mother contacted myself and the other teacher that worked and asked us just to have lunch with her and Anthony, you know, and catch up.

And -- and Anthony was pretty much nonverbal. He was not -- he would not have been an ideal candidate for --

MS. CLARK: Your Honor, I'm going --

THE WITNESS: -- inclusion --

MS. CLARK: -- to object. I'm not sure that we're answering the question.

THE COURT: Sustained.

Restate the question.

THE WITNESS: Yeah, that's fine. So but --

THE COURT: Hang on.

MR. TEIFKE: Just --

THE COURT: Restate the question.

MR. TEIFKE: -- a little more targeted, I guess, a question.

BY MR. TEIFKE:

Q You -- you indicated that you read something that was authored by Brendan's mom --
A Okay.
Q -- right? And based on that, now you're feeling a different way about --
A Right.
Q -- what you saw on video.
A Yeah. Because --
Q So --
A Because I had -- because I had spent my whole life advocating for parents and for students. And in this case I went the opposite way without any other knowledge except for a video.
Q I see. Okay.
That provided context for you that mattered --
A Yes.
Q -- (indiscernible). All right. I see.
So when did you -- so you are interacting with his mother. You're gathering information, I'm guessing, before --
A Yes.
Q -- you first see --
A Yes.
Q -- Brendan?

A Yes.
Q And so --
A Yeah.
Q Okay. And when did you -- I think I asked you that already, but your initial meeting with Brendan, was it at the jail, I'm guessing?
A Yes. Because of the time that -- that I was speaking to Leanne, since Brendan was a juvenile, he was sent to Jacksonville. So Leanne and I had spoken a number of times and met personally a number of times. And then -- and I'm not sure if it was Leanne or myself who contacted Chief Engert at the jail --
Q Okay.
A -- and when he was -- when he was brought back to palm -- well, to -- to Flagler.
Q And how did the initial face-to-face go? Is there a breaking-in period, who --
A Yeah.
Q -- are you?
A Yeah. Well, what I'm going to say, that Chief Engert is my hero. Chief Engert, when -- when we approached him about this, he made sure I had a meeting with him, and he was very clear at that time that this is a -- this isn't a local case. This is a worldwide case. And, you know, we cannot have this go bad.

So I had an extensive meeting with him. And then he also wanted to make sure that Brendan and I were going to be a match, that that was going to work. And so on, I believe, I was going to say November 30th, or somewhere around there, he arranged for us to come in. And the weird thing that day was that they brought Brendan in, and he had no idea why he was being brought in.

Q Right.

A And we had that initial meeting. And again, you know, as a credit to Chief Engert, this was -- the -- the decision to go forward was mine, I -- if I wanted to; but it also was Brendan. He specifically asked Brendan, is this something you want to do. APD at the time, I don't -- I'm not sure Brendan was completely, you know, sure what was going on; but he did -- he did agree to it.

Q Okay. Other initial impressions? Any, you know, hallmarks of disability as you've seen it over the years or --

A Yeah. You know, the initial meeting was -- he was guarded. He didn't, you know, look much at you. He -- he -- he didn't speak a whole lot in answering when questions were asked of him. And I -- I think some of that was that -- that, you know, he didn't --

this -- this was -- he didn't know what was going on. So it was -- you know, but, you know -- you know, clearly, I would see the -- the inattention, you know, at times moving away; but I -- I -- I also have come to know that -- that while he may not be looking at you, he is listening.

Q Is developing trust worthwhile in that --

A You know, it's -- that was -- that was -- the beginning of this was all about trust. And -- and it was trust on both of our parts.

Q Sure.

A You know, I -- I -- I had to believe that I could trust him, and he had to believe that I was there for the right reason, that -- that I was -- well, Brendan -- Brendan said to me, the -- the second or third day we were there, he said to me, everybody hates me. Why don't you? And great question, a great question. Because he had only heard the negatives. And that's when I had actually shared my story with him about how in the beginning, you know, I -- I -- I wasn't team Brendan.

Q Right.

A You know, so -- so yes, the -- the trust is -- and it is two-way. Because if -- if I didn't trust him, I would not have been able to have continued to

come back.

Q Sure. Mutual trust has been achieved then?

A Oh, absolutely.

Q All right. Let's talk about just specifically what you're doing with him while you're in these -- while you're visiting him. What's the plan?

A The -- well, the plan was -- and -- and -- and again, going -- and this is something, for me, that I'm doing for the first time. And I -- I guess it's a good thing that I can say that this is the first time I've ever been inside of a jail. So it was a new experience for me. So but they have a program set up at the jail. And again, kudos to the sheriff, Sheriff Staly, and -- and -- and Chief Engert, you know, in having this there.

So there is a program that is available to the inmates. Not enough of them take advantage of it. So I was kind of given a quick introduction to it by the person, Paul, who -- who runs the program in the jail, by Travis Thomas, who is the -- works from -- it's -- it's run through Flagler Technical College. So, you know, I had to learn the -- the programs. I had to learn the materials. I had to learn, you know, what -- you know, again, having not done GED training before. And that -- that is the goal, the goal is for him to

get his GED.

Q Okay.

A I had to learn GED -- you know, what the GED was, to the point that I took the -- myself, to educate myself on how --

Q Sure.

A They're -- they're pretty hard.

Q Was -- have you had plenty of access to him for these purposes?

A Chief Engert has basically said, you know, whenever I wanted to come, I was welcome. And -- and, you know, we did work out times, because we want -- because the rooms are often used for a lot of things. You know, if you saw this week, they had their celebration for their electric -- electrical engineers program. So we did work out schedules where I would come this time, this time, this time. But a lot of time when the rooms weren't being used on Fridays, I would come in and maybe spend three or four hours on a -- on a -- on a Friday because there was nobody in there on a Friday.

Q Do you get the sense that there's -- these are exceptional efforts being made to accommodate you interfacing with Brendan?

A These are extremely exceptional

circumstances.

Q Okay.

A The chief, you know, understands that -- he understands that -- you know, everybody in there is different.

Q Right.

A But he understands that, you know, Brendan at, with his age and his disabilities, brought a whole other perspective to it. And I -- I do believe in fair -- that the chief will welcome the help I'm giving to be done --

Q Uh-huh.

A -- for other people in there.

Q Sure.

A He -- this is not Brendan specific. I am the one that volunteered, but it's not Brendan specific.

Q Okay. So the GED track he's on, that's consisting of what? Is there coursework? Are there quizzes? Like, what does it --

A Yes.

Q -- look like?

A Yes. You -- you -- you start out -- he starts out by taking assessments to find out where he is in -- you'll -- you have -- the four areas are reading and writing, math, social studies, and science.

Brendan is -- is a very gifted writer -- writer. He's as gifted a student as I have ever had in his writing. And I -- I -- I am talking about the mechanics of writing, not just what he writes, the mechanics. He -- you know, he -- he -- he's one of those people that puts a period -- he -- he uses semicolons. I don't know how to use a semicolon. So he -- he uses things like that, that -- and he'll -- and, you know, I'll say, why did you -- he goes, because it's supposed to. It's separating two things here.

So and then so you get those assessments. And then they have computer programs, which are fantastic, that will gear individually. So it works towards the -- it kind of works towards the individualization of -- of a program for him. And it kind of let's you go through the things that you're good at and get them out of the way and focus on those things and keep coming back to those things that you have trouble with.

So Brendan, I believe, within two months, Brendan did pass the reading and writing --

Q Okay.

A -- part of the GED. He is on track to do the science and social studies. And the reason we really haven't been able to finish that is because there were

computer issues at the -- at the jail. And Flagler Technical College was undergoing some renovations, so they weren't offering the testing. But the science and social studies, I believe Brendan is ready to take it. And the math, for the past three weeks, I -- I -- he is someone who -- he does not like math.

Q Uh-huh.

A And it's very difficult for him. He has come in with a whole different attitude toward it. He wants to get this done where he take -- he'll ask me for work. Can you give me -- I can't get percentages down was the last, I can't get percentages down, can you give some extra work? And then we would sit there and do -- so some of it is -- are face-to-face.

Q Sure.

A A lot of is done on the computer, which he does very, very well --

Q And he --

A -- learning -- learning from the computer.

Q And he sounds very motivated all along this -- the way to --

A Oh, yeah.

Q -- (indiscernible)?

A In -- in the beginning, he -- he -- you know, it -- took a little time, but -- and -- and I would

call myself kind of a therapeutic tutor, in -- in that, you know, sometimes he had things he had to talk about. So we would pull back and do that, and then we would get back to work. He would always ask, can I take a break? He would never just take a break.

He often needed to kind of walk around, which he was in shackles and stuff. And, you know, I -- that was difficult, but he would, you know, he needed to do that.

Q Right.

A And the main thing that we had to work on was stamina, you know, how long can you stay at a task. You know, I -- I am pretty sure that a year ago that even this, sitting in court for this long a period of time would be very, very difficult for him. So we worked on stamina.

Q Okay.

A You know, it -- it -- it wasn't just math, science, social studies, reading.

Q You're -- you're able to assess this personal growth, it sounds like, as well as educational --

A Yeah.

Q -- progression?

A Yeah. Brendan -- Brendan is a -- he -- he -- he's -- he's a much different person than the person I

met, you know, eight months ago. He's -- you know, there's -- there's more maturity to him. There's much more patience. He -- he has tremendous compassion, particularly toward me. I -- I happen to have had three close friends pass away during this time. And he has shown incredible compassion to me when my -- my dog was sick where I -- I couldn't come a few times. And -- and that was one of the things we had in the beginning is Brendan was -- had difficulty when I wasn't there. And -- and I had to say, look, here's our choices, we can come when I -- we can do this when I come or we cannot do it at all.

Q Uh-huh.

A And I said, you make the choice. And his choice was, no, I want you to come. But the compassion that he -- that he shows, the calmness. And now, this determination to get his GED finished. He --

Q Right.

A He wants this done. As a matter of -- it's a matter of pride. And it's also something that he has expressed to me that he wants to make his mother proud of him. And he feels that he has let her down. And he wants her to be proud of him.

Q It sounds like your level of engagement with him, it's more than educational, it's more than a

therapy session; it's personal, would you say, in --

A It -- it -- it's personal.

Q -- many respects?

A It's personal. And -- and -- and I -- you know, and -- and --

Q Are you comfortable with that?

A I'm -- I'm very comfortable. And this is -- this, you know, who I am -- this is who I am.

Q Yeah.

A And -- and it is -- it is who I am. That's why I'm still in touch with a student who's 32 years old who's autistic, who works in a -- in a kitchen in a hospital. And that's -- that's who I am. And I'm very comfortable. It makes -- it makes it so much better for both of us when we -- it's not a job, it's not where I wake up, oh, I'm going there; it's that, I'm going to see Brendan today.

I've told him, he's made me a better person. He's made me more compassionate. He's made me more spiritual. Because he's a very spiritual person, also.

Q Ever a moment there where you were afraid of him?

A No, not for a second.

Q As far as assessing potential, I mean, you -- you're a teacher, you deal with kids, there's many sort

of outlook, I'm sure, you formulate. Do you assess Brendan as having potential?

A He -- he has potential to do some really wonderful things. He -- like I said, he's a gifted writer. But he also has the ability to -- he -- he has written a couple of books. And he has this ability to keep these books, not only on paper, but in his head. And he can pull out characters. And -- and he can describe this -- so he has this -- he also has -- he -- he also -- and -- and I don't have a complete sense of it, because we've only -- but he -- he also seems to be very knowledgeable about computer technology. And -- and I know this is where we got into, you know, all, you know, some of his --

Q Right.

A -- problems, but it is -- but he has a fascination --

Q Yeah.

A -- with -- with computers and how they work. And he actually programs, too, which is, you know, a rather --

Q Sure.

A -- interesting thing that I know nothing about.

Q Exactly.

Do -- do you feel that a routine matters with him? Or maybe the better way to ask it --

A Yeah.

Q -- is a broken routine --

A That --

Q -- matters?

A Yes.

Q How so?

A However, I'm going to -- I'm going to say that routines matter. Routines matter for, you know, most -- most of us in our life, routines matter. For -- for many autistic kids, routine is critical. You know, we would say, you know, preparing for it. And early on, I -- I would give Brendan countdowns and say, you know, we have an hour left, we have 45 minutes left, we have 30 minutes left. I don't -- I don't have to do that as much anymore.

Q Okay.

A It was also very important early on that if I said I was going to be there, I was there. That part of the routine. Because while you, you know, even lose track of, you know, time, he knew what day it was and he knew Tuesday, Thursday -- Tuesday, Wednesday, Thursday, you're coming. You know, and then if I didn't come on a Thursday and I didn't come back until

next Tuesday, well, why weren't you here Thursday?

And so I -- I did get in the habit of where I would -- when I was going to miss, I would call Leanne, because I know she would be in touch with him, and say, let Brendan know this happened today. I can't come. However, I do want to say that he now handles that quite well. Much, much better.

And -- and he'll say to me, oh, my -- my mother told me, blah, blah, blah, blah. So he --

Q Is that -- do you think that's as a result of discussions you've had with him about --

A I -- you know, I --

Q -- dealing with it --

A I -- I --

Q -- or --

A I think it is -- I think -- look, I -- I think it's -- I -- I -- look, I'm -- I'm a piece. I'm a -- I'm a -- I'm a piece to this puzzle.

Q Sure.

A And, you know, but I see the -- the -- the officers in the prison treat him with respect. And to a certain point, they're protective of him. I know one of the officers has been a little bit overly protective of him, to the point that she kind of separated him and a friend. And -- and it was out of precaution. It

wasn't out of, you know, any punishment thing. So I've -- I've seen him adapt to his world and adapt to his circumstances.

He's -- he's growing. He's -- he's growing. And -- and unfortunately, by not having this in the past, it delayed that growth.

Q Right.

A But it's coming. It's coming.

Q I've -- I've shared the observations that you've just alluded to about the level of care and attention -- attention the jail staff has given him. It's been quite exceptional. You -- you would agree with that?

A I -- you know, like I said, and I -- I -- I also want to say, the -- the -- the respect they show me when I come in. You know, do you need, sir, you know, do you need this door open, sir? Do you need -- do you need me to go get this, sir? So there's a -- there's a -- the sheriff and the chief have put together a jail where they are trained to make it the best situation possible for a jail.

Q Right.

A And to people -- and for those who have to come and visit.

Q I don't know if you -- did you hear his

mother testify?

A Yes.

Q Okay. She had mentioned that his historically noise -- noisy situations, environments can be a problem. Have you had any chance to make any --

A Yes, yes.

Q -- observations or --

A I have, actually. Because we -- we did have times when, you know, we would do -- we would do our own thing, me and -- him and I together. But there would be sometimes when there were other people, you know, in the room with us. And, you know, they would make noise, that kind of -- that bothered him a little bit. Not to the point that he was, you know, saying anything, but it was bothering him.

But I did get to experience, we had a fire alarm went off one day when we went in there. And he was -- so I had to cover his ears. I actually gave him pencil erasers bought I didn't have any headphones to put on to put in his ears. And then the bathroom was actually there that was a little bit less noisy. So noises and things like that, you know, clearly do bother him and distract him and, you know, can keep him from doing what he's supposed to be doing.

Q The -- and you're -- you're still working with Brendan, correct?

A Yeah. I saw him on Thursday.

Q Yeah. Okay.

The judge will have some options to consider here, one of which is some sort of community-based sanction. Meaning, not out there.

A Yeah.

Q Would there be continued opportunity for you to work with Brendan?

A If --

Q And if so, how so?

A Well -- well, you know, as -- as Leanne said, this is -- I -- I truly believe this is a lifelong commitment. If Brendan is placed near here, I will happily continuing doing what I'm doing. I would also happily do it if he's not here, do it through video calls, like, you know, Zoom calls and things like that.

I -- I look forward -- because -- because my grandkids have kind of -- you know, there have been times where I haven't been able to do things with my grandkids because I was committed to doing -- working with Brendan. And they know of Brendan. And I am really looking forward to my grandkids meeting Brendan. Because I want them to see the extraordinary -- this --

this -- this was worth it. Even though I couldn't take you to cheer, you know, these nights; this was worth it, because, you know, I was working with this young man, this person who you're going to really --

Q Right.

A -- like.

Q And you would have no reservations whatsoever about introducing Brendan into the -- your --

A Well --

Q -- your life, obviously, but --

A Oh, I --

Q -- family members?

A Oh, absolutely. I -- I -- like I said, I look forward to. I -- I -- and I want them -- because they all know -- they all know of him.

Q Okay.

A And they also know he did something wrong. You know, they also know that he -- that he made a mistake. They know I come to jail to -- to do this. But I -- I want them to see, you know, why I felt it was so important to dedicate this amount of time.

Q You're -- you're in this for the long haul?

A For the long haul.

Q All right.

MR. TEIFKE: Thank you, sir.

THE WITNESS: Thank you.
THE COURT: All right.
Ms. Clark?
MS. CLARK: I don't have any questions. Thank you.
THE COURT: All right.
Thank you. You may step down.
THE WITNESS: Okay. Thank you.
THE COURT: Counsel, do you want to approach, please?
MR. TEIFKE: Sure.
THE COURT: I just want to talk about timing.
(A sidebar conference was had that was unable to be heard, and, therefore, not transcribed.)
THE COURT: All right. Mr. Teifke, you may call your next witness.
MR. TEIFKE: Jerome Powell, Judge. He's on Zoom.
THE COURT: Okay. I see him.
Mr. Powell, this is Judge Perkins. Can you hear me okay?
THE WITNESS: Yes, sir.
How do I sound? I'm clear?
THE COURT: Unfortunately, we can't hear you. So let me try something --

THE WITNESS: Okay.

THE COURT: -- here. I'm going to put this mute on for just a second. Then I'm going to send you a message that asks you to unmute by clicking that. Now try.

THE WITNESS: How is that, sir?

THE COURT: No, that didn't work, either. Sometimes it's at your end somewhere.

THE WITNESS: All right. Hold on. Because I see my mic.

THE COURT: See if your microphone is turned on. I assume you're doing this from a laptop or computer.

THE WITNESS: How is that, sir?

THE COURT: Yeah, unfortunately, no. So it's -- I think it's showing that your -- your microphone is turned off.

THE WITNESS: Okay. Hold on.

THE COURT: (Indiscernible) enough that we can hear you.

THE WITNESS: Lizzy, Lizzy.

Shoot.

Lizzy.

THE COURT: All right. So why don't we do this, that -- that's going to be your next witness,

right?

MR. TEIFKE: Right. It doesn't have to be, but it -- it was going to be.

THE COURT: Right.

MR. TEIFKE: Yeah.

THE COURT: So and you said it's going to be a fairly short witness.

MR. TEIFKE: Yes.

THE COURT: We're going to take a lunch break, either way. Let's take our lunch right now a little bit early.

MR. TEIFKE: Okay.

THE COURT: And so I'm -- I'm going to ask you to come back at 1:00, which will be about an hour and 15 minutes. That will give you a few minutes maybe to talk to Mr. Powell and -- and walking through making sure that we can hear him --

MR. TEIFKE: Right.

THE COURT: -- through the Zoom connection. And then we'll start up promptly at 1:00. Then you have three more witnesses, you think?

MR. TEIFKE: Three after that, yes, Judge.

THE COURT: All right. Including --

MS. CLARK: And, Judge, just so you know, Ms. Libby has indicated that she can hear him on her

Zoom. So I don't know if it's something on our end. I don't know. That's what she was saying.

THE COURT: Okay. I have no idea.

So why don't we do this, we can work with Mr. Powell a little bit when we --

THE WITNESS: Hello.

THE COURT: -- once we adjourn.

So we'll --

THE WITNESS: Hello.

THE COURT: -- get some --

THE WITNESS: (Indiscernible).

THE COURT: -- lunch. Let's stay here for just a minute and see if we can work with Mr. Powell and get him up --

MR. TEIFKE: For sure.

THE COURT: -- running. But we'll start his testimony at 1:00.

MR. TEIFKE: All right.

THE COURT: All right.

MR. TEIFKE: Very good.

THE COURT: So the Court will be in recess. Thank you.

(A recess was taken at 11:44 a.m., and proceedings resumed at 1:00 p.m.)

THE COURT: All right. Are we ready to start

back?

MR. TEIFKE: Yes.

MS. CLARK: Yes.

THE COURT: Okay.

So with regard to Mr. Powell, let's me go ahead and send Mr. Powell a message asking him to unmute. Okay. So he's not going to hear me until I unmute.

All right. Mr. Powell, good morning -- or good afternoon.

THE WITNESS: Yes. How are you doing, sir?

THE COURT: Perfect. We hear you loud and clear. Thank you.

THE WITNESS: Nice. No problem.

THE COURT: Let me just make sure everybody is hearing him loud and clear. Good.

Okay. We're good.

All right. Mr. Teifke, are you ready to proceed?

MR. TEIFKE: I am, sir.

THE COURT: Okay.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

JEROME POWELL,

called by the Defense as a witness, was duly sworn and testified as follows:

MR. TEIFKE: All right.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please, sir?

A I'm Jerome Powell, Jr.

Q All right. And where do you live?

A I live in Hillsborough County close to Tampa, Florida.

Q Hillsborough, okay.

And what do you do for work?

A I am currently a school community officer with Hillsborough County. I am a former unique needs specialist. It's the same thing as a paraprofessional, just a different title. I did that for two years --

Q And --

A -- for Hillsborough County.

Q And just briefly, school community officer means what?

A School community officer is something similar to a school resource officer --

Q Okay.
A -- but -- but not, you know --
Q And -- and do you have other background in the school system, itself?
A No. Just with that.
Q Just with that?
A Just with those two, yes.
Q And we'll get into a little more detail in a second, but just for starters, do you know Brendan Depa?
A Yes, I do.
Q Okay. How did you become interested in this matter?
A Well, with the Brendan Depa situation, I saw it -- well -- well, I heard about it just like everyone else did, I guess, through social media. I saw the video and just -- just with my background, it made me pay attention to it.
Q Okay. And what specifically in your background sparked your interest here?
A Wellbeing a unique needs specialist and that I have a son that is autistic.
Q Okay. And just a little more on unique needs specialist. What is that?
A Unique needs specialist is pretty much the

same thing as a paraprofessional, but it's just a different title. But we do exactly the same thing as a paraprofessional.

Q I see. Okay.

And so you have a firsthand familial experience with autism, you said your son?

A Yes.

Q Okay. And how old is your son?

A My son is 22 years old.

Q Okay. And do you, as a result of having raised your son, have experience with autism and its expressions?

A Yes.

Q Okay. Is it challenging?

A It was at first, yes.

Q Okay. What changes? Is it a matter of gaining knowledge or something else?

A Well, for me, it was denial. Because when my son -- to me, the signs wasn't there at first, or I wasn't aware of it, because at that time I didn't know anything about autism; but my wife, she did. So my son went from saying two- to three-word sentences, talking, joking around like father and son normally do, to one day waking up not being able to talk. He would point at things. He would hum. And it was just things that

I really didn't pay attention to because I thought he was joking because me and my son always had a joking demeanor with each other.

Until it was one day that my son looked at me, and I knew something was wrong. And at that point I became an advocate for him.

Q Okay. I see.

And as a unique needs specialist, do you also have experience dealing with children that are otherwise disabled, ODD, ADHD, IED, do you have experience there?

A Yes.

Q Okay. So you -- you can -- you know what it looks like sometimes when you see it; is that fair?

A Yes. I can notice the signs.

Q In your --

A Well --

Q -- experience, how important would you say it is to have an individualized approach to deal with these children with these needs?

A It's very important. Because every kid is -- or every student, or kid, is different. And you realize that you really have to earn their trust. You have to take a calm approach to them, because they're very sensitive about their boundaries. Every kid is

different. Some kids don't mind you being close to them. Some kids do. So you just have to just take a standard approach of being calm and just watch and observe.

Q I imagine there's a fair degree of trial and error with that?

A Yes.

Q All right. Now --

A Yes.

Q -- specifically talking about Brendan Depa, do you -- have you met him?

A I haven't met him personally, no.

Q Well, have you communicated with him?

A Yes. I have spoken with -- well, the first time I reached out to Brendan, it was via a letter.

Q Okay.

A And then I left my phone number, and he called me. And that was like late last November, early December. And we have been talking ever since.

Q And let's get some more detail there. When you say, talking ever since, are you communicating weekly via letter or by other means? Explain a little more.

A No. Me and Brendan, we talk pretty much on an everyday basis. Ever since the first time we talked

late November, we make an effort to speak to one another every single day.

Q Okay. And so it sounds like the jail has accommodated your -- your engagement with him?

A Yes.

Q Okay. And what role do you see yourself having in his life in the past X amount of months? Is it mentor, friend, something else?

A All of the above so far. Just a mental -- a friend, just to kind of regain his -- his faith in God.

Q Do you have an interest in continuing to engage with and work with Brendan?

A Yes. At this point I have no choice. I can't say no.

Q Okay. Are you in this for the long term?

A Oh, yes.

Q All right. Now, if the judge were to give Brendan some sort of community-based supervision, how would you anticipate being continually involved in his life?

A Whatever I would need to do to make sure that I could help him out.

Q Okay. Would that include -- well, let -- actually let me back up. So how close in proximity are you to the Depas?

