STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Horry County

Honorable D. Craig Brown, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF THOMAS GRIFFIN,

APPELLANT

APPELLATE CASE NO. 2018-001975

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY	)	**2016-CP-26-06412**
IN THE MATTER OF THE CARE AND TREATMENT OF THOMAS GRIFFIN,	)	**TRANSCRIPT OF RECORD** (Motion Hearing) August 7, 2018

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

James K. Falk, Esquire
Attorney for Thomas Griffin

Christopher Andrew Morrow, Esquire
Attorney for State

Kay H. Richardson
Circuit Court Reporter

I N D E X

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No. ID EV

(No Exhibits were marked or admitted.)

AUGUST 7, 2018 - 11:27 A.M

MR. FALK: All right, Your Honor, so, three months ago or so, I filed a motion because we were supposed to have a trial date here and Mr. Griffin and in the motion I gave some information -- so, I'm not -- it's not just me thinking that my client might have some mental issues and certainly my observations were verified by what Dr. Gayle put in her report as far as schizophrenia and prior treatments. And when I had Dr. Mulbre (spelled phonetically) go up and talk to him, he was not really looking for that, he was more looking to do a sex offender assessment. So, he really wasn't doing that type of evaluation. All I can tell you from my observation, there were times when his answers made no sense relative to my questions. And because of that, I felt that he would be prejudiced by trying to have this trial where he could have a significant deprivation of liberty if he losses if he can't participate in his defense. And so that's why I filed this motion. I really don't know if I'm entitled to it under the law, but I did what I did.

RULING OF THE COURT:

THE COURT: I can tell you before hearing from the state, Code Section 44-48-100(b) says that a hearing on this issue must comply with all the procedures specified in this section. In addition, the Rules of Evidence applicable in criminal cases apply and all constitutional rights available to

defendants at criminal trials other than the right not to be tried while incompetent.

So, I think that's dead on the money in the statute.

MR. FALK: And that's -- and then I'm just ---

THE COURT: That's your answer.

MR. FALK: And I'm making my record and that's fine and so if you can give me a -- so that'll be part of the record in this case.

THE COURT: That's fine. I just -- the law clerk, first day on the job, found that in the midst of all that stuff.

MR. FALK: Okay. And then since we have resolved that quickly, then I still need to -- we need a trial date.

THE COURT: Okay. You just go through him. He'll get his computer Thursday. If you'll contact him, he'll set all that up for you.

MR. FALK: Very good. Thank you, Your Honor.

MR. MORROW: Thank you.

ADJOURNED - 11:29 A.M.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the Matter of the Care and Treatment of Thomas Griffin, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 7, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson
Official Court Reporter

August 21, 2019.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 20 16-CP-26-64 12

In the Matter of the Care and Treatment of Thomas Griffin,)

Respondent,) Transcript of Record

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B E F O R E:

Honorable D. Craig Brown
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Christopher Andrew Morrow, Esquire
Attorney for State

James Kristian Falk, Esquire
Attorney for Respondent

Dixie Eubank
Circuit Court Reporter

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(On the record, October 22, 2018. The following takes place in the presence of the jury venire.)

THE COURT: All right. Is the State ready to proceed?

MR. MORROW: Yes, Your Honor. The State is ready.

THE COURT: Mr. Falk, you ready, Defense counsel?

MR. FALK: Yes. We are.

THE COURT: All right. Ladies and gentlemen, I asked you some question downstairs to get you qualified for general jury qualification. I'm going to have to go through some additional questions to get you qualified to serve on this particular case. Okay?

Now, let me tell you a little bit about this case real quick. This case is a case that's been brought by the State of South Carolina pursuant to the South Carolina Sexually Violent Predator Act, Sections 44-48-10 of the South Carolina Code of Laws. As I said, the State of South Carolina has brought this case pursuant to that act, the Sexually Violent Predator Act, to determine whether or not the Defendant, Mr. Thomas Griffin -- bear with me just a second -- is deemed under South Carolina Law to be a sexually violent predator. I'll explain, if you're picked on this jury, I'll explain the law to you as it relates to that later.

Now, before, the State of South Carolina, ladies and gentlemen, let me tell you this, bears the burden of proving that. Okay? This is a civil case. It's not a criminal case.

It's a civil case where the State must prove the elements of this offense, again of which I -- this, of this -- what the action they've brought, I'll explain those elements to you, but the State has the burden of proving it by a preponderance of the evidence. You've heard before the term beyond a reasonable doubt. That's the burden of proof in a criminal case, in a criminal case, but again, this --

MR. MORROW: Your Honor --

THE COURT: -- it's beyond a reasonable doubt.

MR. MORROW: Yes, sir, Your Honor.

THE COURT: And I just caught myself in that. Even though this is a civil case, because it's under this Sexually Violent Predator Act the proof is beyond a reasonable doubt. Typically in a civil case it's by a preponderance of the evidence, but it is a civil action. It's a little bit different though. It's been a -- I think since I've been on the bench since 2010 I've tried three of these. This is my third one. Okay? But the State does bear the burden and, and I will explain to you the law if you're selected on this jury. I'm going to fully explain the law to you as well as the elements of what the State has to prove.

Now, before we go any further in selecting a jury, please listen very carefully. You've heard me say the Defendant or, or the -- in this case the Respondent. His name is Thomas Griffin. His name is Thomas Griffin.

Is there any member of the jury panel ever been related by blood, connected by marriage, had a close personal, business, social relationship or in any capacity know Mr. Thomas Griffin? If so, please stand.

Tell me your name and number.

JUROR 152: I -- my name is --

THE COURT: Tell me your name and number first.

JUROR 152: 152, Kathy Harmon.

THE COURT: Yes, ma'am.

JUROR 152: I grew up with a Thomas Griffin in North Carolina. I don't know if that's -- should stay now or not, but I don't know anything about him now.

THE COURT: Where is the Respondent or Defendant from, Mr. Falk?

MR. FALK: Your Honor, he's from --

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury venire.)

THE COURT: Can you approach a minute, please, ma'am?

JUROR 152: Yes.

(Whereupon, a bench conference is held with Juror Number 152, counsel for the State and Respondent in the presence but out of the hearing of the jury venire.)

(The following takes place in open court.)

THE COURT: All right. Ladies and gentlemen, would the fact that Mr. Thomas Griffin has been convicted of a sexual

offense and has completed his criminal sentence related to that conviction in any way prevent you from being able to be fair and impartial juror to both the State and Mr. Griffin in this case? If so, please stand.

(No response.)

THE COURT: I asked you if you in any way or in any capacity knew Mr. Griffin. Let me ask this question as well. Does any member of the jury panel know anything about the sexual offenses for which Mr. Griffin or offense or offenses that Mr. Griffin was convicted of? If so, please stand.

(No response.)

THE COURT: All right. Is any member of the jury panel or any -- their immediate family or close personal friend been the victim of a sexual assault? If so, please stand.

Tell me your name and number, please, ma'am.

JUROR 335: Danielle West, 335.

THE COURT: Can you approach, please, ma'am?

JUROR 335: Sure.

(Whereupon, a bench conference is held with Juror Number 335, counsel for the State and Respondent in the presence but out of the hearing of the jury venire.)

(The following takes place in open court.)

THE COURT: Tell me your name and number, please.

JUROR 210: Kellie Marselis, 210.

THE COURT: Can you come on up here, please, ma'am?

(Whereupon, a bench conference is held with Juror Number 210, counsel for the State and Respondent in the presence but out of the hearing of the jury venire.)

(The following takes place in open court.)

THE COURT: All right. Is there any member of the jury panel, close personal friend or relative ever been charged, ever been charged or convicted of a sexual offense? If so, please stand.

Come on up here, please, sir. Tell me your name and number.

JUROR 334: Timothy Welsh, 334.

THE COURT: Okay. Come on up here, please, sir.

(Whereupon, a bench conference is held with Juror Number 334, counsel for the State and Respondent in the presence but out of the hearing of the jury venire.)

(The following takes place in open court.)

THE COURT: All right. Is there any member of the jury panel, ladies and gentlemen, have any training or experience in the fields of psychiatry, psychology or the law? If so, please stand.

JUROR 65: Did you say the law?

THE COURT: Or the law. Name and number, please.

JUROR 65: Erin Chriswell, Number 65.

THE COURT: Number 60?

JUROR 65: 65.

THE COURT: Okay. I'm sorry. What area do you have experience in?

JUROR 65: I was a correctional officer in the Federal Bureau of Prisons and also I was a state constable.

THE COURT: All right. The fact that you stood in response to this question if you were selected as a juror in this case could you be fair and impartial both to the State and the Defense?

JUROR 65: Yes, sir.

THE COURT: Thank you. You may be seated.

All right. At this time I'm going to ask the attorney for the State followed by Defense counsel to introduce themselves, please.

MR. MORROW: My name is Christopher Morrow. I am from Columbia, South Carolina. I work for the South Carolina Attorney General's Office.

MR. FALK: Hi. My name is James Falk. I'm from Charleston. I get -- I have a contract with the State of South Carolina to represent people in -- who are in these sexually violent predator cases.

THE COURT: All right. Is there any member of the jury panel ever been related by blood, connected by marriage, had a close personal, business, social relationship, ever been represented by either one of these attorneys or know them in any capacity whatsoever? If so, please stand.

(No response.)

THE COURT: All right. The following is a list of potential witnesses in this case: Dr. Marie Gehle, G-E-H-L-E. Any others?

MR. MORROW: No, Your Honor.

THE COURT: All right. All right. Is there any member of the jury panel that's ever been related by blood, connected by marriage, had a close personal, business, social relationship or know Dr. Gehle in any capacity whatsoever? If so please stand.

(No response.)

THE COURT: Any member of the jury panel previously or currently involved in any type of prison ministry, prison outreach program or any other program involving contact with incarcerated individuals? If so, please stand.

(No response.)

THE COURT: All right. Is there any member of the jury panel, a close personal friend or relative ever been subject to civil commitment proceedings or been voluntarily or involuntarily civilly committed? If so, please stand.

(No response.)

THE COURT: Can you all approach a minute?

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury venire.)

THE COURT: All right. Is there any member of the jury

panel have such strong beliefs about sexual abuse of any kind that would affect your ability to be fair and impartial both to the State and the Defense in this case? If so, please stand.

Can you all approach again? I think this is a misprint.

(Whereupon, a bench conference is held in the presence but out of the hearing of the jury venire.)

THE COURT: Ladies and gentlemen, I previously asked you about whether you, close personal friend or a family member ever been the victim of an offense, a sexual -- an offense that was sexual in nature. Let me ask this question, is there any member of the jury panel, your immediate family, close personal friend ever been the victim of a violent crime? If so, please stand.

Tell me your name and number again, please.

JUROR 334: Timothy Welsh, 334.

THE COURT: 334. All right. The fact that you stood in response to that question, if you were selected as a juror in this case could you be fair and impartial both to the State and the Defense?

JUROR 334: Yes, sir.

THE COURT: Thank you. You may be seated.

JUROR 335: Did you want me to stand for this one again?

THE COURT: Tell me your name and number again.

JUROR 335: Danielle West, 335.

THE COURT: All right. I've already set you aside for this trial. Thank you though.

All right. Does any member of the jury panel believe that someone who suffers from pedophilia can never be cured? If so, please stand.

(No response.)

THE COURT: Does any member of the jury panel believe that it is impossible to rehabilitate persons that were convicted of committing sexual crimes against children? If so, please stand.

(No response.)

THE COURT: Any member of the jury panel that's ever worked for in any way or in any way been connected or associated with any social services agency, guardian ad litem program, foster care program and any other entity whether it's private or governmental that investigates or counsels victims of rape or sex -- sexual assault? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel or spouse or immediate family currently or ever worked with any law enforcement agency whether it be city, county, state or federal? If so, please stand.

Tell me your name. Sir, tell me your name and number, please.

JUROR 38: Dillon Brown, 38.

THE COURT: All right. The fact that you stood in response to that question, if you were selected as a juror in this case could you be fair and impartial both to the State and the Defense?

JUROR 38: Yes, sir.

THE COURT: Thank you. You may be seated.

JUROR 38: Yes, sir.

THE COURT: Tell me --

JUROR 65: Erin Chriswell, 65.

THE COURT: All right. You previously told me that you worked with -- as a correction officer, the Federal Bureau of Prisons. Anything else?

JUROR 65: And I was a South Carolina State Constable.

THE COURT: All right. The fact that you stood in response to that question, if you were selected as a juror in this case could you be fair and impartial both to the State and the Defense?

JUROR 65: Yes, sir.

THE COURT: Thank you. You may be seated. Name and number, please, ma'am?

JUROR 152: 152, Kathy Harmon, Katherine Harmon. I worked for the North Carolina State Bureau of Investigation as a private -- as a secretary for the violent crimes task force.

THE COURT: All right. The fact that you stood in response to this question, if you were selected as a juror in

this case could you be fair and impartial both to the State and the Defense?

JUROR 152: Yes.

THE COURT: Thank you. You may be seated.

All right. Is there any member of the jury panel, close personal friend or relative ever worked for or currently work with the 15th Circuit Solicitor's Office, which is the Horry County Solicitor's Office and Georgetown County? If so, please stand.

(No response.)

THE COURT: All right. Is there any member of the jury panel or their immediate family currently or previously worked for any sort of county, state or federal correctional facility? I know Juror 65 has stood for me. Anybody -- anyone else?

(No response.)

THE COURT: All right. Has any member of the jury panel, their immediate family or close personal friend previously or currently work as an emergency medical technician, voluntary -- volunteer fire person or in any occupation that can be described as a first responder? If so, please stand.

Name and number, please, ma'am?

JUROR 197: Sherry Leonard, 197.

THE COURT: Tell me your name and number, please, sir.

JUROR 259: Randall Purcell, Number 259.

THE COURT: All right. The fact that each of you all stood in response to that question, if you were selected as a juror in this case could you be fair and impartial both to the State and the Defense, Number 197?

JUROR 197: Yes.

THE COURT: 259?

JUROR 259: Yes.

THE COURT: Thank you. You all may be seated.

All right. Is any member of the jury panel, their immediate family or close personal friend associated with any crime prevention group or victims' rights groups or any criminal or law enforcement organization such as neighborhood watch groups, Citizens Against Violent Crime, People Against Rape, Rape Crisis Hotline, Darkness to Light or anything of that nature? If so, please stand.

(No response.)

THE COURT: All right. Any member of the jury panel that personally knows anyone that works in the Horry County Solicitor's Office or the South Carolina Attorney General's Office or had any recent contact or communication with either of those agencies? If so, please stand.

(No response.)

THE COURT: All right. Is there any member of the jury panel that's related by blood or connected by marriage to any other juror on this panel? If so, please stand.

(No response.)

THE COURT: All right. Is any member of the jury panel that's formed or expressed any opinion or -- on any issues or matter involved in this case that would prevent you from being fair and impartial both to the State and the Defense? If so, please stand.

(No response.)

THE COURT: All right. Does any member of the jury panel know of any reason, any reason whatsoever why he or she should not serve as a juror in this case with particular emphasis being placed upon your ability to be fair and impartial to both the State and the Defense? If so, please stand.

(No response.)

THE COURT: All right. Any further requested voir dire from the State?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: Defense counsel?

MR. FALK: Your Honor, I believe you covered my question 16 but could you just.

THE COURT: Let me see. Yes, sir.

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury venire.)

THE COURT: All right. Anything further from Defense counsel?

MR. FALK: No, Your Honor.

THE COURT: All right.

(Clerk and Court confer.)

THE COURT: One alternate sufficient for the State or two?

MR. MORROW: Two, Your Honor, would be what we would prefer.

THE COURT: Okay. Two all right with you, Mr. Falk? Two.

(Court and clerk confer.)

THE COURT: Can the lawyers approach a minute, please, for the jury list?

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury venire.)

THE COURT: All right. The State ready to proceed?

MR. MORROW: The State is ready, Your Honor.

THE COURT: Defense counsel?

MR. FALK: We are, Your Honor.

THE COURT: All right. Madam Clerk.

THE CLERK: We'll start with the Plaintiff. Please strike, strike the numbers one through 20 on the left.

MR. MORROW: The State strikes Juror Eight.

THE CLERK: Plaintiff strikes Number Eight.

THE COURT: Respondent.

MR. FALK: Your Honor, Respondent strikes Juror Five.

THE CLERK: Respondent strikes Number Five.

MR. MORROW: The State strikes Juror 17.

THE CLERK: Plaintiff strikes 17. Respondent?

MR. FALK: Respondent strikes Number Six.

THE CLERK: Respondent strikes Number Six.

MR. MORROW: State strikes Juror Five. I'm sorry, Juror Four.

THE CLERK: Plaintiff strikes Number Four.

THE COURT: Respondent?

MR. FALK: Strike Juror Number One.

THE CLERK: Respondent strikes Number One.

MR. MORROW: State strikes Juror 15.

THE CLERK: Plaintiff strikes Number 15. Respondent?

MR. FALK: Respondent strikes Juror 19.

THE CLERK: Respondent strikes Number 19. First alternate, please.

MR. MORROW: State strikes Juror 22.

THE CLERK: Plaintiff strikes Number 22. Respondent?

MR. FALK: 24.

THE CLERK: Respondent strikes Number 24. Your second alternate, please.

MR. MORROW: State strikes Juror 26.

THE CLERK: Plaintiff strikes 26. And Respondent?

MR. FALK: Respondent strikes 27.

THE CLERK: Respondent strikes 27. May we review your strikes, please? The Respondent strikes Number One, Number

Five, Number Six, Number 19, Number 24 and Number 27.

MR. FALK: That's correct.

THE CLERK: The Plaintiff strikes Number Four, Number Eight, Number 15, Number 17, Number 22, Number 26.

MR. MORROW: That's correct.

THE COURT: All right. Are there any matters of law that we need to take up with regards to jury selection from the State?

MR. MORROW: None from the State, Your Honor.

THE COURT: And Respondent?

MR. FALK: Nothing from Respondent, Your Honor.

THE COURT: All right. Madam Clerk.

THE CLERK: As I call your number please come and be seated in the jury box.

Brenden Blaschke, Juror Number 28; Charles Jacobs, Number 171; Sherry Leonard, Number 197; Christopher English, Number 112; Gary Crowder, Number 83; Timothy Lordi, Number 204; James Dennis, Number 94; Anne Miner, Number 223; Rose Marie Paterchak, Number 244; Patrick Davis, Number 91; Lori Stewart, Number 299; David Cooksey, Number 75; Randall Purcell, Number 259; Michael Hardwick, Number 151.

(Remaining panel released by Court and given call-back instructions.)

THE COURT: Mr. Falk, Mr. Morrow, can you all approach just a second, please?

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen, those that are -- those of you that are seated in the jury box you all have been selected as fair and impartial jurors to serve on this case. What I'm getting ready to do is I'm going to give you, I'm going to give you a lunch break. Okay? Before I do that I'm going to give you a few instructions here. Okay?

As you serve this week, ladies and gentlemen, please stay to yourself or with your fellow jurors. The lawyers have been -- always are instructed not to have any interaction with jurors. You all, innocent conversations, innocent conversations could be misconstrued. Okay? So my instruction to you all is either, one, stay to yourself or with your fellow jurors. If you see any, anyone involved in this case and they don't speak to you, they're not being unfriendly. They're following this Court's instructions because as I said we don't want innocent conversations to be misconstrued. Okay?

I'm going to give you a lunch break until -- I'm going to ask you to be back here at 2:30. There's some pretrial stuff that we have to take up that I have to deal with outside of your presence, and I'm going to try to go ahead and deal with that at this time.

We typically run court, just for informational purposes

for you, we'll start in the morning at 9 or 9:30. We'll go for about an hour and a half, take a mid-morning break and we'll typically go till about 1:00 o'clock before we take lunch. Okay? We'll typically take about an hour and 15 minutes, maybe an hour and a half. It just depends on if I need to deal with some matters. I'm going to -- we'll typically resume about 2:15, 2:30. We'll go for about an hour and a half, take a mid-afternoon break and then go until approximately 5:00 o'clock. Now, I don't sit up here and watch the clock and as soon as it strikes five say, "All right. Stop. We're going home for the day." Okay. Not -- I don't do that. If there is a witness on this stand it will be my intention to finish that witness for the day. Okay? Having said that, if the lawyers tell me that, "Judge, this next witness may be lengthy," and it's 4:30 in the afternoon, we may break for the day at that point rather than keep you here beyond, you know, five, so to speak. Very rarely will you be here beyond 6:00 o'clock. There's always a chance, but very rarely will you be here beyond 6:00 o'clock if you -- while you were serve with me. Okay? But again, there's a chance.

As you serve this week, not sure what the weather is outside right now. It was quite cool at my house this morning when I walked outside. I want you to be comfortable while you're serving in here. Some people are cold-natured. Some

people are hot-natured. Quite frankly, I'm hot-natured. Okay? If I have anything to do with the thermostat it's going to be cool in here. All right? I sit up here, kind of, you know, they say heat rises. I'm sitting a little higher than you all. Okay? That's just the way, way it is, but I have an undershirt on, a dress shirt, a tie, and this robe, that's -- which is part of my uniform, so to speak. Okay? And plus I'm hot-natured. So I want you to be comfortable. Again, I'm going to try to have it quite cool in here. So if you're cold-natured, bring a jacket or bring a little small blanket, whatever makes you comfortable. I don't, don't want you to bring a pillow and a blanket now, but bring a blanket if you need to. If you're hot-natured such as me, I'm not going to let you take off but so much clothes, but I'll let you layer up as much as you want to. Okay?

Anything from the State before I release the jury for lunch?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: Respondent?

MR. FALK: Nothing, Your Honor.

