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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MERRILL D. STEWART,

APPELLANT

APPELLATE CASE NO. 2023-000311

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA IN THE FAMILY COURT
2 COUNTY OF YORK CASE NO.2021CP4603109
3
4 State of South Carolina
5 Plaintiff,
6 -vs- TRANSCRIPT OF RECORD
7 Merrilld C. Stewart
8 Defendant.
9
10 February 13, 14, 2023
11 York, SC
12 BEFORE:
13 The Honorable Daniel D. Hall, Judge.
14
15 APPEARANCES:
16 Suzanne Shaw
17 Attorney for Plaintiff
18
19 Don Thompson
20 Attorney for Defendant
21
22 Emily H. Walker, CVR
23 Court Reporter
24
25

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1 THE COURT: We are about to try the case of the
2 State of South Carolina versus Merrilld C. Stewart.
3 The caption is the Matter In the Care and Treatment of
4 Merrilld C. Stewart. Case number is 2021 CP46 03109.
5 I'm going to have the lawyers introduce themselves to
6 you in just a moment, but I'm going to go through some
7 questions what -- which again, as I told you
8 downstairs, are called voir dire questions that
9 determine whether you should be chosen as jurors on
10 this particular case.

11 The particular case that is before you is, again,
12 The Matter in the Care and Treatment of Merrilld C.
13 Stewart. Mr. Stewart, as you are going to hear this
14 morning, that he has been convicted of a sexual
15 offense. He's completed his term in the Department of
16 Corrections. The present action, the action that is
17 before you, is to determine his status under what we
18 call our Sexually Violent Predator Act of this state.
19 And that is what you will be hearing evidence on and
20 make a decision about in this particular case.

21 Is there any member of the jury panel who has any
22 knowledge of Mr. Merrilld C. Stewart or this case
23 whatsoever? If so, please stand.

24 Thank you, no one stands.

25 Ms. Shaw, if you would introduce yourself and your

1 role here.

2 MS. SHAW: Thank you, Your Honor. Good morning,
3 ladies and gentlemen. My name is Suzanne Shaw. I am
4 an Assistant Attorney General for the state of
5 South Carolina. My office is located in Columbia.

6 THE COURT: Is there any member of the jury panel
7 related by blood or marriage, or having a personal or
8 professional or social relationship with the attorney,
9 Ms. Suzanne Shaw? If so, please stand.

10 Thank you, no one stands.

11 Mr. Thompson, if you would introduce yourself and
12 your client.

13 MR. THOMPSON: Thank you, Your Honor. My name is
14 Don Thompson. I'm Mr. Stewart's attorney. I'm from
15 Greenville. Mr. Stewart, you want to stand up and let
16 them take a look at you? Turn around so they can see
17 you. Okay.

18 THE COURT: Thank you. Does any member of the
19 jury panel related by blood or marriage, or having a
20 close business, professional, or social relationship
21 with either Mr. Don Thompson or Mr. Merrilld Stewart?
22 If so, please stand.

23 Thank you, no one stands.

24 This case, and again, as I stated to you earlier,
25 involves an action by the state to commit Merrilld C.

1 Stewart for long-term sex offender treatment. Would
2 the fact that Merrilld C. Stewart has been convicted of
3 a sexual offense and has completed, or is about to
4 complete, his criminal sentence related to that
5 conviction, prevent you from being able to be fair and
6 impartial to both the State and the defense in this
7 particular case? If any factor would keep you from
8 being fair and impartial because this is a sexually
9 related offense. If so, please stand.

10 All right, yes, ma'am. Your number?

11 JUROR: 50.

12 THE COURT: I'm going to ask if you will come with
13 one of the bailiffs and stand right here. Let me talk
14 to you.

15 (WHEREUPON, a conference was held off the
16 record.)

17 THE COURT: Juror number 50 is excused.

18 CLERK: Juror number 81.

19 (WHEREUPON, a conference was held off the
20 record.)

21 CLERK: Juror Number 115.

22 (WHEREUPON, a conference was held off the
23 record.)

24 THE COURT: Is there any member of the jury panel,
25 other than those individuals that I have spoken to,

1 ever been a victim of a sexual assault, or you or a
2 close family or personal friend has been a victim of a
3 sexual assault? And if so, would that experience
4 affect your ability to be fair and impartial to both
5 the State and the defense in this case? If so, please
6 stand.

7 Yes, ma'am, your number?

8 JUROR: 38.

9 THE COURT: And with that I don't need to know any
10 other details. Does that fact affect your ability to
11 be fair and impartial to both the State and the defense
12 in this case?

13 JUROR: I can't say yes or no (inaudible).

14 THE COURT: All right. Juror number 38 will be
15 excused in this case.

16 Is there any member of the jury panel who has
17 close personal friends or relatives that have been
18 charged with or convicted of a sexual offense? If so,
19 please stand.

20 All right, your number?

21 JUROR: 145.

22 THE COURT: Would that fact affect your ability to
23 be fair and impartial in this case?

24 JUROR: No, sir.

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

1 CLERK: Your Honor, what number was that?

2 THE COURT: That was Juror number 140 -- 145?

3 JUROR: 145.

4 THE COURT: Is there any member of the jury panel
5 having any training or experience in the field of
6 psychiatry, psychology or any law training? If so,
7 please stand.

8 Thank you. No one stands.

9 Has any member of the jury panel currently or
10 formerly worked in the fields of psychiatry, psychology
11 or the law? If so, please stand. You've been employed
12 in those areas.

13 Thank you, no one stands.

14 The potential witness in this case is Dr. Marie --
15 Is it G-E-H-L-E? How do you pronounce that?

16 MS. SHAW: Gehle, Your Honor.

17 THE COURT: Gehle. Dr. Marie Gehle of the
18 South Carolina Department of Mental Health. Is there
19 any member of the jury panel related by blood or
20 marriage, or have any personal knowledge of Dr. Marie
21 Gehle? If so, please stand.

22 Thank you. No one stands.

23 Has any member of the jury panel been -- ever been
24 involved in a prison ministry, prison outreach program,
25 or any other program involving contact with

1 incarcerated persons? If so, please stand.

2 Thank you. No one stands.

3 Has any member of the jury panel, or any of your
4 close personal friends or relatives ever been subject
5 to civil commitment proceedings, or been voluntarily or
6 involuntarily committed? If so, please stand.

7 Thank you. No one stands.

8 Is there any member of the jury panel who is
9 related by blood or marriage to any other member of the
10 jury panel? If so, please stand.

11 Thank you. No one stands.

12 Is there any member of the jury panel, either you
13 or your family, active in or supporter of or
14 contributor to or follower of, in any way involved in
15 any club, agency, organization or movement that
16 promotes, advocates or supports law enforcement,
17 criminal prosecution and/or victim's rights? That
18 would include, for example, Citizens Against Violent
19 Crime, Rape Crisis Hotline, the Me Too Movement, or
20 organizations such as those. Is there any member of
21 the jury panel a contributor to or a follower of or a
22 supporter of any of those type clubs, agencies or
23 organizations? If so, please stand.

24 Thank you. No one stands.

25 Has any member of the jury panel, either you or

1 your family or a close personal friend, ever been the
2 victim of a sexual assault? If so, please stand.

3 Yes, ma'am, your number?

4 JUROR: 178.

5 THE COURT: Without going into any details, would
6 that fact affect your ability to be fair and impartial
7 to both the State and the defense in this case?

8 JUROR: (response inaudible)

9 THE COURT: Thank you. Does any member of the
10 jury panel hold any beliefs or opinions relating to sex
11 crimes or those convicted of sex crimes, which are so
12 strong and entrenched that you could not put them aside
13 and give both the State and the respondent a fair and
14 impartial trial? If so, please stand.

15 Thank you, no one stands.

16 I'm sorry, your number?

17 JUROR: 7.

18 THE COURT: Yes. As a result of that question,
19 would you be able -- are you able to be fair and
20 impartial to both the State and the defense in this
21 case?

22 JUROR: (response inaudible)

23 THE COURT: All right, thank you. Then you're
24 excused. That's number 7 is excused.

25 Is there any member of the jury panel that holds

1 a -- any belief or opinion relating to sex crimes, or
2 to those convicted of sex crimes -- I'm sorry, that is
3 the question that I just asked.

4 Is there any member of the jury panel or your
5 family ever worked for, or been involved with, or a
6 client of any advocacy center or crisis center, please
7 stand?

8 Thank you. No one stands.

9 Is there any member of the jury panel, either you
10 or your family, ever pursued a degree or had any
11 training in the area of psychology -- psychiatry,
12 psychology or the law? If so, please stand.

13 Yes, ma'am. Yes, your number?

14 JUROR: 71.

15 THE COURT: Yes.

16 JUROR: My mom is a psychologist with a private
17 practice --

18 THE COURT: I'm sorry, the department where?

19 JUROR: She had a private practice in psychology.

20 THE COURT: Would that fact affect your ability to
21 be fair and impartial to both parties in this case?

22 JUROR: No.

23 THE COURT: Thank you, you may be seated.

24 Yes, ma'am. Your number?

25 JUROR: 182.

1 THE COURT: Yes, ma'am.

2 JUROR: My aunt is former NYPD.

3 THE COURT: Would that fact affect your ability to
4 be fair and impartial in this case?

5 JUROR: (response inaudible)

6 THE COURT: Thank you, you may be seated.

7 Is there any member of the jury panel, either you
8 or your family or a close, close personal friend, ever
9 been employed by, or confined to, or had any
10 interaction with the South Carolina Department of
11 Mental Health, or any of its inpatient or outpatient
12 psychiatric treatment facilities? If so, please stand.
13 You had any contact with the South Carolina Department
14 of Mental Health, then please stand.

15 Thank you. No one stands.

16 Does any member of the jury panel have any reason
17 why you cannot listen to the evidence that's presented
18 in this case in this matter and render a verdict that
19 is fair and impartial to both the State and the
20 defense, any reason whatsoever, then please stand.