A As far as I know, we're not that far. We're probably like a couple minutes away. That was -- you know, that was weird, but yeah, we're a couple minutes away from each other.

Q Oh, okay. Interesting.

So you're -- you're right in that same area?

A Yes.

Q All right. If there were a placement option that Brendan ended up there, be it home on house arrest or something similar, do you think you would have personal face-to-face engagement with him?

A Yes.

Q And what would that look like?

A Well, I've talked to my family through long conversation, I -- I would be willing to adopt him if needed.

Q It's -- it sounds like it's not your decision alone to make, but you've discussed that with family, and you're aware of the challenges, right?

A Yeah, yes.

Q Okay. So why? Why would you do that?

A Because speaking with Brendan, he -- he's an awesome human being. And I believe that he is worth fighting for.

Q Do you assess that he has potential?

A Oh, yes. Oh, yes.
Q Now, as far as how that could be structured, just so I'm clear, you -- you say you'd be willing to adopt him, you would take him into your home, you would --
A Yes.
Q -- allow him to live as a family member in your home?
A Yes.
Q Okay. Would you have any concerns for your safety or anyone else's?
A No.
Q Have you discussed this with his family, and if so, is -- are -- do you believe that you are a viable option here?
A I spoke with his mother. And yes, I believe that I am a viable option.
Q Okay.
MR. TEIFKE: Thank you very much, sir.
THE WITNESS: Uh-huh.
THE COURT: Ms. Clark?
MS. CLARK: Thank you.

CROSS-EXAMINATION

BY MS. CLARK:
Q Mr. Powell, can you hear me okay?

A Yes, I can hear you.

Q I just want to make sure I understood. It sounds like you've been talking with Mr. Depa since sometime last year, late last year?

A Yes.

Q But you've never actually met him in person, it's just been phone calls and letters?

A Yes.

Q Okay.

MS. CLARK: No further questions. Thank you.

THE COURT: Redirect?

MR. TEIFKE: No redirect.

THE COURT: All right.

Thank you, Mr. Powell.

All right. Mr. Teifke, you may call your next witness.

MR. TEIFKE: Slight reorder of things here. I'd call Kimberly Spence.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

KIMBERLY SPENCE,

called by the Defense as a witness, was duly sworn and testified as follows:

THE COURT: You may proceed.

MR. TEIFKE: Thank you.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please?

A Kimberly Spence.

Q Okay. And where do you live?

A Where do I live?

Q Yeah.

A I live in Rockledge, Florida.

Q All right. And what do you do for an occupation?

A I currently am the clinical director of Autism Support Services For Specialized Treatment and Assessment Resources, which is a private forensic practice. And I currently work for the University of Central Florida for the Center for Autism and Related Disabilities, which I've done for nearly 25 years as an autism disorder specialist.

Q Okay. Educational background to get to that, what -- what's your educational chops?

A Excuse me. So my undergrad is in Secondary English Language Arts, which is basically preparation

to be an English teacher, my Master's is in Special Education, and my PhD is in Special Education with a content focus on autism and personnel preparation. Meaning I was specifically prepared to train educators and personnel about autism.

Q And as far as the -- your Master's and your PhD, how many years are we talking about there?

A My Master's was three years, and my PhD was three and a half years.

Q Okay. And where did you attend school for those?

A The University of Central Florida.

Q Central Florida. Okay.

And Doctorate in Special Education, you indicated?

A Yes.

Q All right. The specialized treatment and assessment resources, that's STAR, right, by --

A Acronym.

Q -- acronym.

Give us some more details on what that is.

A So the private forensic practice specializes in rendering assessments of individuals who have varying conditions, either mental health conditions, autism, neurological conditions, who come into contact

with the criminal justice system. So we work with clients who are arrested for a variety of reasons. And my primary focus is on supporting clients who have autism, development abilities in general, intellectual disability.

Q Okay. And what about the other, which is the Center for Autism and Related Disabilities at University of Central Florida, certainly there's an abbreviation there we can use.

A Well, why don't we say UCF CARD --

Q UCF CARD.

A -- how about that?

Q Okay. Let's use that.

Describe your work at UCF CARD.

A So I started working for the UCF Center for Autism and Related Disabilities in 1999. I was hired as the coordinator of educational training programs, which meant my primary responsibility was to support families, and that's birth to death, in developing programs for people with autism to help with behavioral intervention, working in the school, building summer camps, providing specialized training for sexuality, and kind of anything that's needed by the constituency or requesting agency, which could be the school system, that could be a law enforcement agency.

And my area of specialty over the last 20 years has been providing law enforcement training. So I train first responders. I train SWAT. I train sheriffs, police to identify autism and kind of what to do in terms of crisis intervention and management.

Q Okay. Do you lecture?

A I'm sorry?

Q Do you lecture?

A Yes, I do.

Q And how long have you been doing that and how often and where?

A I've been providing training and lectures for over 20 years. And I've done that internationally and across the United States. I train about autism. I train about the intersect of autism and people that become involved in the criminal justice system. I do a lot of work around prevention, preventing people from becoming involved in the system. People who have caused sexually harmful behavior, how to intervene and what kind of treatment they may need. And a lot of lecturing about what autism is and comorbid conditions that we frequently see in individuals who end up involved in criminal justice.

Q Okay. And are you the -- the author of these training programs? Do you develop them?

A Yes, I do.
Q All right. And you alluded to training law enforcement officers. Is that throughout the state of Florida?
A That's throughout the United States.
Q Throughout the United States. Okay.
Have you trained everywhere in Florida, itself?
A Yeah. Every district, yes.
Q Okay. And that's specifically also to training school resource officers, so law enforcement within the school setting, correct?
A Yes. I've -- I've -- I've spoken at the -- the Florida Association for School Resource Officers has a yearly conference, and I've spoken at that conference for 18 out of last 20 years.
Q Okay.
A Yes.
Q Are you on any boards? Are you a board member of any organizations?
A I'm currently appointed on an FDLE advisory board, which advises the FDLE regarding people that have autism and other neurological conditions or conditions which might affect them and the way that police and/or first responders respond to them. I'm

currently on advisory board with Florida Atlantic University, which is -- has received a grant to develop first responder training across the state. And I'm advising on the development of that material, which will go out statewide in the next three months.

Q Okay. And -- and your sphere of knowledge here is beyond autism. You alluded to other disabilities, correct?

A Yes.

Q Can you specify any that you're speaking of?

A I've spent most of my career working with people who have autism, intellectual disabilities, learning disabilities, different kinds of neurologic or genetic conditions. So my area of specialty is -- is essentially in preparing personnel to work with individuals with these kinds of conditions and directly with -- working with these individuals for the purposes of behavioral programming, sexuality intervention and training, or whatever may be needed based on a situation that's maybe not going well for them.

Q Have you ever been determined to be a subject matter expert in autism in training law enforcement?

A Yeah, yes.

Q Okay. For --

A For about 18 years, yes.

Q Eighteen years. All right.
Based on education, experience, et cetera?
A Yes.
Q Okay. Just so UCF CARD, if I'm understanding it right, you've been there for over 20 years?
A It will be 25 years in November of this year.
Q All right. So it began in 1999?
A '99.
Q And continue to work there, if I understand it right?
A So I worked full time for the center up until about 2014, 2015, and then I went into private practice full time. So I still work part time for the center, one day a week in -- in that capacity, that's to train law enforcement and first responders.
Q Okay. I think it probably goes without saying, but do you think there's plenty of information that needs to be imparted to law enforcement in this specific --
A Absolutely.
Q -- subject matter?
A In identification and deescalation, yes, yes.
Q Okay. So to present, your current roles with UCF CARD are part time --
A Correct.

Q -- correct?

And then STAR is full time? What does --

A I'm full time.

Q -- STAR look like now, as far as what you're doing day in, day out?

A Day to day would be, I would say, an equal measure working on cases, doing assessments, what I'm doing today, and in training. Doing training in a lot of different places.

Q Okay. Have you trained court personnel; attorneys, judges, et cetera?

A Yes.

Q All right. The -- what about any -- have you ever presented at professional conferences?

A Many -- many times. I've -- I've trained probation and parole. I've trained public defender's offices. I've trained judges. I've worked with prosecutors. I've trained Florida Counsel for Exceptional Children, the Association for the Treatment of Sexual Abusers, social workers.

Q And over --

A Many times.

Q Over the entirety of your career, it's always in some respect hands on with autism, right? I mean, that's essentially -- that's the -- the foundation?

A The bulk of my work, yes.

Q All right. Including children; is that right?

A Children and adults, the lifespan.

Q So in addition to your employment, STAR, UCF CARD, also professor, you're a professor, as well?

A So I wasn't -- I -- I worked as an adjunct at UCF. I taught at UCF for about 15 years. And in the time I was there, I also helped in the creation of a Master's program for teachers teaching children, school-aged children, with autism. So we developed that starting in the early 2000s.

Then I taught three different graduate classes. One was specific to autism, and that was working with undergrad and graduate teachers, or school-based personnel, who wanted to have a certificate in the area of autism. I also taught a graduate course, in transition. So how to transition people from middle school to high school, elementary to middle, high school into adult life; how to transition them when they have varying needs, so a disabling condition, behavioral difficulty, autism, and mental health disorders. And I also taught a graduate course that was specific to just understanding autism, called the Nature and Theory of Autism.

Q All right. So we're talking really about, not only just teaching classes, but developing, creating the content, itself, and teaching it?

A Yes.

Q All right. What is Project ASD?

A Project ASD was the Master's grant that I just referred to.

Q Okay.

A And that -- that project came about right around the time I finished my PhD in 2001. And a team of people, including myself, basically put together a template and an outline and created it. And within two-year's time, by 2004, that project was fully funded. And it's since been funded every -- in every two-year cycle since that time.

Q Have you had any experience teaching students like Brendan? You familiarized yourself with him at this point, and we'll get to that. But have you had that type of experience?

A Yes. I was -- I worked as a teacher in general education. And then when I received my master's degree, I began teaching special education. So I taught kids that EBD. I taught kids with SLD. I taught kids with autism. I ran a self-contained unit for five years before I went to work for the Center for

Autism and Related Disabilities.

So yes, I taught students like Brendan --

Q And --

A -- with a very similar profile.

Q Okay. And would that also include consulting with the adults, be it paras or teachers, that in turn deal with students like Brendan?

A Yes. As a -- as a teacher of any exceptional education classroom, particularly a self-contained classroom, part of your responsibility as the teacher is to make sure your paraprofessional knows how to interact with the students, understands their behavior intervention plan, and any strategies for deescalating or reenforcement, as it may be based on the student's behavior plan.

Q And we'll get a little more detailed on that.

But that is something you estimate as is critical, right, in the school?

A Absolutely.

Q All right. What about any authorship, have you authored -- authored any publications?

A I have.

Q What? Unless there's too many to list, I don't know, what have you authored?

A Essentially, articles about transition, about

transition individuals and the use of technology to assist in the transition of students who have autism and providing them supports.

Q Okay. And in addition to any publications, what about any other scholarly activity that we haven't already talked about?

A I was -- I was on the editorial board for the Journal of Vocational Rehabilitation for almost 17 years. And I've been on the board for peer re journal for -- that addresses intellectual developmental disabilities since 2016.

Q Okay. And I'm guessing this isn't your first time in a courtroom. Have you testified in court on the topic of autism as an expert before?

A Many times before.

Q Okay. Any estimate or --

A I -- I don't keep track.

Q Okay. State, federal, both?

A Both.

Q Okay. Do you testify solely for the defense?

A I testify for both sides.

Q Okay. What, like, types of cases to -- if they're criminal cases, for example, what types of cases have you been involved with in your capacity that you're describing right now?

A I've been involved in cases involving aggravated battery. I've been involved in cases involving homicide. I've been in cases involving people in possession of child pornography. I've been involved in cases where there's a sex crime of some kind.

Q A range of offenses?

A Yes.

Q How did you become involved in Brendan's case?

A I was initially contacted by his mother in, I believe, October of 2023.

Q And then thereafter, you and I talked, right?

A Correct.

Q Have you had any time to spend -- opportunity to spend time with Brendan at the jail?

A Yes.

Q Okay. And when, if you remember, when was --

A I saw --

Q -- that?

A -- him on March 28th. I believe I saw him the day after Greg Prichard saw him.

Q Okay. '24, of -- of this year, correct?

A Correct, correct.

Q And can you tell the Court how much time you

spent with him and what it consisted of?

A Yeah. I -- I basically conducted an interview with him for -- I was there for about three hours.

Q Okay.

A Yeah, just shy of three hours, I believe.

Q That's part of your equation in trying to assess things here, right, interviewing Brendan. But there's also other documents and information you've been provided along the way?

A Yes.

Q Have you reviewed the competency evaluations that were done in this case?

A I have.

Q And did you have a chance to review Dr. Prichard's written report on his forensic evaluation?

A I did.

Q What -- were there other psychological evaluations done, as well, that you've had an opportunity to review?

A There were evaluations that were a part of the Agency for Persons with Disabilities documentation. There were -- there was, I believe, a psychological that was a part of the Flagler County schools

documentation. There was additional information from department -- DJJ personnel, I believe, that had seen Brendan in the interim of the time of the incident up until the time I saw him.

Q Okay. Were the APD, Agency for Persons with Disabilities, records voluminous? Was there a lot to look at there?

A Yes.

Q And there was also, you -- if you were here, you heard reference to Brendan's stay at Springbrook. Were there records on offer there for you to evaluate?

A Yes.

Q Okay. And did you have a chance to review more case-pertinent documents, such as the arrest report?

A Yes.

Q Okay. What about any specific school records from Matanzas?

A I reviewed several IEPs. I've reviewed his behavioral data that was proffered by the school. I reviewed his behavior intervention plan. I reviewed documentation from the behavioral analyst, who was -- who, it appears, authored the behavioral intervention plans during the two years that Brendan was at Matanzas High School.

Q Okay. And anything else jumping out? Were there any other court records or -- I'm trying to think of what else you might have relied on or what I've provided you.

A The school documentation, APD, a lot of documentation from ECHO, which was the APD-supported group home.

Q Right.

A There is a great deal of behavioral data from ECHO.

Q Okay. And I think you were also, you sat through a full day of testimony already on this, back in whenever that was.

A May 1st.

Q May, yeah.

A Correct.

Q Based on the information that you've had, do you feel like it's enough? Did you find yourself wanting more, or were you able to opine based on what you had?

A I -- I have definitely many thoughts about -- about things that have occurred previously and -- and kind of, I guess, how we're sitting here. Perhaps I need you to ask me --

Q Yeah. I -- I think maybe you misunderstood

me there.

Just as far as what you've been provided, to sit here and offer testimony --

A I --

Q -- do you feel like you've had enough based on the things we just talked about?

A Yes.

Q Okay.

A Yes.

Q And based on that, based on your interview with Brendan and your review of all these records, what do you see as his presenting needs?

A Currently?

Q Yes?

A I believe that he needs appropriate mental health intervention. I believe he needs intervention provided to him by a person, or -- and/or a team of people, who understands autism and co-occurring mental health disorders and has a background in applied behavioral analysis. So somebody that understands the behavioral presentations and has the fluency to understand the contributions of autism, the contributions of mental health, and how that should look along a continuum in terms of treatment and the behavioral provision.

Q It -- it sounds like that level of knowledge might not necessarily reside in a single person. You -- maybe a team, I think you alluded to?

A I -- I would 100 percent believe it would be a team of people.

Q Right.

Do you believe that he needs, like, substantial support?

A I believe he needs substantial support right now, yes.

Q Okay. And as far as, you know, staff, that engages with Brendan, whether we're talking a jail, whether talking a Springbrook, or anywhere else, what level of training, what level of knowledge do you assess the staff should have to do it well?

A A high degree of knowledge related to autism and co-occurring conditions. And specifically, anyone interacting with Brendan, or any client, for that matter, should have an understanding what their primary disabling conditions are. And in his case, there have been several different opinions related to what his specific condition is. So I think some knowledge about his history, some knowledge about his -- you know, there -- I know there is not a lot of information related to his birth parents, but there is some

understanding.

So just understanding neurology, understanding the presenting and diagnosed conditions, and again, having -- having some fluency with behavioral intervention.

Q Is what you're describing here what you expect led to this designation that you heard that he's like this level six, this high level of care? Is that all that we're talking about when we assign a level? Is that what we're assessing is how much intervention is needed?

A The -- the reference to a level six, which is -- essentially, APD has to make a designation based on the need of the client. So the -- in this case, that reference is related to behavioral need and to additional supports that were needed. They -- some of those were social. Some of those were ongoing need for instruction. Some of those related to skills that he did not possess at the time.

I mean, he has been receiving services at that level since he was 15 years old. So they may have changed somewhat, but they're -- it's based on overall looking at the client and their level of needs.

Q Okay. Is there a level seven?

A I don't know the answer to that question.

Q Okay. Suffice it to say, level six is a high level of need and support?

A I've only had two other clients in nearly 30 years with that designation.

Q Okay. What about his upbringing, or what you've learned about his background, you're aware of his family life, you've talked to his other presumably, what else there, specifically, informed your position, if at all?

A Related to his biological parents or his adoptive family.

Q Well, both, frankly. So biological, were there any -- anything there worth noting?

A My understanding was that both of his biological parents have bipolar disorder. So that's certainly something to keep in mind, because when an individual has bipolar disorder, it's highly likely that any offspring will have some kind of either a neurological disorder or some kind of a psychiatric condition. And that's just looking at the propensity of research literature. And I would say, in practice, it's something to pay attention to.

Q Definitely worth knowing that information, biological parentage, right?

A When -- yes.

Q And --
A Absolutely.
Q And then as you heard, he was adopted at a very young age. What did you learn about just the upbringing did you learn that -- that informed your position at all?
A Well, what I learned from speaking with Brendan's mother and -- and also in reviewing a lot of documents, it appears that his family tried very hard to provide him with resources and the kinds of things that he needed to be successful.
Q Were the -- these layers of needs known to everybody, based on your review of records, were they known to everyone that was engaging with him, or at least knowable to them? If the question makes sense.
A If -- if I understand your question correctly, it appears to me, in reviewing all of the data, that the APD group home, ECHO, was well-apprised of all of his issues, all of the diagnoses, the documentation that had come from South Carolina. Mom had provided them history. There were many, many notes regarding staff that were talking to mom, where mom was relating all of the history, everything that had occurred, ranging from difficulties with his sister, aggression, acting out, very -- a lot of information,

including her husband having a heart attack.

So there was a lot of information that was shared about his adoptive family, about his experience, concerns that his mother had, concerns that the family had in general. So they were shared -- they were provided a lot of informing. And in reviewing the records, when ECHO was participating in the IEP meetings, the school meetings, so this is the Flagler County schools records, the IEPs, the behavior plan meetings around when the behavior plans were being created, or revised, there was a lot of documentation related to the group home being at the meetings and sharing concerns related to different things.

But it appears a lot of documentation relating to, here are very specific things that have occurred. These are behaviors we've observed where people have being very forthcoming.

Q So sounds like the information, itself, is -- is known, and it's being transmitted, but not necessarily implemented? Or am I looking at that the wrong way?

A I -- I wasn't at the school, so obviously I -- I can't say what was implemented or not implemented. What I can tell you is that when I go back and look at the historical data, so this is looking at the IEPs,

this is looking at the behavior plans; and when I go back to kind of March of 2021, where there's this huge IEP meeting and mom is present, I think there were four of the group home staff present, and they have this long meeting. There's these well-documented conference notes where they discuss his medications. That's all written into the IEP. His medications are --

Q All right.

A -- listed. His behavior at the group home is all documented in the conference notes. And at the conclusion of that document, essentially, the group home staff say to the school staff, if there are any problems, call us immediately, and we will come get him. And they express, here are triggers, here are things to work for. There appears to be several are of these communications that were occurring about every three to six months, some of which were kind of in the routine nature of an IEP meeting happening every year --

Q Uh-huh.

A -- some of which were related to problematic things that happened, including there had been a fight on the bus. And then they had a meeting. They had a manifestation determination hearing. They determined the behavior was part of his disabling condition. And

they adjusted his IEP. And they adjusted his behavior plan. And again, at that meeting, it is documented in the conference notes where the staff are sharing, these are triggers, these are concerns we have. Should there be any problems, please contact us.

They're expressing concern related to his use with electronics. They're expressing concern with making sure that all of the staff are apprised of the behavior plan and understand how to implement it.

Q And the -- so there's -- there's the requirement, of course, of at least -- or yearly IEPs, but in the intervening months, there is a way to address needs as they evolve, by way of the behavior support plan, et cetera, right?

A Correct.

And I -- I heard one of the other witnesses make a reference to this. So IEPs must be -- must be completed every single year; but if there is an issue or a concern, that can be -- that can be the school-based team is expressing a concern, this student appears to need more support than they are getting.

Q Uh-huh.

A Or things are going really well and we don't need to be doing whatever it is that we're doing. Or the family can come forward and say, we feel like

something is not going right. So the -- it can be initialed by anybody involved in the entire team, which includes the family, which includes Brendan, which includes the school staff, which included the ECHO group home staff. I believe APD personnel were present for some. There's a lot of people in this kind of moving breathing thing.

So if there's a concern, which there appear to have been concerns along the way, they reconvene, and they -- they basically address that through, either adding goals to the IEP or readdressing the need for intervention or additional supports.

Q And changing strategies along the way --

A Correct.

Q -- as needed?

A Correct.

Q Okay. When we're talking just broadly did triggers, what are we talking about? External stimulus X causes reaction Y? Like, what is it? What do you understand triggers to be?

A Well, trigger -- a common definition of a trigger as it relates to a student, a K through 12 student, would be things that could potentially upset that student to the point of acting out, could potentially cause them such distress that they may

engage in some behavior to avoid that situation or to get out of it. It -- it -- it's a reference to it's a known commodity. It's a known behavior.

And in general, when we see it on an IEP for students at the point, when they're in high school, usually it's a pretty well-documented behavior, that we have a concern at home, we have a concern at the group home that we're seeing consistently. And so we're saying, these are things that we know to be troublesome. These potentially could upset this person to the degree that they may act out; they may run away; they may engage in self-injurious behavior; they may become aggressive.

Q And specifically in Brendan's case, by review of the records, there are these identified triggers, and then there's the resultant strategy for dealing with them as they arise, correct?

A Correct.

Q And that's important to have, you believe?

A Correct, 100 percent for -- for any student.

Q Okay. As to the spectrum of autism or what level, I think we've heard that -- that term used. First of all, what does that mean? What are the levels, and how do they correlate with need of -- of the student?

A So -- so Brendan was diagnosed originally as autism spectrum disorder, level two. So the level -- level one, level two, and level three, these are references to the severity of the presentation of autism. So everyone is different.

Q Uh-huh.

A And clinically speaking, we're looking at, and -- and without getting into a DSM-5-TR breakdown, we're looking at social issues, we're look at communication issues, and we're looking at restricted and repetitive patterns of behavior. Okay. So that would be the very fixed ideas, routine. That would be his very strong predilection towards computer-based use of things.

So we're looking at all these different things, and we're looking at the level to which that person needs support. And so the DSM instructs a diagnostician to look at, how much support does that person need to be --

Q Right.

A -- integrated in their community. So level one means you need a few supports for social difficulties or deficits, you might need a few for language deficits, and you might need a few for the restricted and repetitive patterns and behaviors. So

maybe you're -- you're not as rigid as somebody else.

Level two means you need a substantial level of support, which is the diagnostic level that he -- his diagnostician, who did the testing with him, I believe in 2019, diagnosed him.

A level three would be somebody that needs significant support. Meaning, communication, social, and they have very highly restricted interests, to the point where they probably have to be directed away from things. And I would -- for a level three, I would think, not verbal. Low on the communication continuum, but other very significant behaviors, probably, where they can't maybe comport their behavior in the community, might be engaging in, you know, some kind of acting out kind of behavior.

Q And as to the level of support for Brendan, would you generally agree that that midrange, that level two is what you observed?

A Yes.

Q Okay. You would disagree that he only needs few supports in these various areas, right?

A I disagree that he is a level one.

Q Okay. So in your estimation, again based on your review and your experience, training, et cetera, how does autism affect Brendan?

A I think the deepest impact for Brendan has been he has a lot of anxiety. I know he has a co-occurring diagnosis relating to that, but I think there's a lot of anxiety with changes. There's a lot of anxiety related to when the routine is not followed. He has a lot of social difficulty. He has currently, outside of the people that have spoken in this room today, he doesn't have friends. He reported to me, he wants to have friends, that he has always struggled with making friends, he struggled with socially understanding the kinds of behaviors that he needs to fit in and interact with others.

I think that he has very significant theory of mind deficits, essentially understanding the perspectives of others. I think he, in many instances, he perceives things in a way, and -- and there's a long history of this, where he's perceiving something, and it's not -- it's not actually what's happening it in real time. But it's a -- it's -- he's perceiving it based on, you know, not maybe understanding not verbal social cues or the subtlety in speech or, you know, things that -- that people that don't have autism are able to easily pick up on.

Q Is this -- it's probably things we just take for granted, but is this sort of just nuance in our

social interactions, it's just something that, it isn't there. And either not picking up on a signal or not giving the right signal? Does that make sense?