THE COURT: All right. I'm going to ask you be back at 2:30. Do not -- you know very little about this case right now. Okay? But you're not to discuss what little you know about this case with anyone, friends, family, fellow jurors. You're not to discuss anything about this case at all, at all

until you're instructed to do so by the Court. Okay? Don't go do any independent investigation on your own at all. You are to decide this case based solely upon the testimony from this witness stand and/or exhibits that are introduced during the course of this trial. That is where your decision is confined to, testimony and evidence that's introduced during the course of this trial. Don't go out and try to find out anything. You've heard me mention this -- Mr. Griffin's name. You're forbidden from doing any research about him or anything as it relates to this case. All right. If you do -- if you don't abide by the Court's instructions you could be held in contempt of court. As I've said it's, it's -- in our system, in our judicial system it is vitally important that your decision as jurors be confined to what you hear in this courtroom. Okay? You all are free to go. My bailiff, my deputy will show you where you need to come back to, but be back at 2:30 and we will start as promptly at that time as possible. Okay?

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. Is the -- is Mr. Griffin here?

OFFICER: Yes. He's down in detention, sir.

THE COURT: Can you all get him up here, please?

OFFICER: Would you like him now?

THE COURT: Yes, sir.

MR. FALK: Your Honor, could I have five-minute, a two-minute break just the restroom?

OFF THE RECORD

(On the record, outside the presence of the jury.)

THE COURT: All right. Have some pretrial motions. Who wants to go first?

MR. MORROW: Yes, Your Honor. Briefly, Your Honor, the State has two motions, Your Honor. State's first motion in limine would ask that the Respondent be prohibited from saying that he would be committed for punishment or being -- or being put in prison or using words similar as the old death row building when referring to the location of the sexually violent predator treatment unit. Sexually violent predator treatment unit is located at Broad River Correction Institution behind a line that they provide outside security while the Department of Mental Health or its subsidiary or its designee, which is Correct Care Solutions, provides inside security to the facility. It's a treatment for -- it's a treatment facility. Plus, Your Honor, a new treatment facility has been constructed and it will be moved into in the next two to three weeks. So those descriptions would not even be applicable to the facility. The State's required to prove that he has been convicted of a sexually violent offense and that he has a mental abnormality, a personality disorder that, that makes him likely to reoffend if not committed for

treatment and this would put an additional element on the State to prove that he's being held in a treatment facility.

THE COURT: All right. Mr. Falk.

MR. FALK: Your Honor, I don't plan on using the words death row or anything like that, but I do think that the jury is entitled to know that if he is convicted today he's going to be -- he's going to go to a secure facility not some type of mental hospital, that this is a secure facility. It's going to feel like prison certainly from his point of view, and he's not going to be, you know, the jury needs to know he's not going to be free to come and go. He's not going to be free to have visitors as he wants and --

THE COURT: In applying the definition of relevant evidence, what relevance does that have as far as to what the State has to prove? I mean, is it --

MR. FALK: It's going to be in your charge that, I mean, the definition of a sexually violent predator is somebody who has a mental abnormality or personality defect --

THE COURT: Right.

MR. FALK: -- makes it likely to reoffend, etcetera, if not confined. So certainly situations can come up where the State could certainly prove that he has a mental or has the psychological issue, but whether or not the -- I think it's relevant to the State's proof on, you know, does the treatment -- can the treatment be done outpatient, does the treatment

have to be done at this facility.

THE COURT: Mr. Morrow.

MR. MORROW: Your Honor, the State has no problem with, with a characterization as -- of the, of the treatment unit as a secure facility or secure treatment unit. We just would -- it, it is a treatment -- it's a secure treatment facility. It's, it's not a prison or he's not being incarcerated for life or on --

THE COURT: Well, and I think he agrees with that.

MR. MORROW: Yes.

MR. FALK: Yes.

THE COURT: It sounds to me like you got it worked out.

MR. FALK: I believe so.

THE COURT: Fair enough?

MR. MORROW: The -- yes, sir, Your Honor.

THE COURT: All right.

MR. MORROW: The second motion the State has, Your Honor, is that, that, that the details of further treatment are irrelevant in this case. Dr. Gehle's and what the State has to prove in this case is that he suffers a mental -- from a mental abnormality that makes him likely to, to reoffend and that he has been convicted of a sexually violent offense. Proving that future treatment would be effective or that what exactly that future treatment would be isn't -- would be posing a different -- an additional burden on the State and

that was not the evaluation that Dr. Gehle was assigned to do in this case.

THE COURT: Mr. Falk.

MR. FALK: To the extent that Dr. Gehle would have any information I would like to be able to ask her about -- I believe that there's a diagnosis that has two related but still separate mental health diagnoses, one being the schizophrenia and the other being the biastophilia and I -- to the extent that Dr. Gehle, no, but I would like to ask her whether or not the place he was going would he be able to get treatment for the schizophrenia. I think that's relevant and I believe the jury would want to know that.

THE COURT: Mr. Morrow.

MR. MORROW: Your Honor, again --

THE COURT: Well, I mean, does that -- let me stop you there. Does the schizophrenia play into the diagnosis of the mental abnormality?

MR. MORROW: Yes, Your Honor, and, and again, the State would not have, would not have an objection necessarily to, to the line of questioning I believe counsel is --

THE COURT: Well, and, and I mean, depending upon what her testimony is, if she's taking that into consideration for purposes of giving her opinion in this case, I think he certainly is entitled to ask her about that.

MR. MORROW: Yes, Your Honor.

THE COURT: So I'll allow that.

MR. FALK: Thank you.

THE COURT: All right. What else?

MR. MORROW: Nothing further from the State, Your Honor.

MR. FALK: Your Honor, there is one quick one before we address my other motion, and I should have done this, but I don't think the State's going to be surprised by this, I would just ask that just like we're not going to talk about that this is a life sentence or whatever, I, I think it's also the other side of the coin is that we can't do a lot of talking about the fact that there's an annual review period and that he's eligible for release every year.

THE COURT: Mr. Morrow?

MR. MORROW: Your Honor, I was not planning to present any testimony to that effect. If, if counsel opens the door to that, that questioning, that, that's a different thing.

THE COURT: All right. Well, when, if, how and under what circumstances, I mean, I agree with Mr. Falk on that. I don't think that's relevant to what you got to put up and prove. However, you know, if you try to bring out, Mr. Falk, that you -- something along the fact that he's served his time, you know, that may open the door to some of that stuff.

MR. FALK: Yes, Your Honor.

THE COURT: You know, it's, it's almost as though you, albeit it's a civil matter, really would be no different

arguing parole eligibility to a jury which is --

MR. FALK: Yes, Your Honor.

THE COURT: -- you know, you know, so I don't think it's proper so. All right.

MR. MORROW: Thank you, Your Honor.

THE COURT: All right. Mr. Falk, what else?

MR. FALK: All right. Now, Your Honor, I have made a motion to have my client evaluated for competency to stand trial, and you know, you had asked me a question --

THE COURT: Well, let's do this because we've talked downstairs, which was not on the record --

MR. FALK: Right.

THE COURT: -- during jury qualifications. So for purposes of making sure the record is complete, why don't you just start from, from A, so to speak.

MR. FALK: Yes, sir. Your Honor, I think that there's certainly medical testimony to support the fact that my client suffers from schizophrenia and that the schizophrenia may or may not be related to the reason why he is here today. My client has a history of being able to and I believe the term is recompensate or become competent again, whatever the term.

THE COURT: Rehabilitated.

MR. FALK: Rehabilitated. In 1999, he had a criminal proceeding in which they -- he was evaluated for competency to stand trial. He was found to be not competent, which is a --

sort of a general diagnosis, but that he was returned to competency and did stand trial. I can say, first of all, Dr. Gehle and in my motion for competency, which I filed in March of this year, I quoted some sections from Dr. Gehle's report. I'm sure she would testify to that, but I mean, she certainly testified to the fact that there were schizophrenic issues and that there was a problem that she had with some of his answers did not necessarily follow the questions that she was asking. So there clearly was a communication issue, and I guess, really -- puts us back up to square one. This case was on the trial docket at the beginning of this year. I believe it was in March, and I came up to speak with my client to get ready for it, and it was at that time when I spoke with him in the Horry County Detention Center, which I believe was about February this year, I had serious concerns about my ability to represent him because it was very difficult for me to communicate with him and to get answers that I thought were made sense to the questions that I was asking him. There was a -- assuming was a communication issue, and so I, I filed a motion for him to be evaluated for competency and that was before Judge McFaddin, and for whatever reason it took a period of time for Judge McFaddin to rule on that motion, and I know, you know, my client is in the Horry County Detention Center. He's not getting any better. There certainly was an urgency to move this case along, and so Mr. Morrow and I we

were in this courtroom I think at the beginning of the summer. Does that sound right to you when we asked Judge Seals to rule on it.

MR. MORROW: It was around August the 7th.

MR. FALK: Okay.

MR. MORROW: Of this year, we had, we had a, a trial, another of these trials in front of Judge Seals, and we, we heard some motions then and Judge Seals ruled.

MR. FALK: Okay.

MR. MORROW: That he -- that -- that there was no right to competency in these cases.

MR. FALK: I thought it made sense to talk to Judge Seals because he was the chief admin for Common Pleas, and so it sort of was maybe, but then the matter got a little bit more complicated with the beginning of last week Judge McFaddin said that he had ruled on my motion for an evaluation and asked Mr. Morrow to write up the order. So I mean, procedurally, I have a question as to where we stand. So that's one issue, but let me -- should I now go into my --

THE COURT: Well, I mean, what was Judge McFaddin's ruling?

MR. FALK: Judge McFaddin sent an email, which is my Exhibit B. It was incorrect in that he said that the State's motion for a competency evaluation. His email that he sent on October 16th was, [as read], "Regarding the State's motion for

evaluation for competency to stand trial in the above referenced matter Judge McFaddin respectfully grants the motion. Mr. Morrow, please prepare a proposed order and upload it to e-file." He apologized for his delay. It was my motion for competency but --

THE COURT: Mr. Morrow.

MR. MORROW: Your Honor, and again, I'm not entirely sure what the processes and who -- which judge ruling is, is controlling in this matter; however, since we both agreed to have the, the matter heard before Judge Seals on August 7th I believe that, and Judge Seals ruled on the matter, I believe that that rule was control -- that ruling was controlling in this case. That's why we're here today. Again, it's still the State's position that he's, he's not entitled to a competency evaluation in this matter because both the statute contemplates such a, such a finding under 44-48-100(B). It anticipates a person being found, being charged with a sexually violent offense found incompetent to stand trial and about to be released, and it allows for a starting of the sexually violent predator process at that time, and, you know, and the, the purpose of the act is to commit individuals who suffer from a mental abnormality or personality disorder that makes them likely to reoffend to the Department of Mental Health for treatment. We would argue that that in and of itself, that mental abnormality or personality disorder might

prevent, you know, people from being competent. So --

THE COURT: Let me ask this, I mean, this hearing, Mr. Falk, do you agree to consented to let Judge Seals hear it?

MR. FALK: I'm not -- yes.

THE COURT: Okay. And was that something that was done on the record or in chambers or --

MR. FALK: It -- no, it was -- no, it was done in the courtroom on the record.

THE COURT: Okay. Well, I mean, I would think that if while Judge McFaddin initially heard it, if you all consented and agreed to have Judge Seals make the decision since you hadn't heard from Judge McFaddin, I mean, I would think that whatever --

MR. FALK: Your Honor --

THE COURT: -- Judge McFaddin did post that hearing was waived when you all agreed to let Judge Seals hear it.

MR. FALK: I --

THE COURT: Now, because I can't turn around another judge's, another Circuit Judge's order. I mean, I think Judge Seals had the final say so once you never got an order from Judge McFaddin and it was post after you all agreed for Judge Seals to hear it.

MR. FALK: Your Honor, I thought I needed to bring the procedures to the Court's attention.

THE COURT: Yeah. I just -- and, and you have and I'm

not in any way disparaging in any way.

MR. FALK: Yeah.

THE COURT: I'm understanding the procedural side of it now and what I want it clear for the record.

MR. FALK: And again, from my point of view I think it trying to represent what I thought were my client's best interests his case was spinning --

THE COURT: Right.

MR. FALK: -- I did not believe he was getting any mental health care at all at the detention center.

THE COURT: Right.

MR. FALK: And I thought it made sense to get this thing moving.

THE COURT: Well, and I, I don't disagree with you at all. I understand that, and but Judge Seals denied that. So and I told you downstairs, it was off the record, you all had mentioned, I think you in particular had mentioned the Oxner [spelled phonetically] case that is currently pending in our State Supreme Court concerning this very issue, and you know, you wanted to make sure that your client's interest is protected as it relates to this issue, and I absolutely want to make sure that it's protected --

MR. FALK: Thank you.

THE COURT: -- for his sake as well and want you to put on the record whatever you feel like you need to to preserve

this issue --

MR. FALK: Thank you.

THE COURT: -- for your client. You know, I'm tasked with and responsible for enforcing what the law is right now, and I think both of you, you and Mr. Morrow agree that as it is right now the current law is that he's not entitled to it. Okay. Go ahead.

MR. FALK: Well, Your Honor, and you know, you had asked that question about how this might relate to a probate court matter, and I do have a -- I do have an answer which does reflect current South Carolina law, and I would invite the Court to look at In Re: Chapman which is the South Carolina Supreme Court case which found that a gentleman like my client have a right to, right to counsel, which includes a right to competent counsel. So I am not sure if that same right is reflected in a typical competency hearing and before a probate court judge, but my client has a right to counsel, which is found in Chapman. It's very similar to the right to -- after Chapman it really works pretty much like the right to counsel in a criminal proceeding and that's where I think it's a little bit different from, from our discussion before, and I do not believe the statute necessarily sets forth that he has -- the statute does not provide that he's not entitled to a competency evaluation to stand trial. The statute just does contemplate that it could happen, but it does not.

THE COURT: Well, and I'm not trying to split words here with you. I'm going on what you just told me.

MR. FALK: Yeah.

THE COURT: Okay? Says that in Chapman the Court said that the Defendant in that case?

MR. FALK: Respondent.

THE COURT: Respondent was entitled to competent counsel, that it -- and I hadn't seen the case. I hadn't looked at the case, and that referred to --

MR. FALK: Sexually violent predator proceeding.

THE COURT: Well, I mean, did it refer to competent counsel referring to counsel --

MR. FALK: Oh, no, no. There --

THE COURT: -- or the competent Respondent because the way you said it was --

MR. FALK: Yes, Your Honor.

THE COURT: -- made me lead to believe, well, maybe the lawyer was incompetent such as a PCR proceeding, so to speak.

MR. FALK: That's exactly what it was.

THE COURT: Okay.

MR. FALK: It was a PCR proceeding. It was -- and, and they've sort of suggested that the way that people in that situation would go forward would be through a habeas corpus proceeding so, but my point being that I think once we start looking at the right to counsel it's very difficult for me to

be effective counsel when I can't communicate with my client.

THE COURT: Right. And, and I don't disagree with you at all. The statute doesn't specifically address competencies in these types of cases. That Oxner case is currently pending and is in our State Supreme Court. Even if, even if for argument sake I agreed with you, okay, I, I don't think I have authority to overrule what Judge Seals has done. He's already decided. So I think you've raised the issue again to make sure that your client's interest is protected, which I want you to do, so if me not deciding something different --

MR. FALK: Sure.

THE COURT: -- than Judge Seals or if Judge Seals was wrong, make sure your client's interest, that issue is preserved for appellate purposes. Okay?

MR. FALK: Yes, Your Honor. And so as I just, to make it clear, is that we think that it's a -- it's a right that's found in the due process guarantees under the South Carolina Constitution, under the United States Constitution whether it's the 14th amendment, the 5th amendment. We believe that it's found in his right to counsel, his 6th Amendment right to counsel, the fact that if he's being put into a proceeding which is going to have a significant impact on his civil liberties and that he could wind up being detained for an indeterminate period of time, he certainly has the -- he certainly has the need to have competent counsel, somebody who

can represent him in this action. The -- I think this argument would be more difficult for me if it weren't for the fact that there is a track record here in this case of him being able to be returned to competency when he stays on his psychiatric medicines. So anticipating the question is, well, what difference would it make if he is -- if he goes back to the SVP program he presumably would be getting treatment. However, like -- what I believe is that the diagnosis that Dr. Gehle made that he suffers from biastophilia, which in laymen's terms is somebody who gets sexually aroused by forcing themselves to have sex with another person, sort of as a rape, rape interest, that's a diagnosis that's very difficult for me to respond to unless I could put my client up on the stand to testify. My client in his current state is in no condition to testify. The only times I have won these cases is when I've been able to put my client up on the stand and the client's been -- and the jury's been able to look at the client and be able to decide whether or not they want this person in their backyard. I mean, that's just the reality of it. I don't think these cases are winnable. I've had -- the only -- as I said, the only ones I've won is when I've been able to put my client on the stand. I cannot put this client on the stand because I have no anticipation that he would answer my questions truthfully or would even make a, a logical response to the questions that I asked. I've given -- not been

able to speak with him, do the type of preparation that I would need in order to talk to him about some of these victims that he was alleged to have assaulted. So I, I, I think he's got, as I say, due process rights. I think he has a right to counsel rights that are -- that he's not going to be able to enjoy if he has -- if he were forced to go forward today without him being evaluated and without him being returned to competency because I -- I'm just -- I can say that I've had four meetings with my client and his mental state has significantly deteriorated from each meeting. At the probable cause hearing everything was fine. We were able to communicate. The first time I went to talk to him in the Horry County Detention Center was a little iffy. The second time was worse, and then this last time I was able to speak to him for about eight and a half minutes, and it just wasn't making any sense. My -- if I look at just the quality of the correspondences I've received from him, the first ones are articulate and well lettered and well -- good handwriting and to the end ones looks like they've been written with a pencil with your left hand, just kind of scratching it out. I mean, I, I --

THE COURT: How did it, how did it get addressed to you?

MR. FALK: What's that?

THE COURT: How did the letter get addressed to you?

MR. FALK: He had my card. So maybe somebody addressed

the envelope. I, you know, I don't know.

THE COURT: All right. Anything else, Mr. Morrow?

MR. MORROW: And again, the State would just cite that the statute, Your Honor, also, Council v. Catoe, the Supreme Court looked at a PCR case with similar, similar results, and in other jurisdictions, in Wisconsin they've looked at this issue in In Re: Commitment of Luttrell, which is 312 Wis. 2d 695, and in that case that they ruled that, that a person civilly committed did not have the right to, to have competency or would not have the right to be competent in civil commitment proceeding. There also was similar findings in Iowa in Iowa v. Cubbage, which was 671 N.W.2d 442, but again, Your Honor, I would argue that in this -- in our statute in this state incompetency was, was anticipated and thought of and was included in the statute and --

THE COURT: Okay. All right. Well, the issue I think has already been ruled upon by Judge Seals, has already been ruled upon by Judge Seals, but certainly want Mr. Falk to make the record to protect that interest for his client.

MR. FALK: Your Honor, if I could, this is -- the motion that I have I got to file it with the Clerk of Court, but could we file it as an exhibit, Court's Exhibit to these proceedings?

THE COURT: That's fine.

MR. FALK: It just makes it easier to move along.

THE COURT: That's fine. Any objection to that, Mr. Morrow?

MR. MORROW: No, nothing, no, Your Honor.

THE COURT: Okay. Very well.

MR. FALK: Thank you.

THE COURT: Anything else?

MR. FALK: Not at this time.

THE COURT: Mr. Morrow, anything else?

MR. MORROW: Your Honor, the State noticed last night in looking over our, our jury charge there was a -- there's an error on page eight. I brought three copies because I didn't have access to, to email, to email a new charge to you, but on page eight of the charge it was, it was listed criminal sexual conduct with a minor in the second degree, and in this case it's assault with intent to commit criminal sexual conduct with a minor second degree.

THE COURT: All right. If you'll give me a copy and Mr. Falk a copy.

MR. MORROW: Thank you, Your Honor.

THE COURT: Thank you. All right. 2:30.

MR. FALK: Thank you.

OFF THE RECORD

(On the record. The following takes place outside the presence of the jury. A bench conference is held.)

THE COURT: Real quick before I bring the jury in, you

know, we have this introductory statement that we give to the jury on the case.

MR. MORROW: I'm sorry, Your Honor?

THE COURT: This introductory statement that we give to the jury before you all start --

MR. FALK: Yeah.

THE COURT: -- I'm going to just give them the one from the civil side of it just because it's a little bit different than the criminal one. If there's any issues in there concerning burden of proof I'll address it accordingly.

MR. MORROW: Okay, Your Honor.

THE COURT: Okay.

MR. FALK: Okay. All right. Is the jury here? Can you tell them to bring them in?

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. Good afternoon, ladies and gentlemen. I hope you all had a nice lunch and are ready to proceed this afternoon. As you all come in and out of the courtroom, Mr. Purcell, where are you, sir? All right. And Mr. Hardwick, where are you, sir? Okay. Mr. Purcell, can you switch places with this gentleman at the end here in the blue sweater? All right. Mr. Purcell and Mr. Hardwick, you all are the only ones right now that have assigned seats. If you all will stay in those seats as you come in and out of the

courtroom I'd appreciate it. Okay?

The rest of you, as you come in and out of the courtroom, you do not have an assigned seat at this time. Later during the course of this trial a foreperson will be selected by you all. I'm going to let you pick a foreperson here later, and they will sit where this gentleman is in the grey Adidas pullover. All right. That will be the foreperson's assigned seat throughout the remainder of the trial. Other than those three, nobody else has any assigned seats. Okay?

THE COURT: All right. Before we begin will you swear the jury, please?

(Jury sworn by clerk.)

THE COURT: All right. Ladies and gentlemen, we're about to try the case as it relates to Mr. Thomas Griffin. As I told you earlier this is a case that's been brought by the State of South Carolina pursuant to statute to determine whether or not Mr. Griffin is deemed under the law to be a sexually violent predator as defined by the statute.