21 Thank you. No one stands.

22 Any further questions for the jury from the State?

23 MS. SHAW: Your Honor, can we approach?

24 THE COURT: Yes, you may.

25 MS. SHAW: Thank you.

1 (WHEREUPON, a conference was held off the
2 record.)

3 THE COURT: All right, Madam Clerk, I find that
4 the remaining panel is qualified -- those not being
5 excused will give us a jury. Ladies and gentlemen,
6 what we are going to do is we're going to be at ease in
7 a few moments. We have a computer program that will
8 print out the order in which your name will be called.
9 It's a random selection through a computer. I'm going
10 to give the lawyers -- once that list is generated, I'm
11 going to give them about 10 minutes to look over that
12 list. Then (inaudible) about that. When they finish
13 we'll come back here and we'll select a jury.
14 So why don't we do this. I'm going to allow you to
15 take a break. What this means is you can go out in the
16 hall or you can go downstairs, but just be back in your
17 seats in 15 minutes. It's ten after eleven on the
18 clock here in the courtroom. So at 11:25 if you will
19 be back in your seats. In the meantime we're going to
20 be working. The lawyers will be reviewing the list and
21 the order and then we will select a jury. Everyone
22 else remain seated while this panel is leaving. Y'all
23 can go to the bathroom or you can sit right there if
24 you want. But if you want to get up, this is the time
25 you can relax for the next 15 minutes.

1 (WHEREUPON, the Court took a brief recess.)

2 THE COURT: (missing audio) wearing the robe but
3 it is part of the procedure that we have to honor and
4 show respect for the system we have, so I appreciate
5 the fact that y'all are willing to do that. I think
6 we're ready for the clerk, Madam Clerk, to give us a
7 jury. Ladies and gentlemen, when they call the
8 numbers -- or the lawyers will be calling numbers for
9 strikes, don't get too excited or too depressed about
10 the number. That is not your juror number. They will
11 tell you, tell you who is seated on the jury a little
12 bit later on. So with that, Madam Clerk, if you'll
13 give us a jury.

14 CLERK: Counsel, I will receive your alternating
15 strikes beginning with plaintiff using your numbers on
16 the left 1-20 for your four strikes. Numbers 21-23 is
17 your first alternate. And numbers 24-26 for your
18 second alternate.

19 MS. SHAW: Ready?

20 CLERK: Yes, ma'am.

21 MS. SHAW: Okay. State strikes Juror 13.

22 MR. THOMPSON: We would strike Juror No. 11.

23 CLERK: I'm sorry?

24 MR. THOMPSON: Eleven.

25 CLERK: Thank you.

1 MS. SHAW: State strikes Juror No. 20.
2 MR. THOMPSON: We would strike Juror No. 5.
3 MS. SHAW: State strikes Juror No. 2.
4 MR. THOMPSON: We would strike Juror No. 9.
5 MS. SHAW: State strikes Juror No. 6.
6 MR. THOMPSON: And we would strike Juror No. 10.
7 CLERK: And your first alternate.
8 MS. SHAW: State strikes Juror 21.
9 MR. THOMPSON: And we would strike Juror No. 23.
10 CLERK: Second alternate.
11 MS. SHAW: State strikes Juror 24.
12 MR. THOMPSON: And we would strike Juror No. 25.
13 CLERK: I would like to verify strikes for both
14 sides. I have the following strikes for the plaintiff.
15 13, 20, 2, 6. Your first alternate number 21. And
16 your second alternate number 24.
17 MS. SHAW: That is correct.
18 CLERK: Thank you. I have the following strikes
19 for the defendant. I have number 11, number 5, number
20 9, number 10. Your first alternate number 23. Your
21 second alternate number 25. Is this correct?
22 MR. THOMPSON: That's correct.
23 CLERK: Thank you.
24 THE COURT: All right, Madam Clerk, if you will
25 call -- seat the jury.

1 CLERK: Ladies and gentlemen, as I call your name
2 please bring your personal belongings and move to the
3 jury box here to my right as the bailiffs direct you.
4 Juror No. 34, William H. Cothorn. Number 143,
5 Stephanie A. Raymond. Number 73, Cary D. Jackson.
6 Number 157, Evelyn Shannon. Number 67, Eugennie M.
7 Heth. Number 105, Tammy D. McMullen. Number 28,
8 Marshall B. Chavis. Number 19, Heather M. Bundrick.
9 Number 191, Elijah D. White. Number 21, Eric M. Burns.
10 Number 70, Cassy A. Hudson. Number 135, Brendon T.
11 Pidgeon. As our first alternate, number 156, David A.
12 Scott. As our second alternate, number 173, Jennifer
13 E. Sumter.

14 MR. THOMPSON: Sorry. Madam Clerk?

15 THE COURT: Yeah, hold on, hold on a minute.

16 CLERK: Number 25 was struck?

17 THE COURT: Yes.

18 CLERK: My apologies. I marked the wrong one.

19 THE COURT: Number 26 should be --

20 CLERK: Yes, sir. Number 100 Elaini B. McGaha --
21 I'm sorry I can't pronounce that.

22 THE COURT: All right, thank you. Anything
23 further as far as the jury from the State?

24 MS. SHAW: No, Your Honor.

25 THE COURT: From the defense?

1 MR. THOMPSON: No, sir.

2 THE COURT: All right, ladies and gentlemen.
3 Those of you who have not been selected as jurors in
4 this particular case, you're going to be released for
5 today. You'll need to call tonight. We do anticipate,
6 at this point, starting another very short trial on
7 Wednesday morning. So you'll be getting instructions
8 regarding that sometime between now and Wednesday
9 morning. But with that you are -- I guess we can go
10 ahead and release them for today, Madam Clerk.

11 With that y'all are released for today. If you've
12 got anything downstairs, go by and pick it up. But be
13 sure and call the number that the clerk gave you
14 regarding your status for the rest of the week, because
15 we're, you know, we're not through with trials this
16 week. We should start another trial on Wednesday
17 morning. So you'll need to call and get an update on
18 that tonight and probably tomorrow evening. With that
19 everyone else remain seated while this panel is
20 excused. Y'all are excused. Lawyers approach.

21 (WHEREUPON, the non-selected panel left the
22 courtroom.)

23 THE COURT: All right, thank you, ladies and
24 gentlemen. What we're going to do next is the clerk is
25 going to go ahead and swear you in. And then I'm going

1 to give you some preliminary instructions about the
2 case. And then, and I'll -- and then I'll give you
3 some instructions about where we go once I finish that
4 process. Madam Clerk, if you'll swear this jury.

5 CLERK: Please stand. Ladies and gentlemen of the
6 jury, would you please raise your right hand. You
7 shall well and truly try the issues joining in this
8 case and a true verdict give according to the law and
9 evidence so help you God. Please indicate by saying I
10 agree.

11 THE JURY: I agree.

12 CLERK: Thank you, and please be seated.

13 THE COURT: All right. Thank you, ladies and
14 gentlemen. I'm going to go over some preliminary
15 instructions with you. One instruction you're going to
16 hear throughout the trial is that even though you've
17 been selected as jurors on this particular case, you're
18 not to discuss the case at all among yourselves or even
19 when you go home today and tonight. You're not to
20 discuss it with the folks you live with. And even in
21 the jury room, when you go back there, you're not to
22 discuss the case at all until all the evidence is in.

23 And the reason for that is, as I'm going to
24 instruct you, that you are what we call the fact
25 finders in the case, that's your responsibility. And

1 then you're going to render a verdict at the end of the
2 case.

3 The only way to be fair to both the state and the
4 defense in this case, for you to be able to render a
5 fair and impartial verdict, is for you to base your
6 verdict, your decision on what you hear in this
7 courtroom and not what you may or may not have heard
8 outside the courtroom or in discussions among -- with
9 other people, or your discussions even among
10 yourselves, until you've heard the evidence in the case
11 and I've given you the law in the case. So I urge you,
12 and again instruct you, do not discuss the case at all,
13 even among yourselves, until all the evidence is in and
14 I have told you what the applicable law is in the case.

15 You've been selected as fair and impartial jurors
16 and your purpose is to find and to determine the facts
17 in the case. You're the sole judge of the facts. If
18 at any time I make any kind of comment regarding the
19 facts, you are to disregard that. You are to determine
20 the facts in this case from the testimony that you hear
21 and any other evidence that was presented. You should
22 not be influenced by any opinions or statements that
23 you may have heard outside this courtroom. We ask that
24 you perform your duty diligently and conscious --
25 conscientiously, and with that you will have fulfilled

1 your oath as jurors in this case.

2 The law that makes you the judges of the facts in
3 the case is also the law that makes me the judge of the
4 law. The law that I give you is the law that you are
5 required to consider. You must accept the law and
6 follow it even though you may disagree with it.

7 I can't tell you what the facts are in the case,
8 and you cannot disagree with me about what the law is
9 or should be. Your job is to take the law as I give it
10 to you and apply it to the facts as you find them from
11 the testimony of the witnesses and any other evidence
12 that is presented. After doing that, then you should
13 be able to deliberate and render a verdict according to
14 your oath that you took. Again, do not discuss the
15 case. If anybody attempts to discuss the case with you
16 outside this courtroom, then you need to let one of the
17 bailiffs know immediately, and they'll bring that to
18 the Court's attention.

19 Tomorrow morning, we will -- what I'm going to do
20 in just a few moments, I'm going to release you for the
21 rest of the afternoon. We've got some matters that we
22 will be taking up outside of your presence. I'm going
23 to ask that you be back in your jury room at 9:00
24 tomorrow morning. We will start at 9:00 tomorrow
25 morning. At that time, the lawyers will be given an

1 opportunity to make their opening statements to you.
2 Any statements they make in their opening is not facts
3 in the case. It's what opening statements are is
4 they're a summary of what they believe the evidence
5 will show, and what their particular viewpoint is on
6 the case.