A Well, I -- I think about it like this, so if you're a person that doesn't have autism, your -- your factory setting, as I like to say, is you are preprogrammed to look at people in the face. You are preprogrammed to look to seek out information from somebody's body language, from the tone of their voice. When you have autism, your brain is not wired in that same way. So you're often missing that information. You're missing nonverbal social cues. You're missing subtleties that exist in communications between people.

And when you miss that, you often miss a lot of the meaning that happens in a communication.

Q Okay. And you -- you mentioned wiring, so I mean, we're talking about something that is essentially hardwired; we're just trying to best accommodate for it, is that what we're doing?

A Yes, yes.

Q All right.

A And provide instruction.

Q Okay. What about like a history of rigid thinking or thought processes? I mean, is there that? Did you notice?

A It appears that that has been a difficulty for him going back to the time he was very young, where he has become very fixated on something. And in -- in -- in the records I reviewed, he became very fixated on computer games and computer systems, in general. And that it -- it appears to me, for most of his life, this has been something that has been a very significant struggle for his family, for the placement he was in at the ECHO group home, at Matanzas High School, where the electronics and his very extreme focus on electronics or gaming has caused a lot of difficulty, a lot of problems.

Q What about regulation of management of emotions, has that been something you've learned he's struggled with?

A Yeah, yes, yes.

Q Okay.

A By -- by history, yes.

Q I'm sorry?

A Yeah. By history.

Q By history?

A He has -- has had a very difficult time with regulating his emotional state. And -- and so we'd refer to this as being emotionally dysregulated.

Q And you mentioned trouble with change or

transitioning, I think you might have said; meaning what? Like, what's changing, what's transitioning?

A So -- well, so from -- transitioning is a couple different things. Transition can be, I'm doing one thing, and now I need to do another thing. It can also be a direct reference to you're physically in one place, and you need to physically move to another place.

Q Uh-huh.

A And what we know about people with autism, in -- in looking at peer-reviewed literature, and I can tell you in clinical practice, is that people with autism struggle to stop doing one thing to do another. It's -- it's difficult for them. Even when it's something that they like doing. So there's an inherent difficulty in -- even when I'm trying to get you from doing playing this game to now playing this game, it's harder. And when we think about trying to move people or shift people or transition people from doing something that they're doing that they like to something that they are not going to like, it's exceptionally difficult.

Q All right.

A Especially with a history of the rigidity.

Q And what does the difficulty manifest as?

What does transition or change manifest as? Anger, frustration? Like, what does it look like?

A It can look like a lot of different things. So depending on the individual, for some -- some people, they're going to begin self-injurious behavior are. They might start hitting themselves in the head, throw themselves on the floor. Some might start protesting, screaming, and crying. And some become aggressive.

Q The -- you mentioned electronics. Do you see any record evidence of that being appropriately used or managed or not?

A I have to tell you, it was very concerning for me to read all the records and know the facts in this case. I -- I could not understand why somebody that had had a long history of difficulty with the removal of electronic devices, difficulty, aggression, well-documented, why any program, or any school, would continue to allow him to have -- to have a gaming system. I -- I -- it was shocking to me.

Q Does that extend to just discipline surrounding electronics, whether it's physically taking it way or not, just the topic of electronics?

A Well, so electronics -- electronics are referred to in different ways throughout his records.

When he was younger, it would -- they were referred to, games, gaming systems.

Q Uh-huh.

A And then in some points they're referred to as him using, you know, a PC or some kind of an actual computer. And in other references, just gaming systems in general. And again, it's -- it's very -- it's concerning to me, in reading records where he was in a group home, he was in a level six group home that's funded by APD, and they had to call a crisis team to remove his electronics. They -- they talk specifically about that.

In fact, they advised the school about this, he has these set times, I think it was five to seven or eight to -- I may be getting the times wrong, but --

Q Uh-huh.

A -- there are these specific times, and he's allowed to game. And we're going to take the games away from him, we call in the crisis team.

Q So that was very specifically and narrowly tailored to a known problem?

A Yes.

Q All right. You're aware of additional diagnoses, ADHD, right, for Brendan?

A Yes.

Q IED, intermittent explosive disorder?
A Yes.
Q The disruptive mood dysregulation disorder, right?
A Yes.
Q Do you have an opinion on that, or are you just aware of the prior diagnoses?
A I'm aware of the prior diagnoses.
Q Okay. Is that common for someone with autism, that there's also that, that the -- there's a cluster at the center of the Venn diagram? Is there a lot of overlap there?
A So there's a very high proportionate rate of co-occurring disorders with autism. The two that happen most frequently are anxiety and depression. Those both appear to be lifelong issues for Brendan. And -- and they have been, I believe -- I believe they have manifested themselves in different ways. We do frequently see people with autism who continue to have difficulty with behavioral management of behavior outbursts. We see a higher proportionate rate of those folks having co-occurring mental health disorders.
Q And you -- specifically here, you believe that this is -- these co-occurring orders, in addition to autism, affected Brendan?

A Absolutely.

Q All right. There had been some questioning, I think it was of Dr. Prichard by Ms. Clark, about, I think it was in Brendan's interview with Dr. Prichard, about him blaming Ms. Naydich, or I think it was a reference to, she could have done some things better, too, or something like along those lines. Do you see this the same way, that he's blaming her?

A I -- I don't -- I don't view it as blaming. I view it as he has a very rigid way of thinking about things. And in his world, things are very black-and-white. They're either in this category, or they're in this category. And I think -- I know in his history, he's had difficulty with kind of seeing things, and this is central coherence deficit, is kind of seeing the big picture of things. He gets very myopic and focused on one part of it.

And in speaking with him and talking to him about what happened, because I did ask him what happened, I --

Q Uh-huh.

A -- let him know I had reviewed the records and I wanted to hear his perspective; it felt to me, during the interview he had with me, where he's giving me the facts, he's not necessarily assigning blame to

Ms. Naydich, he's just giving the facts of why he believes an incident -- why something occurred, why this happened.

Q Autism standing alone, and of course that's not the case here, but that -- does autism, itself, usually result in aggressive behavior, or is it this combination we're talking about?

A So a lot of people with autism have -- experience, at some point in their lives, or express aggression. And aggression happens for different reasons. There's different functions for aggression. Some aggression is related to people who are not able to vocalize their needs, so they may become aggressive. Some aggression is related to sensory-based difficulties. So they become very overwhelmed by noise in the environment or a lot of commotion. And I -- we heard about this a little bit early, but and they may become aggressive in the face of that. Sometimes it's sheer frustration.

So there's different reasons, but many children that have autism express aggression. It's -- it's a -- it's a pretty common thing, but there are different reasons for it.

Q I see.

We heard Dr. Prichard agree with the

conclusion that these events were a manifestation of disability. Do you agree with that, as well?

A Yes.

Q And is it all these perturbations of normal that we're talking about, the IED, the DMDD, et cetera, in combination?

A I -- I think you have to -- I look at -- at Brendan as a person that is neurologically comprised. He is somebody who had a very difficult beginning. There are some certainly genetic things at play. And even though a family adopted him that had his best interests, very well-meaning and tried their best, you know, he has autism, and he has other mental health disorders. So he's got this constellation of things that are happening.

In addition to that, you know, he's experienced trauma. He -- he has, in different ways, experienced trauma. And -- and without getting into an entire list, so you -- you have all these different things impacting a young man. And while I understand that Brendan is a very large person, he's still a young man. And at the time that this incident occurred, he was a young man.

He was a 17-year-old young man who had been in an institutional setting for nearly a year, had been

in a group home for nearly two, where I think a lot of people were trying to do their best, but I think it's important to bear in mind that there was just a lot of changes.

Q Right.

A There was difficulty with staffing at the group home. There was just things that happened that where there was just this constellation of changes, which I think was really difficult for him. And I think, in -- in reading the documentation, in speaking to him, and in knowing all the pieces I know, you know, he, on the date of this incident, he was -- he was hungry. On the date of this incident, some different things happened.

And -- and again, I look at it as the perfect storm. So with -- with all of these things that were already present and just kind of one more thing happening here and one more thing happening here, and I don't believe that's what contributed to what happened.

Q There seem to be some intimation that he can control his anger, that it -- he's just bad, perhaps, is the conclusion that's sought to be drawn; but do you see it as -- as that simple, as that straight a line?

A No.

Q Why not?

A I think he has difficulty in, and that it's very clear throughout his history, that he has had difficulty at times with managing his emotions and managing his frustration. And I don't have the impression that that is fully under his control all the time.

Q Okay. Do you believe that he is inherently dangerous?

A Can you -- can you be more specific about that?

Q Without the right support in place, so let's -- let's start with a baseline understanding that you need people in his orbit that know him well --

A Yes.

Q -- that know triggers --

A Highly trained staff.

Q Highly trained. Whomever that is, given if people have the right knowledge and implement the knowledge, do you -- is he dangerous in that scenario?

A I think in having proper supports in place, having staff, family members that are known to him, people around him that know how to manage his behavior -- and -- and part of this, too, is going to be intervention and education, you know, helping him learn how to recognize his internal states. There's just a

lot of things that I believe need to happen. If all of the right things are in place; mental health treatment, medication management, therapeutic intervention, a stable living environment, that would dramatically and should dramatically reduce any concerns about behavior.

Q Oh, are there any other mental health needs that you think haven't fully been talked about enough? Is there anything else that jumped out at ya?

A There -- there -- there's a lot -- there's several are references, and I heard some discussion, related to voices. And I'm certainly not qualified to weigh in on that topic. However, it appears for several years there's been discussions about him hearing voices. He related to me that he heard voices. And I -- I -- again, I'm not qualified to enter into -- you know, it's not my area of expertise, however, I would say that needs to be understood. And whether that's psychosis, whether that's the beginning of schizophrenia, whether that's maladaptive behavior, that needs to be better understood for intervention.

So whether that has some kind of a neurologic underpinning or etiology or it's maladaptive behavior related to what's happening in the environment, we need to understand that.

Q And address it, as --

A Yes.
Q -- well? All right.
A Correct.
Q And you indicated that records reflected that has been a years-long claim? This is not some recent development, right?
A I saw the beginnings of that, I want to say, in 20 -- 2018, 2019. Yes, it's gone on long before this incident.
Q Does the -- his history of seizures factor in at all here, or is that just something physical that really isn't in play here?
A It -- it does factor in here, yeah.
Q How --
A Certainly.
Q -- so?
A So what we know about people who have seizure disorder, which is a very broad category, typically this is something that can impact behavior. And once you've had one seizure, you certainly could be at risk of having one again at any time. I don't -- I didn't review any records related to that, but what we know in general is when you have a seizure disorder or you have experienced seizures, there's often maladaptive behavior that can happen as a result.

Q All right. They often go hand in hand?
A Yeah.
Q All right. Brendan was placed, as a result of ECHO's directive, he was placed back in the public setting; you're aware of that, correct?
A Yes.
Q What was that placement? Like, what was in -- in play there in the school to deal with him?
A So according -- according to the record, he was placed into what's called a self-contained classroom. And a self-contained classroom means it's a smaller-sized classroom, meaning there are fewer students and there are more staff. So typically, you have one or more teachers and you have one or more paraprofessionals and you have a smaller number of students. That may involve a specialized curriculum within that classroom setting.

I believe he was placed based on the label of, other health impaired, into that classroom; but he spent most of his time in that classroom. I know he did go out for the computer class, that I believe was mentioned previously, but he spent the predominant amount of time in -- within that classroom.
Q Okay. So smaller population and then more individualized attention, right? Is it a one-on-one

support in those classrooms?

A He was assigned a one-to-one paraprofessional.

Q Okay.

A Which I believe was recommended by the group home, if I'm not mistaken.

Q And in your experience, the people that are dealing with him, paraprofessionals included, require an intimate knowledge of him, her, whoever it is, correct?

A They should, yes.

Q Okay. To include the IEP and the behavior support plan incorporated into it?

A Absolutely. As a teacher, who would be the direct person in charge of running and being responsible for a self-contained classroom, part of your job is making sure that the paraprofessionals understand the directiveness and the directives on the IEP and that they understand the behavior intervention plan, or the BIP.

So there's the IEP. And the BIP is a part of the --

Q Uh-huh.

A -- IEP. So part of the responsibility of -- of the teacher, or the teacher of charge, however

that's referred to, is to make sure that the paraprofessional understands what that plan is, understands how to implement it. And with any behavior intervention plan, data has to be collected. And in his -- for his behavior intervention plan, there specifically were data they were collecting related to specific behaviors they were tracking.

As a part of that plan, there is preventative base strategies that are articulated in the plan. Try this, say it this way, don't do this, offer this -- this incentive or this --

Q Uh-huh.

A -- reward, and/or the identification of things that are problematic, known things that may be triggers or a problem for that student.

Q And then sprinkled on top of all of this, of course, is ECHO is on standby with a crisis intervention team?

A In the two years preceding the incident, I saw several meetings. There was a meeting in March of 2021, where they said to the school staff, we will come and get him. There was another meeting that happened in December of 2021 where they said the same thing, they expressed concern about the electronics. We go into March of 2022, there were several concerns that

were expressed and again reiterated to -- saying to the school-based staff, if there are any issues, call us immediately.

They also, I believe, in that March of 2022 meeting, shared with the school staff, this is what I was talking about with respect to removing electronics and needing a crisis team, sharing with the school team that was present for that IEP, he's been restrained under these circumstances. These are the things that have happened that have caused a difficult time or difficulty with him.

Q Okay. If a professional -- if a paraprofessional engaging with Brendan was not aware of the IEP, nor aware of the behavior -- the preventative strategies, is that appropriate in your estimation?

A Absolutely not.

Q Okay. For reasons we've talked about?

A It's dangerous.

Q Dangerous. Okay.

As far as the strategies that we're talking about that worked their way into the behavior plan, what specifically, to the extent that you remember, I know there was 25 or so of them, what specifically here was most pertinent?

A His plan was very comprehensive. I would say

what stood out to me was the list, the very clearly articulated list of triggers, things that were known to be troublesome, that were known to cause him to escalate, that were known to be -- if -- if -- if he was spoken to in a certain way, that was known to cause aggression. The fact that multiple times in multiple conference notes, documentation, IEP, and the behavior plans it said, do not correct him in front of other students; choosing your words, offering him basically not -- and I won't use the word -- use the word confront, but essentially being very cautious about how you're interacting with that student, not reacting.

So often when students, who have behavioral difficulty, are reacting what -- what -- as a teacher and as a paraprofessional, and what a behavior analyst will tell you, you have to ignore, you have to stay very calm, very cool. There were just -- there was a lot of documentation in his records that was saying those same things over and over again about being cautious, about how he was spoken to, and the circumstances under which anybody would give him a directive.

Q And based on your review of the records and the descriptions therein about how these events unfolded, were strategies employed, were triggers

recognized?

A It does not appear so to me.

Q The State is requesting that Brendan be sent to prison. Do you believe that is the optimal environment for Brendan?

A I did not.

Q Why? Will he receive the treatment he needs?

A I do not believe he'll receive the treatment he needs. And the things that are happening in Brendan's behavior, incarcerating him is not going to change the factors that precipitate -- precipitate that behavior. He needs therapeutic intervention, and he needs to be provided with mental health treatment. There are several things that need to -- need to happen that will not happen in a prison setting. He needs cognitive behavioral therapy. He needs -- I think psychodynamic therapy would be helpful, ongoing counseling.

There are many things, I think, would be very helpful and assist him in improving his behavior.

Q And there are multiple layers to this, it sounds like?

A Yes.

Q You heard that there's testimony -- the testimony about some sort of apparatus in place in the

Department of Corrections to address mental health. Do the interventions you just described, are they on offer there --

A They --

Q -- cognitive behavioral therapy, et cetera?

A No.

Q Okay. Can you incarcerate this type of behavior out of someone like Brendan?

A No.

Q Why not?

A It doesn't work that way.

Q Is this a -- going to be a lifelong journey for him? I mean, are these interventions always going to need to be in play? Is there a learning curve? What -- what, in your estimation?

A So what I would expect, based on looking at the history and based on the information I have, I think he's going to need intensive intervention for a period of time. I can't predict how long specifically it would take, but what my assumption would be, when we intervene, we're providing mental health treatment, pharmacological treatment, a stable place for living, and for him, getting an education and doing the thing that's he likes to do; what we hope is to build his capacity and build for him learning how to do things

differently, learning to recognize warning signs internally.

Doing everything we can to help him have the things that he wants to have. He -- he said to me, he doesn't want to -- to do this. He doesn't ever want to do this again. He doesn't want to hurt people. He wants to be in the community. He wants to be a productive citizen.

So I believe we have to help people. And part of it is teaching, part of it is going to be in medication management. You know, and -- and I don't know at this point if we fully understand, which I mentioned earlier, everything that's impacting him right now. We have people that have looked at him kind of dimensionally, but I still think we might not understand everything. And I think that's important.

That should drive intervention. That should drive mental health intervention, behavioral intervention. The autism-specific intervention is understanding exactly what we're dealing with in scope.

Q And is there value also in just the people that will be in his life, whether or not they're offering some sort of intervention or not? Does the -- that environment matter?

A Yes.

Q Okay.

MR. TEIFKE: That's all I have. Thank you.

THE COURT: Ms. Clark?

MS. CLARK: Thank you.

CROSS-EXAMINATION

BY MS. CLARK:

Q Good afternoon, Dr. Spence.

A Good afternoon.

Q You are paid at a rate of what, $250 an hour; is that correct?

A Yes, I am.

Q And how many hours have you put into this case so far?

A I don't have that with me.

Q I think the last time you and I spoke, it was at least 20 hours; is that correct?

A If -- I know you and I had a phone conversation prior to the last sentencing hearing, so whatever I said to you on the phone would have been true at that point.

Q Okay. And have you put in any additional hours since that phone call, other than obviously sitting through the court --

A Yes --

Q -- testimony --

A -- I have.
Q -- today?
So how many more hours have you put into it since the phone call with me?
A Since the phone call with you --
Q Yeah. Approximately?
A Approximately, I -- I'd say eight to 10 hours.
Q Okay. So we're --
A Uh-huh.
Q -- talking 30 or so hours so far?
A Yes, ma'am.
Q And at a rate of $250 an hour?
A Yes, ma'am.
Q Okay. Now, when you met with Mr. Depa, I know you did a three-hour interview with him; is that right?
A Yes, ma'am.
Q But you didn't do any separate testing, it was just the interview and then relied on, presumably all the records and the testing that had already been done?
A Yes, that's correct.
Q Okay. Now, you would agree, in your interactions with Mr. Depa, that he is at least of

average intelligence, if not above average intelligence?

A Yes.

Q Okay. So he's a smart individual?

A Yes.

Q And I know that there's been a number of other diagnoses for Mr. Depa in addition to autism. I've seen in the records, oppositional defiant disorder. Would you agree with that? That's in the records.

A I -- I know it is in the records, yes.

Q Okay. Intermittent explosive disorder?

A I have seen that, yes.

Q ADHD?

A Yes.

Q Disruptive mood dysregulation disorder?

A Yes.

Q Now, with respect to seizures, is there any indication in any of the records he's received any treatment for seizures?

A He was on medication. He was on antiseizure medication. And I don't know when that ended, but he was, for a period, on antiseizure medication.

Q And is there any indication in the records he's had any maladaptive behaviors as a result of

seizures?
A I'm not qualified to speak on that.
Q So you didn't see any?
A I'm sorry?
Q You didn't see any in the records?
A No. Related to seizures?
Q Yes, ma'am.
A No.
Q Okay. And I know you said that in your assessments you were able to examine record from Springbrook -- excuse me -- Springbrook, the hospital; is that right?
A Yes.
Q And it looks like he stayed there about a year; is that your understanding?
A Yes.
Q And it was a residential hospital, correct?
A I believe so, yes.
Q And from what I've been told, they specialized in autism; is that your understanding, as well?
A That's what it said in the records.
Q Okay. And you would agree that while he was there, that he still had a lot of aggressive outbursts?
A According to the records, he was still have

gone aggressive outbursts, yes.

Q And he was actually physically violent with the staff?

A In the records, he did -- he did exhibit aggression -- aggression towards peers and staff, yes.

Q I believe I saw notes about him head-butting staff. Do you recall that?

A Yes.

Q Punching the doctor multiple times?

A I believe he hit a psychiatrist.

Q Okay. As well as throwing items like chairs, desks, things of that nature?

A Yes.

Q And then with respect to ECHO, which is an APD group home, I think you said it was a level six; is that right?

A Yes.

Q Okay. And at ECHO, he continued to have aggressive behavior?

A Yes.

Q I know you mentioned there was a crisis intervention where they had to bring in a crisis team to remove electronics, that would be one example?

A Yes.

Q I -- in the records that I reviewed, it

looked like in August, end of August of 2022, he got into an altercation with another housemate. Do you recall reading about that?

A Yes.

Q And that the housemate was injured and had to get attention from the nurse?

A Yes.

Q That he apparently groped a female staff member inappropriately --

A Yes.

Q -- on the way to school in the end of August of '22?

A Yes.

Q You recall seeing that, as well?

A Yes, I did.

Q There was notation about in March of 2022, he ripped off a door off the wall and charged at staff with the door. Do you recall seeing that?

A Yes.

Q And you would agree that this was a group home selected by APD, presumably with staff that would be trained on how to interact with someone with Mr. Depa's diagnoses?

A Theoretically.

Q Okay. And you would agree in your records

review, that his aggressive behavior started obviously even before he got to Springbrook, it was happening at home?

A Yes. He has a well-documented history of aggression.

Q Okay. So he was aggressive with family members, is your understanding, correct?

A Yes.

Q And when I say, aggressive, I'm talking about physically violent towards family members?

A There was acting out in the descriptions I read, which involved sometimes pushing; sometimes posturing; sometimes vocal aggression, yelling, yelling -- screaming profanities.

Q Okay. And then obviously that precipitated him eventually being sent up to Springbrook and then from there to ECHO. Is that kind of your understanding of the timeline of events?

A Yes.

Q Okay. Now, in your review of records, did you also get to review DJJ's assessments that were done on him?

A I believe so.

Q It was an Amy Kutlik, I think is her name?

A Yes, I did.

Q Do you recall seeing those?
A Yes, I did.
Q Okay. Now, in that assessment, I know she did some testing. And one of them was related to COMET disorder and oppositional defiant disorder and presumably must have given him, she called it the PADI 5. Are you familiar with that?
A I believe it's a personality --
Q Test of --
A -- kind of --
Q -- some kind?
A Yeah. Mental health term.
Q Okay. Where he gives responses to certain questions. And in those, there were some that I -- I took note of that were concerning that he indicated that -- positively that he had engaged in this type of behavior. So I'm going to go through some of those with you.

One of them was if he had ever started physical fights with other persons two or more times. He answered affirmatively to that. In addition, he -- he answered that he had bullied, threatened, or intimidated someone. Are those behaviors indicative of autism?
A They can be.

Q Okay. Using weapons, he indicated he had used weapons in the past when involved in an altercation. Again, is that something typical of autism?

A I know people with autism that have used weapons.

Q Okay.

A Yes, can be.

Q Damaged or destroyed other person's things on purpose. Again, is that consistent with autism?

A I've worked with many clients who have destroyed property for a variety of reasons.

Q Being cruel or purposely hurting animals. He indicated he had done that, as well.

A There -- I -- again, each -- every individual person will have a reason for doing whatever the behavior, and again insert the behavior. So I can't speak for -- I did not discuss that with him, so I can't really speak to what his thoughts were, why he responded to that.

I do know people with autism that have harmed animals because they didn't understand that they were harming the animal. So I -- again, I didn't speak to him, so I don't know kind of why he would have answered or the scope of the question.

Q You would agree, that's concerning behavior, to be cruel or purposely harming an animal?
A To purposely harm an animal, yes, I would --
Q Okay.
A -- agree.
Q And he indicated that he has intentionally hurt a person or been physically cruel to them. You would agree that's concerning, also?
A Yes.
Q That he often lied to get the things he wanted or get something out of someone, that would be concerning, as well?
A I know many people with autism who lie to get things that they want --
Q Okay.
A -- for a variety of reasons.
Q Okay. And you would agree that's concerning behavior?
A Yes.
Q Okay. Forcing someone to do something sexual with you or to go farther that they wanted, he answered that affirmatively, as well. Again, you would agree that's concerning behavior?
A It would need intervention. Yes.
Q Stealing things, is that typical for autism,

as well?

A I know many people with autism would have taken things. Because they want food because they're hungry, they're on a restricted diet, so they take food that they don't normally have access to. In his instance, it was related to electronics and games.

Q Okay. And he also mentioned, under ODD, that he repeatedly annoyed people on purpose. Again, would be concerning behavior. Is that typical for autism?

A I know a lot of people with autism that will engage in behavior that's attention seeking. So the function of the behavior is they're trying to get attention. And while it may look very inappropriate to everyone else. It may not be behavior any of us would engage in, in terms of trying to engage someone, they're motivated by the engagement.

Q Okay. And you would agree that Mr. Depa has shown aggressive behaviors or tendencies in -- in basically every environment he's been in, whether it's home, hospital, or group home and school? That he's been showing aggressive tendencies or behaviors in each of those settings?

A I believe that's true.

Q Okay. And would you agree that he's dangerous?

A I think without proper supports, he is dangerous.

Q Okay. And you would agree that over the course of time, there's been an attempt to provide just that, right, with Springbrook, ECHO, IEPs, there were attempts made to provide support to prevent these types of behaviors?