Now, ladies and gentlemen, before we begin the trial of this case I want you to understand that it will probably be different from what you might expect. Many people do not have the opportunity or the chance to attend actual court sessions as you're doing now and may think from watching TV, movies or reading books that trials are always full of high drama, intense action and riveting circumstances. Now, while those

things may be true at times, this trial, ladies and gentlemen, is not for entertainment. It is a fundamental part of our democracy, an effort to make sure that justice is done between the parties before the Court. Now, making sure that justice is done, the process is often slow, deliberate and repetitive, the opposite, the opposite of what you may have seen on television, in movies or read in books. This courtroom, ladies and gentlemen, is a place of honor, dedicated to the protection and preservation of citizens' rights through what many have called the greatest justice system ever created.

The attorneys appearing before you, ladies and gentlemen, are advocates for the parties that they represent, but first and foremost they are officers of the court, sworn to uphold the integrity and fairness of our judicial system. You should expect them to be professional, competent and ethical in the representation of their clients' interests.

Now what I will now say to you, ladies and gentlemen, is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law applicable to this case at the end of the trial before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow during the course of this trial so you may better understand what may be happening.

You, ladies and gentlemen, have been selected as fair and

impartial jurors, whose purpose is to find and determine the facts in this case. You are the sole judge of the facts. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony that you hear and any other evidence that is presented. You should not be influenced by any opinions or statements that you may have heard outside of this courtroom. It is especially important that you perform your duty of determining the facts diligently and conscientiously because ordinarily there is no way to correct an erroneous determination of the facts by a jury.

Now, when you comply, ladies and gentlemen, with your oath to impartially determine the facts of this case you'll have fulfilled your duty as jurors and no one will have the right to criticize your verdict. Now, on the other hand and with equal emphasis, the law that makes you the facts [sic] makes me the judge of the law in this case. The law as given by the Court is the only law that you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you, ladies and gentlemen, what the facts are in this case, and you cannot disagree with me about what the law is or what it should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence that is presented. After doing that you will render your verdict

under the solemn oath that you just took as jurors.

Now, till I advise you to begin your deliberations, ladies and gentlemen, you must not, you must not discuss this case with anyone, including your fellow jurors, friends, family members and anyone involved in the case. The attorneys and parties have been advised that they are not to talk to you at all. So if you see them, as I told you earlier, if you see them and they don't talk to you, they are not being unfriendly. They're simply following this Court's instructions.

Now, during your deliberations, ladies and gentlemen, you may only discuss this case in the jury room with your fellow jurors because they have seen and heard the same evidence that you have. You must not discuss the case with anyone other than your fellow jurors until you have returned a verdict and the case is at an end. I remind you that you must decide this case based solely on the evidence presented here in this courtroom. This means that during the trial you must not conduct any independent research about the case, the facts of the case, the evidence presented in the case or the people or organizations involved in any way in the case. Please do not try to find out information from any source outside of this courtroom. In other words, you must not look at dictionaries or other reference materials, search the internet, websites or blogs or use any other electronic tools to get information

about this case to help you decide the case. You may not use computers, telephones, cell phones, smartphones, tablets, the internet or other tools of technology with communication capabilities at any time while you are in the courtroom or during your deliberations. Now, during your breaks for meals or overnight, if necessary, you may use those devices. However, you may not use those devices to communicate with anyone about the case until the case is over. This means that you must not use text messages, emails, phone calls, instant messages, Twitter or any blog, chat room or website, including facebook, Google Plus, Myspace, Linked, YouTube or any, any social media websites to send or receive information about this case. This includes information about a party, a witness, an attorney or a court officer, news accounts about the case, research on topics raised, any topics that you may think would be helpful in deciding the case or any testimony presented by any witness. During the trial I don't think you're going to see any but you're instructed not to read, listen to or watch any news reports about the case. This includes anything that may be in the newspaper or on the internet, radio or television. You must not, ladies and gentlemen, consider anything that you may have heard or read about this case, whether before or during the trial. Information from other sources might be wrong or incomplete. In our judicial system it is important that you are not

influenced by anything or anyone outside of this courtroom. If you become aware of another juror's violation of these instructions, please, please inform the Court immediately. It is important, ladies and gentlemen, that you keep an open mind and not decide any issue in this case until all the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law applicable to this case.

Now, in just a moment the attorney for the Plaintiff will make what is called an opening statement, the attorney for the State will make an opening statement. What the attorneys tell you during their opening statements is not evidence in this case. It is simply their contention as to what the issues are. The evidence in this case, as I've told you, is going to come from this witness stand and/or by exhibits from sworn testimony from witnesses or by evidence that's introduced during the course of the trial.

From time to time, ladies and gentlemen, you may hear one of the attorneys say something like, "Your Honor, I believe that we have a question of law or a matter of law to discuss with you," or, "Your Honor" they may -- or they may say, "Your Honor, may we approach," or sometimes I myself might find it necessary to excuse you from the courtroom while the attorneys and I discuss a matter of law. Now, the reason that I would excuse you all from the courtroom is sometimes when I am

making a decision as to whether or not a particular law applies it may be necessary that I make some comment regarding the facts. I am not in any way supposed to tell you what I think the facts are. So I will excuse you from the courtroom while those discussions take place so that in no way, in no way will you be influenced by anything that I might say or do in connection with the facts.

Now, in determining what the facts are in this case, you, ladies and gentlemen, must decide whether or not the testimony of the witnesses is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible or not, but once the testimony is admitted whether or not you believe it is solely for you to determine. In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the stand, witness stand. You have the right to consider anything, anything that is in the record that will help you evaluate the testimony of the witnesses. That means, ladies and gentlemen, it is your duty to pay close attention to these witnesses, to observe the witnesses, to listen to the witnesses and to pay close attention to the attorneys and to the Court. Please do not let your thoughts wander but give strict attention to the

testimony in this case so that at the end of all the testimony after the arguments of counsel and the charge on the law by the Court you will then be in a position to determine what the facts are in the case and apply the law to those facts and thus render a verdict. Now, later during the course of this trial, a foreperson will be selected to preside over deliberations in the jury room. The foreperson's responsibility will also be to be the spokesperson here in court if necessary. I will -- it will also be the foreperson's responsibility to write the verdict on the verdict form, but I will give further instructions at the conclusion of the case.

Now, in order to preserve everyone's rights, any exceptions, objections to anything that I've said to the jury from the State?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: Mr. Falk, Defense counsel, in response?

MR. FALK: Nothing from the Respondent, Your Honor.

THE COURT: All right. All right. The State's recognized.

MR. MORROW: Thank you, Your Honor. If it please the Court.

MR. MORROW: Good afternoon, ladies and gentlemen. My name is Christopher Morrow, and I am with the South Carolina Attorney General's Office. I live in Columbia with my wife

Kate and our kids, and I, like I said, I work for the South Carolina Attorney General's Office. Now, you might be wondering to yourself why am I here today, why isn't somebody more local handling this case, and the simple answer to that question is when the Sexually Violent Predator Act was passed 20 years ago they assigned all sexually violent predator cases to the South Carolina Attorney General's Office. So that's why I'm here.

Now, the case today has been brought by the State under the Sexually Violent Predator Act. We're here because the State is seeking the civil commitment of Thomas Griffin as a sexually violent predator to a secure facility for treatment. Now, what is a sexually violent predator? About 20 years ago the South Carolina General Assembly passed the Sexually Violent Predator Act, and they found that a sexually violent predator is a person who has been convicted of a sexually violent offense, at least one, and suffers from a mental abnormality or personality disorder that makes them likely to commit acts of sexual violence if not confined for treatment.

The State contends that Mr. Griffin is one of those individuals, and to prove that Thomas Griffin is a sexually violent predator, the State must prove to you two basic elements: first, that he's been convicted of a sexually violent offense. Thomas Griffin has been convicted of a sexually violent offense, and I don't think the Defense is

going to contest that. You will hear about his sexual offending history, and you'll hear a little bit about what happened to his victims.

The second element the State has to prove to you is that Thomas Griffin suffers from a mental abnormality or personality disorder that makes him likely to commit future acts of sexual violence if not confined for long-term care, control and treatment, and to that effect, the State is going to present to you the testimony of Dr. Marie Gehle, a psychologist with the Department of Mental Health who's diagnosed him with other specified paraphilic disorder, biastophilia and schizophrenic disorder, schizophrenia, rather. You'll hear the testimony from which you can decide whether Thomas Griffin lacks control over his mental abnormalities and -- or mental abnormalities and whether those disorders make him likely to commit acts of future sexual violence.

Now, Dr. Gehle is a chief psychologist for the Department of Mental Health who's testified in hundreds of sexual predator cases. You will hear how Dr. Gehle spent a significant amount of time reviewing Mr. Griffin's case file, which include reviewing all of the records in this case, conducting an actuarial assessment of Thomas Griffin and his risk and interviewing Thomas Griffin. She'll tell you that he suffers from other specified paraphilic disorder and

schizophrenia, and based on her thorough evaluation she believes that Mr. Griffin is likely to commit acts of sexual violence if not confined for treatment.

So the question at the end of the day after you -- assessing the credibility of the witnesses who testify today and the, and the strength of the State's evidence has the State met its burden of proof beyond a reasonable doubt. So I want you to keep in mind and the Judge will instruct you what reasonable doubt is later on, but proof beyond a reasonable doubt is not proof beyond all doubt or any doubt or any conceivable doubt. It's proof that leaves you firmly convinced.

These cases, by their very nature, are going to contain disturbing facts, and this, this case is certainly no different in that regard, but I ask you that you listen to the evidence in this case, and at the end of the day as you listen to the evidence the verdict you should render will become clear, that Thomas Griffin is a sexually violent predator and should be committed to the Department of Mental Health's Sexually Violent Predator Treatment Unit. Thank you.

THE COURT: Mr. Falk.

MR. FALK: May it please the Court, Mr. Morrow. Ladies and gentlemen, my name is Jim Falk. I'm the attorney for Thomas Griffin. As I said, I'm, I'm a private lawyer in Charleston, South Carolina, but I have a contract with the

State, and I represent a lot of these people who are -- get caught up in the sexually violent predator treatment, sexually violent predator commitment proceedings, and so that's how I've come to represent Mr. Griffin today.

Now, I will tell you that at the end of the day I think you're going to be convinced that Mr. Griffin has a mental health issue. I'm not a mental health expert. I do speak with a lot of people, and I think that we're going to find out that Mr. Griffin suffers from schizophrenia. He's suffered from it in the past. I know that's kind of an umbrella term and the expert will, will do the testifying, but what I think we're going to find out is that Mr. Griffin is -- has moments when he is, he is not in his right self, and he's had -- and it's -- a lot of it is because he is unable to, is unwilling to or is not being offered his medicines for schizophrenia, and he has a history of -- I think the term is decompensating. You assume that somebody's competent to stand trial, then at some point they, they call it decompensating. It's a medical term for just sort of becoming less aware of what's going on, and there have been times when he has -- we -- the State's not been able in some of his underlying convictions there have been times when they haven't been able to go forward with the case because my client was ruled to be incompetent to stand trial, he didn't understand what was going on in the case. He didn't understand what the parties were. He didn't understand

the process just because of his mental disease, and so there was a period that, that he went to a mental health facility. He was restored to competency by taking his medicine.

So I have no problem with you all thinking that my client had that mental illness. The issue I think is going to be whether or not it's the second diagnosis that Dr. Gehle is going to use and that is that he has a paraphilic disorder that's sort of under a subheading that's called biastophilia and that's kind of one of these big terms, and there used to be -- in the literature there's another definition for this kind of syndrome. It's coercive paraphilic disorder, which that doesn't help you, but I think at the end of the day the expert's going to testify that it is somebody who, who derives sexual arousal from the act of forcing themselves on somebody. So that's what, that's what this biastophilia is. It's somebody who enjoys pleasure from forcing themselves on somebody, and that really brings you back around to kind of a whole 'nother thing which is really an issue here is that there's criminal conduct, and somebody who forces themselves on another sexual partner that he is committing a crime and that's the crime of rape. As we all know in South Carolina that's called criminal sexual conduct, and that's a crime, and in South Carolina people who are convicted of that are sentenced and they do, they do terms in the South Carolina Department of Corrections. That's a criminal, but what the

State wants to prove today is that he goes beyond that. It's not that he just had a criminal mindset and committed crimes. It's that he has something wrong with him, a mental abnormality or a personality defect that compels him to commit this particular crime. Now, that's, that's kind of a different thing, and I mean, a real simple explanation, a real simple analogy would be somebody who walks into a, a store and they steal a candy bar and then walks out. Well, that person who stole the candy bar might not -- might have wanted some candy just didn't have enough money in his pocket and stole it. That person might really like chocolate and was going to do anything to, you know, really likes chocolate. So he'd want to steal that candy bar or he's one of these people that suffers from a mental disease where they enjoy stealing. It's not that they want the candy, but they get, they get pleasure from the act of stealing. That's, that's kind of a term everybody knows, kleptomania, and that's what I want you all to think about here is whether or not -- my client has committed some crimes, and you know, normal people don't commit crimes, and I get that, and it's very easy to say, "Well, you know, if he committed a crime he's, you know, he's not normal and" -- but that's not what we're talking about here. You have to decide whether or not he has a mental disease and that this mental disease makes him compelled to commit crimes where he forces himself on other victims.

That's what this case is about, and it's kind of -- it'd be real easy to sort of sit back and hear about what my client's been convicted of, and it's going to be real easy to say, "Let's just send this guy away," but I don't think you're doing your job if you just do that. I want you to consider whether or not you think he has a mental disease and that the mental disease is what caused him to commit the crimes, and only if you get to that point would you be justified in committing him.

I think at the end of the day you're going to hear testimony that there's going to be some mental disease, but he doesn't have this compulsion to commit rapes, and he may need some type of treatment, but he doesn't need to go to the sexually violent predator treatment program in Columbia. Thank you.

MR. MORROW: Your Honor, at this time the State would call Dr. Marie Gehle to the stand.

Whereupon, Marie Gehle is called to the stand, duly sworn by the clerk and testified as follows:

THE CLERK: Just state your name for the Court.

MS. GEHLE: My name is Marie Gehle, spelled G-E-H-L-E.

DIRECT EXAMINATION

BY MR. MORROW:

Q Dr. Gehle, what is your occupation?

A I'm a chief psychologist at the South Carolina Department

of Mental Health.
Q And how long have you worked in that capacity?
A I have worked there since November of 2009, so about nine years.
Q And what advance degrees do you possess?
A I have a bachelor's degree in psychology, a master's degree in clinical psychology, and a doctorate in clinical psychology.
Q Dr. Gehle, what is psychology?
A It's the study of human behavior and the mind.
Q And what is clinical psychology?
A Clinical psychology is a subspecialty of psychology concerned with the assessment and treatment of mental illness, abnormal behavior and kind of other problems in life.
Q Dr. Gehle, what is forensic psychology?
A Forensic psychology is taking clinical psychology principles and applying it to matters of the court. Forensic psychologists do things like competency to stand trial evaluations, determining if somebody is not guilty by reason of insanity. We do personal injury cases and risk assessments and sexually violent predator cases.
Q Dr. Gehle, have you had any additional specialized training or experience within the field of forensic psychology beyond your Doctorate Degree?
A I've had a lot of experience and training. I completed a

postdoctoral fellowship in forensic psychology after I finished my doctorate. I did that at a, at a psychiatric hospital that was dealing with criminals, and I did evaluations of people related to legal issues. I've also done a lot of reading of research. I've been supervised to do these evaluations. I've attended countless workshops, seminars, things like that related to the issues that come up in sexually violent predator cases.

Q Dr. Gehle, do you have any memberships in any professional organizations?

A I am a member of the American Psychological Association, the American Psychology and Law Society and the Sex Offender Civil Commitment Program Network.

Q Dr. Gehle, does your work allow you to do forensic evaluations of individuals?

A Yes.

Q And do you have any experience working directly with sex offenders?

A Yes.

Q How long have you worked with sex offenders?

A I've worked with sex offenders in various capacities for 18 years.

Q Approximately how many sex offenders have you evaluated?

A I have evaluated I'd have to guess probably about 350 sex offenders. I know that I have evaluated about 250 sex

offenders under the Sexually Violent Predator Act.
Q And Dr. Gehle, can you briefly talk about your experience in relation to, to sex offenders?
A Yes. I began working with sex offenders at a community mental health center in 2000. I worked with -- during my internship, before I finished my doctorate, I did a rotation at a sexually violent predator program in Washington State where I did group and individual therapy with people there who were committed to that program. I became involved in the South Carolina Sexually Violent Predator Program in 2009. Between 2009 and 2011 I supervised the treatment in the program and I also evaluated people in -- under the Sexually Violent Predator Act, and in, in 2011 I switched positions and just became an evaluator. I do the pre-commitment evaluations and occasionally I'll do other types of evaluations under the Sexually Violent Predator Act.
Q Dr. Gehle, have you ever testified for the Respondent in sexually violent predator cases?
A Yes.
Q Approximately how many times?
A I have testified for the Respondent around 45 times.
Q And have you ever -- and you testify for the State as well; is that correct?
A Yes.
Q How many times have you testified for the State?

A Around 66 times, I believe, but some of those were when I was called by the State, but they were summary judgment hearings that actually benefited the Respondent.

Q Dr. Gehle, about what percentage of the time do you recommend commitment in sexually violent predator cases?

A About a third of the cases that I do I recommend commitment.

Q Have you previously been recognized as an expert and testified as an expert witness in the field of forensic psychology?

A Yes.

Q Approximately how many times?

A About 115 times.

Q Okay.

MR. MORROW: At this time, Your Honor, I move for Dr. Gehle to be recognized as an expert in the field of forensic psychology.

THE COURT: Mr. Falk?

MR. FALK: No objection.

THE COURT: All right. Let me give you all a brief charge. Ladies and gentlemen, normally a person cannot give opinion testimony. Normally when a person testifies they must testify as to what they either saw, heard or sensed by smell or something of that nature. However, there is an exception when someone's qualified because of education or experience.

They are permitted to give opinion testimony. This witness is being qualified as an expert in the field of forensic psychology to give opinion in that area. Now, ladies and gentlemen, that does not mean that you must accept the opinion but is evidence for you to use in any way that you deem appropriate. All right. You may continue.

BY MR. MORROW:

Q Dr. Gehle, how did you become involved in this case?

A I was appointed by the court to evaluate Mr. Griffin.

Q Now, Dr. Gehle, will you be paid to conduct your evaluation in this case or were you paid to conduct your evaluation?

A I'm paid a salary by the Department of Mental Health. I'm an employee there.

Q And would you have been paid any differently if you did not recommend committal?

A No.

Q Now, what type of evaluation did you conduct in this case?

A A precommitment evaluation.

Q And when you're doing a precommitment evaluation what are you asked to do? What is the precommitment evaluation?

A Well, I'm asked to give my expert opinion as to whether Mr. Griffin or the person that I'm asked to evaluate has a mental abnormality or a personality disorder that makes him

likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. Basically, I'm asked to determine if Mr. Griffin has mental health problems, and if so do these mental health problems affect him in a way that makes him likely to commit sexually violent offenses if he's released to the community.

Q Dr. Gehle, could you please describe the method by which you conduct a precommitment evaluation?

A Well, the way that I do these evaluations is I review the records I receive. I request additional records. I interviewed Mr. Griffin. During that interview I completed a formal mental status examination of him. I scored an actuarial sex offender risk assessment tool, and I took all the information that I got from the records and from him and I summarized my findings and gave an opinion.

Q Now, Dr. Gehle, you mentioned as part of your evaluation did you meet with and interview Mr. Griffin?

A Yes. I did.

Q And was that interview part of the basis of your expert opinion?

A Yes.

Q And how long did you interview Mr. Griffin?

A I met with him for three hours and 50 minutes.

Q And is the man that you met with in the courtroom today?

A Yes.

Q Where is he?
A He's in the red shirt over there at the table.
MR. MORROW: Your Honor, may the record reflect that Dr. Gehle identified Mr. Griffin?
THE COURT: So noted.
BY MR. MORROW:
Q Did you explain the purpose of your evaluation to Mr. Griffin?
A Yes.
Q And did he consent to the evaluation?
A Yes.
Q Dr. Gehle, in addition to meeting with and interviewing Mr. Griffin, what information did you rely upon or receive to aid you in conducting your evaluation?
A Well, I looked at his national criminal history report, police reports, investigative records, witness statements, statements Mr. Griffin made to investigators, warrants, indictments, conviction and sentence sheets, prison records, mental health records. I spoke to his sister, and I contacted somebody from the South Carolina Department of Probation, Parole and Pardon Services.
Q And Dr. Gehle, how did you receive that information or obtain that information that you relied upon?
A I received the records through the petition that was filed under the Sexually Violent Predator Act which comes from

the Attorney General's Office, also from the Department of Corrections, and then I also requested information directly from sources like schools and things like that.

Q Dr. Gehle, is the type of information that you listed for the jury a moment ago the type that is typically and reasonably relied upon by other experts in your field?

A Yes.

Q Did you consider and rely upon that information that you listed for the jury a moment ago and upon your interview with Mr. Griffin in rendering your opinion in this matter?

A Yes.

Q Can you explain how an individual's past sexual offense behavior relates to his future sexual offense behavior?

A Well, a person's past sexual behavior is the best indicator of their future sexual behavior because what a person's sexually aroused by tends to remain consistent over time, especially when it's deviant.

Q Dr. Gehle, based on your interview with Thomas Griffin and your review of his -- of the records in this case, could you tell if at, at the time of your interview he had been convicted of a sexually violent offense?

A Yes.

Q In addition to looking at convictions, did you also look at charges that did not result in convictions?

A Yes.

Q And why is it important or why do experts like yourself look at those charges that did not result in a conviction?
A Well, it's important to understand a person's entire history. Their criminal history helps determine the timeline of their life, when they were in the community, when they were incarcerated. It helps determine if they have a variety of -- helps me figure out what kind of offenses they commit, if any. It can indicate that there's possible mental health problems or personality disorders, and their criminal history is really important for the consideration of risk to commit future sex offenses. I also like to look at how soon after someone was released from prison did they reoffend, if they did, how long they spent in prison, things like that. It's really important.
Q And Dr. Gehle, when you're looking at all of this criminal history, are those the -- is that the type of information that is typically and reasonably relied upon by other experts in your field?
A Yes. It is.
Q Dr. Gehle, did -- in addition to his conviction from South Carolina that qualifies as a sexually violent offense under, under the statute, were you able to look at the records and determine if Mr. Griffin had any other convictions for sexual offenses?
A Yes.