7 If during the trial, and again, this would more
8 than likely be a very short trial, but if during the
9 trial one of the lawyers stands up and objects and says
10 something like, I object, Your Honor. I may be able to
11 deal with that immediately. On the other hand, I may
12 call the lawyers up here to the bench, and we can talk
13 about it outside of your presence. Or I may need to
14 send you back to your jury room and discuss that
15 particular area of the law outside of your presence.

16 If they do that, I ask that you not hold that
17 against them. They're doing their job as lawyers, what
18 they -- to represent their clients to the best of their
19 ability, and trying it according to the law. So again,
20 if they do that do not hold that against them. They're
21 simply doing the job that they're required to do.

22 In determining what the true facts are in the
23 case, you must decide whether or not the testimony of
24 the witness or witnesses is believable. It's my
25 responsibility to determine, as a matter of law, as to

1 whether certain testimony is admissible at all or not.
2 But once that testimony is admitted, you believe -- it
3 is up to you to believe it solely. And whether it's
4 believable is up for you solely to determine.

5 In deciding whether to believe a witness you have
6 the right to consider whether the witness has an
7 interest in the result of the trial, whether the
8 witness is prejudiced toward either the plaintiff or
9 the defendant, or the opportunity for the witness to
10 have seen the matters and things about which the
11 witness may testify, and the way the witness acts on
12 the witness stand.

13 At the end of the case, you will have the
14 opportunity to consider the testimony in the case and
15 apply that, that you find it to be -- and apply that
16 testimony with the law that I will give you at the
17 conclusion of the case. And you'll be able to do that
18 in your jury room and discuss that -- and you'll be
19 able to discuss the case in its entirety at that time.

20 You can bring water in and out of the courtroom
21 with you. I ask if you -- don't bring any, don't bring
22 any coffee or soft drinks in. That helps us preserve
23 the nice, new carpet and things we have in the
24 courtroom. But feel free to bring any water with you
25 when you come in and out of the courtroom. I'm going

1 to ask that the two alternates, if you'll keep those
2 two seats throughout the trial.

3 Tomorrow morning when you come into the jury room,
4 if you would elect a foreperson from among yourselves.
5 A foreperson is just simply someone that the Court can
6 communicate with and make sure that the instructions
7 are being followed in the jury room. The foreperson
8 has no further -- has no greater say or influence on
9 the decision that you make as a jury. The foreperson
10 is simply someone by which the judge or the Court can
11 communicate with the jury panel. So at some point
12 tomorrow morning if y'all would elect a foreperson
13 among yourselves. You do that. When you come back in
14 the courtroom at that time, the foreperson will need to
15 take this end seat here on the front row throughout the
16 remainder of the trial.

17 With that I believe that concludes my preliminary
18 instructions and remarks. Anything further from the
19 State?

20 MS. SHAW: No, Your Honor.

21 THE COURT: From the defense?

22 MR. THOMPSON: No, sir.

23 THE COURT: All right. Y'all be back ready to go
24 at 9:00 in the morning. Enjoy your afternoon or go
25 back to work or whatever you have to do, but be back

1 ready to go at 9:00. The bailiff will give you
2 instructions about where to go tomorrow morning.
3 Everyone remain seated while this panel is excused.

4 (WHEREUPON, the jury exited the courtroom.)

5 THE COURT: Alright, let's work on this -- these
6 voir dire questions and deal with those. That make
7 sense to y'all?

8 MR. THOMPSON: Your Honor, may his parents come
9 in?

10 THE COURT: Yes, yeah and...

11 MR. THOMPSON: Mr. Stewart's parents are sitting
12 right outside in the hall.

13 (WHEREUPON, the defendant's parents entered
14 the courtroom.)

15 MR. THOMPSON: May I have a moment, Your Honor?

16 THE COURT: All right, thank you. We have started
17 the trial of In the Matter and Care and Treatment of
18 Merrildd C. Stewart, and those of you who just come in,
19 we have selected a jury. They have not -- I've given
20 them preliminary instructions. They'll be back
21 tomorrow morning, in which the trial will actually
22 start with the lawyers giving their opening statements
23 and then going into the case.

24 What we do have before the Court before we break
25 for the day, there were several motions in limine. And

1 we need to deal with those right now. Mr. Thompson,
2 let's start with yours. You had one and then we'll
3 move to the State's.

4 MR. THOMPSON: Thank you, Your Honor. Judge, my
5 motion has to do with limiting or excluding the details
6 of the sexual assault. Mr. Merrilld Stewart was
7 charged and convicted -- I'm sorry, I'm losing my
8 voice -- was charged and convicted of a sex crime. The
9 doctor considered -- or has the details of it listed in
10 here. However, in her report, she indicates that there
11 is no mental abnormality, no paraphilia. She finds
12 that he's subject to the Sexual Violent Predator Law
13 based on personality disorder. She finds that he has a
14 personality disorder with narcissistic tendencies.

15 Judge, she lists also, for her finding on that
16 personality disorder, she goes into a history of
17 problems with behavior beginning in childhood,
18 exhibiting a pattern of disregard for and violation of
19 the rights of others, repeatedly arrested, evidence of
20 a failure to conform his behavior to societal and legal
21 norms. He's deceitful. He provides contradictory
22 information. She goes into that. That applies --
23 would apply to a personality disorder. But the facts
24 of the underlying sex crime would have nothing to do
25 with that.

1 And what we're arguing and I realize I put in my
2 motion, I may have just absolutely misworded it. I put
3 it wasn't relevant. I realize that pretty much
4 anything is relevant, but it's a situation we get up
5 here, we pound on those elements -- or those facts of
6 those sex crimes, which really have nothing to do with
7 personality disorder. And the jury may -- it may
8 prejudice the jury.

9 And I would argue that under Rule 403 the
10 probative value of the facts -- the underlying facts of
11 the sex crime, are outweighed by their prejudicial
12 value. I mean, I don't think we're going to go into
13 the underlying facts in any of these other things that
14 she's alleging. So I don't see why we would go into
15 the facts of the sex crime.

16 THE COURT: All right. Thank you. Ms. Shaw, I'll
17 be glad to hear from you.

18 MS. SHAW: Thank you, Your Honor. Your Honor,
19 this particular issue was directly addressed by our
20 Supreme Court In the Matter of the Care and Treatment
21 of Corley. That's a 353 South Carolina 2002-2003 Case.
22 Specifically, in that case, the defendant -- or the
23 respondent sought to do the exact same thing as
24 Mr. Stewart is seeking to do here, which is exclude the
25 facts of the underlying sexually based convictions,

1 basically, because they are prejudicial. And
2 unfortunately for him, our Supreme Court has said that
3 if the expert in the case reasonably relies upon those
4 facts, no matter how prejudicial they are, and as long
5 as she factored those facts into making her
6 conclusions, they are highly relevant and under
7 Rule 703 those facts will come in, because she relied
8 on them.

9 And I would also submit that the matters of White
10 and Edle also apply to the question of convicted and
11 unconvicted conduct. In this matter, we have several
12 additional sex offenses that Mr. Stewart was charged
13 with both in this state and out of state, as well as an
14 out-of-state conviction for indecent liberties with a
15 minor in North Carolina. So all of the facts of those
16 underlying cases go directly toward establishing the
17 antisocial personality disorder, which is what
18 Dr. Gehle diagnosed him with.

19 That criminal history, the details of it, the
20 complete disregard for the rights of others, the lack
21 of compliance with supervision, because Mr. Stewart did
22 get a violation of probation out of Mecklenburg County
23 after he was charged a second time with yet another sex
24 offense. So all of those details are highly relevant
25 to Dr. Gehle in the formulation of her opinion

1 regarding whether Mr. Stewart has a personality
2 disorder or paraphilia, because that's what the statute
3 requires, and she did rely on them in forming her
4 opinion.

5 So we would submit they're highly relevant despite
6 their prejudicial nature, and to exclude them would
7 effectively hamstring the State from being able to
8 present a full record of the evidence in this case,
9 regarding Mr. Stewart's status. So we would
10 respectfully request that the Court deny that motion.

11 THE COURT: All right. Thank you, Mr. Thompson,
12 I'll give you the last.

13 MR. THOMPSON: Your Honor, I just want to say the
14 Corley case that was cited, that was a case where the
15 state wanted to put indictments in, and the, the court
16 ruled on yes, you can put the indictments in and we're
17 not contesting that. If they were trying to keep the
18 indictments out because they didn't want the facts of
19 the indictment in there, I mean, it didn't go beyond
20 the indictments.

21 THE COURT: All right. Thank you. Well, on the,
22 on the issue of the underlying -- the facts underlying
23 the sex crime, I'm going to deny the motion to keep
24 those out. I find that they are relevant for the
25 purposes of this hearing. It's a civil hearing to

1 determine whether he can be found to be a sexually
2 violent predator. And that I'll allow the State to
3 use -- go into those as the State has indicated they
4 are the basis or part of the basis by which Dr. Gehle
5 formed her opinion, her expert opinion. So I'm going
6 to allow those.

7 All right, what's next? Ms. Shaw, I believe that
8 brings us to your motion.

9 MS. SHAW: Yes, Your Honor, and thank you. And
10 just as one addition to the record, the argument itself
11 is addressed in my pretrial memorandum from pages four
12 to eight.

13 THE COURT: All right, thank you.

14 MS. SHAW: Yes. All right so, Your Honor, the
15 State has filed its standard three motions in limine.
16 Mr. Thompson and I did have the opportunity to discuss
17 these beforehand. The first motion in limine is to
18 prohibit the defense from making any reference to the
19 sexually violent predator treatment program being in a
20 prison or a prison environment on the old death row,
21 which is where the old SVPTP used to be located.
22 There's a new facility. It's not there anymore.

23 Or from prohibiting the defense from making
24 references to that Mr. Stewart may be committed for
25 life, or forever, because it could potentially

1 transform the jury's impression of the purpose of this
2 treatment program from a civil scheme, not designed to
3 punish, but to get offenders who will fall into this
4 highly dangerous category the treatment that they need
5 while keeping society safe from them so they cannot
6 reoffend.