A Well, I -- I wasn't at Springbrook, so I can't speak for them. What I can say about ECHO is they -- in the documentation, there was problems with staffing, with the consistent implementation of his behavior plan. Those were also concerns that were documented at school. I wasn't at any of those places physically. I can only tell you in the records, it doesn't appear that some of these places were consistent in implementing his behavior plan, in providing him with the kinds of instruction that was likely needed to affect a meaningful behavioral change.

Q And even spending a year in a residential treatment facility for autism, that still didn't presumably provide him the tools necessary to prevent aggressive behavior, because here we are, correct?

A Well, sending somebody to a residential treatment, again, we would need to understand what actually happened in that environment. I've worked in

a residential treatment program for a period with people with autism. I saw staff that were not prepared. I saw people that were not implementing plans that they -- I -- there were a lot of things that happened that -- that, I think, accounted for why clients weren't being successful. And I've seen it over the course of my career.

I wasn't there. So I can't speak for what they did or they didn't do, but I would not assume that somebody who was high needs and -- and demonstrating a lot of aggression would go to a place and they would magically, in a short period of time, all that would go away. That doesn't seem appropriate.

Q And you mentioned that you didn't believe prison would be an appropriate setting for him. And were you present when Dr. Kline testified regarding what they do and don't have in --

A I --

Q -- prison?

A -- was.

Q Okay. And you would agree that they do have cognitive behavioral therapy at the prison; is that correct?

A They -- they offer some based on what may be happening for a client at the moment. But in an

ongoing way, for an individual and targeted treatment, it's not my understanding that that is offered.

Q Okay. And have you worked in the prison system?

A I've been in and out of prisons to provide training, to support clients on many occasions.

Q Okay. And you would agree that there are several defendants that, with autism, or intellectual disabilities that have, in fact, been sentenced to prison, correct?

A That is --

Q Throughout the state of Florida?

A That is correct.

Q Okay. And presumably the Department of Corrections has handled, or been equipped to deal with, those individuals who have been sentenced into their facilities?

A I can't speak to what level of training they receive. I know I provide training along with first responders and have trained many corrections officers and have heard many times that they don't feel adequately trained. I can't speak for all -- all corrections officers across the state, but I've heard many times people saying they wish they had more treatment -- or rather, training.

Q In looking at some of the school records from Matanzas, it appears as though obviously, due to his high IQ, he was able obviously to leave the primary classroom and go to an outside class; is that correct?

A I don't know -- I'm not sure how they made the determination for him to go to the computer class. So I'm -- I'm not sure if I can speak to that.

Q Okay. And it looked like his testing within the school system indicated he had a very high score for reading, vocab, and comprehension. Is that your understanding, as well.

A Yes.

Q Okay. And that prior to this altercation with the victim in this case, you had spoken briefly about there had been an altercation on a bus; is that right?

A That's my understanding.

Q And I think that occurred in December of '21, does that --

A I believe --

Q -- sound right --

A -- so.

Q -- to you?

And in that particular altercation, it was my understanding it was a quite long physical fight

with the Defendant and another student. Is that your understanding?

A Yes.

Q Like 10, 15, 17 minutes, something like that. It -- it took quite a bit to deescalate that situation?

A I believe that's correct.

Q Okay. And in that particular situation, did you see in the records that in situation that, the Defendant, Mr. Depa, didn't show any remorse for that, either?

A I don't recall seeing any comment about it.

Q And you would agree that, in your opinion, Mr. Depa needs long-term supervision and care; is that correct?

A I believe he needs intensive intervention and support.

Q Okay. So, for example, if sentenced as a juvenile, they lose jurisdiction at 21 years of age. Mr. Depa is currently 19. So it would be two years. Would you agree that would not be enough time to monitor him?

A I don't -- I'm not qualified to answer that.

Q Well, you're suggesting that he needs all these supports and that this is a lifelong issue for Mr. Depa, correct?

A Autism is a lifelong issue, yes.
Q Right.
And that, in your opinion, he needs a variety of supports in order to prevent him from harming somebody else; would you agree with that?
A Yes.
Q And would you agree that those supports likely are going to take more than two years in order to teach him and modify his behavior?
A I think -- I think in the sense that this is going to be an ongoing process of helping him to understand where he is with respect to his internal state is going to take a good period of time. How long, I can't say. He's a bright person. So my hope would be that with appropriate intervention and monitoring, that he could learn those skills.
I think the ongoing pieces will be the mental health portion -- parts, portion. So depression or either things that may be affecting him. And that's where I feel it's harder for me to speak to that. But I think he needs support in several are different areas. I would hope that with intensive treatment, applied behavioral analysis, the mental health treatment, as I was discussing before --
Q Uh-huh.

A -- cognitive behavioral -- behavioral therapy, psychodynamic therapy, medication management, and -- and again, I feel like a comprehensive neurological evaluation -- I still am not convinced that we know everything we need to know in terms of providing him with appropriate treatment.

Q And you would agree that these sorts of interventions started with Mr. Depa when he was sent to Springbrook in 20 -- well, even probably before then, but certainly by the time he went to Springbrook in 2019? So we're going back to 2019 with a variety of interventions and supports for him, and yet that still wasn't enough time to prevent what happened in this case, correct?

A Well, if we go back and we look historically, he was -- he went to Springbrook when he was 14, 15, and he's there for a year.

Q Uh-huh.

A So he gets there. I believe he was in many kind of, because of the pandemic, isolation for a period. But we're not talking probably a relatively long amount of time. And then be sent to ECHO.

Q Uh-huh.

A Where near as I can tell, went through several are different staffing changes and changes

within that environment. He also started high school in an online capacity. Then he was going in person. You know, some of this for a juvenile, I would expect, is also happening at school.

So I think in the -- in the volume of treatment, I don't think it's been enough to date.

Q And that's what I'm trying to get at, is that even with all of that over the course of those years, that still was not stuff. So wouldn't you agree that if we only had two years to work with, if he was sentenced as a juvenile, that's not going to be sufficient?

A I'm saying that over the course of the last several years, I don't think the level of treatment has been adequate to address his needs. So it's hard for me to say, in this amount of time or in that amount of time. I don't believe that, from the time he went into treatment, and I wasn't there to know what they did or didn't, I can look at the record, but I don't know the day to day, it feels to me that he's not had the level of adequate treatment of people understanding autism, mental health, and again, if there's anything else that's happening for him that we don't understand.

Q So even Springbrook, which specializes in autism, you don't think that they had the proper

training to address this?

A I've -- I've been to many programs that -- that advertise that they directly support people with autism, or they provide mental health care, and when you go visit those programs, they're not fantastic.

Q And have you visited Springbrook?

A I have not.

Q So you can't speak to them?

A I have said repeatedly I can't speak to what --

Q Okay.

A -- they did.

MS. CLARK: Thank you. I don't have any further questions.

THE COURT: All right. Thank you.

Mr. Teifke.

MR. TEIFKE: A few questions on redirect --

THE COURT: All right.

MR. TEIFKE: -- Judge.

REDIRECT EXAMINATION

BY MR. TEIFKE:

Q If, indeed, the Department of Juvenile Justice was an identified, recognized program for Brendan that, granted would have a shelf life of two years, if we're talking about rehabilitation, does that

set him up as good as anything else for the rest of his life?

A It could.

Q Okay. Does it set him up, in your estimation, better than five or 10 years in the Department of Corrections and their mental health apparatus?

A Yes.

Q Okay. Do you have any doubt about that?

A No.

Q Okay. The mention in Dr. Kutlik -- Kutlik's report, did you read that report that was part of a sentencing recommendation from DJJ, I believe, correct?

A Yes.

Q Okay. And what was alluded to, as some of this maladaptive behavior, was self-reporting, correct?

A Yes.

Q Was there any other record evidence anywhere of any of this other conduct? Harm to animals --

A Not that --

Q -- et cetera?

A -- I saw, no, no.

Q Okay.

A Not that I saw.

Q Okay. And it's true that Dr. Kutlik did not

conclude, based on that and everything else, that there's a conduct disorder that needed to be addressed --

A Correct.

Q -- correct, right?

A Correct.

Q Okay. These were simply things that Brendan had said during the course of this interview, right?

A Presumably, yes.

Q Okay. And you heard when Dr. Prichard was testifying, Brendan made reference to he told Dr. Prichard that he was hearing voices, correct?

A That's correct.

Q And Dr. Prichard did not accept that at face value, right?

A He testified that he did not, no.

Q All right.

MR. TEIFKE: Thank you.

THE COURT: All right. Thank you, Dr. Spence. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Is she released?

MR. TEIFKE: In my estimation, yes.

THE COURT: Okay.

If you're under subpoena, you're released from

any subpoena. Thank you.

All right. Good time for our afternoon break?

MR. TEIFKE: Sure.

THE COURT: Okay. You've got, you said, two witnesses?

MR. TEIFKE: Two remaining. Next --

THE COURT: And they're here?

MR. TEIFKE: -- will be DJJ, Woody Douje. And then one more.

THE COURT: And they're here?

MR. TEIFKE: Here to --

THE COURT: Okay.

MR. TEIFKE: -- include Zoom, yes.

THE COURT: Okay. Does 10 minutes work?

MR. TEIFKE: Sure.

MS. CLARK: Sure.

THE COURT: Okay. Court will be in recess 10 minutes. Thank you.

(A recess was taken at 2:35 p.m., and proceedings resumed at 2:51 p.m.)

THE COURT: All right. Good afternoon. Please -- please be seated.

All right. Mr. Teifke, you may call your next witness.

MR. TEIFKE: Woody Douje, Your Honor. He's

stepped right out, I believe.

(Brief pause in proceedings.)

MR. TEIFKE: Let me switch gears.

THE COURT: Okay.

MR. TEIFKE: I'm -- I'm going to recall Leanne Depa for two questions.

THE COURT: Okay.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

LEANNE DEPA,

recalled by the Defense as a witness, was duly sworn and testified as follows:

MR. TEIFKE: All right.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q State your name.

A Leanne Depa.

Q All right. Have you been sitting in on the testimony?

A I have.

Q All right. And did you hear the testimony

about Brendan's alleged harm of animal or animals?

A I have.

Q Does Brendan have access to any animals in his life?

A The only access Brendan had to animals was in my home.

Q Okay. And what animals?

A I have five cats.

Q Okay. Has Brendan ever harmed one of the cats?

A The most that Brendan has ever done to a cat is hiss at a cat.

Q Okay.

A That Brendan loves the cats. He's devastated when any cat is sick. He's called and asked over and over again about the cat. He has trauma from one of his cats he loved dying. Brendan has never, ever harmed an animal.

Q All right.

MR. TEIFKE: Thank you. That's --

THE WITNESS: Uh-huh.

MR. TEIFKE: -- all I have.

THE WITNESS: Okay.

THE COURT: Ms. Clark, any questions?

MS. CLARK: No. Thank you.

THE COURT: You may step down. Thank you.

Okay. Mr. Teifke, you may call your next witness.

MR. TEIFKE: Julie Harper.

As it turns out, it is under Brice Harper on --

THE COURT: Okay.

MR. TEIFKE: -- Zoom.

THE COURT: All right. So hang on one second.

All right. This is Judge Perkins. Can you hear me okay?

THE WITNESS: Yes, Judge.

THE COURT: All right. If you'll raise your right hand to be sworn, please.

THE CLERK: Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

JULIE HARPER,

called by the Defense as a witness, was duly sworn and testified as follows:

THE COURT: All right. Go ahead.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please?
A Dr. Julie Harper.
Q And obviously, you can hear me okay, right?
A Yes.
Q And what do you do, Dr. Harper?
A I'm a licensed psychologist in Florida and Georgia.
Q How long have you been a licensed psychologist?
A I received my first licensure in 2002 in the state of Washington.
Q And where in Florida are you located? Is there a home base?
A Yes. My office is in Fort Walton Beach, Florida. That's in circuit one.
Q What, if any, is the current focus of your practice now?
A I have a fully forensic practice. That means that I assist the court, the prior of fact, with providing expert information. And I also work with law enforcement agencies to do preemployment evaluations and fitness-for-duty evaluations. I also perform social investigations.
Q That's --
A So -- okay.

Q Yeah. Okay.

And you've been doing that throughout the course of your career?

A I began working with individuals that were in the DJJ system while I was working for Bridgeway Center, which is a community mental health center. That was around 2007, when a retiring psychologist asked if I would assist him as he turned over that contract. And I began working with those individuals.

Prior to that, I was just doing clinical psychology, meaning a focus on psychological assessment and diagnosis.

Q Okay. And looking back even a little further to your education to become you, to become a psychologist, what is your education?

A I have an Undergraduate Degree in Biopsychology, which I earned from Oberlin College in 1995. I went on to graduate school at University of Denver, when I received a Master's Degree in June of 2000, and that was in Clinical Psychology. The program at University of Denver is the psy-D program, meaning that you continue your education after your Master's and move on to getting your doctoral work completed.

And becoming a psychologist, you also participate in an internship program. And I was

matched in APA-approved internship program for Washington State University. So before receiving my doctorate, I went to Washington state, where I worked as a psychologist intern for a year. And then ultimately received my doctorate in 2001. Stayed on out there for postdoc work, during which time I was supervised by a forensic psychologist and worked in a community mental health center in his private practice and also was rehired at Washington State University.

After being licensed in 2002 in Washington, I worked in a group practice for individuals with learning disorders; ADHD, autism spectrum diagnoses, Asperger's, social skills deficits. And that's when I was doing clinical work and assessments primarily.

Moved to Florida in 2005 and was licensed here. And I took over the Bridgeway Center testing program once I moved to the Fort Walton Beach area.

Q Okay. And research experience, as well, is that all part in parcel with this? Or tell us about it.

A Sure. So during graduate school, I was selected to be an assistant to research a project that was an outcomes measure for the state of Colorado. One of my professors was engaging in a research study, so I just assisted him for a stipend. And then in my on

practice, I had an intern that I was working with, and we collected data through her position in the pretrial process to study the TOMM in intellectually deficient or in people -- those individuals with intellectual disability.

And so we collected the data, but we did not publish the study. She actually left for graduate school before we were able to finish the -- the data analysis.

Q Okay. What about any sort of teaching experience in your field?

A While I was an intern at Washington State University, I was a practical instructor, a co-instructor for that group of individuals that were graduate students learning to become counselors. And then I also provide continuing education programs for topics of interest through national conferences. So I've led several on a variety of topics, including memory disorders and how to use an expert correctly in the field of forensic psychology. Those are two examples.

Q And do you have any professional associations that you're a part of, a member of?

A I was previously part of the APA, the forensic division, and also our local chapter of the

Florida Psychological Association; but I transitioned to, when the fees and the dues were very high, I decided I would rather attend more continuing education classes nationally and for -- I went apart from those organizations to be able to use those funds to attend more continuing education than required.

Q It sounds like at the outset of your career, you were involved with DJJ in certain capacities. What did you do in that space?

A Well, I have been two different things associated with the individuals that are in that juvenile population. One was, I was a task supervisor as to Treatment Alternatives to Safer Communities. That's a team of counselors who they evaluate youth after their arrest to see if there might be treatment needs that could be addressed and that feedback is provided to the probation team. And then I, myself, directly provided services from 20 -- sorry -- 2007 through approximately 2011, early 2011, as a program evaluator. That meant that I went to the detention center or I had the families come to my office, did a program evaluation to determine what level of service need there might be, make recommendations as to whether or not I thought the individual would be fit for program, to make recommendations as to what kind of

programatic planning to undertake.

Q Were you also a competency assessor in this timeframe?

A Yeah. So approximately 2010, I became, I guess, part of our local circuit one wheel of evaluators. And I evaluated both youth and adult for competency to proceed evaluations. I was on that wheel through about 2017. That wheel also let me do evaluations of sanity at the time of offense.

In 2017 when I became license in Georgia, I was a state employee. And during that tenure with the state, I provided competency evaluation services and sanity at the time of the offense services for this state system. Georgia Regional Hospital was our base. And I also performed risk assessments during COVID when the courts were shut down.

Q And have you testified as an expert in court before?

A Yes, I have.

Q And can you estimate a number of times or no?

A It's definitely been more than 300. I've testified in a variety of proceedings, including juvenile -- Miller juvenile resentencing cases, as an expert witness for the Department of Vocational Rehabilitation. I've been an expert witness for the

guardian ad litem program. I testified for the DCF attorneys. I've also provided testimony on dependency cases, sentencing proceedings, competency hearings, death penalty mitigation. So a variety of different proceedings.

Q All right. And you don't just testify for defense, correct?

A No.

Q Okay. No, not correct, or no, you don't testify --

A No. I testify for either the State or defense attorneys, whatever my opinion turns out to be. And if it's favorable to either side, they may call me.

Q Okay. And you've testified also as a witness to juvenile competency, right, that's been part of your expertise?

A Yes. So I have also been designated, during those competency proceedings, and part of the Miller sentencing cases in Miami-Dade County as an expert in juvenile brain development.

Q Okay. And -- and let's talk about that, just broadly speaking, what is Miller?

A Well, the Miller case was a case that was heard by the Supreme Court. The importance of the case is that it really identified why life imprisonment for

offenders would not be appropriate because juveniles are a different class of offender due to their tender age and the lack of full brain development while they're still juveniles. So prior to the age of 18, there are a lot of changes that are going on biologically and socially. And that was acknowledged through the court.

And, therefore, people that were serving life sentences, as they were assigned, you know, during their youth, were allowed to return to the state court system and have their case go through an individualized sentencing that would allow the court to hear a variety of those factors that would be unique to that case and then assign a new sentence.

Q So you've testified in these Miller resentencings and in the capacity of an expert on juvenile brain development?

A Yes. Both as an expert in forensic psychology. I think I've been a clinical psychologist. And then also, of course, providing testimony in the capacity of educating the court about juvenile brain development, specifically.

Q Okay. And in a minute we'll get to why that matters, but how did you become involved in this?

A I believe you first reached out to me around

June of 2023 when Mr. Depa's case was going forward with, I think, some competency matters just for a consultation. And so I first discussed the case with you at that point. Later on I was actually retained for an evaluation of Mr. Depa, and I performed that in April of 2024.

Q So you were able to speak to Mr. Depa as part of this assessment, correct?

A Yes. We did an in-person evaluation.

Q Okay. And what other information are you relying on as you're getting engaged in this case?

A Well, of course, the competency evaluations that were undertaken by Jessica Anderton, Dr. Roger Davis. And then also, there was a social -- a developmental history report by Corey Manuel, that was generated for the court system. So I had access to all three of those. I had a court record, a suggestion of mental incompetence to proceed filed the Defense attorney, which is you, Mr. Teifke.

The behavioral analysis filed from East Coast Habilitation. Records from the Agency for Persons with Disabilities, the Flagler County School District records, the Seventh Judicial Circuit juvenile 707 arrest form, and circuit charging sheet, is how I would identify that record. The Flagler County Sheriff's

Department case report. There was a video of the incident. The letter from the tutor at the Flagler County Jail, Mr. Lopes.

A forensic evaluation completed by Dr. Prichard. A Florida Department of Juvenile Justice adult sentencing summary form, a face sheet. And then there was an evaluation completed by Amy Kutlik, which referenced the DJJ comprehensive evaluation summary.

So I had a variety of records that would be both considered like educational records and medical records.

Q And as part of the educational records, was the IEP and behavior plan part of that?

A Yes, that's correct.

Q Okay. So did you feel like you had enough information to work with or too much? I mean, was -- was there enough there?

A I did have a lot of information. Not all cases come with background records that have this many pages. So I was happy to have them. I did also reach out to Ms. Depa, which is the Defendant's mother, for further review of his early developmental history. So I did feel like I needed that additional information, as well as the consultation with you, just to gain some understanding of your client and his ability to work

with you and his level of maturity.

Q Is that background biographical developmental information that you gleaned from his mother, is that an important part of this, in your estimation?

A Yes, it is, very important.

Q Okay. Is there anything that you thought otherwise could have been useful that was lacking?

A No. I didn't feel like I was missing information to come up with my ultimate conclusion.

Q Okay. So given your education and your experience and the discipline in which you've been called as an expert witness before, namely juvenile brain development, are there certain conclusions that you're already able to draw just based on tender age and then there's this other stuff? And if so, why? You learned he was how old? That was a terribly-phrased question. You learned that he was how old?

A So he was 17 years old at the time of the incident. And when I met with him, he was 18.

Q Okay. So knowing that, knowing that he's 17 years old, and giving -- given your area of expertise, are you already able to draw certain conclusions about brain development?

A Right. Based on the background knowledge we

have in science related to structural changes in youth, we know that the brain is not fully formed until somewhere in your mid-twenties, around age 25. Knowing that and understanding that we are looking at an individual who is considered in a stage of middle adolescence, that means that there are certain structural things that are happening, including the myelination of pathways that will prove to be important as the person ages. And these pathways, which allow the maturation of executive functions. What I'm saying there means that the person will be gaining neuronal pathways, which will allow them to better have self-control, make decisions based on the past or their history, have better emotional regulation.

A person of that tender age will be more apt, we know by research, to respond to emotional stimuli in a different way than adult individuals do because of the chemical changes that are associated with the level of development of the limbic system. That's basically, in a nutshell, a person who is going to be more prone to make emotional decisions, rather than accessing their more rational functions. That would be more typical of an older adult.

So those are some of the facets of youth that we know, along with the idea that personality is still

developing. It's not something that would be established at the age of 17. And so you're going to continue to have changes in the way that you interact with others and the way that you perceive stimuli and interpret that, your social relationships with others; all of that will continue to grow and change as you enter adulthood.

Q And this is, I mean, just something you have to wait to happen, right? This is software that has more updates to undergo. Is there anything he can do to speed up the process, or you just have to grow?

A Well, I think that it's very important to understand that development is not all happening at the same rate, right? So you can have some things that are precociously developed. For instance, there's been a few times, even in this proceeding, and based on the record review, Mr. Depa has been described as having a good expressive vocabulary or being able to read or things like that. So you can have some aspects or elements of your development that occurred at an earlier rate, and then you can have things that lag.

There's really not a lot you can do in terms of social and emotional development, to speed that up, except -- except exposure and reenforcement to better ways of responding. In terms of intellectual

development, certainly a rich environment, such as his adoptive environment, which exposes you to things like literature, music, and things like that, that can have a better impact on your vocabulary. So it is possible to have a slight acceleration in that. Because it's the language area, you can prime it by these, you know, good experiences.

Q I want to talk about further how this immaturity of the brain manifests itself. You know, what does it look like? Let's talk about, further about decision making. How is it -- how is it most impactful there?

A Well, what we know is that youths are more likely to consider immediate rewards as they make decisions. And this is different than adults who are more seasoned in their decision making and might be able to pause and have their life history to kind of inform them as to what might happen if I choose this decision. Whereas people that are younger, of course don't have that wealth of experience. And their biology sort of pushes them towards noticing things that have like activated their rewards system. So things like, you know, that might be exciting, risky, novel behaviors, anything that's new. That's one facet of this more juvenile decision making.

Also, we know that decision making in youth is different in the presence of peers. So youths make different decisions that are more risky and more prone towards even law-breaking decisions if they're simply in the presence of peers. They don't even have to be interacting with the peers. It's just the mere presence of them changes the way that the brain is reacting to the outside environment.

So those are two very different ways of making decisions. The emotional reasoning is because, as I was describing about the changes in the limbic system, emotional reasoning -- reasoning, meaning that you can have a fairly rational discussion with a younger person, in which they seem to understand what you're explaining to them about actions and consequences; but it's very different at the time of the behavior, in that we've got something that's called hot cognition, meaning that even though you may have rationally explained to a youth what it is that could be a potential consequence, they do not access that part of their thinking in the time of making the behavior.

What they do is in a hot cognition situation, they're affected very much by their environmental triggers and stimuli, and so they make a decision that's more immediate focus based on a reward or

something that they want, versus cold cognition, which would be how they might explain to you in a very kind of calm stimulus like this, the setting is very relaxed and they're not activated. They might be able to rationally explain to you cause and effect. And that's just not available to them in the heat of the moment.

Q Is there an inability to appreciate consequences of actions? I think you started to allude to that there, yeah?

A There's a difference in the ability to appreciate those consequences because of not having the history of past behaviors to kind of shape the possible outcomes for them. So if you've never been in that situation, it's harder for a youth to kind of predict what the outcome could be. But also, studies have shown that they just pay less attention to those consequences during the act, itself, whatever the behavior may be. It's just, the brain is focused differently during that decision making.

Q What about just the capability for empathy and compassion, is that different in the juvenile brain than the adult brain?

A It's considered what we call an executive function, also described as perspective taking. And it is something that will continue to develop with

empathy. Empathy is one of those executive functions that is reliant on you being able to put yourself in someone else's shoes.

As you enter that early adulthood period, you can see that there are differences in perspective taking, meaning it's easier for a young adult or a middle adult to put themselves in another person's shoes.

Q Okay. Is the type of behavior, itself, is there more -- less appreciation of the -- the consequences of certain behaviors that we might call risky? Is there more desire to assume risk in behavior?

A That's right, because of that biological difference. Things that are riskier include like fast driving, teenage pregnancy, drug consumption. Their rates of that, you know, are quite different for the younger population than they would be in adulthood. So those more immediate rewards, kind of without regard to the consequence of them, is typical of a person in that kind of middle adolescent period.