Q And what did you find?
A Well, his -- one of his earliest convictions was in 1972, and he was convicted in North Carolina with assault with intent to commit rape.
Q So you found he was convicted in 1972 of assault with intent to commit rape?
A That's correct.
Q Did you -- Dr. Gehle, I'm also going to show you some documents here. I want you to take a moment to look at those documents and see if you recognize them. Okay?
MR. MORROW: Your Honor, may I approach?
THE COURT: Yes.
A I've seen copies of these documents.
Q And Dr. Gehle, are those documents the type that are typically and reasonably relied upon by experts in your field?
A Yes.
Q What are they?
A Well, the first one is a sentence sheet for assault with intent to commit criminal sexual conduct with a minor in the second degree. It's from Horry County. The second one is a warrant for assault and battery of a high and aggravated nature from Horry County, and the third document is an indictment for assault with intent to commit criminal sexual conduct and that's from Horry County.
Q And that offense was in 1996; is that correct?

A That's correct.
Q And you consider that offense as part of your evaluation --
A Yes.
Q -- in this case? Is there anything on those documents to indicate their authenticity?
A Yes. They're all stamped by the Clerk of Court.
Q And they were part of the basis of your expert opinion?
A Yes.
MR. MORROW: At this time, Your Honor, the State would enter State's Exhibit One into evidence.
THE COURT: Any objection?
MR. FALK: If I could just look at it briefly.
THE COURT: Yes, sir.
MR. FALK: May I approach, Your Honor?
(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)
MR. FALK: Your Honor, I would object to the arrest warrant going back. I don't think that's relevant, and it contains hearsay information. I think that they --
THE COURT: Hold on a minute.
MR. FALK: -- still can make their point with just the sentencing sheet.
THE COURT: Can you approach a minute?
(Whereupon, a bench conference is held in the presence,

but out of the hearing of the jury.)

THE COURT: All right. All right. I'll sustain the Defendant's objection to this. Let that in.

MR. MORROW: Thank you, Your Honor.

THE COURT: State's Exhibit Number One, Madam Court Reporter.

REPORTER: You want them all marked as one?

THE COURT: Yeah. All marked as Number One. Is that all right with you all?

MR. MORROW: Yes, Your Honor.

THE COURT: All right. State's Exhibit Number One will consist of three pages.

(State's Exhibit Number One [Sentencing Sheet] admitted into evidence and appropriately marked.)

THE COURT: Go ahead, sir, Mr. Morrow.

BY MR. MORROW:

Q Dr. Gehle, Mr., Mr. Griffin pled guilty on June 14th, 1999; is that correct?

A Yes. I believe so.

THE COURT: Hold on a minute. Hold on a minute. Ms. Dixie, you done marking?

REPORTER: I'm good, Judge. You can go ahead.

THE COURT: Well, hand him that exhibit back, please. All right. Mr. Morrow, you may continue.

BY MR. MORROW:

Q What date --
A Yes. He, he, he was convicted on June 14th, 1999.
Q Dr. Gehle, could you please describe or why is it important to look at the details or underlying facts of a conviction?
A Well, I need to look at the age of the victim because that can be relevant to determine if somebody is a pedophile or if it -- depending on the age and the sexual development of the victim. I look at the gender. I look at things like what were the conditions under which this person offended, how much did the victim fight, how much did they have to overcome, were there weapons used, things like that.
Q And that is important to your diagnosis?
A Yes.
Q Did you consider all of that information as part of your diagnosis in this case?
A Yes.
Q Dr. Gehle, would you please describe for the jury the details and underlying facts of Mr. Griffin's 1999 conviction for assault with intent to commit criminal sexual conduct in the second degree?
A Yes. The offense happened on December 19th, 1996, and this was about a month after Mr. Griffin was released from the Department of Corrections in North Carolina. So he was out in the community for a month, and he went to the Dixie Dollar

Amusement Store in Horry County. He went to the restroom, and there was a 12 year old girl in the restroom. He knocked on the door. She told him to hold on.

MR. FALK: Objection, Your Honor, hearsay.

THE COURT: Can you all approach a minute?

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

THE COURT: Restate your question.

BY MR. MORROW:

Q Dr. Gehle, without stating what any one, one individual said, could you tell from the records involved in this case what the underlying facts regarding his 1999 conviction were?

A Yes.

Q And what were those facts?

A He approached a 12 year old stranger, female at a, at a -- an amusements park kind of store, knocked on the door. The girl came out of the restroom thinking that she was going to walk on. He presented a knife, pushed her back into the bathroom and said that he had not had sex in three years, he had three dollars. She screamed for her father and then ran, and while the girl was telling her father what occurred Mr. Griffin fled the store. He had left his sister in the store. He had went to the store with his sister, but he fled.

Q And Dr. Gehle, what sentence did Mr. Griffin receive for that conviction?

A He received 20 years of incarceration.
Q So that, that offense that we were just talking about occurred in 1996; correct?
A That occurred in 1996. Yes.
Q Now, Dr. Gehle, did you find that Mr. Griffin was charged with any offenses between his arrest in 1996 and his conviction in 1999?
A Yes.
Q And why is it necessary to review charges that do not necessarily result in convictions?
A Well, it's important, again, to see their timeline, when did this happen in relation to all the other offenses, but in this particular case Mr. Griffin told investigators that he committed the offense, and he also told me that he committed this other offense.
Q And what, if anything, did you find significant about the charge Mr. Griffin picked up while out on bond for his 1996 offense?
A It was another sex offense involving a 12 year old female, a stranger. It was, it was in many ways similar to this offense that happened in South Carolina. This one happened -- the other one happened in North Carolina. He was on bond for this offense at the time that he committed the subsequent offense. In this case he actually sexually assaulted a girl that he saw leaving her classroom. She had

to go outside of her classroom to go to the bathroom at her school and she had left her classroom and was on the way to the bathroom when Mr. Griffin approached her, asked her if she had any crack cocaine, asked her if she had any money and she said no. Then she remembered that she did have a dollar or so and she gave that to him and then she went to the bathroom. Well, he followed her into the bathroom. She's in -- locked in a stall, and he comes into the bathroom and reaches over, over the stall door, unlocks it and presents a knife and says that he wants to have sex and that if she complies he will not hurt her. He performed oral sex on her. He digitally penetrated her vagina. He fondled her breasts. He fondled her vagina. In the middle of this activity another student walked into the bathroom, saw what was happening and turned around and walked away, and at that point Mr. Griffin allowed her to get up and get dressed and he said that he was going to take her to his house and that was the plan and when -- that he had a gun and that she needed to go with him, and when they left the bathroom she broke away and ran to a classroom, got away from him.

Q Dr. Gehle, did you discuss these charges in your interview with Mr. Griffin?

A Yes. I did.

Q And what if anything did he have to say about these charges during your interview?

A Well, what he said was interesting. For the first one, for the one that occurred in South Carolina he said that he found the victim in the men's restroom, she was standing on the toilet drinking beer and that she just ran from the restroom and approached her dad and that he fled because he believed that they were going to hurt him.

With the other offense he told me that it happened exactly as the victim said. He, he said that it -- that what she said was basically true and that he couldn't have sex with her because she was too tight, but he tried and that's also what the victim said.

Q This, this is the North Carolina offense?

A That's correct.

Q Okay. These -- this North Carolina charge happened in May of 1997; is that correct?

A Yes.

Q And Dr. Gehle, Mr. Griffin was released on bond in February of 1997; is that correct?

A February 15th, 1997.

Q Dr. Gehle, did you review Mr. Griffin's other prior criminal offenses that were not sexually violent offenses?

A Yes.

Q Why is it necessary to look at offenses that are considered -- that are not necessarily considered sexually violent?

A Well, it's important to, to look at those things to see what other types of behavior he engages in. It helps just to establish a timeline how much time he spent in prison. It, it can help, especially violent charges that are non-sexual can -- are related to increased risk for sexual offending. I also ask the person that I'm interviewing about all those charges, all the charges that are in their criminal history.

Q And were those, those offenses or convictions part of the bases of your expert opinion?

A Yes.

Q And did you find any convictions for offenses that were not necessarily sexually violent?

A Yes.

Q And what were those offenses?

A In 1973 he was convicted in North Carolina of kidnapping, damage to personal property and breaking and entering and larceny. He got between 20 and 40 years of confinement for that. In 1978 presumably while he was in prison he was convicted of assault with a deadly weapon. In 1998 in Horry County he was charged with assault upon an employee of a correctional institution. That charge was nolle prossed, dismissed. In May of 1999 he was charged with throwing of body fluids by a prisoner. That charge was dismissed. In 1999 he was also charged with assault upon an employee of a correctional institution. That was dismissed. In 1998 he was

charged with simple assault and battery, and he was convicted of that in 2004. In 2002 he was charged with two counts of assault and battery of a high and aggravated nature, and the original charge for that was throwing bodily fluids on an employee at the Department of Corrections. He was convicted of those offenses.

Q Dr. Gehle, what if anything did you find significant about his, his other criminal history?

A Well, he's committed a lot of violent offenses in which he caused a lot of harm to other people.

Q Dr. Gehle, did you also review Mr. Griffin's disciplinary history while he was incarcerated as part of your evaluation?

A Yes.

Q And why, why do you look at an individual's behavior while in prison while conducting these evaluations?

A I just want to see how they act in a really highly structured, controlled environment.

Q And Dr. Gehle, are records like those you reviewed in this case the type of -- that other experts in your field reasonably and typically rely on?

A Yes.

Q Did you use them in forming part of the basis of your opinion in this case?

A Yes.

Q What did you find when you reviewed his prison

disciplinary history?
A Well, he had many behavioral infractions in prison. He repeatedly assaulted staff members and other inmates. He used homemade weapons in some of those assaults. He also did things like threw liquids, including feces, on staff members. He flooded his cells. He was convicted of criminal offenses during his period of incarceration, and he had 29 disciplinary infractions that he was convicted of. He was also frequently hospitalized for mental health reasons.
Q Dr. Gehle, were any of his infractions of a sexual nature?
A Yes.
Q And what happened?
A Well, he had one, one sexual misconduct. That, that's the name of the infraction, and that was in, that was in 2000, and he was caught having anal intercourse with another inmate. It was unclear from the records whether that was consensual, but that behavior is an infraction in the prison setting. There was also two incidents that involved sexually inappropriate behavior or nonconsensual sexual behavior, but the records were unclear. One was in 2015 and one was in 2016.
Q What if anything, Dr. Gehle, did you find significant in regards to his disciplinary infractions while in prison?
A There was a lot of violence. There was a lot of

difficulty controlling his behavior and some of the, some of the incidents were sexual.

Q Dr. Gehle, did you review prior treatment records as part of your evaluation in this case?

A I had very limited treatment records, but I reviewed whether he had been to sex offender treatment, and I reviewed some of the mental health records.

Q And of the records that you reviewed relating to that, were they the type of records that are reasonably and typically relied upon by experts in your field?

A Yes.

Q Did you consider Mr. Griffin's prior treatment records as part of the basis of your expert opinion?

A Yes.

Q And what if anything did you find significant to your opinion about Mr. Griffin's sex offender treatment that he received at the South Carolina Department of Corrections?

A Well, he completed the first phase of sex offender treatment at the Department of Corrections in 2008.

Q And did you find his progress in treatment -- in the sex -- in sex offender treatment to be enough to preclude him from committing acts of sexual violence in the future?

A No.

Q Why not?

A Well, in his case he retained very little knowledge of

it. He told me that his four months of treatment entailed being shown a film. He said that he didn't understand what he was doing when he committed the offenses and that he was through with all of that, but when asked about the treatment all he really told me was that he was shown a film and then his answer was apart from that. He didn't know anything about treatment terms like risk factors or things like that that I would expect somebody to have learned in treatment.

Q In your interview with Mr. Griffin did you discuss his plans if he's released?

A Yes.

Q And why'd you consider that information?

A Well, I want to see if their plans are feasible, if they're making good judgments, if they actually do have a plan, things like that.

Q And what is Mr. Griffin's plan if he's not confined for treatment?

A Well, he said that he was going to go to church and sit in the back row and get his big money and look out for his great, great grandchildren. He said that he will receive or has received, he, he fluctuated then how he presented that throughout the interview, but he was adamant that he has earned $1,997,000 from Social Security for taking his mental health medications, and he said that he was going to, you know, enjoy that money. He might live with his family, planned

to buy a piece of land and buy a mobile home and he wanted -- and his sister wanted him to take care of her grandchildren.

Q Now, Dr. Gehle, will there be any authority monitoring Mr. Griffin?

A No. His sentence was completed on September 15th, 2018.

Q And Dr. Gehle, did you find his plans to avoid re-offense would prevent him from committing future acts of sexual violence in the community?

A No.

Q And why not?

A His plans aren't really practical. I spoke to his sister and she said that that, you know, that the money that, the money that he says he received from Social Security that that is inaccurate. He told me that he was -- he actually committed that sex offense in North Carolina because he wanted to go back to prison or it was the one in South Carolina. I'm not -- I'd have to look up and see which exactly one it was, but one of those offenses he said that he wanted to go back to prison because his family was trying to kill him because of this money. So he had some delusions and just some odd beliefs about that, and so that was really concerning.

Q Dr. Gehle, in your evaluation of Mr. Griffin were you able to diagnose him with a relevant mental abnormality or personality disorder?

A Yes.

Q What diagnosis did you assign to Mr. Griffin?
A I diagnosed him with other specified paraphilic disorder, biastophilia and with schizophrenia continuous.
Q Dr. Gehle, what is other specified paraphilic disorder, biastophilia?
A Well, a paraphilia is any intense or persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal physically mature consenting human partners. So that means that it is typical sexual behaviors. It's not fetish behaviors such as being sexually aroused by touching feet or by things like that. So that -- that's where that sexual interest in genital stimulation or fondling with people who are of a normal sexually developed age who are physically mature, so they're sexually developed, and they consent. So when somebody is sexually aroused to things outside of that parameter it's called a paraphilia, and if they have a pattern of this kind of arousal over a period of at least six months then it can be a paraphilic disorder. If they've acted on it and they or they're distressed by this arousal pattern then it's paraphilic disorder. Biastophilia is a type of paraphila, paraphilia in which the individual is sexually aroused by engaging in coercive sexual acts with a non-consenting person.
Q Dr. Gehle, are you familiar with the, with the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition?

A Yes.
Q And that's otherwise known as the DSM-5.
A That's correct.
Q What is the DSM-5?
A Well, it's a manual that's used by mental health professionals such as psychologists and psychiatrists to diagnose mental illnesses. The manual includes a summary of diagnostic categories and information about each of the diagnoses. It lists symptoms, and there's guidelines on what kind of symptoms and other conditions must exist for someone to meet criteria for a mental illness.
Q And Dr. Gehle, is the DSM-5 is that a learned treatise in your field?
A Yes.
Q Do other evaluators use the DSM-5?
A Yes. Everybody uses the DSM-5 in the mental health field.
Q Does other specified paraphilic disorder appear in the DSM-5?
A Yes.
Q And why was the other specified paraphilic disorder category created?
A Well, it's really because there are hundreds of paraphilias and not all of them could be specifically described in the manual. Eight paraphilic disorders are

described in the manual. So not all of them are included, but many common paraphilias are not included. Paraphilias share characteristics that make it really kind of unnecessary to include all of the paraphilias in that manual because they all involve a six-month pattern of deviant sexual arousal that's been acted on with a non-consenting person or that causes distress or impairment.

Q And now the DSM-5 lists several modifiers to other specified paraphilic disorder; is that correct?

A Modifiers are types. Yes.

Q And is biastophilia one of those listed modifiers?

A No.

Q And why is that?

A Well, again, they didn't list all of them. There is some controversy in the field about biastophilia or a paraphilia with non-consent because there's the concern that if that is included specifically in the manual that all rapists could be classified as mentally ill. Rapists could then claim that they're not guilty by reason of insanity because of this mental illness that they're -- that they can't help it, that they can't control their behavior. Any rapist then could be subject to civil commitment. So those are some of the reasons that it's not specifically included, but there are many common paraphilias that are also not specifically included.

Q Now, Dr. Gehle, you diagnosed him with other specified

paraphilic disorder, biastophilia. Why did you do so even though this controversy exists?

A Well, I take care when diagnosing that, and in his case there was evidence that he was sexually aroused, he had sex with, he engaged in sexual acts with, tried to engage in sexual acts with the victim after presenting a weapon. When you present a weapon to somebody that is because you want to get control of them. You want to cause them fear. You know that if you present a weapon to somebody and say, "I want sex," it's not going to get you a consenting victim. So he has no -- he did not want a consenting victim. People that want to have sex with a stranger would have other tactics in order to get a compliant, consenting victim, and it's abnormal to be sexually aroused when the person is not consenting.

Q Dr. Gehle, is other specified paraphilic disorder, biastophilia a recognized diagnosis in your field?

A Yes.

Q And how does Mr. Griffin meet the criteria for other specified paraphilic disorder, biastophilia?

A Well, he was convicted of two attempted sexual assaults. He was charged with and confessed to a third sexual assault. He attempted to sexually assault the 12 year old using a knife. He was on bond for one of the offenses when he was used the last one. He presented a knife to her. He told her that he had also a gun. These incidents occurred over more

than a six-month period. Using that weapon is just meant to scare, intimidate, threaten someone, and there's very little evidence that he was having sex in other ways. He has very few sexual partners, and so in my opinion he has a preference for a non-consenting coercive sex.

Q Now, Dr. Gehle, you mentioned or you also diagnosed Mr. Griffin with schizophrenia. Is that correct?

A Yes.

Q And what is schizophrenia?

A Schizophrenia is a psychotic disorder that includes delusions, which are fixed false beliefs, hallucinations, those are perception like experiences without an external stimulus. It's seeing things that aren't there, hearing things that aren't there, disorganized thinking which is evidenced by speech that's tangential or jumping topics or when you ask a question it's only -- the answer is only loosely associated with what you asked or speech that's very incoherent. It's also grossly disorganized or abnormal behavior. So people's behaviors can go from a childlike silliness to unpredictable agitation. They just act in very odd, abnormal ways, and there's also negative symptoms, which is a decrease in facial expressions, so a flat voice, a flat facial expression, loss of interest in pleasurable activities, loss of interest in social interaction. So you have to have a couple of these types of symptoms in order to meet criteria

for schizophrenia.
Q Dr. Gehle, how does Mr. Griffin meet the criteria to be diagnosed as suffering from schizophrenia?
A Well, he's been diagnosed with schizophrenia or psychotic disorders for a number of years. All of the records I looked at had, had diagnoses in that category of psychotic disorders and schizophrenia is a specific type of psychotic disorder. He exhibited delusions and disorganized speech in my evaluation of him. He told me that he had a history of auditory and visual hallucinations when he wasn't taking his antipsychotic medication. He has a history of decompensation, so becoming more psychotic when he is noncompliant with his medications. These symptoms occurred over a period of decades. His delusional thinking and disorganized thinking have remained present even when he is on psychotic medications and so that's the basis of, of, of the diagnosis for him.
Q Dr. Gehle, could you give some examples of his delusional or disorganized thinking?
A Yes. Refer to my report here. Well, one of the primary delusions that he had was that he had gotten or will get $1.9 million from the government, Social Security, which his sister said was not true, that his family was trying to kill him in order to get that money. That was a big delusion that he had. He also had delusions related to sex. He told me that he was teaching others in prison to stop eating sweets and meat and

milk because then they won't have to masturbate. He said that those foods stimulate the glands and make you want to masturbate, and he gave me the example of when a, when a rabbit eats a carrot that rabbit will then go out and be on top of all the other smaller rabbits because carrots have sweeteners in them that cause, causes the rabbit to be very sexually stimulated. He said things about if -- you can be born again if you stop eating meat or pork for three days and that your third eye will open up. He said that a bunch of the women in prison were talking about him, that one of the guards was interested in a relationship with him. He said that a female guard had a girlfriend in the streets but that she wanted a part-time boyfriend and she was interested in him. Those were some of his delusions that I came across.

Q Dr. Gehle, in your report you used the modifier continue -- continuous. What does that mean in relation to Mr. Griffin's schizophrenia?

A That means that he has -- that he experiences psychotic symptoms almost all the time, even when medicated.

Q What is the presence of these two mental abnormalities in Mr. Griffin mean for his risk to offend sexually?

A Well, the other specified paraphilic disorder, biastophilia means he has deviant sexual interests involving coercive sexual acts with non-consenting persons. Those type of interests if acted upon can result in new criminal

behavior, sexually violent offending. Then in conjunction with his schizophrenia he has delusional and disorganized thinking and that impairs his judgment. It impairs his impulse control. He has paranoid delusions that are related to physical violence and things like that against women. He has delusions related to sexual functioning. He said that he committed one sex offense because he wanted to return to prison in order to avoid his family from killing him for that money and that he said he had ongoing problems with, with his family because of that money. These things just impair his judgment and increase his risk that he'll commit another sexual offense.

Q Now, Dr. Gehle, you looked at Mr. Griffin's risk to reoffend sexually as part of your evaluation; is that correct?

A Yes.

Q Okay. How do experts such as yourself measure risk?

A We typically use actuarial risk assessment tools and look at the presence or absence of dynamic risk factors.

Q So an actuarial risk assessment tool that looks at -- are there -- are they called static risk factors? Is that what looks at?

A Yes.

Q And what are static risk factors?

A Those are historic and demographic factors that increase the risk that someone's going to commit another sex offense,

and those factors typically do not change with treatment. They're just based on the person's history and demographics.

Q And Dr. Gehle, when you were -- when you were conducting this actuarial assessment of Mr. Griffin, what actuarial assessment did you use?

A I used the Static-99R.

Q And what is the Static-99R?