7 So we're not here in a punitive context, and those
8 would certainly mislead the jury into thinking that we
9 may be. I -- Mr. Thompson and I, when we discussed
10 this earlier, I have no objection to Mr. Stewart being
11 referenced as being there indefinitely, or that he
12 would be in a secure facility, but any reference to
13 punitive type language to suggest that we would be
14 punishing him, I would request be excluded.

15 THE COURT: All right. Mr. Thompson.

16 MR. THOMPSON: Thank you, Judge. I realize the
17 law says this is not punitive and there's nothing I can
18 do to change that. I'm not going to try to argue that.
19 These are the three standard motions that the State's
20 filed in every case we have dealt with, and I think
21 we've worked it out the same way in each case. And
22 that is that I can ref -- I won't call it a prison. .
23 But I can reference it as, as a secure facility. And I
24 can represent it as being confined in a secure
25 facility.

1 As to the --

2 THE COURT: Well, well, let me do this. As far as
3 going into the -- all three of these motions. If these
4 are the standard motions, and you've indicated that
5 y'all have agreed to -- that you've worked them out to
6 follow the procedure that you've done in every other
7 case you've done of this nature in the past, is that --
8 is that where we are?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: And y'all understand the ground rules?

11 MS. SHAW: Yes, Your Honor. We've pretty much
12 worked them out, but we do just need to make the record
13 because if he does get committed, then there will
14 certainly be an appeal.

15 THE COURT: Okay. All right. Go ahead,
16 Mr. Thompson.

17 MR. THOMPSON: Let me see what there -- I lost
18 track of my -- here, Judge, I'm sorry. As I was
19 saying, the secure facility is okay. Confined is okay.
20 The length of time is indefinite. We've agreed to use
21 the word indefinite. That's what we've done in the
22 past. I will, for the record, indicate that I think
23 that the actual -- being able to go beyond that is
24 relevant. And I'll tell you why.

25 Mr. Runyon and I tried a case in Spartanburg last

1 spring, and the jury come (sic) back with a question of
2 how long is he gonna be there? Well, that hadn't been
3 put into evidence. So the judge told them they
4 couldn't consider that. On the way out to the garage
5 after the, after the trial, and after they had put the
6 fellow in treatment, I happened to be parked near one
7 of the jurors and he came up to me and he said, how
8 long is this treatment program? And I said, the word's
9 indefinite. He says well, it means what six months, a
10 year? I said, No. It's indefinite. It could be
11 six months to a year, probably not. Or it could be
12 20 years, 30 years, it might be his life. And the
13 fellow -- the juror said to me, Oh, we thought it was
14 something kind of standard. We wouldn't have put him
15 in there if we had known that. So I think it is
16 relevant, but I do know that in the past; we've agreed
17 that the word we would use is indefinite.

18 THE COURT: All right. I think that seems to be
19 the appropriate way to deal with it. I don't know what
20 the judge -- how the judge answered that juror --
21 jury's question about -- I think Judge Hall would have
22 said, you have all the evidence in the case, period.
23 And not made any further comment. But be that as it
24 may, again, in this particular case, I've heard the
25 motion and I will, I will restrict you or allow you to

1 use the word indefinite as it relates to the length of
2 time of any treatment program. All right.

3 MS. SHAW: And, I mean, I know that Mr. Thompson
4 is very unlikely to do this, but would your Honor also
5 be excluding the death -- the language related to any
6 sort of punitive scheme like going to a prison or being
7 on Broad River?

8 MR. THOMPSON: I cannot go there. I --

9 THE COURT: Yeah, he understands the rule.

10 MS. SHAW: Okay. Thank you, Your Honor. Then
11 moving on to the second motion in limine we had
12 discussed that there would be no discussion of any
13 future treatment that Mr. Stewart might get either on
14 an inpatient or outpatient basis. My only intent to
15 discuss treatment during this trial is to ask Dr. Gehle
16 if Mr. Stewart has had any sex offender treatment at
17 any time. Because he did fail to comply with it when
18 he was on probation in North Carolina. And so that is
19 part of the relevance to her opinion. And that is the
20 only discussion I intend to offer this jury regarding
21 treatment.

22 And it would -- if, if defense counsel were
23 permitted to go into what type of treatment -- could it
24 be on an inpatient or outpatient basis, would it
25 potentially be effective, that would confuse the issues

1 here. I mean, the jury's only really called upon to
2 decide whether he has personality disorder or mental
3 abnormality, whether he's likely to reoffend. Not
4 whether treatment would be effective or what kind of
5 treatment he should get. And that would effectively
6 create a fourth element that I would need to prove if
7 that were permitted, so we ask that that be excluded.

8 THE COURT: Mr. Thompson.

9 MR. THOMPSON: Judge, I think for the most part,
10 we understand that. The statute does indicate though
11 that it -- the jury is to find that he is to be placed
12 in secure inpatient, or a secure treatment facility,
13 which would be inpatient, confined. That's the use of
14 that word. So I think I could ask if outpatient
15 treatment were appropriate. Now I realize I can't go
16 into what kind of treatment, what will they do, just
17 that, that thing. But I think I could ask if
18 outpatient treatment would be appropriate.

19 THE COURT: Again, what's the relevance? I'm --
20 the relevance of any -- whether treatment is
21 outpatient. Ms., Ms. Shaw?

22 MS. SHAW: Oh, I'm sorry. Your Honor, the
23 relevance of whether it's inpatient or outpatient, in
24 the State's opinion, is not there. I mean, it's not
25 relevant whether he should get inpatient or outpatient

1 because the statute itself expressly says that the
2 person is likely, if not committed to a secure facility
3 for long-term control, care, and treatment. So it's,
4 that's not the question Dr. Gehle answered, and that's
5 the answer she would give Mr. Thompson if he did ask.
6 Is that that is not the question that I was called upon
7 to answer. So, A: She wouldn't be able to testify
8 about it because she didn't form any opinions about
9 whether it could be inpatient or outpatient. She
10 merely answered, you know, whether he meets criteria
11 if -- defined -- if not confined he's likely to
12 reoffend.

13 THE COURT: All right.

14 MR. THOMPSON: Like the statute does read, Judge,
15 suffer from a mental abnormality or personality
16 disorder, that makes the person likely to engage with
17 acts of sexual acts -- in acts of sexual violence, if
18 not confined in a secure facility for long-term
19 control, care, and treatment. So that's something
20 they'll have to decide, whether he needs to be
21 confined.

22 THE COURT: Well, they're not here -- y'all help
23 educate, educate Judge Hall. That is the issue.
24 That's what they're to determine. They're not to
25 determine whether there are any other alternatives, or

1 whether there's outpatient treatment may or may not be
2 available. That's not even an issue for this jury to
3 even consider.

4 MR. THOMPSON: No, sir, but apparently it's not an
5 issue that was considered by the doctor either in
6 making her opinion.

7 THE COURT: All right. Well, I'm not gonna allow
8 you to discuss -- I'm going to grant the motion as far
9 as limiting on the treatment. It appears that the
10 doctor is going to testify about treatment according to
11 the wording of the statute but no further, is that
12 correct?

13 MS. SHAW: She's only going to be discussing
14 Mr. Stewart's prior failure to comply with sex offender
15 treatment in North Carolina, and that he has not had
16 any sex offender treatment while he's been in SCDC.
17 That's it.

18 THE COURT: All right.

19 MR. THOMPSON: I would argue that opens the door
20 when she goes into the fact that he hasn't complied
21 with outpatient treatment.

22 THE COURT: I note your objection, however, I'm
23 going to grant the motion to limit to what we
24 discussed. All right.

25 MS. SHAW: Your Honor --

1 THE COURT: Are we clear on that?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: All right.

4 MS. SHAW: Thank you, Your Honor.

5 MR. THOMPSON: I may have one other issue dealing
6 with treatment, Judge.

7 THE COURT: All right.

8 MR. THOMPSON: I'm not going to go into what kind
9 of treatment he can get or how it's done, but I may
10 want to ask her, depending on her testimony, how do we
11 know when treatment's over?

12 THE COURT: Ms. Shaw.

13 MS. SHAW: Your Honor, I would object to that
14 question for the very reason that we don't know when
15 treatment is going to be over, and if Mr. Stewart is
16 committed to the program the keys are in his hands for
17 him to eventually get out. He's the one who has to
18 make the changes. He's the one who has to engage in
19 the treatment itself and show another evaluator, who
20 most likely will not be Dr. Gehle because she doesn't
21 do annual review evaluations, he'll have to convince
22 somebody else when his treatment --

23 THE COURT: Well, I'm going to ask -- I'm going to
24 allow him to ask that question. That seems reasonable
25 that he's going to ask how do we know when the

1 treatment will end. And an expert has to make that
2 decision even though, yes, it's in his hands. But it's
3 up to someone else to evaluate what he's done to
4 determine whether he has met any standard to be
5 released. So I'm going to allow him to go into -- to
6 do that.

7 MS. SHAW: Okay, Your Honor --

8 THE COURT: All right.

9 MS. SHAW: -- thank you. Just for the record, we
10 would just say that that would again add another
11 element that we may have to prove to this jury's mind,
12 so we would object to that, but I understand the
13 Court's ruling.

14 THE COURT: All right.

15 MS. SHAW: And then the last thing, motion in
16 limine would be the total length of time Mr. Stewart
17 has been kept in a confined -- confinement either in
18 SCDC, or the, or the county jail past the expiration of
19 his criminal sentence. This case has been listed -- it
20 was originally listed when Dr. Gehle, I believe, put
21 her opinion out. And then Mr. Stewart got a second
22 opinion through his prior counsel. Then there was a
23 breakdown in that relationship and Mr. Thompson got on
24 board. Now we immediately got this rescheduled for
25 trial to expedite it. So the total length of time he

1 has been in past his max out date has been -- I won't
2 say extensive, but it's been more than he, he would
3 have served had he been released and not subject to
4 these proceedings.