Q Okay. And this, what we've just talked about, these deficits, let's call them that, this is all -- these are all things that you've testified to before and that have been recognized in this Supreme

Court jurisprudence that you're talking about, right, this is grounded science?

A That's right. So the advances of scanning, we see that there are brain differences and the correlates to the behavior, which are well-studied. It's something that's been briefed by the APA to the Supreme Court, an amici brief. It's had -- you know, it's been testified about in front of the Supreme Court. So this development that occurred, you know, back in, I guess, our knowledge base before 2015, is now just sort of standard well-understood science.

Q The affect of it being a diminishment of culpability, right?

A Correct. That's how it's described, in that the -- the tenderness of youth makes a person less apt to be able to apprise for themselves the consequence of their actions. And the -- because they're -- people that are in this middle adolescent period would be considered, you know, a different class of offender. They have differential culpability, say, versus an adult that might be, you know, past age 25, past the point that their brain is fully developed.

Q Can you -- are there means by which you can assess Brendan, specifically, his maturity, his sophistication?

A Well, I think that when the school district is assessed -- sorry -- assessing things regarding adaptive functioning or functional behavior, I think that is what they're trying to figure out. You are trying to identify to what degree a person might be able to meet their daily needs. It's called adaptive functioning, in that can the person communicate their needs adequately, are they doing self-care skills at the level of their peers. And so when you're part of the special education program, you'll see these periodic reassessments of that, and goals.

Actually, Brendan had a goal regarding becoming a little more autonomous. You can see that in the records. So we've got some external measurements of behavior to assess that if it's the range of what would be considered average or typical for his age group.

Q And do you assess his as average sophistication -- if we're talking sophistication, do you assess it as average for his age or his age group?

A Well, to address that, I relied on a couple of different things. I would say that there's plenty of evidence in the record that it -- that he is not operating at the level of a, you know, a typical 17- or 18-year-old person. The evidence in the record

included when in 2019, he was diagnosed originally with autism, and Dr. Taormina references him having decreased perspective taking. As I was discussing, that's like the ability to put yourself in someone else's shoes. That should improve with age.

But he was below the second percentile. Meaning if you like up a hundred people, he's only standing in position two in terms of achievement of that developmental milestone. So that would suggest that he's not, you know, functioning at that level. Also, when we are referencing Amy Kutlik's report, she reference the interpersonal and independent living skills being low, below average; behavioral modification is needed to address his impulsivity. Impulsivity being a hallmark of youth, of course. So again, that would suggest that it's not at the level of his chronological age.

Other evidence I considered in coming to the conclusion was that he asked the competency evaluator, Dr. Davis, multiple times for the interview to end. And that behavior is for typical of a younger youth. If I've done a competency evaluation on a young teen, maybe somebody who is like 12, 13, 14, you'll see that behavior. They are impatient. It's hard for them to have task persistence and kind of hang in there

throughout the interview. And so it's less likely to occur when somebody is in their later teens.

Also, in the Association for Persons with Disability person-centered plan that was generated in December of '22, there's a reference that Mr. Depa chooses younger-aged peers typically if he's going to establish friendships. That would suggest that he is chronologically gravitating towards younger-acting individuals that would be more consistent with his level of social development.

And then today we heard from his teacher, Eugene, who was talking about how they've been working on task persistence, I think he called it stamina; but basically as your level of patience goes up, and, you know, that he's seeing an increasing level of compassion. That would be consistent with this period of time where, you know, you're going to see some brain changes in maturation, which means it wasn't present earlier in the year.

So I would say he's not chronologically displaying a lot of these achievements that somebody that would be typically 18 years old, 17, 18 should show.

Q When did you first meet Brendan?

A On April 19th of 2024.

Q Okay. And at the Flagler County Jail?

A That's correct.

Q Okay. And take me through that. What did that consistent of? It's an interview? It's an evaluation? Tell the Court what you did with him.

A Sure. So in beginning my forensic clinical evaluation, I performed a mental status examination that is just a brief assessment of things like immediate memory, capacity to kind of draw similarities between words, which is like abstract thinking. I also did a psychosocial history interview to go through, like, his past school achievements, his family structure, medical, mental health symptoms, work history. All of those things that might give me better information as to how he was functioning in the community and be able to forecast a little bit for the Court about his future potentials.

I also administered the Miller Forensic Assessment of Symptoms Test, which is an effort test. It can help identify if a person intends to malinger or feign psychiatric impairments.

Q Okay. Why is that important for you to do?

A Well, I think that it -- it's generally understood that forensic evaluators should be on alert to consider, you know, a person's motivation. And if

there's any indication if they might be trying to feign or malinger mental health symptoms, that's an important piece of information that you need to take, you know, under advisement as you're looking through records and interviewing the defendant and also, you know, trying to get third-party information about when it is, you know, determined, as I did, that Mr. Depa was not trying to feign or malinger mental health symptoms in any way, his score on that did not suggest feigning, then it let's you rely a little bit more on their self-report, in addition to the records.

Q I see. So and I'm sorry, so specifically here, no evidence of malingering with Mr. Depa?

A No.

Q All right. And were you able also to get any information -- well, let's finish with Mr. Depa. Did you do anything else with him? Any other tests that were used, any instruments?

A No, I did not.

Q Did you also get any further information from his mother?

A Yes. And so his mother was able to provide some background information about the early history of symptoms that manifested when he was much younger. Also, trying to get a history of treatment that they

may have undertaken originally for concerns about hyperactivity or attention limitations, trying to figure out what the root cause of his behavioral problems were early on. I learned, of course, that he did not receive an autism diagnosis until somewhat late. 2019 means he was approximately 14 years old.

You know, in my clinical practice, I usually would refer -- receive referrals for individuals who are about seven or eight years old, sometimes as early as four or five. So 14, to me, that was a pretty late identification of his disorder.

So I learned from her about the interventions that they were undertaking, starting, you know, in these teenage years. Meaning intensive behavioral training. And, of course, as we've heard plenty of times today about the Springbrook and efforts made to start getting him under behavioral reenforcement programs for the first time as a teenager.

I also learned from her about his past major depressive disorder mood problems that she observed. And in this individual, in Mr. Depa, he's been a person that when he's experiencing depression, it's come out a lot of times as irritability. That is a symptom of depression in youth. And so I think that that was very helpful to learn from her, that without a mood

stabilizer onboard, he might have a proclivity to be a little bit more irritable when he was down.

Q And I'm sorry, (indiscernible) more specific to young people, depression resulting in anger?

A So irritability is often a way that a child will express depression versus maybe an adult might be more able to vocalize or verbalize a down mood or sadness. A child is more apt to express it by being irritable.

Q I see. Okay.

And Brendan is, of course, adopted. Was there any information known -- made known to you about his biological mother?

A So in the records, there is a reference to both of his biological parents being diagnosed with bipolar disorder or having features of bipolar disorder. So that is a family history of mood disorders.

Q Okay. Specifically, to autism, you -- you've -- you've seen it before, right? You've engaged in autism? You know about autism, right?

A Yes.

Q And in your assessment, in what you reviewed and specifically in dealing directly with Brendan, do you see the -- the signs of autism? Would you

concur --

A Yes.

Q -- with that?

A I do.

Q Okay. And we've heard this talk about levels, what levels mean, it's a function of how much support is -- is needed. Are you able to assess a level or agree or disagree with a prior assessment of a level?

A Yes. So my conclusion is that he meets criteria for a level two. He has the social communication difficulties and restrictive patterns of interest that are very typical of autism spectrum disorder. He also expresses behaviors even in the midst of support. And that is how our diagnostic manual identifies level two, is that you will still see behavioral manifestations of difficulties even when support is present.

Q Okay. So you have confidence in that, that's the level that he occupies?

A Yes. And consistently throughout the records, you see that the treatment approaches to the IEP have tried to address, you know, shifting his behaviors, like allowing transitions without other peers in the hallway. These are the kinds of

interventions that are targeted towards preventing a symptom flare up. And so you would also identify the level of staff needed. In the APD records, when they identified a level six, that is the highest level of intervention available, that would also inform that things like mechanical restraints would be at a duration of like you could use that to restrain a person for more than 60 minutes, that the staff ratio regarding that individual needs to be at a three-to-one level.

So we really have, you know, I guess, at this point a replete record of these interventions and the significance that they are needed. Mr. Depa not being really allowed to be without staff involved with him in a 24-hour period is significant. That would be a level two.

Q Okay. Okay. Other diagnoses that you -- you land on, depression?

A Yes. The major depressive disorder, there's, I guess, identification of that. And it's been addressed by psychotropic medication in his records. He identified it when we were speaking as something that he was able to realize and kind of verbalize by the time that he was in Springbrook. I think that the doctor that assessed him in 2019 already had identified

that prior to his placement in Springbrook. But as we understand, there is a little bit of a learning curve in trying to identify feelings and express them. So he didn't really express ever -- wasn't able to really reveal that or understand it much until he had already been in Springbrook.

So that's our first instance of a, you know, reference in a diagnostic way to a depressive disorder. It's reoccurred. You can see that. His mother had identified it as irritability earlier than that, 2018, 2019, and his frequent psychiatric hospitalizations. And then it's still a symptom that he reports and receives treatment for, a depressive mood.

Q And -- and do you also diagnose any disorders involving anxiety? And if so, what?

A Yes. So I diagnosed him with an unspecified anxiety disorder. The medication that's been addressing that has been propanolol. It is prescribed in the jail medical records as a treatment for anxiety. And his, I guess, historical record, as the school district gathered, symptoms and clinical things of interest from his mother, as she filled out behavioral questionnaires, those kinds of anxiety symptoms were noted, as they first developed his IEP, being present in social situations. So he's got social anxiety.

I think that when he's about to have a change or a transition, it generates anxiety. Again, that's like why he would be allowed to have movement in the hall when other students are not present. So when things are not going in a predictable manner, it's going to be the time that you are going to notice the highest level of anxiety for him.

Q Predictability and routine are important here?

A Yes, very.

Q And you're aware, at least, of other diagnoses that have been made along the way, the intermittent explosive disorder, oppositional defiant disorder, disruptive mood dysregulation disorder? Are you aware of those?

A Yes. So his records have had those diagnoses, and they've been carried forward, you know, on to his IEP plan and referenced in medical records that the team discussed.

Q And if we're circling back to culpability, we've talked about how the juvenile brain, how that -- how we should view culpability in highlight of the juvenile brain, do these other disabilities, these diagnoses that either you made or have been made aware of, do they further inform your opinion at all on

culpability?

A Well, I think that it's the totality of the -- the symptoms. And so I believe that -- because we already know that an individual without these mental disorders of this age is going to be more apt to make emotional reactive decisions, then you layer on top a neurodevelopmental disorder, which includes impulsivity, which includes, you know, reactivity, essentially an anger outburst, that leads to -- I guess that has reoccurred enough that it is addressed on a behavior management plan through the school district, and then another layer of, you know, having to take psychotropic medications to manage your level of depression, impulsivity, anxious feelings; all of these things are going to be, you know, operating all at the same time as you try to make decisions.

And so I do feel that it's a layering effect. They each would contribute and, you know, have kind of lit up different areas of Mr. Depa's brain as -- as the situation is unfolding.

Q All right. So they're all kind of insinuating themselves in their own separate ways. Is there also -- you mentioned a totality, so is there some sort of then emergent whole that expresses itself differently, or are we just talking about the sum of

the parts?

A I think that, you know, you have to take every situation individually, right? Certainly, there have been some, I guess, activating situations that he's been in, that his treatment plan is, you know, guiding him and trying to use other practices to have emotional regulation, try to soothe himself, like use meditative breathing and yoga. And so I think that every situation presents challenges when it's a new highly stressful situation when he doesn't have access to his preferred motivational reward, which is his game system. It's his, like, area of interest.

I think this is just the perfect storm of not having those environmental supports that should prevent the symptoms from overtaking him and him not being able to redirect because the symptoms overtook him. Once you reach a certain level of reactivity with autism, the person is just not able to engage in that kind of rational self-talk to talk down. And so that's what we see here, you know, it's kind of like the combination of the environmental supports falling out and not existing and then also him just being overrun by symptoms that he just didn't have the cognitive resources to mediate, you know, mediate.

Q Sure. Would you agree that his best chance

of success is with those that are in his orbit knowing a lot about him and knowing an approach to take in ever-changing scenarios and circumstances?

A Yes. Yeah, I'm going to liken it to sort of like getting a treatment team to hone in on your specific behavioral problems so that you're reenforcing almost like an orchestra on beat. Okay. So you want to stay with the same response to the same target behavior every time and not get off beat. And so as the team becomes more familiar with what is the trigger for the behavior, what is the typical response, you can start to see that. That's why you regenerate those behavior, you know, functional assessments of behavior plans every year, because they're going to change as you have mastered, you know, some of those triggers. They might not be influential as they change.

You want the team to consistently know what your triggers are, to consistently respond to those triggers in the same way. So, for instance, if redirection is very effective or nonresponding is very effective, the team can communicate with one another. Sometimes medication adjustment is what is needed. And so that will take, you know, kind of priority over everything. Your team needs to be very cohesive and understand the working parts so that there is always a

consistent response to the -- the -- the target behavior.

Q All right. If we're talking about -- and -- and again, let's just compartmentalize this a bit for the purpose of this question, maybe the next, to just the juvenile brain, the immature juvenile brain; how quickly are things evolving? I mean, for example, you first meet Brendan on X date and, you know, now here we are and you've heard some descriptions in court about how he's doing in his classes and stuff, is it --

A Uh-huh.

Q -- evolving and maturing rapidly or what is it -- its pace?

A I'm not sure if I can answer your question. I can only tell you about the typical trajectory is that we've got these known biological differences, well-studied, that are definitely present at age, you know, 17, 18. And we've got a predominance of the limbic system and the decreased performance of the frontal lobe, which is like your executive functioning, that changes through the age of 25. So it will mature as the brain grows and develops on its own.

And in -- in that timeframe, different things are happening. Like, you've got developmental pathways that are forming between your seat of emotional

recollection and memory and your frontal lobe that let's you focus on the right thing, have appropriate social reactions given the circumstance. That will just kind of come on over time. Likewise, in this developmental period, you're having the pathways that are not used. Like, for instance, if you took a lot of piano lessons when you were a kid, but you're not going to become a concert pianist, those will fade. You know, infrequently used pathways will fade.

So it's just a trajectory that is well-studied and understood to occur from 17 to 25.

Q Impulsivity, risk-taking behavior decreases as age increases, right in?

A That is correct.

Q As well as capacity for empathy, sympathy, other?

A Right. So I think what you're asking is, do the social skills and the perspective taking of an individual develop with age. Yes. You have more relationships. You have more feedback from your relationships. You also have that pause for reflection that you do not have when you were younger. So there's a lot of reasons. Like, your moral development is occurring as your personality is evolving.

A lot of things are changing, and that would

allow that social, what we call reciprocity. Meaning learning to be in relationships with others.

Q Is there anything that you've learned about him in meeting him, in reviewing records, in sitting through testimony that you think is irredeemable or is it a matter of people around him knowing him and a certain approach being taken?

A I -- no, I wouldn't say irredeemable. I noticed in the records that while he participated in ECHO, they noted that in the first month of being there, of course he had behavioral outbursts, which reduced. They did not need to use mechanical restraints on him anymore. He didn't need any emergent -- I'm sorry -- emergency sort of chemical restraints. So I think that that's one area of recordkeeping that kind of demonstrates that he is responding to treatment.

Additionally, I think that, you know, his capacity to show empathy and understanding towards his tutor is a development of his social skills. They are keeping track in the person-centered support plan, through APD, you know, of target behaviors for change. I -- I think that that indicates that he is pretty early on in his behavioral treatment that is going to address the autism. And since he's fairly new in the

treatment, he still has a lot of growth and gains to make.

Additionally, he's responded pretty well to his psychiatric medication. You know, as Dr. Spence was alluding to, I think that there is more neurological workup that could be conducted that might be better inform the psychiatrist. So for instance, you know, if ADHD medication is a good adjunct to his mood stabilizing -- stabilizing medication, that would be something that could be further developed. I think his psychiatric medication regiment could be become even more titrated to his specific symptoms over time. So that would indicate, you know, good progress.

Additionally, I was very glad to see, in the DJJ evaluation, that the evaluator noted that he seemed to have some insight into his mental health, which is fantastic. That would suggest change, that he's kind of learning about his symptoms, and motivation for therapy, which is also very good. So I would suggest that those are rehabilitative factors, things that are coming along that would suggest that, you know, he is making progress. Nobody has given up on him, you know, in the records.

Despite his problems, his team still identified, and his school team, that when he did have

problems, including the case, including this legal case that's before the court, and I'm looking directly at his school record, the behavior is considered a result of his disability. It's a manifestation of symptoms. That also means that those symptoms can be suppressed and targeted with behavioral therapy.

Q And in your familiarity with DJJ and what you've read and reviewed, given the rehabilitative model of DJJ, do you believe that a placement with the Department of Juvenile Justice could serve these needs?

A He would be screened by the Department of Juvenile Justice, you know, for placement. Essentially, I -- I think that it's important to understand the staff ratio that will be needed for him, you know, to continue to have his behavior redirected. I think that you're going to have a greater staff defendant ratio if you are in the juvenile justice system versus the adult correctional model. The aim being rehabilitation. I think that understanding that he could continue to benefit from school intervention, have, you know, some guidance towards becoming an effective adult and being released, you know, into the community where he is among supportive caregivers who understand and want to work towards his independence goals. I -- I think that that is well-suited for a

juvenile disposition.

That's just not going to happen in the adult corrections model, where he'll, you know, he'll be warehoused, essentially, and just like kind of waiting for a sentence to be over. And I don't feel that there would be the kinds of specific therapies needed to reduce symptoms and prevent, you know, kind of prevent recidivism.

Q All right. And so in your estimation, that wouldn't set him up well for a post-incarceration future of success and achieving potential?

A Right. It's not the same kind of therapy as it's delineated on the Association for Persons with Disability, that kind of therapy that is needed --

Q All right.

A -- for this vulnerable person.

Q All right.

MR. TEIFKE: Thank you, doctor.

THE COURT: Thank you.

Ms. Clark?

MS. CLARK: Thank you.

CROSS-EXAMINATION

BY MS. CLARK:

Q Dr. Harper, can you hear me okay?

A Yes, ma'am.

Q Okay. Good.

Now, I understand that you charge at a rate of $200 per hour; is that correct?

A For direct service, yes.

Q Okay. And that when I spoke with you previously, you had worked about 12 hours so far in the case. Do you know how many hours you've put in to this date?

A So I think that we were in court we were in court on the 1st, I think I was there at approximately eight hours at $80 an hour waiting time. And then I've worked probably four more hours at direct service rates since then.

Q Okay. So about 16 hours in direct service at about $200 an hour and then eight hours at $80 an hour?

A Right. And then the time waiting today. So whatever time we're at.

Q Okay. And you had mentioned your testimony in the past. With respect to criminal cases, you primarily testify for the defense; is that correct?

A I've been called by defense, yes. I'm available for either the State or defense. And primarily defense has retained my services.

Q Okay. That makes up the bulk of your services in the criminal cases, correct?

A Not testimony, no. Testimony is a very small percentage. There are lots of evaluations undertaken, records reviewed, things like that. So testimony is -- is actually a pretty small percent of what I do.

Q Okay. But in the times that you've testified, those -- in criminal cases, those are primarily for the defense; is that correct?

A Thus -- yes, thus far.

Q Okay. And you would agree, based upon your review of records, that Mr. Depa is average to above average IQ?

A Yes. I think he had an assessment performed in March of '23, and his IQ was around 93, which is an average range.

Q Okay. And you didn't do any IQ testing, correct?

A No. It wasn't needed. It was recent. March of '23 is still considered a recent test.

Q Okay. And your experience with autism and persons with intellectual disabilities, what sort of experience do you have with that?

A My first exposure to that was when I worked in Littleton, Colorado, as an undergraduate -- well, I was actually a graduate student, sorry, doing a practicum, and we had a mixed social skills group of

individuals with autism, Asperger's disorder, OCD, and ADHD. So we had semester-long programs where every week we met in a group format and took these individuals into the community to try to have more social interactions that would be considered neuro-typical or more average.

We'd take them places like Dave & Busters or, you know, a variety of kind of community places. And then I also had one-on-ones with, you know, a percentage of those individuals in the group, where I met with them one-on-one and then their family. That was my first exposure. And so that would be in 1997.

And then during my practice, 2002 through 2005, that practice in neuro-education in Spokane, Washington, was focused on learning differences. We had a lot of referrals from Fairchild Air Force Base that were regarding autism or Asperger's at the time because they did not have like a psychologist that would be addressing it. They had a developmental pediatrician, and so he would refer to us as a practice. We would do evaluations, return the patient to the doctor for treatment.

And so I had three years of both doing assessments. And then I undertook a therapy group, much like the one I had done in my practicum years, to

do social skills development. And then I had some individual therapy clients. And then when I worked, beginning in 2010 -- well, actually 2005, sorry, 2005 at Bridgeway Center, I did Social Security evaluations. That is a commonly referred diagnosis, autism spectrum and evaluation as an independent evaluator. And so I would be tasked with seeing if the person met criteria for autism spectrum disorder.

Similarly, as an evaluator briefly for APD, I think between maybe 2009, 2008, to 2011, during that period of time. And at that same time I was working for vocational rehabilitation. So what would happen is I would get a referral to do an assessment, try to make some determination if treatment was needed in the community, what kind of occupational outcome that individual might have. And then as I got into purely forensic work, my evaluation would involve things like trying to see if the person was competent to stand trial.

For instance, culpability regarding mental state at the time of the offense and then sometimes in sentencing proceedings.

Q Now, I wanted to ask you about some of the symptoms of autism that I -- I don't believe there's any record to indicate that Mr. Depa has. For example,

he doesn't necessarily engage in repetitive behavior. You didn't find any record of that, correct?

A The repetitive behavior is related to his preoccupation with electronic stimuli. So he is focused, as an area of interest, on asking for his game, having his behaviors being targeted towards earning time with the game. So the repetitive nature of his thought process is regarding electronics.

Q And then you would agree that the record seemed to indicate, and I would assume even your interactions with him, that he has a good communication level for somebody with autism?

A He has a -- I believe his expressive vocabulary was rated at above average, and his receptive vocabulary was average.

Q Okay. Now, in your review of records, did you review records from Springbrook?

A Yes.

Q Okay. And you would agree that while he was at Springbrook for about a year, that he engaged in a number of aggressive violent behaviors?

A Yes. I saw those documented instances where he, I think, more at the beginning of the program, had engaged in some aggressive acts, yes.

Q And my understanding is Springbrook is a

residential treatment facility that specializes in persons with autism. Is that your understanding?

A That's what I've heard, yes.

Q Okay. So even while he was there, in a specialized setting, there's records to indicate that he head-butted staff?

A Yes.

Q Punched a doctor, at least twice?

A I think he did have an altercation with his psychiatrist.

Q Right.

Was throwing chairs and other furniture, things of that nature?

A Threw a chair, yes.

Q Okay. And then and you had an opportunity to review the records at ECHO, as well; is that correct?

A Yes.

Q And you would agree that even at ECHO, he continued to have aggressive violent behaviors?

A It was noted as the treatment provider had summarized to the IEP team that he had, in the first month he had four interactions that would be considered aggressive acts. Those reduced to one or two times in the following year. So I don't -- I would say that it is par for the course in beginning a new undertaking of

behavioral reenforcement that you're going to have a person have the most expression of trouble with transition, new reenforcers, express -- you know, really express kind of like their anger as they meet these new barriers and reenforcements. And that is reflected in the record.

Q And again, he was acting out violently at ECHO, correct?

A Again, it is documented in the IEP, in the first month, there were four instances, and then it reduced so that he did not continue to need any kind of restraints, like mechanical or chemical. So if he was continuing to act out, it was improving.

Q Okay. But he did, for example, according to the records, in late August of '22, attacked a housemate that required the housemate to get medical attention from the nurse?

A That is right.

Q In addition to that, in March of 2022, he ripped a door off the wall and charged at staff?

A Yes.

Q And again, late August of '22, the records indicate he inappropriately groped a female staff member on the way to school on three separate times, apparently?

A Yes.

Q Okay. Now, you also would have reviewed the DJJ evaluation done by Dr. Kutlik; is that right?

A Yes, that's right.

Q Okay. And within that documentation, she refers to the PADI 5 test that she conducted with him that, I think, is geared towards, I guess, conduct disorders and ODD; is that correct?

A It's an evaluation of symptoms. And based on that, you can see a variety of clinical conditions, such as depressive disorder. Behavioral manifestations of -- you know, behavioral disorders can pop through on there, as well.

Q Okay. And within that testing, he indicated, Mr. Depa did, he endorsed that he did engage in certain behaviors that are indicative of a conduct disorder or ODD; is that correct?

A So he endorsed behaviors, but that was not ultimately doctor -- well, sorry, she's not doctor -- Ms. Kutlik's conclusion that he had had conduct disorder. So he was ultimately not diagnosed with conduct disorder.

Q But some of the behaviors he endorsed included intentionally hurting other people, or being physically cruel to them, correct?