A It's an instrument that is designed to assist in the estimation of sexual and violent recidivism for sex offenders. It's the most widely used measure of sexual recidivism, and it estimate -- the estimates were derived from new charges and reconvictions of groups of individuals. So we're comparing Mr. Griffin to groups of sex offenders.

Q So Dr. Gehle, could you -- how, how does the Static-99R measure risk? Could you explain or give an explanation of it?

A Well, they looked at, the researchers that compiled this looked at a large sample of sex offenders, and they looked at a variety of different demographic information and historical information, so their age, what kind of -- how many crimes they have committed, have they had non-sexual violent crimes, how many sentencing dates, what type of victims, male victims, stranger victims, non-family victims, any contact offenses or noncontact offenses, things like that. They looked at that, at that whole group of sex offenders and then they wanted to see who went on to reoffend. So they wanted to see with that

group that went on to commit another sex offense are they more likely to have these factors, and what they found was those are the factors that can help differentiate the groups of offenders who go on to reoffend and those that don't.

Q And Dr. Gehle, when you're describing these, these groups in this research, was, was, was this a large study?

A Yes. Thousands of people, many studies.

Q And has the data been updated throughout its existence?

A Yes.

Q And what was Mr. Griffin's score on the Static-99R?

A He has a score of four.

Q And what does a score of four on the Static-99R indicate to you about Mr. Griffin's risk for re-offense?

A Well, his score of a four means that -- so when I take -- when I get that score I can look at various different like ways to look at it. So it is -- if we look at --- people with a score of four, 11 percent of them went on to reoffend within five years. It also makes him 1.94, almost two times more likely to commit another sex offense compared to just the average sex offender. So the average score on the static is two, and they range from negative three to 12, and hardly anybody scores over a seven. So a seven is a very, very high score, and his is four.

Q And did you also look at dynamic risk factors as part of your evaluation in this case?

A Yes.
Q What are dynamic risk factors?
A They're psychological or behavioral features that are related to an increased risk to reoffend and that are potentially changeable in treatment.
Q And what if any dynamic risk factors did you find applied to Mr. Griffin?
A He has a preference for pubescent children, offense supportive attitudes, sexualized violence, lack of emotionally intimate relationships with adults, poor problem solving abilities, lifestyle impulsiveness and resistance to rules and supervision.
Q Okay. Let's, let's just go through those real quick, Dr. Gehle, so I -- and I want to understand better what those are. So an attraction to pubescent children, what does that mean?
A He has two victims that were age 12. By their age they're likely in the very early stages of puberty.
Q And what was the second one?
A Offense supportive attitudes.
Q Well, how does he, how does he exhibit offense supportive attitudes?
A He does not recognize how a victim could be harmed by his sexual behavior, and he just puts his own desires in front of others and, and gives very minimal, if no regard, for the victims.

Q You also mentioned, I believe, it was a preference for sexualized violence. How did you reach that?
A Yes. Just based on his use of weapons and threats to gain, you know, in his sexual activity, I guess.
Q And you also said poor problem solving ability; is that correct?
A Yes.
Q And how does Mr. Griffin meet that dynamic risk factor?
A He reportedly committed sexual assault behaviors to get, to get secondary gain. So he said that he was having problems with his family and that he committed this sex offense in order to go back to prison instead of being killed by his family. He also reportedly inappropriately touched another inmate in the prison in order to move living units. So those were a couple of examples of, of him just using poor problem solving. His schizophrenia really interferes with his problem solving abilities.
Q You also mentioned lifestyle impulsiveness or low self control. What does that mean?
A Yes. He really has low self control. He has repeated acts of violence that he's engaged in in the community and in the correctional setting, lots of irresponsible decision making. He's been noncompliant with medication, sexually inappropriate behavior in the prison and criminal activity in the prison. He has unrealistic goals. He told me, for

example, that he was going to get married in two or three weeks of release from prison despite him having never been in a relationship before, and then he just, just engages in lots of repeated violence, assaulting other people and behavioral infractions in the prison.

Q And that, that final dynamic risk factor that you talked about I think I'm at the final one is resistance to rules and supervision; is that --

A There's one other, but --

Q Oh, okay.

A Yes.

Q Well, what was the other one then?

A The other one was a lack of emotionally intimate relationships with adults.

Q And how does Mr. Griffin meet that criteria?

A He's had no long-term romantic relationships, really no romantic relationships to speak of, and he's never been married. He's never lived with a partner, and that's what that risk factor speaks to. The last one is resistant to rules and supervision, and that is he has defiant attitudes towards authorities, multiple instances of throwing substances on prison staff, physical assaults on staff members, violations of the conditions of bond and committing that new offense while he was on bond, and he's also had some failure to appear for court dates in his criminal history.

Q Dr. Gehle, how do these static and dynamic risk factors relate to Mr. Griffin's risk for reoffending sexually if not confined to a secure facility for treatment?
A Well, all of these factors indicate that he's likely to commit another sexually violent offense if he's released to the community.
Q Dr. Gehle, to be clear, it is your expert opinion that Mr. Griffin suffers from two mental abnormalities; is that correct?
A Yes.
Q Those mental abnormalities are other specified paraphilic disorder, biastophilia and schizophrenia continuous?
A Yes.
Q And do you have an opinion as to whether Mr. Griffin's other specified paraphilic disorder, biastophilia and schizophrenia continuous causes him serious difficulty in controlling his behavior?
A Yes. I believe they do.
Q Do you have an opinion as to whether Mr. Griffin is likely to commit acts of future sexual violence if not confined for treatment?
A Yes.
Q Dr. Gehle, do you have an opinion as to whether Mr. Griffin's other specified paraphilic disorder, biastophilia and schizophrenia continuous make him likely to engage in acts

of sexual violence if not confined to a secure facility for long-term control, care and treatment?

A Yes. I believe that those disorders make him likely.

Q Dr. Gehle, do you have an opinion as to whether Mr. Griffin meets the criteria to be found a sexually violent predator under the statute?

A It's my opinion that he meets the criteria of a sexually violent predator.

Q And are all these opinions and conclusions based on a reasonable degree of psychological certainty?

A Yes.

Q Dr. Gehle, please answer any questions that Mr. Falk or the Court may have for you.

THE COURT: All right. All right. Ladies and gentlemen, we've been going about an hour and a half. I'm going to let you step to the jury room. Do not discuss the case at all while you're back there. If you all will select a foreperson, reduce it to writing, give it to my deputy here. When you all come back he'll give that piece of paper to me and that foreperson will sit where this gentleman is in the grey pullover. All right. Step to the jury room. Do not discuss the case. I'll get you back out here in a few minutes.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Mr. Falk, just for planning purposes how long

do you anticipate cross examination?

MR. FALK: Probably not as long as typical, but it's probably going to be at least 40 minutes.

THE COURT: Okay. And this is the only witness the State has?

MR. MORROW: That's correct, Your Honor.

MR. FALK: No witnesses.

THE COURT: All right. Well, let's try to get -- let's try to finish with testimony today. We can argue and charge in the morning. Sound fair enough?

MR. FALK: Yes, sir. Sounds fair enough.

MR. MORROW: Sounds fair enough, Your Honor.

THE COURT: Dr. Gehle, I'm going to let you step down, but do not discuss your testimony, and when we reconvene I'll get you back up here before I bring the jury in and you'll be seated there.

A Can I use the restroom?

THE COURT: That's what we're going all to do if you need to. All right.

A All right. Thank you.

THE COURT: We'll stand down for a few minutes.

OFF THE RECORD

(The following takes place outside the presence of the jury. A bench conference is held.)

THE COURT: Will you check and see if the jury is ready?

Is he bringing them? Okay. Thank you.

(The following takes place in the presence of the jury.)

THE COURT: All right. Ladies and gentlemen, got all the jurors back. Juror Number 83, Mr. Crowder, you're my foreman. That'll be your seat throughout the remainder of this trial. Okay?

JUROR 83: Yes, sir.

THE COURT: Madam Court Reporter, will you mark that as a Court's Exhibit, please?

(Court's Exhibit Number One [Foreperson Selection] appropriately marked.)

THE COURT: All right. Cross examination.

CROSS EXAMINATION

BY MR. FALK:

Q Dr. Gehle, can you just discuss a little bit more about the interview? You said it take -- it lasted six hours?

A No. I believe it lasted three hours and 50 minutes.

Q Okay. And a lot of -- part of your, your opinion is based, really, on information that he self-reported; is that not correct?

A Part of it is. Yes.

Q For example, talking about whether or not he had romantic partners, whether he had lived with anybody for over a period of time, that would -- your information for that is basically on the self-report. Is that correct?

A That came from him and came from his sister. His sister told me that she had never known him to be involved in any kind of relationship.
Q I'm just -- there were times when -- well, you said he, he had some -- some of his answers did not make sense --
A That's correct.
Q -- his response to the question; is that correct?
A Yes.
Q Do you have any concerns that you were getting accurate answers to that?
A Well, of course, that is a concern in some areas. I tend to open -- or ask open-ended questions so that I can get just whatever they want to offer and then questions will typically narrow down from there.
Q Okay.
A So I'll clarify to make sure that I'm understanding what he's saying. I'll ask for him to repeat himself. I'll sometimes ask for him to spell words so that I can understand because he tended to mumble. So some of his speech was difficult to understand.
Q How was his spelling?
A It was not terrible I don't think. I don't think that -- like intelligence-wise there's probably a little bit of impairment but it's hard to tell if that is related to his schizophrenia or if he has an intellectual disability.

Q Well, that was really kind of into my next question. Did you give him any type of IQ test?
A No.
Q So he suffers from schizophrenia; is that correct?
A Yes.
Q And in his record -- his medical history which shows that he suffered from that for a long period of time; is that not right?
A Yes.
Q Is he taking medication for the schizophrenia? Well, let me ask a better question. Was he ever prescribed medication for the schizophrenia?
A Yes.
Q And what type of medication was that?
A He's been prescribed antipsychotic medications and then medications that accompany that to control side effects.
Q Is he -- do you have an opinion on his functioning when he is on his medication?
A I believe that when I saw him he was on his medication, and he has some symptoms, but he doesn't have hallucinations. He still has delusional thinking, and he still has like disorganized thinking as evidenced by his speech.
Q And what's the difference between the delusions and hallucinations?
A Delusions are fixed false beliefs, things like "I think

I'm God," or things like "I think I'm receiving special messages through the TV that's telling me I'm super important," things like that, "Women are attracted to me," all that kind of stuff. Hallucinations are seeing, hearing, tasting, smelling, feeling things that aren't there. So you're having a perception, a sensation, but you don't have any external stimuli that's causing it. So it's coming from inside your brain.

Q So in your report you show the time that in 1999 he was evaluated for competency to stand trial; isn't that correct, around that time?

A Yes. I believe so. Yes.

Q Late 90s?

A It was 1999.

Q And your record shows that he was returned to competency or rehabilitated?

A Well, he was diagnosed with psychotic disorder not otherwise specified. He was deemed incompetent. He was hospitalized at a psychiatric facility for competency restoration, treatment, and he was then, with treatment he was found competent to stand trial. So after a period of treatment he was then reevaluated and found competent to stand trial.

Q Okay. So it would appear that he could go to a -- what type of facility did you say he went to for restoration?

A He would have went to a forensic psychiatric hospital.
Q Okay. And he was able to be rehabilitated so that he could stand trial? At least that's what his record shows?
A He was able to -- his symptoms decreased to the point that he could understand the nature of the charges against him and assist his attorney in his own defense. That's the standard for competency.
Q Do you know, and if you don't know that's fine, but is the sexually violent predator treatment program, that facility, is that a forensic hospital?
A It's not a forensic hospital per se. No.
Q So he would -- if he was going to be returned to competency or be rehabilitated he would go to a forensic hospital?
A Okay. Return to competency and rehabilitated, I, I would consider those things different. So if, if he wanted to go to or if he was incompetent to stand trial on a criminal case, if the Judge found that he was incompetent he would get a 60-day period of restoration in the forensic hospital in Columbia. It's on the same campus where my office is. He would get up to 60 days. At the end of the 60-day period or if he was improving before then, which with his condition would be unlikely, so he would be reevaluated and they would make another opinion that they would present to the Court and the Court would make a decision.

Q Okay. Yeah. But I meant rehabilitated. I meant for rehabilitated to competency, not any other type of --
A So he'd be restored to competency?
Q Restored to competency --
A Yes.
Q -- is a better term. Thank you. When you -- what time of -- when did you speak with him? When was your evaluation?
A I interviewed him on May 2nd of 2017.
Q Okay. Did you -- part of your evaluation did you ever look at the -- his medical records from the, the J. Reuben Long Detention Center, the Horry County Detention Center?
A I did not look at those records until you provided them to me today.
Q Okay. And so I showed you some records that I had gotten from the Horry County Detention Center?
A That's correct.
Q And did you have a chance to look over them?
A I, I looked over them for -- to answer some questions that you had.
Q Okay. And did -- and do they look like medical records?
A Yes. And it's a medical administration record.
Q Okay. Could you see in there whether or not he was receiving the medicine? Could you have testified that he was -- been diagnosed medicine to treat the schizophrenia; is that correct?

A Yes. In the prison when I saw him I believe that he was taking medication.
Q Okay. Does -- do you have an opinion whether or not he's still taking medication based on those records that you have?
A Yes. It appears from these records that he stopped taking medication in the middle of January of, I believe, 2018. Yes. He's -- his medication compliance, so whether he was taking it was somewhat sporadic, and then on, I believe, January 12th, 2018, the doctor discontinued his medications because he was being noncompliant with taking them.
Q Okay. How would somebody respond if they were on psychiatric medications for schizophrenia and then they went off of them abruptly? What type of symptoms, what type of physical manifestations would he show?
Q Well, abruptly is not a huge concern for psychotic medications. There's not a huge withdrawal syndrome with going off those medications abruptly or just, you know, taking them and then not taking them, but you would expect the symptoms that they had before taking medications to come back.
Q Okay. Can somebody have a diagnosis of schizophrenia without being diagnosed as a sexually violent predator?
A Yes.
Q Okay. Is there any other evidence in his medical records that he's gone from periods of being on his medicine to decompensating and then being restored?

A Yes.
Q Okay. So is it more than once?
A Yes. I believe so.
Q Now, you had diagnosed him with having biastophilia, and I know Mr. Morrow talked to you a little bit about that. I cannot -- this is -- we all consider this the bible of -- in your field, forensic psychiatry, forensic psychology.
A Well, it's really just in psychiatry and psychology and mental health, not necessarily forensics.
Q Okay. So in the fields of psychology and psychiatry this is a book that you always rely on?
A Yes.
Q Okay. And biastophilia, I can't even find that in the index; can you?
A I, I don't -- it's probably not in the index. That would be correct I would say.
Q And you talked a little bit about the -- there's been some controversy in the past about whether or not biastophilia or in it's -- and in some of the conferences they use a different terminology for that. Wasn't there a coercive pedophilic or paraphilic disorder? Wasn't that also another term used?
A Term used by --
Q To, to diagnose -- let me, let me ask a better question. There was a DSM-4 that was before this; is that correct?

A A 4-TR.
Q Okay.
A A text revision so.
Q And wasn't there some question about whether or not the diagnosis of coercive paraphilic disorder would be included going into the DSM-5?
A Yes. They considered -- the people who write this book are the American Psychiatric Association. They, they have work groups for like each category of diagnosis. Each diagnostic category they assign a work group, and the work group for the paraphilias considered including something like biastophilia or non-consent or paraphilic coercive disorder.
Q And that work group when they were considering that then it was not put in the DSM-5.
A That's correct.
Q And -- well, how do you differentiate then -- not everybody who commits a rape suffers from a paraphilia; is that correct?
A That's correct.
Q How do you differentiate somebody who just has a -- who has committed a rape versus somebody who has a, a paraphilia that causes him to commit a rape?
A We look at the conditions under which they committed the rape, and we look at a variety of things like the use of weapons. That's the big one because the use of weapons

indicates that they're -- they did not want to talk themselves or talk this person into having sex with them. They didn't want to manipulate them. It was outright "I want you to be scared. I want you to comply. This is happening," kind of thing. There's no buildup. It's just immediate. Whether you are sexually offending strangers, whether you have a like -- things like whether it was family members, males, females, I'm really blanking on some of the things that I consider, but whether they have a rape kit, whether they're offense pattern is similar, so are they, are they committing the same types of offenses or are they wildly different, how did the victim react to the offense and did the person -- was -- were they able to commit the offense in light of the victim fighting with them, with the victim crying, with the victim showing non-consent, things like that.

Q Now, you did not speak with any of the victims in this case; did you?

A That's correct.

Q So what do you know about the victims?

A I had to rely on the records.

Q Okay.

A And I know about two assaults. They were both 12 year old females, strangers.

Q But you don't know how mature the 12 year olds looked; do you?

A He told me that he, that he rubbed his fingers on the -- one of the 12 year old girl's pubic hair, which means that she would have been in puberty if she had pubic hair, then she was in puberty.

Q Okay. You had talked earlier in your definition of paraphilia you used phenotypical partners. What was that term?

A Just give me a second here. I'll find that page. So phenotypically normal, physically mature, consenting human partners.

Q Well, you did not -- you did not diagnose Mr. Griffin as being a pedophile; is that correct?

A That's correct.

Q So in that context what does phenotypically normal mean for a 12 year old girl? I mean, that's clearly a crime; right, as a sexual partner?

A A 12 year old girl?

Q Yes.

A Yes. The age of consent is 16 in South Carolina.

Q But as far as whether or not she was old enough to get pregnant or be sexually -- I guess I don't -- I'm still fumbling with what phenotypically normal means.

A It means that somebody is like a normal gender. They are sexually mature. So they have passed through the stages of puberty.

Q Okay. So do you have any information that these girls were not phenotypically normal partners for him other than their obvious age?
A Other than the age, no, and that's why I didn't diagnose pedophilia. Yes.
Q Okay. Okay. So there was nothing -- because you would agree that there was nothing normal about an adult being sexually attractive to a six year old girl?
A Correct.
Q I mean, biology, whatever, just doesn't make any sense for reproduction or anything, a six year old girl?
A Correct.
Q But a 12 year old girl that's not necessarily -- but being attracted to a 12 year old girl is not necessarily a sign of any type of paraphilia; is that correct?
A It would depend on that 12 year old girl and their level of sexual development.
Q Okay. We were talking a bit -- well, first of all, on biastophilia, with the medication that he was prescribed would that affect his biastophilia? The medication -- first of all, is there medication that you can give somebody who suffers from what you're saying is biastophilia?
A Yes.
Q What would that medicine be?
A Those medications are things that decrease somebody's

sexual arousal. It is things like Depo-Provera, which is a birth control injection. It is things like drugs that are used to treat prostate cancer. Those things decrease arousal, and they can be used to treat impulsive sexual behavior like biastophilia.

Q But they would, they would treat all manner of sexual arousal; is that correct?

A That's correct.

Q Yes. So it's nothing that would target biastophilia?

A That's correct.

Q But the schizophrenia medicine sort of targets those symptoms? It can help people not have the delusions and the hallucinations?

A Yes.

Q What do you know about his medical history or at least as far as whether or not he was taking his schizophrenia medicine when he was out of custody prior to his arrest in 1997?

A I know that he was in prison right before that, and he told me that he took medication in prison, but I don't know if he was medication at the time of the offenses.

Q If he were brought back to competency and given the medicine for schizophrenia, can you say with any degree of medical certainty that that would not affect his biastophilia?

A From what I've seen in records with him, he decompensates and gets very ill, but when he's appropriately medicated he's

still ill. He still has impaired thinking, disorganized thinking and he still has delusions, and some of those delusions are sexual in nature.

Q Now, one of the tests that you -- one of the risk assessment measures you used was the Static-99.

A Yes.

Q And it's safe to say that the, the only variable on there that is not static is age; is that correct, because that changes, that will change over time?

A Yes. It's, it's something that changes, but other things change if somebody commits another offense and things like that.

Q But as far as the picture of who he was in 1997 when he went away to prison and who he is today, if you did a Static-99 back in prison the day he was sentenced, would it still be the same four other than the age?

A Let me find that because I think it would still be the same. Yes.

Q None of his prison time affected his Static-99 score?

A I did not include his prison conduct. Now, in -- it can be included. So if you can -- if you commit a sexual infraction in the Department of Corrections and you are punished for that it has to meet a minimum threshold per the scoring rules of the static, but that can become their index offense, so their most recent offense. With him I did not

include those charges because it was unclear to me if the sexual misconduct that he had was consensual sex, and there were other instances of sexually inappropriate behavior but I couldn't tie infractions to those. So I didn't know if he was punished for those things.

Q Okay. But as people age, once they're over 40, as people age, does the risk to reoffend go down as measured by the Static-99?

A Yes. The risk -- when we look at age, so you can get one point if you're between 18 and basically 35. You get zero points if you're between like 35 and about 40. You get negative one point if you're between 40 and basically 60, and when you're over 60 you get negative three points. So his score also reflects that negative three points.

Q Okay. But it also is a sign that -- it also shows the fact that there's a recognition that the older people get the less likely they are to reoffend.

A That's correct.

Q Once they get to an age of --

A Yes.

Q Okay. Can the Static-99 measure -- what would his untreated schizophrenia, how would that effect his risk to reoffend?

A Well, it has nothing to do with the Static-99R.

Q Right.

A But it does -- untreated schizophrenia can result in more impaired behavior, more impaired thinking, more delusions and that can cause somebody to act out in a variety of ways. One of them could be sexual. In his case it seems like that was part of his offense pattern.

Q Now, you had said that he has a risk of violent crimes and that there was a risk -- he posed a risk of committing an assault going forward. Was that not right?

A Well, I don't know that I, that I said anything about his violent crimes but like that are non-sexual but I believe that he does have a risk to do those things just based on his past history of doing them repeatedly over and over and over.

Q But the risk to commit an assault that wasn't a sexually violent crime does that make somebody a sexually violent predator?

A No.

Q Because what we're talking about is whether or not he has a risk to commit a crime of sexual violence going forward; is that correct?