5 And what we don't want is for that to be
6 discussed, so that the jury may think that the
7 government is simply holding Mr. Stewart indefinitely
8 for, you know, for punitive reasons or for any reason
9 other than that, our cases -- once we get a probable
10 cause order for evaluation, automatically put a
11 detainer on the offender, so he cannot be released
12 until this matter is concluded. So we just submit that
13 would be highly prejudicial and should not be
14 discussed.

15 THE COURT: All right.

16 MR. THOMPSON: I have no intention of doing that,
17 Judge. I understand that's not appropriate.

18 THE COURT: All right, thank you. Then I'll grant
19 that motion, however, the State agrees -- I mean the
20 defense agrees that they're not going to go into any
21 length of time that he's been held past his maximum
22 date of incarceration. All right.

23 MS. SHAW: Thank you.

24 THE COURT: Any other issues?

25 MS. SHAW: No, Your Honor. We just want to go

1 back in chambers. We can talk about the --

2 THE COURT: Yeah, let's go back. We'll talk about
3 that other case.

4 MS. SHAW: Oh, and the other case, yes.

5 THE COURT: All right, then we'll be at ease till
6 tomorrow morning at 9:00. We will start at 9:00
7 tomorrow morning.

8 MS. SHAW: Yes, sir.

9 (WHEREUPON, the Court was in recess until
10 9:00 a.m. February 14, 2023.)

11 (Continuation of trial on February 14, 2023.)

12 THE COURT: Ladies and gentlemen, I appreciate
13 your patience this morning. We've been working even
14 though you have not been in the presence -- been
15 present in the courtroom. We're ready to proceed. It
16 has -- it does appear that Mr. Jackson, number 73,
17 you've been elected as the foreperson. Okay, and I
18 instruct you, as I did yesterday, that you have no
19 further -- no greater say in the outcome of
20 deliberations than any other juror. However, your role
21 is to communicate back and forth with the Court, if
22 that's required.

23 What we'll do is we're ready now to begin opening
24 statements. We'll begin with the State.

25 MS. SHAW: Good morning, Your Honor. Thank you.

1 May it please the Court. Good morning, ladies and
2 gentlemen. This is going to be a very short trial. My
3 name is Suzanne Shaw. Again, I am an Assistant
4 Attorney General for the State of South Carolina, and
5 we are here in the matter of the care and treatment of
6 Merrilld C. Stewart. This is a sexually violent
7 predator matter. These are relatively uncommon. It's,
8 relatively, a little known statute. But what it
9 provides for is the identification and civil commitment
10 of individuals who meet certain criteria to be
11 considered sexually violent predators.

12 Now, since this is not a common statute I'm going
13 to explain a little bit what, what it was designed to
14 do. It was originally enacted in 1998 to assess and
15 determine whether certain individuals had, who were of
16 an excessively dangerous class of sex offender, met
17 certain criteria that would qualify them for an
18 indefinite civil commitment, where they would be
19 offered care and treatment for their mental
20 abnormalities or personality disorders.

21 Now under the statute, we, these individuals are
22 not being punished. And I want to make that very clear
23 to you today. We are not here to punish Mr. Stewart.
24 He has been convicted of certain sexual offenses, and
25 he has paid his debt to society. He served his time

1 and he has maxed out. So I just want to make sure
2 that's very clear to you.

3 You're not going to like him after what you hear
4 about what he's done. And that's okay. But
5 Mr. Stewart is a U.S. citizen. He is entitled to his
6 liberty now that he has served his prison sentence.
7 The State cannot infringe upon that right without due
8 process of law. And that's why you're so important to
9 this process because you are the fact-finders. You're
10 the ones who will ultimately decide whether he meets
11 criteria, or whether he does not.

12 So how do we do that? We have to answer two
13 questions in this matter. Actually, one of them is
14 already answered. And so I'm gonna back you up,
15 because the criteria I have to prove to you, I don't
16 want to under -- also underscore this. I have to prove
17 to you beyond a reasonable doubt that he meets
18 criteria. In ordinary civil cases, the standard is
19 preponderance of the evidence, roughly more likely than
20 not, 51%. We don't use that standard in these types of
21 cases simply because we are dealing with constitutional
22 liberty issues. The State must prove, using the
23 highest burden our judicial system allows to you, that
24 this individual needs to be civilly committed. So bear
25 that in mind.

1 But this is a very important case. It's going to
2 go quick because we only have one witness, but I need
3 you to pay very close attention because we are dealing
4 with a man's liberty.

5 So back to the elements of the case. First things
6 first, the individual must have what is called a
7 qualifying conviction. It means he will have to have
8 been convicted of certain enumerated sexual offenses,
9 they're in the statute. It's very clear what they are.
10 And we wouldn't even be here if that were not already
11 established. So first we have to have that.

12 Second, we have to have -- the individual has to
13 have a personality disorder or mental abnormality which
14 is typically a paraphilia. And you will be explained
15 what that is. That makes it likely that they're going
16 to reoffend in a sexual way. We don't care in these
17 cases if an individual has a personality disorder, but
18 they're not likely to sexually reoffend. If a guy is
19 more likely to rob you than he is to rape you, he
20 doesn't belong in this program. That's what we're
21 talking about. The sexual reoffense, not, not another
22 criminal offense, like grand theft or anything like
23 that.

24 So how do we establish those elements? Well, it's
25 through expert testimony. Figuring out whether someone

1 has a mental abnormality or personality disorder, and
2 whether they're likely to reoffend is beyond the
3 knowledge of the ordinary juror, beyond my knowledge
4 for certain. So what we do is we have the Department
5 of Mental Health evaluate the individual, they conduct
6 a records review, a risk assessment, as well as an
7 interview. And you will hear about all of that, and
8 how Mr. Stewart behaved during the interview, what his
9 actuarial and risk assessment results were, and then
10 you'll be asked to make that final decision.

11 So this, as I said before, this is going to go
12 real quick. We're, hopefully, going to be done by
13 mid-afternoon. So I ask for your close attention. And
14 I ask that you dispassionately evaluate what you hear
15 today, and make your decision based on those facts.
16 Thank you.

17 THE COURT: Thank you. Mr. Thompson.

18 MR. THOMPSON: Thank you, Your Honor. Ms. Shaw.

19 MS. SHAW: Counsel.

20 MR. THOMPSON: Good morning, ladies and gentlemen.
21 I'm not going to, hopefully, I'm not going to plow the
22 same ground that Ms. Shaw just plowed. I mean, I was
23 going to say those things, too. But you heard it and
24 the judge will give you that in final instructions.
25 We'll probably go back over it in our final arguments.

1 But when I was in law school 45 years ago, we were
2 taught in a trial to tell the jury what they're going
3 to hear, then you let them hear it, then you tell them
4 what they heard. I found that not to be very effective
5 for two reasons.

6 Number one, practicing law I've realized that what
7 I think somebody's going to say might not be what they
8 say. Or I may be telling you they're going to say
9 this, and they don't. And number two, I think it
10 insults your intelligence for me to sit here and say,
11 oh, they're going to say this. You're going to hear
12 it. There's no need for me to tell you what they are
13 going to say.

14 What I'm going to tell you instead, though, is --
15 and it's going to go a little bit over what Ms. Shaw
16 said. I'm going to tell you what you need to be
17 looking for. There's basically three things. You
18 don't need to look for the first one. The first thing
19 is whether or not he's been convicted of a sex offense
20 that qualifies. He has. Okay, you don't need to worry
21 about that one.

22 Second thing is whether or not he suffers from a
23 mental abnormality or personality disorder. You need
24 to listen to testimony, and decide whether or not
25 Mr. Stewart suffers from a mental abnormality or

1 personality disorder.

2 And thirdly, if you decide that he does, does that
3 mental abnormality or personality disorder make him a
4 person likely to reoffend, to engage in acts of sexual
5 violence, if he's not confined in a long-term secure
6 facility.

7 As Ms. Shaw said, we're not here to punish
8 anybody. That's not your job. You're going to hear
9 about what's happened in the past, and you aren't going
10 to like a bit of it. It's going to sound horrible.
11 But he's already been convicted of that. He's already
12 been to prison. He's paid his debt to society. And
13 he's been released from prison. Now he's waiting for
14 this, this sexually violent predator action. With that
15 I'm going to sit down. Let the State call its
16 witnesses. Thank you.

17 THE COURT: All right. Thank you, Mr. Thompson.
18 State, call your witness.

19 MS. SHAW: Your Honor, the State calls Dr. Marie
20 Gehle of the Department of Mental Health.

21 CLERK: Place your left hand on the Bible and
22 raise your right. Do you solemnly swear or affirm that
23 the testimony you give in this matter will be the
24 truth, the whole truth, and nothing but the truth?

25 THE WITNESS: I do.

1 MARIE GEHLE, being first duly sworn, was examined
2 and testified as follows:

3 DIRECT EXAMINATION

4 MS. SHAW: Dr. Gehle, can you hear me from here?

5 DR. GEHLE: I'm sorry. There's no place for me to
6 put my stuff so I'm going to have to put this
7 somewhere. Give me a second.

8 MS. SHAW: Can everybody hear me? I'm sorry, I'm
9 naturally very soft spoken. If you can't hear me at
10 any point, just raise your hand and I'll know to speak
11 up, okay? All right.

12 BY MS. SHAW

13 Q. Dr. Gehle, can you hear me? Okay, great. So
14 could you please state and spell your name for the
15 record?

16 A. It's Marie Gehle, G-E-H-L-E.

17 Q. And by whom are you employed and in what capacity?

18 A. I work at the South Carolina Department of Mental
19 Health as a chief psychologist in the forensic
20 evaluation service.

21 Q. Okay, and in order to be employed as a chief
22 psychologist, are you required to have certain
23 education, background, and experience?