A Right. So if you endorse behaviors on any one assessment measure, it's not an ultimate conclusion. You can't make a diagnostic decision off of one assessment. It's the totality of the information, which is why she did not ultimately conclude that he had that.

Q Okay. But again, he had endorsed that he had intentionally hurt people or been physically cruel to them, correct?

A That's what then endorsement is, uh-huh.

Q And that he had started physical fights on two or more occasions?

A Yes.

Q That he had bullied others or tried to intimidate people?

A Yes.

Q That he had used weapons in fights?

A Right. It says, reference what kind of weapon it is, but that's his endorsement on an assessment.

Q Right.

That he had purposely destroyed other person's things?

A Yes.

Q That he had intentionally hurt animals or

done cruel things to them?

A That's what he endorsed, yes.

Q He endorsed that he would lie to get the things he wanted?

A That's what's reported in the -- in the record, yes.

Q Also indicated that he'd either forced someone to do something sexual with him or gone father than they -- than they wanted?

A That's endorsed, correct.

Q Okay. He also indicated that he repeatedly annoyed people on purpose?

A That's endorsed.

Q Okay. And in Ms. Kutlik's report, towards the end of her report, she kind of summarizes some things and indicates in there that the use prognosis is poor. Do you recall seeing that?

A Yes, I do, uh-huh.

Q And it seems to say, in her report, the reason for her conclusion that his prognosis is poor is he's received extensive services, including hospitalization, residential stays, and outpatient care since the age of four; however, continues to struggle behaviorally and within his mental health. These factors are likely to continue to impact his ability to

be successful in the legal system, occupationally, and interpersonally. Did you see that?

A I did. Because it's attached to her recommendation that these treatments continue. So that would indicate that he's not finished and that he has received these services and that they should continue.

Q And you had said with Mr. Teifke that you believed a DJJ placement would be appropriate for Mr. Depa; is that correct?

A I think that that -- the same of rehabilitation would help him meet some of these treatment goals and that the staff ratio would be better for him and that they would be more informed as to how to handle developmental differences, which are, you know, the ways that his symptoms get expressed, more like a child.

Q And do you know when, if he were sentenced to youthful sanctions, do you know when it is that that sentence would be up?

A I think that you just mentioned to the Court it would be at age 21.

Q Right.

So we're talking two years if he's 19 right now, correct?

A He's 18 right now.

Q And do you believe that two to three years for Mr. Depa is enough, so that if he were released from DJJ and just went back into society, that we, as a society, could feel safe?

A Well, I think that your -- your question is complicated because you're suggesting that treatment would end at 21, but there's no evidence that that is the case. What you can do is you can establish a very specific treatment plan, as they've narrowed in with his treatment at ECHO, it was getting better, he was responding in the terms that he needed less outside kinds of restraints. And so what you would do in the next period of treatment is you would hone in on, you know, accentuating his coping skills, getting that medication right. That begins the stamp of the correct treatment that he will continue to follow.

Then, if he is in a group home next, for instance, they will have a great track record of what has really worked for him with the medications being stabilized, with the reenforcers being identified. Since he's in the early stages of treatment at this point, that will only get better. So I would see that he would continue with that. There's no reason why he'd be done with treatment at age 21. This is going to be a lifelong process where he will be able to

benefit from psychiatric care and community supports for the rest of his life.

Q And you would agree that all the prior treatment that we've been discussing, the Springbrook, the ECHO, the IEPs, that's all when he was a minor, he was a juvenile, correct?

A Yes, from -- at -- starting at 14.

Q And as a minor and a juvenile, for example, his parents would have some say in his treatment and could make sure that he continues with treatment?

A Yes.

Q But clearly, when he's an adult, now he has a say in some of his treatment, correct?

A Yes. That's why, I believe, the assessors were evaluating his motivation for treatment, which he is motivated for treatment. So his personal desire to continue his services, but he -- because he's a vulnerable person, I think that the next step would be an obvious determination of guardianship. Then you could have, you know, oversight into his care if his parents wanted to pursue that.

Q And you were present when Dr. Kline testified, correct?

A Yes, I was.

Q Okay. So you were able to listen to the

different mental health programs that the Department of Corrections has, correct?

A Yes.

Q And so you would agree that, based upon her testimony, they have a classification system for inmates to determine their mental health needs?

A Yes.

Q They even have a crisis stabilization should that become necessary for an inmate?

A They do.

Q And they do have cognitive behavioral therapy and different types of therapy that they can give to an inmate if that's necessary?

A Yes. They have cognitive behavioral. They don't -- she didn't say that they had ongoing ABA therapy.

Q And they have the ability to medicate inmates to assess them with their mental health, correct?

A They do.

Q Okay. And you would agree that things like cognitive behavioral therapy, as well as medication would be appropriate for Mr. Depa?

A Would be -- medications are essential, of course, you know, to continue to stabilize his mood. Behavioral therapy, that would be considered applied

behavioral analysis therapy, would be effective treatment for his condition. Cognitive behavioral therapy is of some benefit. But again, it's like I was saying about being on beat, you need an entire team to be consistent in applying those reenforcements. You need to understand that his symptom expression might look like, you know, just behavior problems, but really, it's when his symptoms are activated.

Corrections staff, we've got, you know, morning shift, afternoon shift, evening shift being targeted towards understanding what his treatment goals are and responding in the same way is very unlikely.

Q And you had mentioned that when he was at ECHO, for example, that his violent outbursts seemed to have declined over time, correct?

A Yes.

Q That when he initially started there, he was having more difficulties than he was towards the end of his stay there?

A That's right.

Q And you would agree that that would allow someone to conclude that it -- it appears as though Mr. Depa was learning to control his anger and his outbursts?

A Well, it's -- it's -- again, it's the

circumstance. As the staff learn his triggers better, it can use those skills, like redirection. They will understand which reenforcers work best for him. Like, establishing a game time for him at a certain time each day. So the environment grows and understands him, the staff understand him, and he also responds to that behavioral management and, you know, working on his goals. So it's both.

Q Okay. So fair to say that over that period of time, that he was able to control his behavior, to some extent?

A Well, it seems like there were periods of time without behavioral outbursts when the medication was right, when the reenforcements were on. So I think that in that environment, he did control his behaviors sometimes, yes.

Q All right.

MS. CLARK: I don't have any other questions. Thank you.

THE COURT: Okay.

Mr. Teifke, any redirect?

MR. TEIFKE: Just a few, Judge.

REDIRECT EXAMINATION

BY MR. TEIFKE:

Q Dr. Harper, any of the aforementioned

endorsements by Mr. Depa, in -- that appear in Ms. Kutlik's report, is there any other record evidence of any of that that you've seen?

A No. And because reading comprehension has been an area of difficulty for him, I would say that, you know, we don't know what's behind his endorsements. So you can't rely on each one like that, to come up with some kind of diagnosis that's not consistent with the records.

Q And I think you heard Dr. Prichard testify on day one, when Brendan endorsed that he was hearing voices, and that was not accepted by Dr. Prichard, right? He didn't believe it?

A I did hear that.

Q Okay. And the provision of mental health services in Department of Corrections, whatever that might be, the goal of that is simply to stabilize and send you back to general population. Is that how you understood the testimony?

A That's how I understood the testimony. It's for, like, present functioning. And then that's also my clinical experience, because I do see people in the prison as part of my evaluation process. And so I have had exposure to their medical records and, you know, firsthand reports as to, like, the goal of the therapy

and the services they receive there. It's immediate focus. It's crisis based.

Q So it's not necessarily some finely tuned and arrived at team that is trying to solve for the future?

A No. And as a matter of fact, they rarely reference past providers' notes. As you read thousands of pages of DOC clinical records, you see that, like, a diagnosis will be present. Two hundred pages later, the diagnosis goes missing because the record -- the provider doesn't reference past diagnoses. They don't have access to outside, you know, historical information about their patients. A lot of times, nobody is calling their families to like figure out what's already been tried. And so it is present focused without all of that rich, like, diagnostic history to lean on.

Q All right.

MR. TEIFKE: Thank you, Dr. Harper.

THE COURT: All right.

Thank you. You may disconnect.

THE WITNESS: Thank you.

THE COURT: All right. Mr. Teifke, you may call your next witness.

MR. TEIFKE: Woody Douge.

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THEREUPON,

WOODY DOUGE,

called by the Defense as a witness, was duly sworn and testified as follows:

THE COURT: You may proceed.

MR. TEIFKE: Thank you, Judge.

DIRECT EXAMINATION

BY MR. TEIFKE:

Q Can you state your name, please?

A My name is Woody Douge.

Q And where are you employed, Mr. Douge?

A I'm currently employed with the State of Florida under the Department of Juvenile Justice for the --

Q How long have you been --

A -- last --

Q -- employed there?

A For the last 20 years.

Q Twenty years. Okay.

And what do you do there?

A I'm currently a senior probation officer.

And I supervise juveniles on probation in the community in Flagler County and also conduct intake for new kids who get arrested or anything like that, come to our case.

Q Okay. Your responsibility is in the supervision capacity. What else? I mean, what do you do to supervise? Are you looking after other JPOs, the probation officers, what do you do?

A I'm also a senior probation officer. I'm also a supervisor. So an acting supervisor (indiscernible) supervisor of the JPO, also.

Q Okay. And part of your responsibilities here, and at other times, are to provide recommendations to the Court for disposition; is that right?

A That is correct.

Q And did you, in fact, do that or were asked to do that in this case of Brendan Depa?

A Yes.

Q Okay. And you're the assigned JPO, juvenile probation officer, for Mr. Depa?

A That is correct.

Q Okay. And what is your first involvement, Mr. Douge?

A Well, Department or with --

Q No. In this case --
A In this case.
Q -- with --
A So --
Q -- Mr. Depa.
A -- the initial case, when it happened back in February of 23rd, the case came to our office. And the next couple days the case was transferred to the adult system. So I didn't work the case until the case got to the court process where it was due for sentencing.
Q Okay. So at -- yeah, right, at the time he enters a plea, it is set for sentencing, and then DJJ, you, get a --
A Uh-huh.
Q -- phone call to prepare a report for the court. Do I understand that right?
A That is correct.
Q Okay. And what information gathering is done as part of that process?
A For the process, we -- the Department conduct what is called a multidisciplinary -- disciplinary staffing. That's when the Department is considering commitment for a residential youth that's (indiscernible) staffing for that --
Q Okay.

A -- (indiscernible).

Q And what is that? Who are the players, the participants?

A For the staffing, we do send out an invitation to the State attorney, the youth's lawyer, the youth's mom, dad, school official. Everybody involved with the youth, those people are participated to invite in the staffing.

Q Okay. So there's -- several invitations go out, and it cuts across --

A Yes.

Q -- many aspects of his life?

A Counselor or former therapy. So anybody that's involved with the youth, they get invited.

Q And is part of this also a mental health assessment?

A Yes, that is correct, the Department was part of that process when we staffed the case. We did request a competency evaluation from Ms. Amy Kutlik.

Q Okay. Kutlik, the one that we've just been talking about?

A That is correct.

Q All right. So that -- that's part of the DJJ end of this, it's an evaluation for that purpose, right?

A Yes.

Q All right. And do you feel like you had enough information to make a recommendation here?

A Based on the history that I have with the youth face sheet, which is all his record based on whenever he got involved in the Department, and -- and the police report that I have in here and then also the evaluation that was provided to us and whatever collateral information was collected to present to the court, school, behavioral. Any history of the youth, we'd collect all those information before -- in order to present that summary, sentencing summary for the court.

Q Okay. And there is certainly a lot of information on offer there --

A Yes.

Q -- for you to consume, correct?

A Yes.

Q Okay. And is the staffing that is held amongst these participants, are there -- is there a give and take, are there differing opinions, or is it just everybody is bringing their own information to the table? Tell me a little bit before how it just --

A So --

Q -- works.

A -- the staffing is typically how we have a commitment manager, she's the one that's leading the staffing. So my role, or my job, as a probation officer, is to present the information, because she doesn't know anything about the case --

Q Right.

A -- or anything like that. So I present the information that I have, which is his history, criminal history, school history, mental health, or any information that I have, I present that to her. And during the staffing, we discuss, and whatever information we have in the past, and the parents also have the time to bring whatever information they have; and then the commitment manager at that time gather all this information, and then she make a decision if that youth would be qualified to one of our residential programs or if the youth is qualified to go to the adult system.

Q Okay. So the -- the answer is -- is, you know, not always that there's juvenile available, right? I mean, there's an assessment of need --

A Yes.

Q -- of the case, and then there's also an assessment of availability of services; is that --

A That is correct. If the youth has exhausted

all of the service, if they have a long history, then, therefore, sometimes that youth doesn't need -- need to be in the system, so they will typically go to the adult system.

Q So that seems to be -- a primary factor is, chances already had, interventions already employed?

A That is correct, per history or any intervention we have already implemented in the process.

Q So sometimes the answer is, we simply don't have anything else that we can provide; therefore, adult court; is that --

A That is correct.

Q All right. And here in this case of Brendan Depa, what was the recommendation, that there were services that could be offered?

A In terms of staffing, we did explore the opportunity. So at the end of the commitment staffing, we feel like the youth did not exhaust all the services we have available to him in the community. And that moment the case -- the commitment manager decide there was (indiscernible) for the youth to be committed to the maximum risk program, based on his history and based on the charge that is at hand.

Q Okay. And this is -- there's nothing, per

se, that was disqualifying about the nature of the offense in your determination of whether or not services were available through DJJ?

A No.

Q All right. Okay. And it's -- you indicated that the recommendation was made about a commitment program; is that --

A Yes.

Q -- correct?

A Residential program.

Q Okay. So Brendan had never been on, like, even juvenile probation; is that --

A No.

Q -- correct?

A No.

Q Okay. It's not correct, or he's never been on it?

A He's never been on probation with us.

Q Okay. And he's never been committed to the Department of Juvenile Justice --

A Never been --

Q -- right?

A -- committed, no.

Q Or any -- to the Department of Corrections, per se?

A Not that I'm aware of, no.
Q Okay. There is some mention of a prior diversion, but not a formal court case. Is that accurate?
A Well, it is accurate. It's a court case. So he was -- back in 2019, March of 2019, he obtained two misdemeanor offenses, which were diverted to the juvenile diversion program, which he successfully completed back in 2019.
Q Okay. And that's the JDAP program?
A JDAP program, yes.
Q So that's a means by which, upon successful completion, the case is --
A Would be a nolle pros.
Q -- is nolle pros?
A Yes.
Q Is dismissed, right?
A Dismissed, yes.
Q Okay. And was there, in fact, successful completion of that?
A Yes. Based on the record, yes.
Q Okay. Now, at some point JDAP, or diversion, it -- is -- becomes unavailable, right? You can't just keep getting diversion, right?
A That is correct, yes.

Q At some point, they -- what would the next step be from the DJJ, as we envision this as a staircase, is it some form of probation?

A Based on the child, he may go from probation to high-risk residential. So it depend --

Q Okay.

A -- on the -- on the charge and based on the --

Q The current charge and --

A Yes.

Q Sure.

Now, in this case commitment to a program was deemed appropriate. And you said a residential. Was it a maximum risk?

A A max risk program.

Q Okay. So what would that look like? How long would it last? What does it entail?

A A max risk is typical from 18 to 36 months. Typical is a hardware facility. So it's not like something he can walk out. It's just like a regular jail. Well, it is a prison, in -- in fact. And it is a security facility. It's locked. So everything is monitored, and you are being supervised by staff. And there won't be any chance for anybody to leave or anything like that or escape or anything.

Q Okay. So secure facility. And that's the highest risk? There's tiers of programs --
A Yes.
Q -- right? That's the highest --
A That's --
Q -- right?
A -- the highest risk we have right now.
Q Okay. And hence, it -- that's the one that can last the longest, right?
A Can last -- yes.
Q So if Brendan is coming up on 19, it could clearly last until he's 21; is that right?
A Based on the treatment -- based on his treatment, so it can last until 19 -- or 21, yes.
Q Twenty-one. Okay.
And specifically, the commitment programs, what are they geared towards? You've indicated they're secured facilities. So what other components are there to it, as you understand them?
A Our goal, the Department goal, is rehabilitation. So the program is geared towards try to rehabilitate the youth based on mental health, if they needs for mental health, education, and behavior management or medication management. All those components are included when the youths go to a

program. So these are all the services provided. Also, psychiatric evaluation. All the different components to try to help the kids and try to help them and to become a successful citizen at the end of their program and become a successful person in the community.

Q I see. So there's mental health --

A (Indiscernible).

Q -- professionals --

A Yes.

Q -- in there?

A Yes.

Q There's medication that is available?

A Yes.

Q And then there's other counseling, also?

A Yeah. They go to weekly counseling session. And they rotate. They have substance abuse counseling if the youth needs substance abuse counseling. And mental health, all those components are included in that process when they're in the program.

Q Are there several aspects of that, then, that you think specifically can apply here, and that's why it was deemed appropriate --

A That is --

Q -- that --

A -- correct.
Q -- Brendan can avail himself of?
A Yes.
Q Okay. And you indicated that this is a -- the overarching goal of this is rehabilitation --
A That --
Q -- correct?
A -- is correct.
Q Okay. Is -- is trying to ensure that the -- the juvenile, the kid, when released becomes a productive member of society?
A That is our goal.
Q Okay. Are there any other services specifically that you're -- know that he would be provided besides what you already referred to?
A One of the things, education, also vocational. So if the youth want to be -- we have all the services included, such as HBI, which is a home builders certificate, forklift.
Q All right.
A If you want to become a truck driver, they have a stimulating trucking program in the program. So they have different avenue. That's one of the things our Department is gearing focused on, is education, trying to help those kids when they go to the program

and get out to be able to be successful by providing the education for them in that aspect in the program.

Q Okay. Very good.

And is that program specific as far as what's on offer there for class-wise? Does it just depend on which program it is?

A It depends on which program. Right now we have three max risk that are available for him in the state of Florida.

Q I'm sorry, there's two available?

A Three, three max --

Q Three.

A -- risk programs to pick --

Q Okay.

A -- from.

Q And they're available immediately?

A Earlier I just texted the commitment manager, we have some vacancies. So within a month. He'll be able to be placed within a month.

Q Okay. Very good.

And is there -- is it simply a matter of a vacancy at a max risk, or is there particular -- is there communication with a particular max risk that says, hey, you know, we've reviewed this, and we think this is a perfect fit? Like --

A So the commitment manager, which was the person that held the commitment management meeting on staffing, she's the one that, based on all the information, the evaluation, and all the documents that we collected, and she determined, okay, which program would be best services need. So if they are mental health overlay, all these different components, she will decide, okay, this is the program that best fit for him out of the three programs in -- in the state of Florida. She decides that aspect.

Q And, if you know, where are these three located generally?

A Let me just get my notes. So we have Kissimmee Youth Academy, St. Johns Youth Academy, and Cypress Creek, which is in Citrus County. And these are the three programs that we have.

Q Okay. All right. And if there -- he's not successful in a commitment program, there's a mechanism by which he can be returned to the -- the court system, correct?

A I mean, you have to elaborate on that (indiscernible) since if he's getting into trouble or if he's not -- because the program is 18 to 36 months.

Q Well, yeah. There -- so if there were new -- an incident, or incidents, at a program that were --

were to such an extent that resulted in his discharge, them saying, we're done?

A Yes, it would go back to -- come back to the court system.

Q Back --

A Yes.

Q -- to the court system. Okay.

Is there -- is there anything else that we didn't talk about, about the program, itself, and what it offers?

A No. Pretty much covered everything.

Q All right.

A So --

MR. TEIFKE: Thank you, Mr. Douge.

THE COURT: All right. Thank you.

Ms. Clark?

MS. CLARK: Thank you.

CROSS-EXAMINATION

BY MS. CLARK:

Q Now, in DJJ's assessment, you all did no review the records from Springbrook; did you?

A No. We reviewed the -- for -- no. Not at this time, no.

Q So you didn't review the medical records from the mental health facility he stayed at for a year?

A I didn't review that information, but I just followed the comprehensive evaluation that I include -- that's what I included in my report.

Q Okay. So DJJ didn't actually see the records, themselves, for what the Defendant may or may not have been doing up at Springbrook; is that correct?

A Just for the (indiscernible) that I have in the competency -- competency evaluation. That's why I went by with all the information that was collected, I read from that point.

Q Okay. So, for example, were you aware that Mr. Depa had attacked staff up at Springbrook?

A Based on the report that I -- when I reviewed that comprehensive evaluation, that's when I saw that.

Q So you were or were not aware?

A No, not at the beginning. No. Until I saw the reporting, the document on (indiscernible).

Q Okay. I just want to make sure I understand. So at the time DJJ made the recommendation for youthful sanctions, were you aware of the Defendant's behavior at Springbrook?

A No, not at that time.

Q Okay. And DJJ also did not review records at ECHO prior to making its determination, correct?

A No. Not at this time, no.

Q So again to make sure I understand your answer, when you all made the recommendation for youthful sanctions, meaning DJJ sanctions, you all had not reviewed the records from ECHO?

A Those were discussed, but I wasn't viewing them personally. Those were discussed with the staffing, what happened in the staffing. But all our accommodation, based on the evaluation that we did, the (indiscernible) file, and then based on the actual charge that was at hand.

Q Okay.

A Well, we were aware of those same -- those -- accommodations were from the copy of (indiscernible) that's where we get our accommodation and the staffing, during the staffing.

Q Okay. So it sounds like you relied on the eval that Ms. Kutlik did, correct?

A And other components in the staffing. When we had the staffing, whatever information was provided to us during the staffing.

Q Well, did you have members from ECHO at the staffing?

A No.

Q Did you have members from Springbrook at the staffing?

A No.

Q Okay. And you would agree that if Mr. Depa were to be sentenced as a juvenile to DJJ maximum risk, which you said could be anywhere from 18 to 36 months, but once he turns 21, he is released, correct?

A That is correct.

Q So even if he is still in desperate need of treatment, program is done, he's 21 years old, good-bye?

A So one other thing with the program, so once the youth is in the program, so I, the JPO, we participate in a monthly -- monthly meeting with the program. So every month we have a treatment meetings to know the status of the youth. So if there is -- before the kids get released from any program, we have to set the foundation for them when they get out. If they need after service, after treatment services, we have to lay the foundation for them before they even get released, even though at the time they're expired, but we do set those kind of services for them, which is (indiscernible) we do at the end before the youth is going to get released. And we get all those components, if there's going to be after service care or vocational education, we do have a meeting every month for that kid and before they get released.

Q Sure.

But you would agree once they turn 21, DJJ no longer has jurisdiction to require him to do anything?

A Yes, that is correct.

Q So even if he's still in desperate need of treatment or acting aggressively, DJJ says, good luck, and let's them go?

A It's all based on the program and the treatment is going. So if that's what they decide they want to do, that's what the program want to decide. Not up to me.

Q Sure. It's up to the treatment.

But at the end of the day, regardless of what treatment needs he might personally need, as soon as he turns 21, he's out the door?

A Jurisdiction-wise, yes.

Q And you guys can't require him to do a darn thing?

A We can recommend that.

Q You can make recommendations all you want, but you --

A Yes.

Q -- but you can't require him to do anything, correct?

A That is correct.

Q And you would agree that he's going to be turning 19 later this month, correct?
A Yes. The 22nd.
Q So we -- you would only have two years to work with him?
A The program would have two years, yes.
Q Right, that's what I'm saying.
Even though the program ideally can go up to 36 months if -- if needed for a juvenile, that's not possible for Mr. Depa?
A It's up to the program. It's not up to me.
Q Well, I thought it's once he turned 21?
A I mean, the program can release him. Once he turns 21, it release him, yes.
Q Yes.
So there is no chance of him getting, for example, three years' worth of treatment with DJJ, because that time isn't allotted? He's already going to be 19 later this month.
A Yes.
Q Okay.
MS. CLARK: Thank you. I don't have any further questions.
THE COURT: Mr. Teifke?
MR. TEIFKE: No redirect.

THE COURT: All right.

Thank you. You may step down. Thank you, sir.

THE WITNESS: Thanks.

THE COURT: All right. Mr. Teifke, you may call your next witness.

MR. TEIFKE: May I approach briefly?

THE COURT: Okay.

MR. TEIFKE: Very.

(A sidebar conference was had that was unable to be heard, and, therefore, not transcribed.)

THE COURT: The Court will take a 10-minute recess.

(A recess was taken at 4:33 p.m., and proceedings resumed at 4:42 p.m.)

THE BAILIFF: All rise.

THE COURT: All right. Please be seated.

All right. Ready to go back on the record? Ready to proceed?

MS. CLARK: Yes, sir.

THE COURT: Okay.

So, Mr. Teifke, you indicated that Mr. Depa, your client, may wish to read a statement to the Court as part of the sentencing today?

MR. TEIFKE: We had a change of heart on that,

Judge.

THE COURT: Okay.

MR. TEIFKE: Defense rests.

THE COURT: Okay. So he does or does not?

MR. TEIFKE: Not.

THE COURT: Okay. All right. Very good. Thank you.

Any other evidence or testimony from the Defense?

MR. TEIFKE: That's all, Your Honor.

THE COURT: Rebuttal from the State?

MS. CLARK: Just briefly, Judge. The State would call Dr. Prichard, who is on Zoom with us.