A Correct.

Q And whether or not he has other assaultive conduct, that's not what we're talking about here today; is that correct?

A That's correct.

Q And, for example, he was doing something, throwing bodily

fluids that's not necessarily a sexual violent -- sexually violent offense; is that correct?
A That's not a sexually violent offense.
Q Okay. Now, you could have a high score on the static and also not be a sexually violent predator; is that correct?
A That's correct.
Q So there has to be some type of connection between the diagnosis and the risk?
A Well, you could have a very high score on the static, but you might not have a diagnosis, and therefore, you wouldn't meet criteria because you have to have a mental abnormality or a personality disorder that's making you likely.
Q And there has to be a connection between the mental abnormality and the risk?
A Yes. The mental abnormality or the personality disorder has to cause some volitional or emotional impairment.
Q Okay. The term I get sort of hung up on is likely to reoffend. You had said according to the static he had 11 percent chance to reoffend within five years?
A That's not quite how it is portrayed. People with a score of 11 within five years, or I'm sorry, people with a score of four, his score, within five years 11 percent of them were charged with or convicted of a new sexual offense.
Q Okay. How's that different from what I said?
A Because it's not that we can just say he has an 11

percent chance.
Q Okay. All right. And so the next five years people with that same score, 11 percent of the people with that same score sexually reoffended in five years; is that correct?
A Yes.
Q So --
A They were caught for that. Yes.
Q -- he's 62 right now; is that right or is he 63? Actually that was one of the issues that you had with his personal history; right, is not being able to --
A Yes. He told me -- I mean, he was not clear on how old he was. He was born in 1956.
Q Okay.
A So he should be 50 or 62.
Q All right. And five years from then he would be 67.
A Yes.
Q Okay. Does the, does the risk go down as, as you go out in years? I mean, if it's 11 percent in five years, what's it in ten years? If you go offense free for five years, what's it look -- you know, does the risk go up or down when you're going out to ten years?
A Yeah. So I compared him to a routine sample, and it doesn't give a ten-year rate, but there is some research out there saying that the longer you're out in the community offense free your risk decreases.

Q Uh-huh.
A There's a table in here, I think. I'll have to find it, but I couldn't tell you right off the top of my head like how much it decreases.
Q But it does decrease?
A Yes. In general when they look at the groups that would be the overall finding, but you have to be completely offense free, no violent or no sexual behavior within that time period. If you're out committing offenses that, that could land you even for a day in jail then it -- your risk to commit another sex offense actually doesn't decrease. That's what that research has shown.
Q I want to get back to the -- your definition of biastophilia. Doesn't the person have to get the arousal from the act of forcing somebody?
A Well, it's a six-month pattern of behavior in which the person is sexually aroused by engaging in coercive sexual activity with a non-consenting person so.
Q How do we -- how do we know he just wasn't aroused by the 12 year old girl?
A Well, he started the offense by presenting a knife before he'd even really seen the 12 year old girl or, you know, maybe he'd seen her for a second. So, I would --
Q Sometimes that can be all it takes to -- if somebody's attracted.

A Perhaps, but especially the girl that was in the bathroom at the, at the, at the store he saw her for probably a split second. I mean, she opened that bathroom door and he pushed his way in and said he wanted sex, had a knife, held that knife out to her, and I mean that, that decision seems to me that it was preceding him seeing her or being sexually aroused by her.

Q But just saying that he wanted sex was not necessarily a sign that he had biastophilia.

A That is a sign when under those conditions with a complete stranger who he is not -- has not been stalking her that we know of, I mean, she was in the bathroom, he comes in. He goes to the bathroom, knocks on the door, hears her say something and hears that she's a female, that she's likely young. She was 12. So she probably sounded like a 12 year old and then when she comes out he pushes his way in and threatens her and sex is immediately what he wanted. So that is evidence of that sort of arousal pattern.

Q And that happened in 1996, '97?

A That was in 1996 after he had been out of prison for less than a month and he had been in prison on a very, very long sentence. He had been in there I believe for 23 years on a kidnapping charge.

Q So the last evidence that you have that he has -- that he has acted on any type of biastophilia is evidence that

happened in 1996?
A No. The other evidence that I definitely have is from the offense that he committed after he was out on bond for the 1996 offense. He was not convicted of that offense because it was dismissed when he was extradited here, but I believe that they have a hold on him. So those charges could become active.
Q But that's still that same time period of 1996, '97, '98?
A That was, that was 90 -- that was '97. So I'm looking for a six-month pattern of behavior, and I have that. We also have the earlier offense from the 1970s, but I don't have a lot of information about that one. His sister told me that that that offense had to do with him having some sexual behavior with a neighbor, and he got charged with a sexual offense for that when he was 16.
Q But still we don't have anything this century, no conduct this century; right, nothing since 2000?
A There are some allegations and information in the Department of Corrections' records that he inappropriately touched another inmate in order to get moved to a different unit, and there is also information that he was being investigated under the Prison Rape Elimination Act for behavior that occurred in prison and that has definitely been in the last century. Those, those incidents were in 2015 and 2016.

Q What discipline did he receive for those?
A Those are the incidents that I don't know if they were tied to disciplinary infractions.
Q So you don't know if they were -- that that was some type of consensual activity that was going on or whether or not that was a sign of somebody forcing themselves? You don't have information?
A So the quote that I, that I got from the records was that he reported he wanted to be removed from the step-down unit. So he inappropriately touched another resident, and then I know that Prison Rape Elimination Act investigations are when somebody alleges nonconsensual sexual contact. If he was just having sex with someone in the prison and it was consensual he could be charged with a sexual misconduct infraction, which he was in 2009, or maybe not 2009. That was in 2000 and that -- the write-up, narrative on that offense appeared that the sex could have been consensual, but --
MR. FALK: One moment, Your Honor.
BY MR. FALK:
Q One, one little last area. You had said that he had schizophrenia and that's in the DSM-5?
A Yes.
Q And that's on page 99, and they list a lot of criteria there, diagnostic criteria.
A Yes.

Q Okay. And what does that term, diagnostic criteria, mean?
A Well, it's, it's symptoms or conditions that have to exist in order to meet criteria for this disorder.
Q And so this lists eight, one, two, three, four, five, six, seven different criteria that you have to meet; is that correct?
A Well, there, there are five different symptoms, that that's the hallucinations, delusions, disorganized speech, grossly disorganized or catatonic behavior, negative symptoms. They have to have two or more of those for a significant period of time during a one-month period or less if it -- if they've been treated, and they have to have -- at a minimum they have to have delusions, hallucinations or disorganized speech. That has to be one of the symptoms that they have.
Q And by -- oh, go ahead.
A Then the other criteria are other conditions, not necessarily symptoms. So it's time periods. It's -- if they have this disorder the symptoms could be because of that and you need to be like probably not diagnosed. It depends. It's a complicated diagnosis.
Q But is there -- is there uniformity in, in the psychiatric and psychological fields that these are the -- this is the way you diagnose somebody with schizophrenia?
A Yes.

Q You follow these, these criteria?
A Yes.
Q So that if you talked to a doctor in California and said, "I have this guy. He's done, dut, dut, dut, dut," and you knocked off, you checked the boxes on some of these criteria he would possibly or she would possibly agree with you, right, because you all are using the same criteria for the diagnosis?
A Yes.
Q What are the diagnostic criteria for biastophilia? They're not in this book; are they?
A Well, it's -- the diagnostic criteria are, for a paraphilia it's a six-month pattern of deviant sexual arousal or paraphilic arousal and that paraphilia is -- would go back to that same definition. So it's any intense or persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature consenting human, human partners. So a paraphilia is anything outside those conditions. So right there is consenting human partners. So if somebody is not consenting that's a paraphilia. A paraphilic disorder has to be a six-month pattern of that sexual arousal that the person has acted on with like non-consenting person or that causes them distress and impairment, like they're very upset about it. In his case he's acted on it.
Q Is there universal agreement in your -- in forensic

psychology that biastophilia is a paraphilia?
A Biastophilia is listed in all of the like lists of paraphilias that I've ever seen. I mean, there are, there are many paraphilias and really anything outside of that definition could be a paraphilia.
Q I have no further questions.
THE COURT: Any redirect?
MR. MORROW: Briefly, Your Honor.
THE COURT: All right.

REDIRECT EXAMINATION

BY MR. MORROW:
Q Dr. Gehle, we've talked a little bit about Mr. Griffin's schizophrenia, and Mr. Falk asked you a little bit about he's -- decompensation or his deterioration of his, of his symptoms. In your report you looked at his history of decompensation when noncompliant with medications, and you found that that was documented, that was documented in the records; is that correct?
A Yes. When he stops taking medications he will have an increase in symptoms or we call that decompensation. So he's not functioning at the level that he's capable of.
Q You also found in your report that even when he was taking the medication that he -- when he was taking the medication that, that his delusion -- delusional and disorganized thinking appeared to remain present while other

symptoms were remitted; is that correct?
A That's correct.
Q Or decreased.
A Yes.
Q So even when he was taking the medication he still had this delusional or this thinking and disorganized thinking; is that correct?
A Yes.
Q Okay. In addition to -- we talked about the Static-99, but we also talked about some dynamic risk factors that he had and other concerns that you looked at. You don't just look at the Static-99 when assessing if someone's likely to reoffend; do you?
A That's correct.
Q Okay. And you found -- you looked at whether or not he carried a weapon in his, in his crimes. Is that one of the things you looked at?
A Yes.
Q And you found that significant; correct?
A Yes.
Q And why did you find that significant?
A Well, it means that he didn't want a consenting victim. He wasn't going to use sort of the normal or more common, less harmful tactics to gain a sexual partner. I mean, it's not uncommon for strangers to have sex, but there's a variety of

like courtship behaviors that occur before somebody will agree to have sex with you or, you know, even if you are -- if you're gaining consent because you're paying somebody I wouldn't call that abnormal, but this is "I'm going to use a knife. I'm threatening you. I'm showing you this knife," and the only reason that you do that is to create fear and to make sure that the victim knows that you're going to hurt them if you -- if they try to, to fight and that's very problematic.

Q In addition to looking at like whether he used a weapon, you looked at other factors, and one of those was whether he offended against strangers like you just mentioned; is that correct?

A Correct.

Q And you also looked at how he offended and the circumstances. He offended against minors where interested adults were nearby; is that correct?

A Yes.

Q And he offended -- did you also look at whether he offended in situations where he could easily be caught?

A Yes.

Q And why is, why is that significant?

A Well, I mean, that speaks to impulse control problems. I mean, if you're -- if -- this is a 12 year old girl at a store. I mean, 12 year old girls can go to stores by themselves, but it's likely that there are adults attached.

So that's very dangerous. I mean, you're putting your safety at risk because that's what happened in that situation. The offense that happened at the convenience store he, he pushed that girl into the bathroom. She screamed. Her dad immediately came, and her dad was talking about going out to the car and getting a weapon according to Mr. Griffin, and so he fled because he thought, "I'm going to get shot here," because that's what happens when you offend a stranger. You have no concept of, you know, who's watching them. You don't know who they're attached to. You don't know if that's their dad, is that huge guy over there or if the girl came to the store to themselves. You don't know how dangerous it is, but you can assume that it's very dangerous when you're offending a stranger and in a public place. It's -- and with his sister present, too, I mean, she's, she's likely going to wonder, "Well, where he's at," and look for him, and it's very likely that he's going to get caught in that situation.

Q And then Mr. Falk talked about the Static-99 and how it looks at a five-year risk assessment or versus but when you're doing an evaluation in this case you're not just looking at five years; is that correct? You're looking at whether he's likely to ever reoffend; is that correct?

A Yes. Yes.

Q And you all -- looking at his, his sex offense history you found that he offended 30 days after his release from

prison; is that correct?
A Yes.
Q And while out on bond, after being released from being arrested for a sexual offense, he offended not three months later in North Carolina.
A That's correct.
Q Okay.
A And those are the only times that he has been outside of prison in his whole adult life. He has been incarcerated for the most part since he's been 16 years old except for those very short periods, just several months, and in those months he offended sexually.
Q Thank you, Dr. Gehle. No further questions.
THE COURT: Any recross?
MR. FALK: No, Your Honor.
THE COURT: Doctor, you may step down. Thank you.
A Thank you.
THE COURT: All right. Ladies and gentlemen, what we're going to do at this time it's a few minutes after five. I'm going to -- we're going to stop for the day. I'm going to ask you to be back here tomorrow morning at 9:30. Be back here tomorrow morning at 9:30. Do not discuss this case at all. As I told you from the outset, you're to decide this case based solely upon the evidence and testimony as presented in this courtroom and nowhere else. You all have a nice evening.

I'll see you back tomorrow morning at 9:30. All right. He'll show you where to go.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. Anything else from the State at this time?

MR. MORROW: No, Your Honor. The State would rest its case at this time.

THE COURT: All right. Anything from Defense counsel?

MR. FALK: Are we doing a motion?

THE COURT: Well, what I'm going to do, I mean, I should have let you do that in front of the jury. When I bring the jury back in in the morning I'll recognize you and you can rest. If you want to go ahead and argue your motion.

MR. FALK: Yes, Your Honor.

THE COURT: Go ahead.

MR. FALK: I mean, Your Honor, really our argument would be that the testimony has got to be that he suffers from a mental disease, that he suffers from a mental abnormality or a personality disorder that makes it likely that he's going to reoffend. The testimony from the State's witness that it's 11 percent, that he fits in a category of people which are likely to reoffend 11 percent of the time over the next five years. She also testified that his risk to reoffend goes down the older he gets. I think as a -- at some point 11 percent

can't, can't fit the definition of likely.

THE COURT: Well, I mean, the statute doesn't define what percent. She's --

MR. FALK: But it does say likely.

THE COURT: Well, she's testified I think sufficient --

MR. FALK: Thank you.

THE COURT: -- to get the case to the jury but your motion is so noted for the record.

MR. FALK: Thank you.

THE COURT: And I don't disagree with what you're saying. I mean, it does say likely, mental abnormality, cause one likely to reoffend, and while that's what the statute says, the statute doesn't define likely.

MR. FALK: Yes, Your Honor.

THE COURT: So noted for the record. All right. You had indicated previously that you don't intend to put up any witness, witnesses?

MR. FALK: That's right, Your Honor. Obviously, if this was a criminal case, we would talk to my client to make sure he was waiving his right. I think as it stands under the South Carolina it does reflect that. So I don't think -- I don't think we have to -- it's necessary you do a colloquy about whether or not he's waiving that right. I am making that decision as his counsel based on my conversations with him that I do not think that that would work.

THE COURT: All right. Well, and for the record you say conversations and he's attempted to try to talk to you today and you certainly told me here at side bar, I don't know if it's on the record or not, indicated that you didn't necessarily understand what he was saying. It was not in a coherent manner.

MR. FALK: None of it was, yes.

THE COURT: Okay. So anything else from the State at this time?

MR. MORROW: Nothing from the State at this time, Your Honor.

THE COURT: Well, tomorrow you can certainly rest when I bring the jury back out, Mr. Morrow. All right.

MR. MORROW: Yes, Your Honor.

THE COURT: I'll -- at that point you need to put on the record, "I renew my previous motions" --

MR. FALK: Right.

THE COURT: -- just to make sure and I'm going to recognize you after I, in essence --

MR. FALK: Okay. Thank you.

THE COURT: -- say my rulings remain the same, and then you'll rest, I'm assuming, and then renew your motions again.

MR. FALK: Right. And again.

THE COURT: And then we'll go into closing arguments. All right.

MR. MORROW: Thank you, Your Honor.

MR. FALK: Thank you.

OFF THE RECORD

(On the record, October 23, 2018. The following takes place outside the presence of the jury.)

THE COURT: All right. Anything before I bring the jury out, Mr. Morrow?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: Mr. Falk?

MR. FALK: Nothing from the Respondent.

THE COURT: What I put in here pursuant to your objection yesterday, Mr. Falk, I'm going to just read -- just listen to this. You had an objection to mental health facility, and I just put in here provided in a secure facility.

MR. FALK: Thank you.

THE COURT: That's what the statute says. Okay. Bring me the jury, please.

Well, hold on just a second. You're going to rest. You're going to renew your motions. I'm going to recognize you, Mr. Falk.

MR. FALK: Yes, sir.

THE COURT: You'll rest, renew your motions and we'll go straight into closing arguments. Let me ask you all this question, I kind of started doing this a little bit and that is giving the charge before you do your closing arguments.

What do you all -- any objections to that?

MR. FALK: I love the idea.

THE COURT: Mr. Morrow.

MR. MORROW: It doesn't bother me, Your Honor.

THE COURT: Well, I mean, it gives them the law and kind of lets them at least be thinking about while you're making your arguments, and I just -- I think Judge Cottingham used to do that, and I just -- I tend to like that when they're hearing the last word from you all. Okay?

MR. FALK: Just curious, do you notice any more questions or less questions coming back on the law?

THE COURT: You know, when I first got on the bench I didn't send the charge back. Then I started sending it back, and then I've stopped again, and it just seems when you don't send it back there are more questions that come back, and I tried a case last -- was it week before last, week before last in Florence, it was an attempted, attempted murder case, wasn't it, ABHAN case. You know, that statute that they have now, I mean, everything, ABHAN, A and B First, A and B Second, A and B third, are all lesser included offenses, and the statute says that, which necessitated I think based upon the facts that came out during the course of the trial required that I charge all of that, and after the third time bringing the jury out and charging them on A and B first or A and -- and/or A and B second and third I sent it back. The lawyers

initially objected to it. I said, "Whether you object to it or not, at this point I'm sending it back," but it just -- it seems like there are less questions when you send it back, and I'm not saying I'm going to do that in this case. This is pretty straightforward, but when you have multiple charges, so to speak, and multiple lesser included offenses, I think the charge needs to be sent back with them. So all right. Well, I'm going to go ahead and charge them after we do all the resting and etcetera and go from there. All right. You can bring me the jury now, please, sir. Other than that objection, was there any other objection in this charge?

MR. FALK: No, Your Honor.

THE COURT: Okay.

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: All right. Mr. Foreman, ladies and gentlemen of the jury, I hope you all had a nice evening last night and are ready to proceed this morning. I'm going to -- we're going -- what I'm going to do at this time is I'm going to recognize the State. Mr. Morrow.

MR. MORROW: Yes, Your Honor. At this time the State would rest its case.

THE COURT: All right. Mr. Falk.

MR. FALK: The Respondent will also rest.

THE COURT: Well, you need -- renew your motions, prior motions.

MR. FALK: Renew the prior motions and then rest.

THE COURT: The Court's rulings on those motions remain the same. The Defense has rested at this point and again renewed its prior motions of which the Court's rulings remain the same. All right. Thank you. You may be seated.

Ladies and gentlemen, you have heard all the testimony that you are going to hear in this case. What we're going to do at this point is -- that which remains is a charge on the law and arguments of counsel. There's no set in stone order in which that takes place. When I initially got on the bench back in 2010 or ever since I've been practicing law most judges have always let the lawyers argue and then charge you on the law. Okay. There's a judge that's now retired, but held a lot of court down here, Judge Cottingham, from Bennettsville, always or liked to give the charge first and then let you hear from the lawyers, and I've started doing that, and I kind of like the way that goes, giving the lawyers the last word to you as opposed to me. I will remind you now and, and before I turn it over to the lawyers for closing arguments, their arguments are not evidence in this case. The evidence as I've told you from the outset is based upon the testimony that was in here and items of evidence that may have been introduced during the course of the trial. All right.

Now, I'm going to read this charge to you. I ask that you pay very close attention to what I tell you the law is as it applies to this case. Okay.

The Petitioner in this case, ladies and gentlemen, the State of South Carolina has brought this case under the Sexually Violent Predator Act of South Carolina. The State seeks the civil commitment of the Respondent, Mr. Thomas Griffin, for long-term control, care and treatment in a secure facility. This is not a criminal proceeding seeking incarceration but rather a proceeding seeking civil commitment. The State of South Carolina alleges or claims that Respondent, Thomas Griffin, is a sexually violent predator under the law. Respondent denies that he is a sexually violent predator, and the burden of proof is therefore on the State of South Carolina to prove by evidence sufficient to satisfy each of you beyond a reasonable doubt that Respondent is a sexually violent predator. If the State is unable to meet that burden of proof as to one or more of the elements of this claim, Respondent is entitled to a finding that he is not a sexually violent predator.

In most civil cases the Petitioner only has the burden of proving that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. However, I say that again, however, in this case the State's burden of proof must be more powerful. It is -- it must be

beyond a reasonable doubt.

Now, under the constitution and laws of South Carolina you are the sole finders of the facts in this case. I may not intimate to you in any way what I may think about the claims in this case. You also are the judges of the credibility and believability of the witnesses who have testified. In passing upon her credibility, the witness's credibility you may take into consideration many things such as what was the manner and appearance of the witness who testified, was she straightforward or was she hesitant in answering, how did the witness come to know the facts that she testified to or what was her ability to know these facts, is there some reason a witness would want to give testimony which would help or hurt one side or the other, in other words, was the witness biased or prejudiced and was the testimony of a witness strengthened or weakened by other testimony or evidence. You, ladies and gentlemen of the jury, may believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses or just the opposite. You may believe a part of a witness's testimony and disbelieve the rest, and you do not determine the truth merely by counting the number of witnesses presented by each side. The fact that testimony is not controverted does not mean you must accept it as true and undisputed. You must gauge the credibility of the witness to

determine the believability or truth of the facts offered through the testimony. Keep in mind throughout this process you have but one objective, to seek the truth, regardless of the source from where it comes.