24 A. Yes.

25 Q. Okay. Can you please discuss your undergraduate

Dr. Marie Gehle - Direct by Ms. Shaw

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1 and graduate training?

2 A. Yes, I have a bachelor's degree in psychology from
3 Ohio Northern University. I have a master's degree in
4 clinical psychology from Xavier University, and I have
5 a doctorate in clinical psychology from Xavier
6 University.

7 Q. Okay, and after you obtained your degrees, did you
8 pursue any further specialized training?

9 A. Prior to obtaining my doctorate, I did a year-long
10 pre-doctoral internship at Western State Hospital in
11 the Special Commitment Center in Tacoma Washington.
12 There I did forensic evaluations, inpatient and
13 outpatient, and then I also did a long rotation in
14 their sexually violent predator program. Then when I
15 finished my degree, I did a postdoctoral fellowship in
16 forensic evaluations at East Central Regional Hospital
17 in Augusta, Georgia.

18 Q. And what did you do at East Central?

19 A. Forensic evaluations, primarily competency to
20 stand trial, criminal responsibility, and sometimes
21 risk assessments. But it was primarily those pre-trial
22 evaluations.

23 THE COURT: Do you want to stipulate this?

24 MS. SHAW: No, Your Honor. We'll just finish.
25 I'm almost done.

1 THE COURT: Okay.

2 MS. SHAW: It's not going to take that long.

3 BY MS. SHAW

4 Q. So are you required to be licensed in the state of
5 South Carolina to do your job?

6 A. Yes.

7 Q. And are you licensed in any other states?

8 A. I'm licensed also in Georgia.

9 Q. Okay. And since you completed your fellowship in
10 Augusta, have you been working for the South Carolina
11 Department of Mental Health consistently or
12 continuously?

13 A. Yes.

14 Q. And when was that?

15 A. I started at the Department of Mental Health in
16 November of 2009.

17 Q. And how long have you held your South Carolina
18 license to practice psychology?

19 A. I became licensed in 2010.

20 Q. Okay. And do you have any publications, articles,
21 or other studies that you've authored, or co-authored,
22 or participated in?

23 A. I've published some legal digest articles, which,
24 which we do -- I'll write those, co-write those with
25 forensic psychiatry fellows who are at their last year

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1 of training in forensic psychiatry. We'll receive a
2 case from a journal, a legal case that affects the
3 mental health community somehow, and we'll write that,
4 like, summary of the case. I've published several of
5 those over the years. Primarily, that's, that's all for
6 my publications. I have a very clinical job. It's not
7 an academic job. So I pretty much do work, and not
8 research.

9 Q. And, but you also do lecture at M -- at USC,
10 correct?

11 A. Yes, I am, I'm on faculty at the Department of
12 Psychiatry at the University of South Carolina School
13 of Medicine. So there I will help train forensic
14 psychiatry fellows. And I will give lectures on sex
15 offender treatment, sex offender risk assessment, and
16 then, just, violence risk assessment every year to the
17 fellows. I'm also involved in the training program at
18 the Forensic Evaluation Service at the Department of
19 Mental Health. We are training forensic psychologists
20 to do sexually violent predator evaluations, and
21 criminal responsibility, and competency to stand trial
22 evaluations.

23 Q. And are you a member of any professional
24 organizations?

25 A. Yes, the primary one is the Sex Offender Civil

1 Commitment Program Network, which is a group of
2 individuals involved in sexually violent predator
3 programs.

4 Q. Okay. Now, how many times have you testified in
5 the state of South Carolina?

6 A. I've testified well over 100 times. I've, I've
7 lost count.

8 Q. Okay. And you've been qualified as an expert in
9 each of those occasions?

10 A. Yes.

11 Q. Okay. And approximately how many of these
12 pre-commitment evaluations do you do every year?

13 A. It varies. It's somewhere between 20, and 25 or
14 30, depending.

15 Q. And just to clarify, there's more than one type of
16 evaluation in this type of case but you strictly do
17 pre-commitment evaluations, right?

18 A. I've strictly done pre-commitment evaluations, I
19 think, since 2012. When I first started working at the
20 Department of Mental Health I also did annual review
21 evaluation.

22 Q. Okay.

23 A. And then I did, I do some of those, like, on
24 occasion.

25 Q. Okay. And how many pre-commitment evaluations

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1 have you done in total? .

2 A. I think that I've issued opinions in around 235
3 cases. And then I have another, maybe, eight cases
4 pending.

5 Q. Thank you.

6 MS. SHAW: Your Honor. At this time, the State
7 would offer Dr. Godfried (sic) as an expert in clinical
8 and forensic psychology and specifically --

9 THE COURT: Gehle.

10 MS. SHAW: (laughter) I'm so sorry, Dr. Gehle.
11 Dr. Gehle as an expert in clinical and forensic
12 psychology, and specifically in sex offender
13 evaluations.

14 THE COURT: Mr. Thompson.

15 MR. THOMPSON: I've just got a couple of questions
16 for her.

17 CROSS EXAMINATION

18 BY MR. THOMPSON

19 Q. Dr. Gehle, you're a psychologist, correct?

20 A. That's correct.

21 Q. You're not a psychiatrist, right?

22 A. That's correct.

23 Q. So you're not a medical doctor.

24 A. That's correct.

25 MR. THOMPSON: Okay, thank you. I have no

1 objections.

2 THE COURT: All right, thank you. She is
3 entered -- she's admitted as an expert in the area of
4 clinical and forensic psychology. Let me give a brief
5 instruction to the jury. Normally, a person cannot
6 give an opinion testimony when they testify.
7 Generally, they must testify as to what they either
8 saw, heard, or sensed by smell, something of that
9 nature. However, there's an exception when someone is
10 qualified, because of education or experience, they are
11 permitted to give their opinion in certain areas, if
12 the Court qualifies in that way.

13 This particular witness, Dr. Gehle, has been
14 qualified in the area of clinical and forensic
15 psychology. And she is allowed to give opinion
16 testimony in that area. That does not mean that you
17 must accept the opinion, but it is evidence for you to
18 use in any way you see fit. Thank you.

19 MS. SHAW: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. SHAW

22 Q. Dr. Gehle, are you familiar with an individual
23 named Merrilld Stewart?

24 A. Yes.

25 Q. How are you familiar with him?

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1 A. I was ordered to do a pre-commitment evaluation of
2 him, and I interviewed him for that evaluation.

3 Q. Okay. And did you complete a report in context of
4 your evaluation?

5 A. Yes, I did.

6 Q. And what is the date of that report?

7 A. Dated April 18th, 2022.

8 Q. Okay. Is Mr. Stewart present in the courtroom
9 today?

10 A. Yes.

11 Q. Can you point him out, please?

12 A. He's sitting over there in a button-down shirt,
13 light, light blue, it looks like.

14 Q. Next to Mr. Thompson?

15 A. Yes, I can't see Mr. Thompson, but, yes.

16 Q. Thank you. So describe what your role is in the
17 context of a sexually violent predator evaluation.
18 What do you do?

19 A. Okay. I'm a court-appointed neutral examiner in
20 these cases. So I'm typically the first, the first
21 person who's evaluating them. My protocol is to
22 receive records that we normally get with the order to
23 evaluate. I review those records. I will collect
24 other records. A paralegal in my department will pull
25 Department of Mental Health records if they exist.

1 They will also collect records from the Department of
2 Corrections from their health services, so medical and
3 mental health records. I will review all that
4 information.

5 I'll schedule an interview, and then I'll sit down
6 with the person. I'll explain to them what the purpose
7 of the evaluation is, what's happening, how the, how
8 these court proceedings typically work. I will give
9 them all that information that's, so that they know
10 what they're getting into. So they know exactly why
11 they're talking to me. And I'll ask for them to
12 participate, and typically they do. And in
13 Mr. Stewart's case he agreed to participate and answer
14 questions.

15 And then I will ask them questions about all
16 aspects of their life, including their childhood, their
17 adolescent years, their medical, mental health history,
18 substance use history, relationship history, sexual
19 history. I'll ask them questions about their
20 education, employment history. I will then go through
21 their legal history, and I'll get an account from them
22 on each of the entries in their criminal history
23 report. And I will ask them about whether they've had
24 any sex offender treatment, how they view their
25 offenses, things like that, to assess what they think

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1 their risk is, and what they think their problems are.
2 Or whether they think they don't have any problems.
3 I'll ask them, I'll also ask them about what their
4 plans are if they're released.

5 During all that questioning, I'm also observing
6 their behavior, observing their attitudes, observing
7 their demeanor. Assessing how they interact with me
8 and how they interpret information.

9 Q. Okay, so discuss what your mission is in the
10 context of a pre-eval -- pre-commitment evaluation.
11 What are you trying to look for?

12 A. Well, what my mission is, is to answer the
13 question that's been posed to me by the Court in the
14 court order, and that is whether the person has a
15 mental abnormality or a personality disorder that makes
16 them likely to engage in acts of sexual violence if
17 they are not committed to long-term control, care, and
18 treatment. So, essentially, what that means from a
19 mental health perspective is I'm going to do a
20 diagnostic interview.

21 I need to determine if there is a mental health
22 problem, or a problem with their character traits or
23 personality that predisposes them to commit acts of
24 sexual violence. So, specifically, whether they will
25 commit the types of sexual offenses that are listed in

1 the statute as sexually violent. And that likely piece
2 is a risk assessment. So it's a diagnostic assessment,
3 and a risk assessment.

4 Q. Okay, thank you. Now, before we go into what you
5 actually did in this particular case, can you tell the
6 jury what a personality disorder is as differentiated
7 from a mental abnormality, just so they have a, an
8 initial idea. And we'll go into it in more detail in a
9 minute.