THE COURT: Okay. All right. Give me just one second here.

All right. Good afternoon, Dr. Prichard. This is Judge Perkins.

THE WITNESS: Good afternoon, sir. How are you?

THE COURT: Good, good.

We can hear you loud and clear. And I can see you got my link to turn your -- your audio on. So I think we're ready to proceed.

Ms. Clark --

MS. CLARK: Does -- does he --

THE COURT: -- you may proceed.

MS. CLARK: -- need to be sworn in first, Judge?

THE COURT: Huh? Yeah.

MS. CLARK: Does he need to be sworn?

THE CLERK: Can you raise your right hand?

Do you swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THEREUPON,

GREGORY PRICHARD,

recalled by the State as a rebuttal witness, was duly sworn and testified as follows:

MS. CLARK: May I proceed, Judge?

THE COURT: You may.

DIRECT EXAMINATION

BY MS. CLARK:

Q And, doctor, could you please give us your name again for the record?

A My name is Greg, G-r-e-g, last name Prichard, P-r-i-c-h-a-r-d.

Q Now, I wanted to speak to you about something specifically. You just listened to the testimony of Dr. Harper and Spence, correct?

A Yes.

Q And I know previously you had testified that you opined the Defendant was dangerous and had a propensity for future danger, correct?

A Yes.

Q Now, Dr. Harper and, I believe, Spence, both endorsed that they felt the better placement for the Defendant would be with the Department of Juvenile Justice. So I wanted to speak to that with you. Do you believe that if the DJJ sentence is limited to, basically until he's 21, about two years, is that sufficient time for supervision and treatment and punishment for Mr. Depa, given what you know about him?

A I mean, what I would say is I would have -- I would have very significant -- significant concerns if the expectation is that two years of continued treatment for Mr. Depa -- Depa is sufficient, given what we know about his past and given what we know about the interventions in the past. So I would consider that -- he was in the Springbrook, and again, that's a -- that's a residential environment specializing in autistic spectrum individuals. My recollection is, at discharge from that facility, that the gains, in terms of accomplishing and meeting the goals of treatment for him, they were either minimal or

nonexistent. So in other words, didn't make many gains in that type of residential environment.

And then ECHO, I would say, you know, a level six group home, Agency for Persons with Disabilities sponsored, meaning the residents of the group home have some kind of qualifying diagnosis for Agency for Persons with Disabilities intervention, meaning autistic spectrum intellectual disability; he did not do well there for a period of time. It sounded like his behavior got better towards the end of that commitment, but still not great. You referenced a couple incidents, I think, it was in August of 2022, which would have been about six months before the incident that led to the criminal charge at Matanzas High School.

So there was still a lot of behaviors there in a relatively, an environment, I think the testimony was previously there was something like six or eight other residents in that group home. So that's a small number of other residents in that group home. The other consideration is that those other residents in the group home were adult residents. So Mr. Depa was allowed there was a 15-year-old because of his -- his large size. In other words, it wasn't peers. It wasn't other 17-, 16-, 15-,14-year-olds, which very

likely a Department of Juvenile Justice facility would be other peers his age and younger.

So the other consideration is Matanzas High School. Again, around a lot of peers. A lot of intervention; the one-to-one paraprofessional, the IEPs, and all of the individuals who were involved in care of Mr. Depa, teachers, other paraprofessionals, other professionals, other staff members. You know, he -- he didn't do very well in that environment, either.

So if the expectation is that somehow this Department of Juvenile Justice facility is going to kind of all of the sudden -- he would have about two years until -- until he's 21, with his history of issues, do some type of intervention that's going to make him, you know, fully better and be able to function independently and safely, I think that's misguided.

Q And do you feel that whatever form of incarceration he gets, that it would be appropriate for long-term supervision to follow that incarceration to ensure that he's actively engaged in mental health treatment and things of that nature to protect society?

A Yeah, I think it's necessary and pretty obvious. Again, when we're talking about, and this has been testified to, autistic -- autistic spectrum

issues, they're lifelong. There's been disagreement, obviously about his level, level one or level two, but either way it requires support. He's going to need support and supervision, you know, for a lot of things. And a lot of things have been mentioned.

So yes, this is -- this is going to be -- this is going to be carried out for, you know, a long time for Mr. Depa. There shouldn't be any expectation that he's suddenly going to not need any of this intervention.

Q And you would have heard from Dr. Kline testify in the prior hearing; is that correct?

A Yes.

Q And you were able to hear the Department of Corrections has, obviously, mental health treatment they can provide to inmates; is that correct?

A Yeah. It's pretty extensive. They -- they rate them one through six, that's the scale. Six is the highest, meaning the person requires higher levels of care. And in Department of Corrections, the higher level of care, four, five, and six on one-to-six scale, those are inpatient facilities within the Department of Corrections, so residential mental health units that are an option. And then less -- less intensive below that level four.

So yes, they have lots of services in Department of Corrections, for obvious reasons. There's a lot of people in Department of Corrections that have mental health issues, that are diagnosed with intellectual disabilities. Not a lot of autistic spectrum individuals in Department of Corrections, but certainly some autistic spectrum individuals in Department of Corrections. So they have services for, you know, all of the individuals with whatever mental health concern there is, because they, you know, have residents with those mental health needs that come to Department of Corrections frequently.

Q And you would agree they obviously have medication, psychotropic medications, as well as cognitive therapy that they can provide to inmates?

A Yeah. They do have medications. Many Department of Corrections residents are on psychotropic medications. Cognitive behavioral therapy is the typical therapy in Department of Corrections. So addressing cognitions and behavior and the connection between the two and helping them understand that. So it's a -- it's a very common type of therapy in Department of Corrections.

Q And going back to Department of Juvenile Justice, you had mentioned that if that were the

sentence, he obviously would be housed with potentially other juveniles, children that are even younger than him; is that correct?

A That's right. And that's relevant for a couple of reasons. One is because, those are the -- the environments where he has been in where he has not done well. So, you know, understanding that these are -- these are adolescent peers. And when they're in a Department of Juvenile Justice facility that is high-risk facility, you know, they have -- they have issues of their own. So they have mental health issues, they have behavioral issues. So you're -- you would be putting Mr. Depa in an environment that's -- sounds fairly similar to what Springbrook would be in terms of a lot of peers, a lot of mental health issues.

So that's -- that's, you know, potentially problematic, because he know he has trouble with peers. So yeah, I would say that -- that should be a consideration. I think -- don't think it's been mentioned, but yes, putting him around peers, rather than possibly adults in other settings.

MS. CLARK: Thank you. I don't have any further questions.

THE COURT: Mr. Teifke, any cross?

MR. TEIFKE: Just a few.

CROSS-EXAMINATION

BY MR. TEIFKE:

Q Just so I'm understanding this correctly, because there's been prior problems when he interfaces with other juveniles, you believe that no such problems would exist if we place him in a general prison population with adult criminals, felons?

A No. I think Mr. Depa is going to have problems no matter what environment he is in -- in going forward, for at least a fairly significant amount of time, judging from his history. What I am suggesting is that peers, especially peers with problems, they -- they would ostensibly be more difficult to get along with, maybe more apt to pick on Mr. Depa, push his buttons, more immature, things of that nature relative to people who are maybe more mature adult population.

Q How much do you know about mature adult Department of Corrections populations?

A I mean, I -- I assess them all the time. I assess individuals in Department of Corrections all the time, the -- the adult criminal population.

Q And if, you know, believe what we're saying we believe and we're trying to set this up for some long-term success, you believe he's better served by

going into a general prison population and then maybe availing himself of some services on the back end, rather than a juvenile commitment program, which is --

A Yeah.

Q -- (indiscernible) by a commitment to rehabilitation and then undertaking services and support voluntarily when he's released? Do I understand that right?

A Well, that's not what I said. I really didn't offer an opinion about where Mr. Depa should go. I am offering information that wasn't, to this point, expressed, or I didn't hear it expressed by other -- other professionals, about some of the context in the -- in the things we're considering in terms of placement. So yeah, it wasn't my opinion that he should go to Department of Corrections rather than to D -- DJJ, but there were some things that were not said that I think are important to consider.

Q And your primary concern, to the extent that there are any, about a DJJ sanction is that you're assuming there would not be support and services voluntarily in place, whether it's under the auspices of a court or it's ordered, doesn't your answer assume that everything you've heard about the support he has is not, in fact, true?

A I'm sorry, I'm not being difficult, are you talking about outside of the DJJ facility?

Q Right. If he were committed until he's 21.

A Right.

Q Your reluctance to endorse that seems to be that, well, yeah, until 21, and then he's just set loose on the world. That assumes that there's not going to be some family supports that's in place, as you've heard all day today, right? Aren't you making that assumption?

A No, I'm not really making that assumption. I'm saying that the proposition that the DJJ treatment in a residential facility for two years would be sufficient is -- is, I think, misguided. I don't think it would be sufficient. What happens after that? I'm not sure. Certainly, it would be nice if he had a lot of supports. I don't know that that's going to happen.

It's my belief that court wouldn't have jurisdiction anymore. So it would be a matter of releasing him from the DJJ facility, and then whoever chooses to support, family, friends, professionals, whatever, that would be up to the people in the community to take care of --

Q Yeah.

A -- and wouldn't have any kind of tie to, you

know, court jurisdiction.

Q We just have to assume that everything everyone testified to all day long here today under oath here was, in fact, true?

A Did you say, was, in fact, true?

MR. TEIFKE: No further questions.

THE WITNESS: Okay.

THE COURT: Okay.

Ms. Clark?

MS. CLARK: No further questions. Thank you.

THE COURT: Okay.

Thank you, doctor. You may disconnect.

THE WITNESS: Thank you, Your Honor.

THE COURT: Yeah.

All right. Ms. Clark, any other evidence or testimony?

MS. CLARK: No, sir. Thank you.

THE COURT: All right. How about argument, then? It's a few minutes before five. I'll give each of you 15 minutes.

MS. CLARK: Okay.

THE COURT: How do you want to divide it up? Do you want -- do you want a five-minute warning? What do you want?

MS. CLARK: Sure.

THE COURT: Do you want 10 and five, five and 10? What do you want?

MS. CLARK: Let me know if I've gone over 10 minutes.

THE COURT: Okay. Okay. You proceed when you're ready.

MS. CLARK: Yes, sir. Thank you.

THE COURT: If you don't mind, let me just go through a couple of things while you're getting your --

MS. CLARK: Okay.

THE COURT: -- stuff together, a couple of the -- the basic information with regard to the sentencing.

So this is -- we all agree this is a first-degree felony. It's punishable by up to 30 years state prison, right?

MS. CLARK: Yes.

MR. TEIFKE: Right.

THE COURT: Mr. Depa scores on the score sheet, I think it was 74 points minimum permissible prison score, 34.6 months Department of Corrections.

MS. CLARK: Yeah.

MR. TEIFKE: Right.

THE COURT: Right?

MS. CLARK: Yes.

THE COURT: And he has time-served credit

533 days through and including today, approximately 17 and a half months.

MR. TEIFKE: Yes.

THE COURT: All right. Thank you.

All right. Ready?

MS. CLARK: Yes.

And, Judge, I kind of want to go through a little bit of the timeline that you've been hearing from the various witnesses as to kind of what brought us here. As you know, I think it's on the PSI, as well as there's been some testimony, there were a couple incidents where the Defendant was involved in the judicial system back in March of 2019, April 2019, and June of 2019, which preceded him being admitted to Springbrook in November of 2019.

So we had a pattern of behavior that was happening --

THE COURT: Four separate patterns.

MS. CLARK: Yes, sir.

THE COURT: Right.

MS. CLARK: -- while he was living in the home with his family. And then that precipitated him attending, or being admitted to Springbrook in November of 2019. And you've heard from the various witnesses about the records from Springbrook, that while he was

there, at a residential treatment facility that specialized in autism, he was still acting out in a very violent manner towards the staff there.

There was head-butting, threatening the staff, punching doctors, throwing furniture, things of that nature. And ultimately, he was discharged from that facility in November of 2020 and went from there straight to ECHO, here in Flagler County, a level six facility, a group home, where again, he continued to have outbursts that ECHO would have to deal with, both with staff, as well as with other persons that were living there.

And all the while then, he obviously starts attending Matanzas High School, where we had an attack on another student in December.

THE COURT: Before we move from ECHO --

MS. CLARK: Uh-huh.

THE COURT: -- my understanding from the testimony and the notes that I made was that Ms. Depa, who testified, saw the -- the treatment that was made at the hospital, as Springbrook, as kind of the last resort to try to restore things where her son wasn't violent, and then her intention was to bring him home.

MS. CLARK: Yes.

THE COURT: But before that could be achieved,

apparently insurance ran out, and so she had to move him to ECHO with the same objective?

MS. CLARK: Yes.

THE COURT: Okay. Thank you.

MS. CLARK: I think that's what she testified to, that the hope was that --

THE COURT: I'll be asking you the same question.

MS. CLARK: -- the hope was that --

THE COURT: Go ahead.

MS. CLARK: -- he would be able to return home. And she had hoped that it would be a quicker transition. But we know that he left their home of November of 2019 and was still living out of their residence at the time of this incident, which was February of 2023. And prior to this attack on Ms. Naydich, which is February 21st of '23, we know we had an attack of another student on a school bus, it was December of 2022.

So that was all kind of precipitating what happened here in this particular case. But in addition to that, we also saw, according to the reports, that there was some evidence of self-control at times, that Mr. Depa is capable of controlling his behavior when he chooses to. We set -- there was reports of a 97-day

streak at ECHO, meaning he had had, you know, 97 days of good behavior are. So indicative that he's able to kind of control himself. That when things are triggering him, that he's able to moderate his behavior so that he's not acting out aggressively.

There was also records within the school, and I think Dr. Prichard testified to, that between August of 2021 and December of 2021, he didn't have any incidents of physical or verbal aggression at school. Again, indicative that he's able to control himself when he chooses to. And then there's the jail, it -- by all accounts, since he's been housed at the Flagler County Jail, he's only had three disciplinary reports, which is remarkable.

THE COURT: I thought there was only -- I thought I heard there was only one violent incident?

MS. CLARK: Only one, but a total of three disciplinary reports.

THE COURT: Right.

MS. CLARK: But yes, one violent.

So in all the while that he's been in that environment, he's been able to acclimate to that environment and not act out in a way that would cause disciplinary reports.

And even on the day of the incident when this

occurs, we had evidence that he was able to control himself. We heard from Ms. Naydich at the first portion of the sentencing where she received that on the day that he arrived, that he wanted to go to the cafeteria immediately because he was hungry, but she instructed him that, no, we have to wait for the other students that are arriving, as soon as they get here, we'll go to the cafeteria. So he waited, did not have any issues waiting, other than asking to go to the cafeteria, but didn't act out aggressively.

And then even when you fast-forward that day a little bit until when he gets into the classroom for the computer class and he had brought his Switch out and Ms. Naydich asked him to put it away because it was during instruction time, he did so. He didn't lash out, didn't have any issues. So again, he's exercising self-control when he chooses to. And then again same thing towards the end of that class, he was starting to get the -- the game system out again, and Ms. Naydich said, hey, it's time to head back to our regular classroom. Meaning, put that away, we're going to go. And again, there were no issues with him doing that.

So it was clear, and is clear, that he can exercise self-control when he chooses to; but obviously, in this particular incident, we had a

vicious attack of Ms. Naydich, which you've seen the video in this particular case, where he pummels an unconscious woman for a good period of time. And it's extremely disturbing. You've watched the video. I debated playing it for you again, but I'm sure you've seen it multiple times. But if you look at the video closely and you slow it down, you'll see, I counted 15 times that he punched her while she's completely unconscious, that he stomped her at least three times. It took five people to pull him off of her.

I would assert to you, but for those five people pulling him off, I don't know if Ms. Naydich would be here today. I don't think he would have stopped on his own. He was obviously extremely angry with her. Mind you, all she had done is talk with her teacher. If you recall the testimony, it was the teacher that had brought up the whole Switch issue to begin with. It was the teacher that had had confronted Brendan. And she never seen took the Switch from him.

And he chased her out of that classroom. He made a conscious decision that he was going to go get Ms. Naydich. She had literally left the situation because he was getting upset. So she left the classroom to try and deescalate the situation, but that didn't work. So she had tried to distance herself from

Mr. Depa in the hopes that he would calm down; but instead, he chased her out and viciously attacked her.

And you heard the result of that attack. She suffered extreme injury. This isn't just a bruise. This isn't, you know -- she had a total of eight broken ribs. Five of those broken ribs that break on the front and the back. That's how powerful those blows were. This wasn't a small thing. This was extremely dangerous, extremely vicious. In addition to those broken ribs, she suffered are a concussion, which has had long-term effects for her. She testified about she still gets headaches to this day. The reading comprehension -- comprehension has gone down as a result of those concussions.

So she's suffering to this day. She had to leave an occupation she loved. She's been in the school system most of her career. She dedicated her career to serving kids. And because of her injuries, she can't do that anymore. She suffered from PTSD, from anxiety, which is understandable given how she was attacked. It's -- it's horrific, what happened to her. This is a woman that has dedicated her lives -- her adult live to work with kids, and that's been taken from her as a result of Mr. Depa.

In addition to those injuries, she also had, I

believe, it was an injury to her shoulder that's likely going to require surgery at some point, injury to her back. I mean, these are serious, serious injuries.

Now, Judge, the other issue that I have is his reaction, both day of and then after the fact, which I would indicate to you shows a complete lack of remorse. Right after it happened, you saw the body camera footage when he's being escorted out of the building and he spits at Ms. Naydich as she's coming to, basically, in the hallway, that he screams that he wants to kill her.

Even days later when they go through the manifestation meeting, he's making statements blaming her for what had happened, not taking any consequence for himself as to what he had done. Showing absolutely no remorse for what he had done. Making statements about how that she messed with him, that she was the problem. If she wasn't in the class, that there would not have been a problem. She even blamed -- he even blamed the fact that nobody had pulled him off faster and, you know, made mention that -- that she didn't try to run away from him. So really, just kind of put it all on everybody else but himself.

And, Judge, it's just, you know, the lack of remorse is -- is frankly just shocking given the fact

that she was so seriously injured. You know, that this was a woman that he completely knocked unconscious and just continued to beat over and over and over again until someone pulled him off. And the concern that we have, obviously, is that he is dangerous. You heard from Dr. Prichard. He testified that the Defendant, he's very intelligent, he's at least average, if not above average IQ; that he does understand the difference between right and wrong; and that he is dangerous.

He testified that he has obviously been provided intensive intervention. You've heard about it. You've heard about Springbrook, ECHO, the IEP, all these interventions have been put into place in his life before he ever attacked Ms. Naydich, yet here we are. So he has shown that he is incapable of abiding by societal rules -- rules in all areas, whether it be at home, he attacked his family; he attacked other persons in the community when he was living at home; at Springbrook, he attacked facility members at that particular location; at ECHO, he attacked the staff, he attacked other people that were living there; and again, at the school.

So he's displaying that he's incapable of abiding by societal rules -- rules in any of those

places. And that's what Dr. Prichard was telling us, is that he has a high probability of violence in the future. And that's incredibly frightening. You have an individual that attacked a helpless woman and -- and, frankly, would have killed her but for someone pulling him off. And he should be punished for that, Judge. As you know, that is the primary purpose of the judicial system is punishment.

And I would argue that DJJ sanctions are just not appropriate in this particular situation. As the Court is aware, as soon as he turns 21, he is cut loose, regardless of what's going on with him, regardless of whatever treatment he may -- he may need. There will be no sanctions whatsoever on him. And they all talk about, well, he's got family that can help him, and I'm sure they will, I have no doubt of that, they love their son, they will be around for their son; but at the end of the day he will be an adult.

It is not like when he was a child and his mother could decide, you need intensive treatment, I'm going to send you to Springbrook. She no longer has that control over him. He is an adult. So he has to make those decisions for himself. And I would argue to you that I don't think that the -- Mr. Depa, the man that pummeled Ms. Naydich and showed zero remorse for

what he had done, is going to do what he should do about making sure he doesn't hurt someone again.

And that's why I'm advocating for a prison sentence followed by a long period of probation. And I think the period of probation should implement what those doctors are suggesting. I don't disagree, I think he absolutely needs those treatment modalities, but for a long period of time. I don't think cutting him off at 21 and then hoping he does right is going to do anything for Mr. Depa, for his family, or for us as a society. And that's why I think a prison sentence followed by a long period of probation is the only appropriate sentence in this case, Judge.

THE COURT: Okay. Thank you, Ms. Clark.

Mr. Teifke.

And --

MR. TEIFKE: Yes.

THE COURT: -- you used 10 minutes. You used actually 11 minutes.

MS. CLARK: Thank you, Judge.

THE COURT: All right. Mr. Teifke.

MR. TEIFKE: Judge, I think it's worthwhile to remember to go back to the very beginning, remember why we're even here. After all, Florida has a system of dealing with young people accused of violating the law,

the juvenile delinquency system.

We're not here pursuant to some sort of mandatory direct file scheme, right? There are such offenders, offenses for which it has to be done. We're here pursuant to 985.557, which is the discretionary direct file scheme. The State chose to do this. That is a codification of State whim, in my estimation. It doesn't erect any guardrails. There's no guidance. It only leaves -- leaves it to their judgment and discretion.

THE COURT: You're point being that the State would have done nothing, and this would have worked its way through the juvenile justice system without this Court's intervention?

MR. TEIFKE: Right.

THE COURT: Right.

MR. TEIFKE: It didn't have to get filed as an adult --

THE COURT: Sure.

MR. TEIFKE: -- Judge.

THE COURT: But they have.

MR. TEIFKE: It was --

THE COURT: And we are in that.

MR. TEIFKE: I -- I understand that, but --

THE COURT: Okay.

MR. TEIFKE: -- I still think it's important, though. And I'll -- and I'll get to that, Judge. Because I think it informs how you should view the cases, how you should impose consequences as a result of the exercise of that -- that discretion. That's why I mention it.

But first, so we have all sentencing options available to you. Traditional adult, I'll call it that, which is what you just alluded to, the score sheet minimum, up to 30 years Department of Corrections. You also have youthful offender, under 958.04, which as you know, includes some iteration of a six-year sentence, incarcerative, supervisory, both, or --

THE COURT: Right.

MR. TEIFKE: -- just one of them.

THE COURT: Right. With a --

MR. TEIFKE: And --

THE COURT: -- maximum of six years.

MR. TEIFKE: A maximum of six years. That's right, Judge. And I think that --

THE COURT: But questionably, your client would qualify for YO based on his age at the time of the incident, right?

MR. TEIFKE: He qualifies. And if my time

doesn't run out, I'll go through those actual factors. But yes, he does --

THE COURT: Right.

MR. TEIFKE: -- in fact, qualify, Judge. I mean, I think there's some --

THE COURT: I know what the factors are. You don't have to go through them.

MR. TEIFKE: Okay. Great. Maybe I do that more so to keep myself organized.

THE COURT: Okay.

MR. TEIFKE: But there -- I think there's some interesting options, nonincarcerative options, under that YO framework. But you also have available, as you've heard, juvenile sanctions for your consideration, by way of 985.557. And I would argue that juvenile sanctions effectuate all goals of disposition or sentence in that they're punitive. They have deterrent impact, but there's rehabilitation.

I don't think the adult framework, the criminal punishment owed, makes any pretenses about anything other than, we are punishing someone. This effectuates all. And if you think that that's something worth effectuating, juvenile seems most on point.

Judge, I would argue that these, by operation

of the statute, 985.565, it puts all these options on equal footing. No one is -- none of them are privileged or preferenced over the other. There's nothing -- no burden I have here to argue against something that is presumptively correct because they chose to file as an adult.

THE COURT: Mr. Teifke, let me ask you the direct question on the --

MR. TEIFKE: Sure.

THE COURT: -- juvenile sanctioning. You just presented today two expert witnesses that I listed to -- listened to, that testified that with regard to treatment for this type of a condition, it's lifelong. It's --

MR. TEIFKE: Sure.

THE COURT: -- going to -- the earlier you start, the better, but it's a lifelong condition and a lifelong treatment. How do I square that with the limitation imposed of two years on the juvenile sentence -- sentencing?

MR. TEIFKE: Right. You disagree with Dr. Prichard's assumption that it's only going to be two years of intervention. So you have to -- you have -- under the -- the -- the auspices of the Court, sure, the sentence, that has an expiration date.

THE COURT: Right.

MR. TEIFKE: But you've also heard detailed testimony about the framework that will be in place as part of a sentence or as part of the tail end of a sentence.

THE COURT: Do I ignore the prior history?

MR. TEIFKE: You don't ignore it at all. And I don't think we're in denial about that, Your Honor. That's why we're specifically identifying need and telling you about what the plan would be to address that need.

THE COURT: Okay.

MR. TEIFKE: So 985.557, Judge, the direct file statute says that, when in the State -- pertinent part at least -- when, in the State attorney's judgment and discretion, the public interest requires that adult intersections be considered or imposed. I think that's interesting. So that's the authority they're relying on. And I would ask the Court to wonder why it isn't just so that when they decide to file direct, then it's adult, and we're just arguing within the CPC framework.

I think it, what that statute does, it -- it basically renders it to nothing more than a suggestion to the Court.

THE COURT: It makes it discretionary.