There are two types of evidence, ladies and gentlemen, which are presented during a trial, direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law, ladies and gentlemen, makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

Now, ladies and gentlemen, you heard the testimony of a witness who has special knowledge, skill, experience, training or education in a particular field and who has given her opinion as an expert as to matters in which she is skilled. In determining the weight to be given to such an opinion you should consider the qualifications and credibility of the

expert and her reasons given for her opinion. You are not bound by such opinions. Give them the weight, if any, to which you deem them to be entitled. The value and effect of expert testimony is a matter to be solely estimated by you, the jury. No opinion of an expert can be accepted in and of itself as truthful or reliable but must be weighed by you and convince your judgment beyond a reasonable doubt and with the same force and effect as any other fact proved in this case before you can rely upon it. You must consider expert testimony in the same manner as you do any other testimony and give to it such weight as you believe it to be entitled when considered with all the other evidence in the case. Such testimony is given for the purpose of helping you and not for the purpose of controlling your judgment.

Now, the same constitution and law that makes you the finders of the facts, ladies and gentlemen, makes me the judge of the law. You must accept as correct the law which I charge and apply to you in this case and reach a verdict as a result of me charging you on this law.

If I should make an error in the law as I instruct it to you there is another time and another place and another court in which that error can be considered and if necessary corrected, but for the purpose of this case today you must accept the law as I charge it to you, and in that regard I tell you that neither you nor I for that matter should be

concerned about what we think the law ought to be but only concern yourselves with what I charge you the law, in fact, to be.

Now, what is a reasonable doubt in the law? A reasonable doubt, ladies and gentlemen, is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced.

Now, there are very few things in this world that we know with absolute certainty, and the law does not require proof that overcomes every possible doubt. What is required is if based on your consideration of the evidence you are firmly convinced that the Respondent is a sexually violent predator then you must return a verdict for the State. If on the other hand you think there is a real possibility that he is not a sexually violent predator you must give him the benefit of the doubt and find a verdict for the Respondent. Reasonable doubt may arise from evidence that is in the case or from the lack of evidence in the case. It is up to you, ladies and gentlemen, to determine whether or not a reasonable doubt exists in this case. Excuse me.

The elements, ladies and gentlemen, which the State must prove beyond a reasonable doubt are, one, that the Respondent has been convicted of a sexually violent offense. I charge you that assault with intent to commit assault, that assault with intent to commit criminal sexual conduct with a minor in

the second degree is a sexually violent offense. Two, that Respondent suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. Inherent in these two elements is that the State must prove the requirement that Respondent's mental abnormality or personality disorder causes him serious difficulty in controlling his behavior. In other words, the State must prove beyond a reasonable doubt that the individual it seeks to commit suffers from a mental illness which he cannot sufficiently control without the structure and care provided in a secure facility rendering him otherwise likely to commit a dangerous act. In order for you to better understand the elements of the State's cause of action I am going to define for you some of the terms that I have just used.

A mental abnormality means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses. This mental abnormality or personality disorder must cause Respondent serious difficulty in controlling his behavior.

Likely to engage in acts of sexual violence means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others so that he is dangerous to others. Again, I remind you

that the burden of proof is on the State to prove to your satisfaction beyond a reasonable doubt that the Respondent has been convicted of a sexually violent offense as I have instructed you and also suffers from a mental abnormality or personality disorder that makes Respondent likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. If the State carries its burden of proof and convinces you beyond a reasonable doubt as to each of the two elements of its cause of action it is entitled to a finding that Respondent is a sexually violent predator. If the State does not meet that burden of proof as to one or both of these elements Respondent is entitled to a finding that he is not a sexually violent predator.

All right. Ladies and gentlemen, I have charged you on the law applicable to this case. What I'm going to do -- what we're going to do now is I'm going to turn it over to the lawyers for closing arguments, and once they are finished I'm going to give you just a couple of more instructions here before I turn it over to you all for your deliberations. At this time the State's recognized for closing arguments.

MR. MORROW: Thank you, Your Honor. May it please the Court.

Thomas Griffin is a sexually violent predator. Mr. Griffin needs treatment in a secure facility. He has a long

documented history of schizophrenia, a mental illness that impairs his perception of reality. In addition, you heard from Dr. Gehle who found that he suffers from other specified paraphilic disorder, biastophilia, a sexual arousal to non-consenting sex or rape.

Mr. Griffin has demonstrated this behavior repeatedly throughout his life. He was convicted in 1972 of assault with intent to commit rape. He then went to prison in 1973 for about between 20 and 40 years. He was released from prison in North Carolina on November 14th, 1996. Then on December 19th, 1996, he approached a 12 year old female who was in the restroom at the Dixie Dollar Amusements in Loris, South Carolina. He presented a knife and told the victim that he had not had sex in three years. That victim yelled for help and was able to escape Mr. Griffin. Mr. Griffin was apprehended on December 31st, 1996, and extradited to South Carolina on February 12th, 1997. He was released on bond on February 15th, 1997, and on May 28th, 1997, Mr. Griffin, while still out on bond for his offense in South Carolina, was arrested in North Carolina for first degree rape and first degree kidnapping in Columbus County, North Carolina. It is alleged that he entered Williams Town -- or a school and sexually assaulted a 12 year old female stranger who was using the bathroom. It is alleged that Mr. Griffin presented a knife and forced the victim to strip, penetrated the victim

digitally and attempted to penetrate her with his penis. The victim escaped and ran, and ran towards the classroom. Mr. Griffin allegedly tried to take her from the restroom.

On May 29th, 1997, he gave a statement to law enforcement that Dr. Gehle told you about confirming much of the victim's account of that situation in North Carolina. Mr. Griffin was then extradited to South Carolina for the offense in Horry County where he was sentenced to 20 years of incarceration on June 16th of 1999.

Thomas Griffin cannot control himself. Despite the fact that he's been in prison for much of his adult life, he has still managed to be arrested for three separate sexual offenses. Not 30 days after being released from prison in 1996 he offended in Horry County. After making bond for that offense in 1997, he was again charged in May for, for almost an identical offense except this time he went into a school.

He offended in very public places. He offended against stranger victims. He offended in places where he was very likely to get caught, and he offended where there were interested adults around. He also used a weapon. Mr. Griffin cannot control his sexual urges. He needs treatment, and that treatment should happen in a secure facility under the supervision of the South Carolina Department of Mental Health.

Now, why are we here today? We're here to seek civil

commitment. It's not about punishment. It's about treatment in a secure facility to protect the public during the treatment process. The secure facility is under the jurisdiction of the South Carolina Department of Mental Health. I mean, excuse me, Thomas Griffin needs help and the public needs protection from him while he gets this treatment.

And what does the State have to prove? The State has to prove that he's been convicted of a sexually violent offense and that he suffers from a mental abnormality or personality disorder that makes him likely to reoffend if not confined for treatment. The burden of proof in this case is on the State. Proof beyond a reasonable doubt, as you just heard, is not proof beyond all doubt or any doubt or every doubt. There are few things in this world we know with absolute certainty, but proof beyond a reasonable doubt is proof that leaves you firmly convinced.

What, what evidence has been provided? The State has provided evidence that he has been convicted of a sexually violent offense. We put the certified copy of that conviction into the, into the record and you'll have that conviction to look at. The State has met -- has proved that element of this -- of its case. He's been convicted of assault with intent to commit criminal sexual conduct with a minor in the second degree.

The second element the State has to prove is that he

suffers from a mental abnormality or personality disorder that makes him likely to reoffend if not confined for treatment. To that, to that the State has provided you with the testimony of Dr. Marie Gehle. Dr. Gehle's a chief psychologist with the South Carolina Department of Mental Health who's been practicing for 18 years. She's done over 200 forensic evaluations of sex offenders. She talked about her methodology, her evaluation. She talked about how she reviewed records, including criminal history, mental health history, disciplinary history, community supervision records, prior treatment, medical history and educational history. She talked about how she conducted an in-person interview with Mr. Griffin, conducted an actuarial assessment assessing his risk to reoffend looking at static risk factors for re-offense. She also talked about looking at empirically supported dynamic risk factors for re-offense.

Well, she found that he had multiple of those. She diagnosed him with other specified paraphilic disorder, biastophilia. Biastophilia is a type of paraphilia in which an individual is sexually aroused by engaging in coercive sexual acts with non-consenting people. Otherwise, basically, he's aroused by rape. Mr. Griffin has convicted or been convicted of two sexual assaults and has been charged with a third. Not less than 30 days after his release from a 23-year prison sentence, Mr. Griffin attempted to sexually assault a

12 year old female stranger in a public restroom using a knife. While on bond he committed another offense in North Carolina. Use of a weapon during these sexual assaults suggests that he was interested in coercive sex with a non-consenting victim.

His diagnosis of schizophrenia, long documented history of schizophrenia, he's exhibited delusions and disorganized speech that Dr. Gehle told you about, his history of auditory and visual hallucinations when not taking his antipsychotic medication, all these -- although these hallucinations stop with medication, delusional and disorganized thinking still appear to remain present even with the medication.

Why -- the State also has to prove that he's likely to offend if not confined for treatment. Now, part of that Dr. Gehle looked at static risk factors. She looked at his Static-99R score, and that -- what that is essentially is that he -- she compared his score on this instrument to other sex offenders and what their score was on the instrument, and when they -- when she did that she was able to get a, a risk score, and what she found was that his risk to reoffend was about twice that of a normal or average sex offender.

She also looked at his dynamic risk factors. She would say had a preference for pubescent children. He had offense supportive attitudes, a preference for sexualized violence, no long term previous romantic relationships, poor problem

solving abilities, lifestyle impulsiveness and resistance to rules and supervision. He has two -- he has been charged in SCDC with at least two criminal offenses. He's had 20 or while he was in prison he had 29 disciplinary infractions, and one of those was for sexual misconduct with another inmate.

The State asks that you find Thomas Griffin is a sexually violent predator. Through his actions and throughout his life he has demonstrated inability to control his sexual urges. He is a sexually violent predator. Despite spending much of his adult life in prison he has managed -- been charged with three separate sexual offenses. He has offended against 12 year old girls in public places, in close proximity to interested adults. He used a weapon in those offenses. He committed sexual misconduct while incarcerated and he's been convicted of a sexually violent offense. He suffers from two mental abnormalities, other specified paraphilic disorder, biastophilia and schizophrenia. He has demonstrated an inability to control those urges and despite a high likelihood that he would get caught. He is a sexually violent predator and we ask that you find him to be a sexually violent predator and commit him to the Department of Mental Health Sexually Violent Predator Treatment Program in a secure facility where he can receive the treatment that he needs and so the public can be protected during the treatment process. Thank you.

THE COURT: Mr. Morrow, Mr. Falk, can you all come here,

come here a minute?

(Whereupon, a bench conference is held in the presence, but out of the hearing of the jury.)

MR. FALK: May it please the Court?

THE COURT: Mr. Falk, yes, sir.

MR. FALK: I do disagree with Mr. Morrow. Thomas Griffin is not a sexually violent predator. Thomas Griffin has schizophrenia. My client can get better. It has happened in the past. When he goes to a forensic hospital on the property where the Department of Mental Health, as Dr. Gehle said that he could go to a facility to get rehabilitated at a hospital to be brought back to sanity. She said that's where you would go to treat somebody like that. That's where you would go to be restored to sanity. That was her testimony. She said that the sexually violent predator treatment program was not that same type of facility. My client needs a mental health facility. He doesn't need to go to a facility that's storing a bunch of pedophiles.

The State's got to prove that he has a mental abnormality or personality defect that makes it likely that he's going to commit a crime. This is sort of what I was talking about at the beginning, that just the fact that you commit the crime does not necessarily mean that you've got a mental abnormality that makes you want to commit the crime. What I was alluding to in my opening argument when I was talking about some people

go in and steal stuff because they want what they stole, a guy goes and steals a chocolate bar because he really likes chocolate. That's not a mental illness. It's the person who steals the chocolate bar because they like stealing and they don't care what it is. They just like to steal. They get, they get pleasure from the act of stealing. That's the difference. The State needs to prove to you that Mr. Griffin suffers from a mental illness that he enjoys the act, not that he enjoys the chocolate bar, the end of the act.

She also said that schizophrenia is not the diagnosis that puts him where he is today. He is here because she diagnosed him as having an unspecified paraphilic disorder, other paraphilic disorder with a qualifier called biastophilia and what she said was that that is a diagnosis where people get aroused by the act of forcibly having sex with other people, that they get aroused by the rape.

This is the document. This is the book. This is the bible that she uses in her field. She says that he suffers from biastophilia. You would think that if that is, in fact, a recognized mental disorder that that would be something that would be covered in this 847 page book, but it's not because it doesn't make sense because what they're really saying is it's -- he's, he's committed a crime. You can't just classify everybody who commits a crime as saying that they have a mental disease. I mean, I'm here today to tell you that my

client is no angel. He has committed rapes in the past, 26 years ago, whenever it was. He's committed rapes in the past, and the criminal justice system has done what they do to people who commit rapes. They put him away. Your job today is not to put him away for the conduct he did in the past. It was 1997. This is 2018. Dr. Gehle admitted that this is a controversial diagnosis. I submit that it's a controversial diagnosis because we're trying to diagnose saying that -- by saying that biastophilia or this coercive paraphilic disorder really allows these kind of proceedings to go forward against somebody in order to sort of warehouse people who have been -- who've committed rapes in the past in order to sort of get them off the street. That may be a goal that you all think is a good goal, but that's not your job today because somebody who's committed a rape does not necessarily mean they've got a mental disease. It would be different I would think if you were saying that he suffered from pedophilia where it's sort of this unnatural desire to be attracted to, you know, prepubescent children, but that's not what he has. He hasn't -- he has, you know, he found 12 year old girls attractive but these were 12 year old girl who had sexual characteristics. She said that that is not a sign of a -- that the attraction to the 12 year old Dr. Gehle said is not the sign of a paraphilia [sic]. It's not like being attracted to a pedophile. I mean, I know this is a tough argument for you

all to get around because, you know, he's not a great guy. He's committed a crime, but he needs to go to a mental hospital where he can get the treatment, be brought back to sanity like he was in 1999 and he was at other times in the past.

I'm put in a situation today that I can hardly communicate with him because he talks and gesticulates, and I have no idea what he's saying. It's sort of, you know, he may be saying inside a body that's trapped that he can't talk but anyways he doesn't need to go to a program to be tried and taught how not to be a sexually violent predator. I mean, he needs to go to someplace where he can be restored to competency.

Here's where I think reasonable doubt exists in the State's case because the State has to prove a likelihood to commit a crime of sexual violence. It's not, it's not as Mr. Morrow said likely to commit a crime going forward or committing violence moving forward. It's committing a crime of sexual violence going forward. That's what they have to prove.

Dr. Gehle testified that just somebody who has a high risk of committing another crime again does not make them a sexually violent predator, and Dr. Gehle testified that just because somebody has schizophrenia would not make them a sexually violent predator. You've got to connect those two

dots, that the disease causes the conduct. It almost seems like the disease they've created is this he likes to rape people, therefore he is a sexually violent predator. That's almost sort of a circuitous argument. He's committed these crimes, therefore he's crazy because he's committed these crimes, but there's no, no unnatural drive, that it's not like he's attracted to little girls, baby girls.

He's already done significant criminal sentences in the past. Your job is not to be sentencing him today, but here's the thing, at the end of the day she said that he's -- he thinks it's likely that he's going to reoffend because she said that he fits in a category of people it is likely that in 11 percent of the times they're going to reoffend over a five-year period. Eleven percent of the time, you have to get your arms around whether or not you think that is likely to reoffend.

Now, what the State says when, kind of where Dr. Gehle is arguing is she said, "Yeah, but he is twice as likely to reoffend as another person committed sexually violent crimes," but unless you know what that first odd is, it's hard to twice, oh, it sounds a lot worse, and the reason why I was fumbling for these when I came up here is I think maybe this is an argument you all can appreciate. This is a ticket to Friday's, no, to -- yeah, the Friday's Mega Millions jackpot. I had one in 300 million chance of winning on that ticket. So

I wanted to double my odds. I got two tickets. I didn't win the jackpot. Twice of something that's not likely is not necessarily -- I mean, twice sounds good, but it's 11 percent of the time, he fits in a category of people that's going to commit another crime 11 percent of the time in five years. He's 63 years old right now, 62 years old right now. Five years at 67 I submit to you this is an old guy that needs some treatment. He needs to be restored to sanity. He doesn't need to go to the sexually violent predator treatment program. I think it's very easy to just think that's the best thing to do with him, but that's not the right thing to do with him. He needs to -- he need -- he does not need to go to the sexually violent predator program because he's not a sexually violent predator. He clearly has a mental disease. He has a personality defect, but what's so sad is that it's something that he can be restored. He's been restored in the past. He can be restored again, just a matter of medicine, getting his medicine right.

I think at the end of the day if you will just keep considering that the State, everything else put aside, the State's got to say that it's likely to commit crimes of sexual violence, and their experts say that he fits in a group of people that makes it 11 percent chance that that's going to happen.

I -- the State has the burden of proof beyond a

reasonable doubt. So in effect they're telling you that 11 percent chance of something happening is proof to you beyond a reasonable doubt that that thing will happen. I submit to you that that is not enough. My client is sick. My client has committed bad crimes in the past. My client does not need to be in the sexually violent predator treatment program. He needs to be in a mental -- he needs to be in a forensic mental hospital that Dr. Gehle talked about so he can be treated. Thank you.

THE COURT: Mr. Morrow, any reply?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: All right. Ladies and gentlemen, give you a few, few more instructions. I've given you the law in this case, and you've heard the closing arguments by counsel. I want each of you to clearly understand that you are not, ladies and gentlemen, partisans or advocates for the State of South Carolina or for this Respondent, for the Respondent. You do not serve as jurors to reward your friends or punish your enemies. In this regard you have been selected -- you were selected by both the State and the Respondent to be fair and impartial jurors. It is your duty by your joint deliberations to determine the truth in this case, giving to the Respondent the benefit of every reasonable doubt on each and every issue, then to the facts which you determine to be true you should take and apply the law which has been given to

you by this Court and thus arrive at a verdict which speaks the truth in this case. In fact, the word verdict, which has as its Latin derivative, means a true saying. Thus, when you have accomplished these responsibilities, you will have satisfied your oath as jurors, and you will have discharged your duty to this Court.

Now, there are two possible verdicts in this case, ladies and gentlemen: one, Respondent is a sexually violent predator or Respondent is not a sexually violent predator. There is no significance whatsoever in the order in which I state these possible verdicts. It is simply that one must be stated first. All 12 of you, ladies and gentlemen, must agree on the Verdict. Your verdict must be unanimous. Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration not in evidence in this case.

Now, Mr. Foreman, when the jury agrees on the verdict you will sign your name as foreperson on the line underneath the jury verdict. If you will then knock on the door and let the bailiff know, my deputy know that you all have reached a verdict we'll get you back into the courtroom as quickly as possible.

During your deliberations should you have any questions, Mr. Foreman, you all as a jury, it will be your responsibility to reduce that question to writing, knock on the door, let my bailiff know, my deputy know that you have a question. He'll

get it to me, and after consulting with the attorneys I'll make a decision on how to appropriately answer that question.

Now, at this time let me ask this question before you all step to the jury room. Anyone on the jury not feeling well? Everyone feeling okay? Okay. I'm going to ask that all of you, all of you at this point step to the jury room, but do not, do not begin your deliberations until you're instructed to do so. The law requires that I consult with these attorneys to make sure that I have not left anything out of the instructions that I have given to you. So at this time I'm going to ask you step to the jury room. Do not begin your deliberations until you're instructed to do so.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: All right. Any, any exception or objection to the charge from the State?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: Mr. Falk.

MR. FALK: Your Honor, I do have a concern in that this is a reasonable doubt case, and you used the verdict that speaks the truth language, which is the language that was used in a criminal case in Beaty where they said was inappropriate in a criminal case and that's really speaking to my burden of proof here, and I'm making my objection to the language. I'd ask that you recharge or a curative instruction.

THE COURT: Mr. Morrow.

MR. MORROW: Your Honor, I believe -- the State has no objection to your charge, believes it was appropriate and this is a civil case. I mean, it's beyond a reasonable doubt standard, but I think it was an appropriate charge.

THE COURT: Well, I'm not going to bring them out and give another charge. I'll note your objection for the record. I mean, you were, you were provided with this charge at least 24 if not more hours before we -- at least before we started this case, and I've asked you multiple times whether or not there were any objections to the charge before I gave it, and to now, after I've charged them, to raise this objection I think it was waived.

MR. FALK: Thank you, Your Honor.

THE COURT: All right. But it's noted for the record.

All right. You all come up here and look at the -- any items of evidence. The verdict form that I have I'd punched holes in it and put in a notebook. Is that okay with you all?

MR. FALK: Yeah.

MR. MORROW: Yes, Your Honor.

(Exhibits reviewed and approved by counsel for State and Respondent.)

THE COURT: All right. Do you all mind if I pull the alternates out in the hall and excuse them?

MR. FALK: No, Your Honor.

MR. MORROW: No, Your Honor.

(Alternates excused.)

REPORTER: All right. Do the attorneys agree on the exhibits?

MR. MORROW: Yes, ma'am.

MR. FALK: Yes.

REPORTER: Plaintiff's One only?

MR. FALK: Thank you.

(Deliberations begin at 10:20 a.m.)

OFF THE RECORD

(Whereupon, the following takes place outside the presence of the jury. Verdict reached at 10:45 a.m.)

THE COURT: All right. Anything before I bring the jury out from the State?

MR. MORROW: Nothing from the State, Your Honor.

THE COURT: All right. Respondent's counsel?

MR. FALK: No, Your Honor.

THE COURT: All right. Bring me the jury, please.

(Clerk and Court confer.)

(Whereupon, the following takes place in the presence of the jury.)

THE COURT: Mr. Foreman, I need you to date the verdict form, please. It's the 23rd.

FOREPERSON: Thank you.

THE CLERK: All right. Madam Clerk, you may publish the

verdict.

THE CLERK: Okay. Mr. Foreperson, have you reached a verdict?

FOREPERSON: Yes, ma'am.

THE CLERK: Okay. State of South Carolina, County of Horry, in the Court of Common Pleas, 15th Judicial Circuit, in case number 2016-CP-26-6412, in the Matter of the Care of Treatment Thomas Griffin, has the Petitioner, the State of South Carolina, proven beyond a reasonable doubt that the Respondent Thomas Griffin is a sexually violent predator under the South Carolina Sexual Violent Predator Act? We, the jury, unanimously answer the questions as follows: yes, Thomas Griffin is a sexually violent predator, signed by Foreperson Gary Crowder.