10 A. Well, a personality disorder is a clinical term.
11 That's a term that we as a, as a psychologist, or as a
12 psychiatrist, we use that term routinely. A mental
13 abnormality is actually a legal term. It's not a term
14 that, that the mental health community typically uses.
15 But it's defined in the statute as a condition that
16 affects their emotional or volitional control. And it
17 predisposes them to commit acts of sexual violence. So
18 what I, what I typically think of as a mental
19 abnormality is any disorder that's not a personality
20 disorder, that predisposes them to commit acts of
21 sexual violence.

22 Now, typically, the mental abnormality is going to
23 be a paraphilic disorder. And that is a pattern of
24 deviant sexual arousal. So it could be, for example,
25 it could be somebody who's attracted to really young

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1 children. Or it could be somebody who is attracted to
2 having sex with dead bodies. It could be something
3 like that. Those are examples of paraphilic disorders.

4 Q. Okay, thank you. So in this particular instance,
5 what kind of information were you provided with for
6 Mr. Stewart?

7 A. I was provided the typical kind of information
8 that I get in these cases, which was a lot of legal
9 records. So it's incident reports, so investigations
10 by law enforcement agencies. It's arrest warrants,
11 criminal indictments like grand jury indictments,
12 sentence sheets, things like that, that come from the
13 criminal justice process. I also received records from
14 the Department of Corrections. I received records from
15 their health services as well, which had medical and
16 any mental health records that would have exist --
17 existed.

18 I received things like victim statements, things
19 like that. I think I requested school records, and I
20 didn't receive any school records. I requested records
21 from the Department of Probation, Parole and Pardon
22 Services, but they didn't have any records for him. So
23 primarily, it was those legal records.

24 Q. Okay. And were you able to go through all of that
25 information before you met with Mr. Stewart?

1 A. The records that I had I reviewed. Some of it
2 comes in after. Some of it I have to request because
3 it's missing from the file. And I don't keep good
4 notes on what I, what I had when I started the
5 interview.

6 Q. Okay, so after you meet with the offender, at that
7 point, you know, if you feel there's additional records
8 you need, you will request them, correct?

9 A. Yes. For example I, I will always have to
10 request, like, school records and things like that
11 after the interview, because I don't know where they
12 went to school before I see them.

13 Q. Okay. And did you also happen to have a National
14 Crime Information rap sheet, for lack of a better word
15 for Mr. Stewart?

16 A. Yes, I did.

17 Q. Okay. And is that essential in cases like this?

18 A. Yes.

19 Q. Why?

20 A. It's essential because it's a central place where
21 their criminal history is reported. It's an official
22 document that is kept by the, I believe it's a division
23 of the FBI. So if he had criminal entries or charges,
24 convictions, things like that in other states, or in
25 the state of South Carolina, or, you know, anywhere, it

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1 would be listed in that report.

2 Q. Okay. And in fact, Mr. Stewart does have out of
3 state sexual convictions, does he not?

4 A. That's correct.

5 Q. Okay. Now, does he have any convictions in
6 South Carolina for what would be defined as a sexually
7 violent offense?

8 A. He does.

9 Q. And can you please tell the jury what that is?

10 A. He was, excuse me, he was convicted of criminal
11 sexual conduct in the first degree.

12 Q. Okay. And do you see those documents right in
13 front of the monitor where you're sitting? Could you
14 please identify those?

15 A. So this is a sentence sheet for criminal sexual
16 conduct in the first degree. It's a sentence sheet for
17 kidnapping. And it's the indictment for kidnapping,
18 possession of a weapon during the commission of a
19 violent crime. And it is a -- it appears that it's
20 just a cover sheet for criminal sexual conduct in the
21 first degree, and possession of a weapon during the
22 commission of a violent crime. So I would say that
23 there's a page missing from this document.

24 Q. Okay.

25 MS. SHAW: Your Honor, at this point in time, I

1 would offer State's 1 in evidence.

2 MR. THOMPSON: No objection.

3 THE COURT: Has it been marked?

4 MS. SHAW: It has been pre-marked as State's 1,
5 yes.

6 THE COURT: All right, State's 1 in evidence
7 without objection.

8 MS. SHAW: Okay.

9 BY MS. SHAW

10 Q. So do you also, did you have that document when
11 you were conducting your records review?

12 A. Yes, I believe so.

13 Q. Okay. And is that something you would have
14 considered in your evaluation?

15 A. Yes.

16 Q. Now, do you ever do any collateral interviews with
17 family members, or other treatment providers, or PPP,
18 or anyone?

19 A. Sometimes if it's necessary.

20 Q. Okay. And did you feel it was necessary in this
21 matter?

22 A. I don't believe that I, that I did any inner --
23 collateral interviews with anybody in this case, no.

24 Q. Okay. So what date did you meet with Mr. Stewart?

25 A. I met with him on March 3rd, 2022.

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1 Q. All right. And can you describe his demeanor on
2 that occasion?

3 A. Well, right away when, when the interview started,
4 he was very impatient. I have a lot of information to
5 explain to them at the beginning, just to, just to help
6 them understand what's happening, and what we're doing
7 here, how it won't be private. And what I'll do with
8 my -- with the information that I'm collecting. He
9 wanted to hurry me along. He was very impatient. He
10 indicated that he already knew all this information,
11 and didn't need me to explain it. But when I asked him
12 questions about it, he didn't understand the
13 information.

14 So I asked him to slow down. I explained to him,
15 you know, really, why I needed him to slow down. And
16 he did. I also noticed that pretty much from the
17 beginning, he was very talkative. He, he talked a lot
18 and he, and he presented a very, like, good, or what I
19 saw as grandiose, opinion of himself. He talked about
20 how everybody loved him, how he was a great person, how
21 there would be a lot of celebrations when he left
22 because he had so many friends, things like that.
23 Those were the things that stuck out to me.

24 Q. Okay. Were you ultimately able to explain the
25 purpose of the interview and obtain consent?

1 A. Yes.

2 Q. Now, describe his affect in general. And
3 actually, how long were you with him on the date you
4 met with him? How many hours did you spend?

5 A. I met with him for more than six hours.

6 Q. And in your opinion, is that a sufficient time to
7 be able to identify certain behavioral patterns, and
8 certain reactions in individuals? That would be enough
9 to diagnose?

10 A. Yes.

11 Q. Okay. So describe his affect overall, in that
12 six hours you met with him.

13 A. His affect was generally right. So he appeared
14 pretty normal.

15 Q. Okay.

16 A. It was appropriate to the situation for the most
17 part.

18 Q. Okay. So did he evidence any irritability or
19 frustration during the process?

20 A. At times, maybe just a little bit, but it wasn't
21 significant.

22 Q. Okay. All right. So please give the jury a brief
23 history of Mr. Stewart's relevant personal history,
24 which would be all of his personal information, not
25 including the sex and legal offenses up to now. Like

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1 what, what, if anything, was significant about that?

2 A. Well, he grew up in between, I think, York County
3 and Mecklenburg County in North Carolina. His parents
4 divorced at a young age. He lived with his mom till
5 about age 12. Went -- seemed like back and forth from
6 his, with his dad at times. Talked about having lots
7 of friends. Talked about having some problems with his
8 behavior as a juvenile. Said that he was arrested for
9 the first time at age 16 for disorderly conduct.

10 Talked about cussing out his aunt because she was rude
11 to his friend. And he thought that she was wrong. He
12 talked about some behavior problems, lying to get out
13 of, to get out of trouble, stealing candy bars,
14 basketballs from people's yards, stealing a bicycle
15 when he was a kid.

16 Q. Did he report any significant rule violations?

17 A. He, he didn't report. He, he denied that when I
18 asked those direct questions. So significant rule
19 violations are things like being truant from school,
20 not coming home when your parents tell you to, so just
21 disregarding a curfew. And it's, it's like running
22 away. So those are the significant rule violations
23 that I'm looking for. And those are evidence of
24 conduct disorder. So it's those specific behaviors
25 that I'm looking for when I'm assessing his background.

1 So when I asked him about those directly, he
2 denied those. But when we talked about his educational
3 history, it appeared that he had maybe skipping class
4 when he was young, and having some problems around,
5 around that.

6 Q. Okay. Did he report any problems with fighting or
7 suspensions from school?

8 A. He talked about having some suspensions from
9 school. He, he was very unclear. So when I'd say were
10 you ever suspended from school, it'd be, no.

11 Okay. I'd ask the next question, and then he
12 would talk about being in an alternative school, or
13 being placed in a resource classroom for his behavior.
14 So he gave a lot of answers that were unclear, and that
15 were contradictory with each other. So I could ask him
16 a question, and then a couple seconds later, he would
17 give me a very contradictory answer.

18 Q. So basically, you could not consider him a
19 reliable historian when he was telling you about his
20 personal experiences.

21 A. I, I think when I was hearing that his behavior
22 was really good, it was less reliable. And then when I
23 really got into the details of the question and tried
24 to really nail it down, it was potentially more
25 reliable.

1 Q. Okay. So did you find evidence of a conduct
2 disorder as a juvenile in Mr. Stewart?

3 A. Yes.

4 Q. Specifically, what behaviors did you consider when
5 you were assessing whether he had conduct disorder as a
6 juvenile?

7 A. If I'm understanding your question correctly, the
8 symptoms of conduct disorder are the serious rule
9 violations that I just described. It's also things
10 like deceitfulness, theft, damaging, destroying
11 property, stealing, doing things like that. So
12 violating other people's rights, primarily, in a
13 variety of different ways.

14 Q. And why in the context of a personality disorder
15 is a conduct disorder relevant? In what situation
16 would that be important?

17 A. Well, the reason that looking at conduct disorder
18 is so important is that one of the primary personality
19 disorders related to sexual offending is antisocial
20 personality disorder. One of the criteria for
21 antisocial personality disorder is evidence of conduct
22 disorder before age 15. So you have to see some of
23 those symptoms beginning before age 15. You don't have
24 to have a diagnosis of conduct disorder, because that's
25 not always available. And the criteria -- it doesn't

1 say that you have to have that diagnosis, that you have
2 to be able to establish that diagnosis now, just says
3 that there has to be some evidence of conduct disorder
4 before age 15.