MR. TEIFKE: Right.
THE COURT: I agree with you.
MR. TEIFKE: It -- it is, but it -- I think that that statute gives them a burden. Because that suggestion has to have a foundation of a showing of the public interest requires an adult sanction.
THE COURT: That's not what the statute says. It --
MR. TEIFKE: It is -- it is what the statute says. It --
THE COURT: Okay.
MR. TEIFKE: -- says, when, in the State attorney's judgment and discretion, the public interest requires that adult intersections be considered or imposed. So they're exercising that discretion and passing on to you the imposition of a consequence --
THE COURT: Sure, yeah.
MR. TEIFKE: -- to this, right?
THE COURT: Agreed, uh-huh.
MR. TEIFKE: So I would argue that that is something that you are considering, is, is that, in fact, true, does the public interest require that I impose an adult sentence.
THE COURT: Right.
MR. TEIFKE: Because I believe that to be

true, part of what I submitted to the Court was what I believe to be just a small snapshot of the public interest in this case. I think it's the first exhibit, Judge. A letter from the Autism Society explaining autism, explaining whenever possible the use of nonincarcerative options, out lining the perils of imprisonment. The Arc of Florida is one of those, an advocacy organization on behalf of people with intellectual and developmental disabilities, urging an understanding of disability and how it is implicated.

On occupational therapist who's worked with Brendan, who's intimately aware of his limitations and who is urging mercy. There is one from an educator with 42 years of education, exceptional student education; an author; a researcher in the field of behavior disorders, who has had the opportunity to learn about Brendan, pleading for mercy, et cetera. People, organizations, firsthand knowledge of autism.

That's a streamlined submission. Let's just -- let's just say that.

That's very interesting to me, Judge, that -- I mean, you can only look at that video one way, right? I mean, you see that, there's -- that can only engender one sentiment, it's like, wow, that's shocking to see. Add to that a single variable, you know nothing else,

you add to that that is a disabled child and look at how perspectives shift, dramatically. That's the only other variable anyone needs to know to see that that knows anything about disability, and all of a sudden they feel completely different about it.

THE COURT: That's Mr. Lopes's testimony.

MR. TEIFKE: Right, it's Mr. Lopes. But it's also, presumably, all these, the -- the Autism Society, the Arc, educators.

THE COURT: Now, your argument doesn't depend on Mr. Depa's incident here being caused by his autism spectrum disorder, right? Your argument is the same either way, whether it's caused by it, contributed to it, or whether he has just it; your argument is not that there's a causal relationship, right?

MR. TEIFKE: Not necessarily. My argument, and this is based on record evidence, most notably the determination from the manifestation review, that this was a manifestation of disability. We talked about intermittent explosive disorder. Dr. Prichard agreed with me that this was -- this incident was a manifestation of disability. And that definitionally, intermittent explosive disorder included an outsized response to a stimulus, and on cross-examination acknowledged that that lacks premeditation.

So disability is directly implicated here.

THE COURT: So -- so let me make sure. So you're saying that anybody that suffers from the autism spectrum disorder is, by definition, aggressive and violent?

MR. TEIFKE: No. That --

THE COURT: Perfectly my point.

MR. TEIFKE: Right. No, but we also heard of other diagnoses, right? ADHD --

THE COURT: Sure.

MR. TEIFKE: -- intermittent explosive disorder --

THE COURT: Yeah.

MR. TEIFKE: -- DMDD, oppositional defiant disorder. And it was this constellation of conditions, of disability, that resulted in this, autism being a part of that.

THE COURT: Okay. And which expert testified to that?

MR. TEIFKE: Dr. Spence.

THE COURT: Okay.

MR. TEIFKE: Also urging juvenile sanctions because sentencing sanctions are typically proportional to the offense, sure, but also graduated, in every respect. DUIs, you know, the third one is worse than

the first. Battery, theft, drugs, I mean, it always gets worse the more you get into it. You get some chances.

This, I would argue, that sentencing this disabled young man to the Department of Corrections is not a graduated sanction. To the extent that the Court recognizes (indiscernible) that as, or believes me that that is, you know, part of how sentences are meted out, this certainly isn't that. This is a -- he's had a prior diversion, and now he is being considered for entry into the Department of Corrections. I don't believe that's graduated.

You have statutory guidance as to the appropriateness of juvenile sanctions.

I think I'm going to have to talk really fast here to get in on the --

THE COURT: You've got about five minutes. And I'm --

MR. TEIFKE: And I'm at five?

THE COURT: -- not going to -- I'm not going to cut you off. You've got about five minutes.

MR. TEIFKE: I feel like I need 30, but okay.

There's -- there's factors, Judge, about the appropriateness of juvenile sanctions. It's not exclusive, but it -- it seems to hit on what matters.

985.565(1), number one, the seriousness of the offense to the community and whether the community will be better protected -- excuse me -- be best protected by juvenile or adult sanctions.

So best protected. How are we assessing that? I guess that would depend on any -- the length of the sentence you'd be inclined to give out in Department of Corrections. If you were inclined to do score sheet 34 months, the juvenile sanction would actually better protect the public. If we're measuring that by just being in a secure facility, because that's two years and some change versus --

THE COURT: Right.

MR. TEIFKE: -- 34 months with 18 months credit, right? So juvenile sanction would better effectuate the -- the --

THE COURT: As opposed to a bottom of the guidelines?

MR. TEIFKE: Exactly right.

THE COURT: Right.

MR. TEIFKE: Yes.

THE COURT: Uh-huh.

MR. TEIFKE: I think we could also, and should also, consider what the other side of these sanctions are going to look like. If we're truly interested in

public safety, assess how someone is going to -- the -- the relative safety to the public from someone released from the Department of Corrections after X amount of time and all that entails versus somebody who is in the Department -- in the Department of Juvenile Justice in a rehabilitative program and what that entails.

Number two, whether the offense was committed in an aggressive, violent, premeditated, or willful --

THE COURT: Let's --

MR. TEIFKE: -- manner.

THE COURT: Let's say you lose that -- that issue. Okay.

MR. TEIFKE: All right.

THE COURT: And let's say that's the end of that issue with regard to juvenile sanctions. Since we're getting low on time, let me ask you to -- so there's one aspect of this that you haven't mentioned. And if we continue --

MR. TEIFKE: Right.

THE COURT: -- down the juvenile sanctions, you --

MR. TEIFKE: Right.

THE COURT: -- won't get to talk about, and that is that the strongest argument for the State on adult sanctions is, whatever the initial term is in

this case, we've got up to 30 years of probation. So we can provide the treatment that's required, and we can do it in a supervised environment, and we can have it go as long as it needs to take, even if it's 30 years, up to 30 years or terminate that early if he's successful in that regard. Why aren't you making that argument? Honestly, that's what I expected.

MR. TEIFKE: Yeah. Because I still believe what I'm saying, to be honest with you, about juvenile. Given the circumstances, the exceptional circumstances here, his age and these other factors, I think it favors juvenile treatment. And he's 18 years old, Judge. He was 17 when this happened. He is disabled. And to saddle him -- to just come in here and try to argue against how much time in the Department of Corrections he's going to do, I'm not doing my job if I'm doing that. And because I don't feel that that's right.

The other -- I'll skip juvenile.

Actually, I'll skip to the last fact -- factor, whether adult sanctions would provide more appropriate punishments and deterrents to further violations of law that the imposition of juvenile sanctions. And I think what the -- the State was getting at here in providing the testimony from Kline,

Suzonne Kline, was that the services are available and they're appropriate. I think what you heard was testimony as to availability. I don't think that really speaks at all to appropriateness.

Because you can see, some of the questions I asked, just how loose an apparatus that is. It can start to break down at the intake stage, where there's supposed to be this interview with the person coming in, an assessment of records, and then a classification decision that is made. But then she acknowledged that, well, they don't necessarily have to participate and give us any information, and we're not going to ask for any records. We just have to rely on records being sent.

And then you have to have the wherewithal -- one with the wherewithal to review, you know, this times 10 and make some sort of nuanced determination of need and services. There is no way that that is going to happen. This is all the while with, what did she say, 86,000 inmates in the Florida Department of Corrections at any given time.

THE COURT: I don't know. She said a big number.

MR. TEIFKE: It was a lot.

THE COURT: I don't know many are in this

number, but she said a big number of people.

MR. TEIFKE: Yeah.

THE COURT: So that --

MR. TEIFKE: It -- it was a lot.

How do you just suppose that might work, Judge? And the goal, she did acknowledge that the goal of any sort of intervention that is offered, is simply, it's not to set someone up for long-term success, it's to get them back to again population. That's in the mission statement as the goal is to get these people, you know, stabilized enough to get into general population. Oh, terrific. That's a -- that's a perfect place for him.

Their mission statement, the -- their moon-shot mission statement was, you know, constitutional adequacy, I think it was. So let's just try to do everything not to be truly and unusual. That's not good enough for an autistic disabled child, Judge.

And lastly, on -- on that, you know, if you're believing that that would work, that that structure in place, just being in place, again, Judge, is not enough. The structure was in place here on a smaller scale with less people involved with more participants in the process, with more information. The plan was

written up, and then it wasn't followed.

Is the Department of Corrections going to adequately deal with mental health needs? This is not something he picked off a shelf, Judge. He has been gifted this. He can't help it. He can't navigate the world like you and I can. It's not his fault.

What is the price he has to pay for that?

THE COURT: I think you're out of time, Mr. Teifke.

MR. TEIFKE: Thank you.

THE COURT: All right.

Ms. Clark, you've got four minutes.

MS. CLARK: I'll be --

THE COURT: I guess I --

MS. CLARK: -- (indiscernible).

THE COURT: -- gave Mr. Teifke an extra almost 10, so I won't cut you off either, but go ahead.

MS. CLARK: All right. Judge, first I want to speak again to the DJJ recommendation from the Defense, that same statute he was turning to, 985.565, goes through a list of -- of things you should consider, whether it should be adult versus juvenile. I know you're familiar with them, but I wanted to highlight a few. One, the serious offense and community best protected -- protected by adult sanctions. Clearly,

this was a serious offense. Ms. Naydich would be dead today but for the five other citizens that pulled off Mr. Depa. And clearly, adult sanctions, which I'm going to argue in just a minute, are more appropriate.

Obviously, this was violent, aggressive, willful. There's no doubt whatsoever. It was against a person and not property. We have a previous history of violence. He had had those three prior juvenile batteries in 2019 before this ever happened, plus he had the fight at school.

And then again, I would argue that juvenile sanctions are not appropriate because as soon as he turns 21, they're letting him go.

Now, the Defense is trying to argue, well, his family with step in, and they're going to help him. We have a history of what that looks like. We are here today, and by all accounts the Depas did everything they would for their son and they tried the best to try and get him the help he needed and potentially try to avoid being in this courtroom, but we know that's not viable. That's not a viable option, to just turn him loose and hope that all the pieces are going to fall into play, and that he's going to get the help that he needs.

He will be an adult. His parents can't force

it. The Court would have no jurisdiction to force it. And that's just frightening, Judge.

I think that the more appropriate sentence is, in fact, the Department of Corrections. And again, Mr. Depa does need to be punished for what he did. I -- I think everybody is losing sight of what happened here. You had a woman that was just doing her job, that she likes working with kids, she'd done that her entire life, she liked working with special-needs kids, which I think you heard testimony, they have a hard time finding those people. Well, she was one of them.

And when things got out of control, she left the situation; but he chased her down. He threw her to the floor. And while she was completely unconscious, he viciously attacked her. Let's not lose sight of that. And I'm sorry, but Mr. Depa should be punished for that. He almost killed a woman.

We can't just sit here and say, well, you know, he was having a bad day. No. He almost killed a woman. He should be punished for that. And that is the Department of Corrections.

And while he's there, you heard from Dr. Kline, they can provide him with the services that he needs. He needs mental health treatment, they have it. He needs medication, they have it. If he has a

crisis, they have a stabilization unit for him. They have what he needs.

I'm not advocating that we just send him to prison and be done, no. I'm advocating for a split sentence. He should go to prison. I would advocate he should go for seven years, Judge. I think that the bottom of the guidelines is not enough. He almost killed a woman. He should be sentenced appropriately. And then when it's over with prison, there needs to be long-term probation, at least 10 years, if not longer. You have up to 30 to work with.

You heard from the doctors with the different types of mental health treatment that he needs. I agree with all of that. Absolutely. I don't think he should just be cut loose into society, and we hope that he gets it done that time. No. We know that's not realistic.

He should be placed in a group home, once he's on probation, much like ECHO had, a level six, if that exists, wherever he's going to be; and he needs severe mental health treatment, anger management, MRT. Obviously, no contact with Ms. Naydich. GED programs if he hasn't already gotten it. Absolutely.

Everybody wants to see Mr. Depa succeed, but first we need to deal with what he did. And there are

consequences for what he did. And that's why I'm asking that you forego DJJ, that is not a viable option, because we cannot rely on Mr. Depa to get it done. It absolutely should by adult sanctions. It should be prison followed by long-term probation with all the recommendations you've heard from the doctors, Judge. And that's what I'm recommending.

Thank you.

THE COURT: All right. Thank you very much.

(Brief pause in proceedings.)

THE COURT: All right. Counsel, thank you for the detailed presentations. It reflects the extent of work that both of you have put into it, and I want to commented you for it and thank you for that. I know it's difficult.

So Mr. Depa is charged with one count of aggravated battery on an education employee. It is a first-degree felony that's punishable by up to 30 years in state prison. So based on the plea that Mr. Depa has previously entered, I accept that plea, I did find it knowing and voluntary at the time; and I'm going to adjudicate him guilty of that charge.

And moving to the sentencing. So through the testimony, both -- I want to remind you that we started with a competency hearing in this case, and we heard at

experts at that point in time. We heard from additional experts today. And I think everyone, all of the experts, especially the ones that we heard from today, all agree that Mr. Depa does not have an intellectual disability. He has above average intelligence, by all accounts. He has educational and vocational goals of his own that he wishes to chief. He accurately perceives his circumstances. He's got insight, and the experts disagree slightly, but two say good insight into his mental health, and to a large extent, Dr. Harper and Dr. Spence, I believe, and Dr. Prichard agreed on most of that.

In that context then with regard to -- I am not forgetting, of course, Mr. Depa has been diagnosed with and suffers from autism spectrum disorder. And although this event was senselessly violent, I don't want to lose sight of the fact that at the time of the event, Mr. Depa was 17 years of age. However, this was not an isolated event. The history goes back to -- as much as Mr. and Mrs. Depa tried everything they could to provide for their son, their adopted son in that regard, resulting in a number of Baker Acts. I heard as -- as many as six. I could only find three. Describing the problems as yelling, screaming, hitting.

We had a -- in March of -- March 22nd of 2019,

there were two battery charges. They went to juvenile. There was a juvenile diversion program. Mr. Depa was released, I believe, that same day. And a month later, we had another battery charge. Again, there was a juvenile diversion and released. And about six weeks later, we had yet another battery charge. And again, there was a diversion with regard to that that was successfully completed.

We also had a, while at ECHO, starting in November of 2020, at the group home, there was violence and aggression, both towards the staff and also towards the residents there. On December of 2021, there was an extremely aggressive fight by Mr. Depa on the bus, that even the bus driver indicated he could not break up, even when the other individual disengaged from that, it continued on for a fairly long period of time.

We have aggression, as I indicated, with the ECHO staff and the residents there that go through March of 2022. Violence in August of 2022 with staff. And then of course we have this incident that happens in February of 2023, February 21st, 2023.

So I would suggest to you that that is not an isolated event. It's an event that shows the progression of the aggression and violence that Mr. Depa was exerting on those that were around him.

I did listen carefully to the expert testimony that we heard, including Dr. Prichard, Dr. Spence, and Dr. Harper. It's not often I get to hear three PhDs in the course of a sentencing. I listened very carefully to what they had to say. Dr. Prichard, as you might recall, actually gave us a written report that we went through. And I had the ability to read that, as well. I went back and reread it in preparation for this hearing.

Again, doctor -- all three of the doctors agree, above average intelligence; no cognitive impairments; good abstract reasoning; performs better, because of -- of some limitations associated with autism, in a routine where there's structure that's imposed. No hyperactivity. No attention deficits. All of them found that Mr. Depa was both cooperative and attentive. He was not distracted by other stimuli.

I have to say that, having observed Mr. Depa through a number of hearings now, I would share that he is articulate and thoughtful in his responses to the Court. He's been here the entire day without any problems in that regard participating in these proceedings. And I accept Dr. Prichard's testimony when he says that Mr. Depa understands the difference between right or wrong and he is capable of controlling

his temper and his anger.

I also accept Dr. Prichard's testimony to the extent that violent behavior is not related specifically to an autism spectrum disorder. And by that I mean, it doesn't cause it. It doesn't mean you can't have that co-occurring or as part of the presentation, but it's not the cause for it. Violence, bullying, aggression are not associated with the autism spectrum disorder. Now, there can be those that suffer and are from the ASD and are very violent, very aggressive.

In this case it was clear from this incident, and some of the prior incidents, that Mr. Depa's aggression was extreme and not proportional to the triggering event. It's not related, as a indicated, to the ASD level one. I do accept that. And I do note that although we've had a history of violent he events -- events that have occurred that led up to this particular event in 2023, there's been a significant absence of such events that have occurred since Mr. Depa's incarceration at the jail. I commend the jail. I commend Mr. Lopes for his efforts in that regard. And maybe they had something to do with that, but I do note that somehow the jail, and that is the structure of the jail, the routine of the jail maybe

played some role in eliminating the -- the violence that was almost monthly leading up to that and occurring much more frequently.

I do note from Dr. Spence, and accept, that Mr. Depa had problems with anger and aggression. He exhibited both at home and in the juvenile proceedings. It marked his stay at both Springbrook and also at ECHO. He performs better with routine and stability. He does not perform as well with transition. And transition is both in space, that is moving from place to place, or in task, changing from one thing to another. He would benefit from intensive intervention, stable living environment, routine, repetitive activities, therapeutic intervention, prescription medication, management, and cognitive behavior treatment. And Dr. Spence did say, without proper support, that Mr. Depa is dangerous.

In this case I found no warning testified to by anyone with regard to the rapid onset of both extreme aggression and senseless violence that marked this incident. Dr. Harper testified that predictability and routine are important and that a stable treatment team knowing Mr. Depa and knowing his triggers are important, and that they have a stable long-term response.

I also accept the testimony of all three experts, this is a lifelong commitment, that Mr. Depa is going to be lifelong -- need lifelong treatment in that regard.

Now, I bring all of this up because one of the issues that the Court had wrestle with and determine in order to enter both, not only a lawful, but an appropriate sentence in this case, is one of dangerousness. Okay. So in the -- in the words of Dr. Prichard, this was chronic aggression. It increased in frequency and in intensity over a period of time. It was made worse by the fact that during this period of time, Mr. Depa matured physically, growing in size and stature in that regard, that made any violent outbursts that he might engage in much more dangerous to those around him, much more likely to cause significant injury, as Ms. Naydich experienced in this particular incident.

His -- his violence, Mr. Depa's violence, relates to factors outside of the autism spectrum, that is that the violence was not caused by the ASD. He has a lot of triggers. So frequency and intensity of violence is likely to increase.

Therefore, for purposes of assessing the Court's obligation of protecting the community,

Mr. Depa must be considered to be dangerous for purposes of sentencing with a high probability of violent conduct in the future. Accordingly, I find that Mr. Depa is not a candidate for solely community-based sanctions, at least not at first.

Now, turning to this particular incident, this is -- everybody has seen the -- the video. Believe it or not, I think I've only seen it once or twice when it was presented, actually right here in the courtroom is the only time I've actually seen it; but it is -- it captures senseless extreme violence in a very troubling way.

Dr. Prichard testified that that was both volitional and an intentional act in, again, saying that Mr. Depa understands the difference between right and wrong. He knew that it was wrong. He admitted to Dr. Prichard that he knew it was wrong, wished he hasn't do it; but he did it anyway.

Compounding the senseless physical violence was the screaming of obscenities, spitting on Ms. Naydich, both before and during the incident. He pursued her down the hallway, pushed her so violently from behind that she flew through the air and was knocked on unconscious when she landed in the hallway floor way. He then proceeded to kick her, then jump on

top -- on top of her, striking her in the head and body more than 15 times. It took several strong men, I counted five, but several to pull him off her.

I accept the testimony of Officer Landi, the resource officer, after the incident, that even at a time when Ms. Naydich was still not conscious, that Mr. Depa was sitting at her. He escorted Mr. Depa past Ms. Naydich to go downstairs, and he yelled profanities, I'm going to kill that effing bitch, I'm going to kill you. And then even when he was escorted back sometime later, and Ms. Naydich was just coming to, he again yelled at her that he was going to come back and murder her.

I saw no concern for Ms. Naydich's injuries. And Mr. -- Mr. Depa has never expressed, not even a single bit of remorse before this Court in many of our many court proceedings, not once with regard to remorse.

We have on the other side Ms. Naydich, who was a school employee for 18 years. She told the -- the teacher, here, Ms. Buchanan, about what the other teacher had said, and that's, as best I can tell, what triggered the screaming profanity for Mr. Depa. Even there, he spit all over her. By the grace of God, she was knocked unconscious and has no memory of this

incident.

What -- what would have happened had Mr. Depa not been pulled off her, I -- I -- I don't want to even imagine in that regard.

What she does remember now is the pain that was caused by her five broken ribs, her concussion, her herniated discs in her back, her headache, her dizziness, her hearing and vision losses, her cognitive problems, PTSD, panic attacks, all of those things. I'm sure she remembers that.

So what do we do? I heard the State's recommendation. I heard the recommendation from the Defense. With regard to the Defense's recommendation with regard to juvenile sanctions, I -- that was the first place I looked, quite candidly. And I looked at how they handled this case coming up to this point in time. I have no confidence that they would handle this appropriate moving forward. So with regard to that, I just don't think that their handling was enough. And frankly, two years, by the testimony of all three expert witnesses, is not going to provide sufficient treatment in that regard.

So that moves us then to adult sanctions.

There were two issues that were brought up, Mr. Teifke, by you with regard to adult sanctions. One

was a youthful offender sanction. Based on the facts of this case, I do find that Mr. Depa would qualify, that is by age, he would qualify for youthful offender; but because of the nature of the charge and how this incident actually occurred and all of the circumstances, having carefully reviewed that, I find that a youthful offender sentence would not be appropriate here.

So we're left then with, okay, what do we do with regard to the context -- the context of criminal adult sanctioning. So in this case, then the Court sentences Mr. Depa to 60 months of Department of Corrections, followed by 15 years Department of Corrections supervised probation.

Now, with regard to the initial DOC sentence, giving him credit for his time served, when he goes to the reception center, I'm directing that the DOC conduct a full mental health assessment, as Dr. Kline indicated they would accept from the Court, and develop an individual service plan with regard to all of the diagnoses that Mr. Depa has received and then institute a care plan and a putting him on the mental health caseload that is consistent with that individual service plan, including the consideration of prescription medication, inpatient -- they have a

special inpatient wing and treatment for those in those facilities. And I'm asking that he be considered for all of that.

When he has completed his DOC sentence, then he will start 15 months DOC-supervised probation. It is the Court's direction that he be placed in an appropriate group home getting the treatment that he needs. That would be continued mental health assessment, along with treatment. Not just for the -- for his current symptoms with regard to ASD, but for all of his diagnoses and treatment that he needs. That he be evaluated for his prescription medication on a regular basis. That that continued mental health treatment occur in an appropriate residential setting where he would receive continued vocational training, GED program, anger management classes.

Once Mr. Depa is stabilized, the Court would consider home healthcare options, similar to the types I've heard here today.

But stability, safety, routine will be the earmarks of the Court's sentence in this case.

All right. Ms. Clark, any questions?

MS. CLARK: Just want to confirm, you said it was 60 months Department of Corrections, followed by 15 years?

THE COURT: Yeah, yep.

Mr. Teifke, anything else?

MR. TEIFKE: No, Judge.

THE COURT: All right.

All right. Mr. Depa, you'll be remanded, as you have been, to the sheriff of Flagler County for pending transfer to an appropriate facility and assessment. Please understand that although you had entered a plea in this case, that you may appeal the Court's sentence. If you're going to do that, you have to do it in writing. If you can't afford a lawyer, I would appoint one for you. If you have questions about the basis of what that sentence would entail, about what your appeal might challenge in that regard, please talk to Mr. Teifke about that, and he'll explain it all to you.

MS. CLARK: And --

THE COURT: All right.

MS. CLARK: -- Judge, I'm sorry, I don't think I heard you say no contact with Ms. Naydich. I would certainly request that.

THE COURT: Yeah, of course, no contact with Ms. Naydich.

And obviously, costs would be assessed.

Anything else?

MS. CLARK: No, sir.

THE COURT: All right. Thank you all. Court is adjourned.

(Court adjourned at 5:53 p.m.)

C E R T I F I C A T I O N

STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, Christine Aiello, certify that I was authorized to and did transcribe the foregoing digital audio recording of the above proceedings; and that the transcript is a true and complete record to the best of my ability.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 9th day of December, 2024.

Transcribed by: /s/ Christine Aiello

Reviewed and Certified by: /s/ Amy Freeman
Certified Verbatim Reporter
Esquire Deposition Solutions