Mr. Foreman and ladies and gentlemen of the jury, if this is your verdict please raise your right hand to signify.

(All jurors raise right hand.)

THE COURT: All right. All right. Anything from the State or Respondent before I release the jury?

MR. MORROW: Nothing from the State, Your Honor.

MR. FALK: No, Your Honor.

(Jury released by Court.)

THE COURT: All right. Anything from the State at this time?

MR. MORROW: Your Honor, I have an order prepared for

committal.

THE COURT: All right. Mr. Falk, have you seen that? All right. Anything at this time, Mr. Falk?

MR. FALK: Not at this time, Your Honor.

THE COURT: All right. I've signed the order. Give it to my clerk, and you need that back or --

MR. MORROW: I, I just need to get a copy to the Department of Mental Health, Your Honor.

THE COURT: Okay. All right. Thank you all.

MR. FALK: Thank you.

THE COURT: Thank you, Mr. Falk. Thank you, Mr. Morrow.

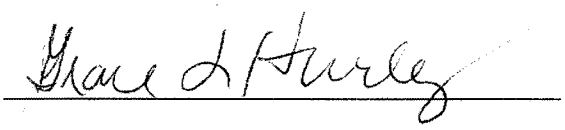
MR. MORROW: Thank you.

(Adjourned.)

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing as reported by Dixie Eubank, held in the case of In the Matter of the Care and Treatment of Thomas Griffin, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on October 22 through 23, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M
Official Reporter

January 11, 2019.

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
COUNTY OF HORRY	)	FOR THE 15th JUDICIAL CIRCUIT
In Re Care and Treatment of	)	CASE NO.: 2016-CP-26-06412
THOMAS GRIFFIN Respondent,	)	RESPONDENT'S 2nd MOTION FOR COMPETENCY TO STAND TRIAL EVALUATION

2018 OCT 22 PM 2:54
HORRY COUNTY

Respondent by counsel renews his motion that this Court enter an order for evaluation of Respondent to determine whether Respondent is competent to stand trial. Attached hereto as Exhibit A is counsel's initial motion for evaluation that was filed February 28, 2018.

PROCEDURAL HISTORY

Respondent's case was on the Horry County trial roster for the week of March 19, 2018. On February 28, 2018 Respondent filed his initial motion for competency evaluation, and the Honorable Judge George M McFaddin Jr., took the matter under advisement.

Respondent's counsel and counsel for the State of South Carolina were before the Honorable Judge William H Seals, Jr. on another Sexually Violent Predator matter during the week of August 7, 2018. As of that date Judge McFaddin had not yet ruled on Respondent's motion to reconsider, and both parties agreed to submit the matter to Judge Seals, who was then Chief Administrative Judge for Horry County Common Pleas. Judge Seals denied the motion for competency evaluation and relied upon SC Code Ann § 44-48-100(B) which sets forth the procedure for conducting a SVP civil commitment case for respondents that are charged with a sexually violent offense and found incompetent to stand trial for that offense.

On October 17, 2018 both parties received the attached email (EXHIBIT B) from Judge McFaddin in which he grants the motion for a competency evaluation.

DEFENDANT'S EXHIBIT
1
dca 10-22-18

SIGNIFICANT CHANGE IS CIRCUMSTANCES

There has been a significant change in Respondent's condition that justifies this court to reconsider the denial of Counsel's request for competency evaluation. On October 17, 2018 counsel met with Respondent at the Horry County Detention Center. Counsel is informed and believes that Respondent's metal condition had decompensated even further than when he met with him in February 2018.

Counsel is informed and believes that Respondent's current mental state is because he is not receiving his antipsychotic medications while he is in the Horry County Detention Center. Counsel has reviewed Respondent's medical records from the detention center and is unable to confirm whether Respondent is currently receiving these medications. In Dr Gehle's report she notes that in 1999 Respondent was evaluated for competency to stand trial and criminal responsibility in South Carolina. In 1999 he was diagnosed with Psychotic Disorder, Not Otherwise Specified. In her report Dr Gehle states: *[Respondent] has been psychiatrically hospitalized for related competency restoration treatment. It was noted that [respondent] readily decompensates into psychosis when he does not take prescribed psychotic medications. With consistent treatment, he was deemed competent to stand trial.*

LEGAL ARGUMENT IN SUPPORT OF RESPONDENT'S MOTION

Conducting a civil commitment trial under SC Code Ann § 44-48-10 et seq, when respondent lacks the ability to assist in his own defense violates respondent's due process protections under the V and XIV Amendments to the United States Constitution as well as Article 1, § 3 of the South Carolina Constitution.

"[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 425 (1979). "The

loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement." Vitek v. Jones, 445 U.S. 480, 492 (1980). "It is indisputable that commitment to a mental hospital can engender adverse social consequences to the individual and that whether we label this phenomena 'stigma' or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual." Id. (Internal quotations omitted).

Due Process is not a technical concept with fixed parameters unrelated to time, place, and circumstances; rather, it is a flexible concept that calls for such procedural protections as the situation demands." State v. Legg, 416 S.C. 9, 13-14, 785 S.E.2d 369, 371 (2016). "Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal." Id.; see also Daniels v. Williams, 474 U.S. 327, 337 (1986) ("[A] guarantee of fair procedure, sometimes referred to as 'procedural due process': the State may not execute, imprison, or fine a defendant without giving him a fair trial.").

"To establish a procedural due process claim, a person must show deprivation of his liberty or property interests due to the government's failure to provide notice, an opportunity to be heard in a meaningful way, or judicial review." Clemmons v. Lowe's Home Centers, Inc.--Harbison, 412 S.C. 366, 378, 772 S.E.2d 517, 524 (Ct. App. 2015)). To determine whether a particular procedural protection is warranted in a given context, courts apply the test articulated in Mathews v. Edwards, 424 U.S. 319, 334 (1976). The Mathews test has three elements: (1) the liberty interest at stake; (2) the risk of erroneous deprivation of that liberty interest with the existing procedures and probable value, if any, of additional safeguards; and (3) the government interest, including costs and administrative burdens of additional procedures. *Id.* at 370.

The first factor undoubtedly weighs heavily in Respondent's favor. "Civil commitment deprives [the offender] of significant liberty interests." In re Detention of Morgan, 253 P.3d 394 (Wash. Ct. App. 2011); see also In re Treatment & Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) ("A person's interest in freedom from bodily restraint is 'at the core of the liberty protected by the Due Process Clause from arbitrary governmental actions.'" (quoting Foucha v. Louisiana, 504 U.S. 71, 80 (1992)).

The second element also weighs in Respondent's favor. There is a considerable risk of erroneous deprivation of liberty under the existing procedures. In his current state Respondent is unable to take the stand to rebut Dr Gehle's diagnosis. Dr Gehle diagnosed Respondent as having Other Specified Paraphilic Disorder, Biastophilia in addition to Schizophrenia. Counsel is informed and believes that Biastophilia is defined as is a paraphilia in which sexual arousal is dependent on, or is responsive to, the act of assaulting an unconsenting person, especially a stranger. In order to effectively represent Respondent at trial counsel must be able to call Respondent to the stand to testify that his sexual arousal pattern is "normal" and that he does not become aroused by the act of physically coercing his partners into sex.

Respondent can also meet the third element under Mathews because the Respondent the requested relief will not create a prolonged delay in these proceedings; and will not create an undue burden for the state. Counsel is informed and believes that until he is returned to competency Respondent would be unable to participate in or comprehend the sex offender treatment he would receive if he were convicted. Respondent can be expected to return to

competency once he has received sufficient treatment with anti-psychotic medications. Therefore the delay to these proceedings resulting from the requested evaluation and recompensation period would not pose an undue hardship upon the State.

Respectfully Submitted,

James K Falk
Falk Law Firm
PO Box 38
Charleston, SC 29402
(843) 606-6007
(843) 972, 9005 Fax
jfalklaw@gmail.com

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF HORRY	)	FOR THE 14th JUDICIAL CIRCUIT
	)	
In Re Care and Treatment of	)	CASE NO.: 2016-CP-26-06412
	)	
	)	
	)	
	)	MOTION FOR EVALUATION
Thomas Griffin	)	COMPETENCY TO STAND TRIAL
Respondent,	)	
	)	

2018 FEB 28 PM 12:4
CLERK OF COURT
HORRY COUNTY, SC
HORRY COUNTY

Respondent, by counsel, moves pursuant to § SC Code 44-48-100, that this Court enter an order for the evaluation of Respondent to determine whether he is competent to stand trial. In support of this motion Counsel cites the following passage from the June 26, 2017 report prepared by the court- appointed expert, Dr. Maries Gehle. The purpose of Dr Gehle' report was not to determine whether Respondent was competent to stand trial, but rather to determine if Respondent met the criteria for classification as a Sexually Violent Predator.

> *Mental Health History: According to mental health and SCDC records, Mr. Griffin has a long history of mental health problems and treatment. He has been diagnosed with Schizophrenia and psychotic disorders (the umbrella under which Schizophrenia is classified) consistently in the records. In the current interview, Mr. Griffin said he has been diagnosed with Schizophrenia in North Carolina. He said he was prescribed "Benadryl and Artane," both medication often used to help with side effects from antipsychotic medications. He said he took medication for 17 of the 23 years he served in prison in North Carolina. He said he has been in Dorothea Dix in 1971. North Carolina state psychiatric records were requested; however, no records were found.*
>
> *Mr. Griffin has been evaluated for competency to stand trial and criminal responsibility in South Carolina in 1999. He was diagnosed with Psychotic Disorder, Not Otherwise Specified. He has been psychiatrically hospitalized for related competency restoration treatment. It was noted that he readily*

decompensates into psychosis when he does not take prescribed psychotropic medication. With consistent treatment, he was deemed competent to stand trial.

Mr. Griffin was hospitalized at Gilliam Psychiatric Hospital multiple times while incarcerated at SCDC. The admissions are provided in a chart at the end of this report. The dates of hospitalization were noted in SCDC records retrieved from the system on August 15, 2016. In addition, it is know that he was hospitalized at least one time after August 15, 2016 (the 2017 hospitalization dates were noted in a discharge summary). Mr. Griffin was noncompliant with psychotropic medications at times in SCDC. In the current evaluation, he said his medications were changed from injections to oral medication "about four months ago." It was noted in recent records from the detention center that Mr. Griffin was diagnosed with Schizophrenia and was treated with Risperdal (an antipsychotic medication) and Cogentin (a medication to help with side effects from antipsychotic medication). He was generally compliant with medication. The respondent's sister said that in that June 2017, Mr. Griffin told her that his food (at the jail) was being poisoned (a likely paranoid delusion).

Additionally Counsel retained Dr William Mulbry to perform an independent evaluation of Respondent for the purpose of these commitment proceedings. Like Dr Gehle, Dr Mulbry did not evaluate Respondent to determine his competency to stand trial. However, Dr Mulbry concurs in Dr Gehle's assessment of Respondent's current mental health status.

On February 23, Counsel met with Respondent at the Horry County Detention Center for the purpose of preparing for his March 19th commitment trial. During this meeting Counsel was unable to effectively communicate with Respondent because his answers to Counsel's questions were often times illogical or no way responsive to the questions asked. Counsel is informed and believes that he has not received any psychiatric medications while housed in the Horry County Detention Center. Counsel is informed and believes that at this time Respondent is unable participate in his defense to the pending commitment proceedings.

Counsel therefore asks moves for an evaluation to determine whether Respondent can be restored to a level of competence that would enable him to participate in the defense of these commitment proceedings.

HORRY COUNTY
2018 FEB 28 PM 12:41
CLERK OF COURT
HORRY COUNTY, SC

Respectfully Submitted,

James K Falk
Falk Law Firm
PO Box 38
Charleston, SC 29402
(843) 606-6007
(843) 972, 9005 Fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

A copy of the above was mailed this 23 day of February 2018, to James Bogle, Jr. Esq. at the Office of South Carolina Attorney General PO box 11549, Columbia, and SC 29211-1549.

James Falk

EXHIBIT B

Gmail James Falk <jfalklaw@gmail.com>

In Re: Thomas Griffin 2016-CP-26-06412

2 messages

McFaddin, George M. Law Clerk (Lillian Meadows) <gmcfaddinlc@sccourts.org> Tue, Oct 16, 2018 at 10:36 AM
To: "James Falk (jfalklaw@gmail.com)" <jfalklaw@gmail.com>, Cam Morrow <CMorrow@scag.gov>
Cc: "McFaddin, George M. Secretary (Andrea Morris)" <GMcfaddinSC@sccourts.org>, "McFaddin, George M." <gmcfaddinj@sccourts.org>

Good Morning,

Regarding the State's motion for evaluation of competency to stand trial in the above-referenced matter, Judge McFaddin respectfully grants the motion. Mr. Morrow, please prepare a proposed order and upload it to e-file.

I apologize for the delay in this ruling. If either of you have any questions, please do not hesitate to contact me.

Best,

Lillian L. Meadows

Law Clerk to The Honorable George M. McFaddin, Jr.

215 N. Harvin St.

Sumter, SC 29150

W: (803) 436-2373

M: (850) 865-5602

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

James Falk <jfalklaw@gmail.com> Wed, Oct 17, 2018 at 9:45 AM
To: Cam Morrow <cmorrow@scag.gov>

How does this affect next week. I am driving to Horry County to talk with Griffin. Call me in my car if we need to discuss. 843 557 8786

Jim
James Falk
Falk Law Office

38 Broad Street, 3rd Floor
PO Box 1058
Charleston, SC 29402
(843) 606 6007
(843) 972 9005 Fax
WWW.FALKLAWFIRM.COM
[Quoted text hidden]

STATE OF SOUTH CAROLIN)
COUNTY OF Horry)
STATE VS.)
Thomas Griffin)
AKA:)
Race: Black Sex: male)
DOB: [redacted] Age: [redacted])
SSN: [redacted])
DL#:)
SID#:)

IN THE C RT OF GENERAL SESSIONS
INDICTMENT/CASE#:
97 -GS-26 - 1708
A/W#: F-277666
Date of Offense: 12-19-1996
S.C. Code § : C.L. 17-25-30

CDR Code #: 0 1 0 1 1 3

SENTENCE (Guilty but mentally ill) wl

☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO: Assault w/ intent to commit C.S.C. w/ A minor 2nd in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0 1 3 1 9 1 6

☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

x Thomas C Griffin
Defendant

x Barbara Pratt
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of 20 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

RENEE N. ELY CLERK OF COURT HORRY COUNTY, SC CERTIFIED COPY

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

PLAINTIFF'S EXHIBIT 1 dce 10-22-18

*Fine: ..... $ _____
§ 14-1-206 - Assessments 100% ..... $ _____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $ _____
County (3%) ..... $ 3.00
TOTAL ..... $ 103.00

Clerk of Court/Deputy Clerk Jeanne J Roberts
Court Reporter: Brenda Babb

PTUP _____
_____ days/hours Public Service/Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

PRESIDING JUDGE Alice Renee Lee
Judge Code: 1 1 1
Sentence Date: 6-14-99

White - Clerk *Green* - Corrections *Canary* - Probation *Pink* - Defendant
SCCA/217 (1/99)

RECEIVED
NOV 05 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	
)	
IN THE MATTER OF THE CARE)	CASE NO. 2016-CP-26-6412
AND TREATMENT OF)	
THOMAS GRIFFIN,)	**ORDER OF COMMITMENT**
RESPONDENT.)	

The trial of this case was held in the County of Horry in the Court of Common Pleas the week of Oct. 22, 2018. A jury of citizens from Horry County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Christopher A. Morrow represented the State and James F. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent Thomas Griffin is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to continue to be detained at the Horry County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.

Presiding Judge
Fifteenth Judicial Circuit Court of Common Pleas

Oct. 23, 2018
Horry, South Carolina

HORRY COUNTY, SC
2018 OCT 23 AM 10:49
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
STATE VS.)
Thomas Griffin)
AKA:)
Race: Black Sex: male)
DOB: [redacted] :)
SSN: [redacted])
DL#:)
SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
97 -GS-26 - 1708
A/W#: F-277666
Date of Offense: 12-19-1996
S.C. Code § : C.L. 17-25-30

CDR Code #: 010113

SENTENCE (Guilty but mentally ill) ml
☑ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Assault w/ intent to commit C.S.C. w/ A minor 2nd
in violation of § 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 013916

☐ NON-VIOLENT ☑ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor

x Thomas C Griffin
Defendant

x Barbara Pratt
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 20 ~~days/months~~/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC
CERTIFIED COPY

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100%..... $_____
§ 14-1-211 - Surcharge..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... $_____
County (3%)..... $ 3.00
TOTAL..... $ 103.00

Clerk of Court/Deputy Clerk Jeanne J Roberts
Court Reporter: Brenda Babb

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

PRESIDING JUDGE Alice Renee Lee
Judge Code: ___/___/___
Sentence Date: 6-14-99

White - Clerk *Green* - Corrections *Canary* - Probation *Pink* - Defendant
SCCA/217 (1/99)

97-2-229

ARREST WARRANT

F- 277666 F277666

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

HORRY

THE STATE

against

THOMAS C GRIFFIN

[redacted] ABBY LANE

Address: CHADBOURN NC

Phone: _____ SSN: _____

[redacted]M Race: B Height: 5 7 Weight: 165

[redacted]State: _____ DL #: NCID 23820299

DOB: [redacted] Agency ORI #: _____

Prosecuting Agency: _____

Prosecuting Officer: _____

Offense: AND BATTERY OF A HIGH AND AGGRAV ATED NATURE (ABHAN) Offense Code: _____

Code/Ordinance Sec. C/L, 17-25-0030

This warrant is **CERTIFIED FOR SERVICE** in the [ ] County/ [ ] Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

TRANSFERRED TO SOLICITOR APR 2 1997

_____ (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant Thomas C. GRIFFIN on 2-13-97.

Sandy J. Cooper

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
HORRY)

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

180

Personally appeared before me the affiant DET. MATT TWIGG who being duly sworn deposes and says that defendant THOMAS C GRIFFIN did within this county and state on 12/19 1996 violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) in the following particulars:

CERTIFIED COPY
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

DESCRIPTION OF OFFENSE: C/L, 17-25-0030
ASSAULT AND BATTERY OF A HIGH AND AGGRAV ATED NATURE (ABHAN)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON 12/19/96, ONE THOMAS GRIFFIN DID APPROACH THE VICTIM ONE 12 YEAR OLD FEMALE, WHILE SHE WAS ATTEMPTING TO EXIT A RESTROOM LOCATED IN THE DIXIE DOLLAR AMUSEMENTS, IN THE LORIS SECTION OF HORRY COUNTY, GRIFFIN PUSHED THE VICTIM BACK INTO THE RESTROOM AND PRESENTED A KNIFE. ONCE INSIDE THE RESTROOM, GRIFFIN BEGAN TELLING THE VICTIM THAT HE HAS NOT HAD SEX IN THREE YEARS AND FOR HER NOT TO SCREAM AND SHE WOULD NOT BE HURT. THE VICTIM THEN YELLED FOR HELP AND WAS ABLE TO ESCAPE FROM GRIFFIN. GRIFFIN THEN FLED THE BUSINESS ON FOOT PRIOR TO THE ARRIVAL OF LAW ENFORCE MENT LEAVING HIS SISTER IN THE BUSINESS.

Sworn to and subscribed before me on 12/20/96

R S Lovelace (L.S.)

Signature of Issuing Judge

Matthew S Twigg

Signature of Affiant

Affiant's Address HORRY COUNTY POLICE DEPT
CONWAY SC 29526

Affiant's Telephone 0002481250

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
HORRY)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 12/19/96 defendant THOMAS C GRIFFIN did violate the criminal laws of the State of South Carolina (or ordinance of [ ] County/ [ ] Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: C/L, 17-25-0030
ASSAULT AND BATTERY OF A HIGH AND AGGRAV ATED NATURE (ABHAN)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

R S Lovelace (L.S.)

Signature of Issuing Judge

Judge Code: 791

Judge's Address 209 BEATY STREET
CONWAY, S.C.

Judge's Telephone 8032481373

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL

WITNESSES

TWIGG/HCPD

ARREST WARRANT NO. F-277666

CDR 0254 16-03-0656,0563(2)

CDR

CDR

CDR

ACTION OF GRAND JURY

JUL 31 1997

TRUE BILL

FOREMAN OF GRAND JURY

Gail H. Hucks

VERDICT

FOREMAN OF PETIT JURY DATE

DOCKET NO. 97-GS-26-1708

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

52576 1 CPN

COURT OF GENERAL SESSIONS

JULY TERM 1997

9.24.97 BW cut

THE STATE

VS.

THOMAS C GRIFFIN B/M

[redacted] ABBY LANE

CHADBOURN NC

284310000

DOB: [redacted]

SSN: [redacted]

ATTORNEY:

MS. BARBARA PRATT

INDICTMENT FOR:

ASSAULT WITH INTENT TO

COMMIT CRIMINAL SEXUAL CONDUCT

ORIGINAL

Ralph J. Wilson, Solicitor

CERTIFIED COPY

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR:
ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT

At a Court of General Sessions, convened on July 31, 1997 the Grand Jurors of Horry County present upon their oath:

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT
(CDR: 0254 16-03-0656,0563(2))

That Thomas C. Griffin did in Horry County on or about December 19, 1996 commit the offense of Assault with Intent to Commit Criminal Sexual Conduct in that he assaulted the victim, MINOR [redacted] a 12 year old female, by presenting a knife while uttering threats and pushing the victim back into a restroom she was leaving, all with the intent to accomplish a sexual battery.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

OFFICIAL

Ralph J. Wilson
SOLICITOR

RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

CERTIFIED COPY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED
Jun 22 2020
SC Court of Appeals

s/ Joanna K. Delany
Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 22nd day of June, 2020.