5 Q. Okay. And in Mr. Stewart's case, you did find
6 that.

7 A. Yes.

8 Q. Okay. And that's based on the records and his
9 self-report.

10 A. Yes.

11 Q. Okay. So, before we get into Mr. Stewart's sex
12 offending history, I just want to go through two
13 relatively minor things. Does Mr. Stewart have any
14 medical conditions, like TBI, or any, any organic brain
15 damage, or anything of that nature?

16 A. No.

17 Q. And does Mr. Stewart have a significant substance
18 abuse history?

19 A. He denied any history of substance use.

20 Q. Okay, but he does have convictions and charges for
21 possession, correct?

22 A. I believe so, yes.

23 Q. Now let's get into Mr. Stewart's sex offending
24 history. His current incarceration, that's not his
25 first sex offense, is it?

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1 A. That's correct.

2 Q. Okay. Can you discuss his first sex offense,
3 where it was, and the certain details about it?

4 MR. THOMPSON: I'm going to object for the record,
5 Your Honor.

6 THE COURT: All right, I note your objection.
7 It's overruled.

8 MS. SHAW: Thank you. Go ahead, Dr. Gehle.

9 DR. GEHLE: I need to get a drink of water if you
10 give me a second.

11 THE COURT: Ladies and gentlemen, while she is
12 getting water, I did not instruct you. Anytime you
13 need to take a break, simply raise your hand and we'll
14 allow you to go back to your jury room. However, we'll
15 take a break after, generally, about every hour. Thank
16 you.

17 MS. SHAW: No problem. Thank you, Your Honor.

18 BY MS. SHAW

19 Q. You okay, Dr. Gehle?

20 A. Yes.

21 Q. Okay. So, tell me about his first sex offense
22 conviction.

23 A. It was 2008. He was charged with statutory rape
24 and indecent liberties with a child in Mecklenburg
25 County, North Carolina. He was convicted of indecent

1 liberties with a child in 2010. He was charged in 2008
2 and convicted a little less than two years later. He
3 was sentenced to 16 to 20 months of incarceration, and
4 they suspended that period of incarceration to
5 36 months of probation. He was required to give a DNA
6 sample, pay court costs, complete 50 hours of community
7 service within 120 days, and have no contact with the
8 victim. He was also required to register as a sex
9 offender, and not live in a household with a minor.

10 Q. Okay. What was the underlying details of that
11 offense as was relevant to your inquiry?

12 A. Well, that offense involved a 14-year-old female
13 acquaintance. And it was noted that in the June of
14 2008, that 14-year-old girl, she was walking and she
15 walked by Mr. Stewart. He asked if they could go talk
16 at the park, and they walked to the park together. He
17 said he had missed talking to her. And she pointed out
18 that he had a girlfriend. And he began touching her,
19 hugging her, kissing her. She told him not to touch
20 her. He continued to repeatedly make those kind of
21 advances on her. She pushed him away, tried to protect
22 herself, told him to get away, things like that. She
23 tried to get away. And she repeatedly told him to
24 stop. And he eventually pulled her pants down. She
25 kept pulling them back up. He pushed her over and he

1 started to have sexual intercourse with her.

2 Q. And was there any question, based on the records,
3 that this was a non-consensual event?

4 A. All the descriptions of this indicate that it was
5 non-consensual.

6 Q. Was there any violence to it?

7 A. He didn't use any -- there was no account that he
8 hit her, or that he strangled her, or hurt her, you
9 know, specifically in a physical way other than the
10 sexual part.

11 Q. Okay. But he did use force to accomplish the
12 rape.

13 A. I would say that he used a degree of force
14 necessary to accomplish the rape, but it wasn't an
15 amount of force that was over the top.

16 Q. Okay. Now, he had -- was also, again, charged in
17 Mecklenburg County with another sexual assault, is that
18 correct?

19 A. That's correct.

20 Q. Okay. And he was not convicted of that, correct?

21 A. That's right. He was not convicted of that.

22 Q. Okay, when did that happen?

23 A. That charge was brought -- well, I'm sorry. So
24 that, the incident reportedly occurred on May 14th,
25 2010. And he was charged on May 19th, 2010.

1 Q. Okay. So that was right, roughly in the same
2 timeframe of the other sexual offense, correct?

3 A. It was while those earlier charges were pending.
4 A short time before he was convicted of those offenses,
5 he was charged in this incident.

6 Q. Why is it significant if someone receives or
7 incurs new sexual charges when he's got pending sexual
8 charges?

9 A. Well, it can mean that they are having a lot of
10 trouble controlling their behavior. We typically think
11 that if you are facing significant punishment, or you
12 know, if you're under the purview of the court system,
13 it should be on your mind a little bit more. If you're
14 thinking that you're coming up to sentencing, or, you
15 know, your case is going to be disposed, you might be
16 on your best behavior. And if your best behavior
17 involves a new allegation of sexual assault, that, that
18 means that you probably are having problems with your
19 behavior.

20 Q. Okay. Or just having trouble controlling
21 yourself.

22 A. Yes.

23 Q. Okay. So can you describe, briefly the details of
24 that second charge?

25 A. This was a 17-year-old female acquaintance. She

1 reported that, that she was walking by the house, saw
2 Mr. Stewart. She had been avoiding him for some time
3 because she felt like he was harassing her. And she
4 finally thought, like, enough time had passed that she
5 could walk in that area, and not have to avoid him so
6 much. She, she saw him, and it was reported that she
7 went in the house, and that he raped her there.

8 Q. Was it, in fact, reported that he dragged her into
9 the house, and forcibly raped her?

10 A. Yes.

11 Q. But you don't consider charged but unconvicted
12 conduct for purposes of diagnosis, do you?

13 A. That's correct. So he was -- this charge was
14 dismissed within a month of the charge being brought,
15 so it was dismissed on June 2nd, 2010. So to me, this
16 is an allegation. It wasn't something that he was
17 convicted of. It's not something that he admits to so
18 I don't consider that as part of the -- as part of a
19 paraphilic disorder. It's something that I have to
20 count in terms of risk assessment, but I give it very
21 little weight, little to no weight in terms of
22 diagnosis.

23 Q. Okay. Because the diagnostic portions of your
24 evaluation, and the risk assessment portions are
25 different, correct?

1 A. That's correct.

2 Q. Okay. And in the risk assessment portions, you
3 are actually required to take charges which are not
4 convicted into account, correct?

5 A. Correct.

6 Q. Okay. So you would prefer to err on the side of a
7 conservative diagnosis, is that accurate?

8 A. I believe in the principle of innocent until
9 proven guilty. So I give them the benefit of the
10 doubt. Unless when I -- I asked him about this in the
11 interview, and I'm still collecting data about his
12 attitudes, about his explanation, and that can be, that
13 can be useful information. But in terms of whether I'm
14 saying this incident happened, and using that to make a
15 diagnosis of a deviant sexual arousal, I don't.

16 Q. All right. So after the conviction for indecent
17 liberties with a minor, has Mr. Stewart incurred any
18 additional sexual charges?

19 A. Yes. He was, he was charged in Rock Hill in 2015
20 with criminal sexual conduct in the first degree,
21 possession of a knife during a crime of violence, and
22 kidnapping.

23 Q. Okay, can you tell the jury a bit about the facts
24 of that offense?

25 A. Excuse me. So, this incident involved a 20-year,

1 20-year-old female stranger.

2 Q. Well, actually, I'm so sorry. Before we go into
3 the details of the offense, he was charged with that in
4 2015, correct?

5 A. Yes.

6 Q. And when did the offense allegedly occur?

7 A. The, the incident occurred on December 15th, 2011.
8 The incident occurred on that date. She reported it
9 right away. She underwent a sexual assault
10 examination, and I'll explain the underlying basis of
11 the behavior in a minute. But he went undetected. She
12 didn't know who he was. She couldn't identify him.
13 She could provide very little information to law
14 enforcement about his identity.

15 And the way that it was linked to him was they did
16 that sexual assault examination, they entered a swab
17 from her vagina into CODIS, which is a DNA collection
18 system. So it's a database for DNA from all over the
19 country. And they found a match to him, I believe, in
20 2014. And then he was charged in 2015.

21 Q. So he, so this sexual assault was against a
22 stranger who could not identify him, and he was only
23 identified as the perpetrator through DNA evidence?

24 A. Yes.

25 Q. Okay. Now, please go into the details of that

1 offense, if you would.

2 A. So this girl was at her apartment. She briefly
3 left her apartment to get her computer charger from a
4 phone, or from the car, I'm sorry. So she was grabbing
5 her computer charger from her car. A black male,
6 Mr. Stewart, approached her, held a knife to her side,
7 forced her into her car. He got into the passenger
8 seat, directed her to drive. He had her pull into a
9 parking lot of an, of an apartment complex and park in
10 between two cars. He told her to get out of the car,
11 lay on the ground between the cars, take off her
12 clothes.

13 She removed her pants and her underwear. He
14 pulled his pants down, took his penis from his boxer
15 shorts, and then penetrated her vagina with his penis.
16 She indicated that it seemed like they had sex for
17 forever. And it was, she estimated it was about 10 to
18 20 minutes. He also performed oral sex on her, and put
19 his penis in her mouth.

20 According to her witness statement, she said she
21 started fighting back too late. She did start
22 resisting him, she started pushing him, and that
23 interrupted the assault. And she started pushing him
24 off. He eventually got up and pulled up his pants and
25 walked away. And when he was walking away, he said,

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1 that's why I gave you AIDS B-I-T-C-H.

2 Q. Okay. And is that level of violence in the actual
3 offending behavior at all concerning? Or does it show
4 any sort of a -- suggest any pattern to you of behavior
5 on his part?

6 A. Well, again, you know, a sexual assault is violent
7 in and of itself. But in this incident, he isn't using
8 gratuitous violence. He's using, I think, the knife to
9 scare her and to get her compliance. He's, he's not
10 strangling her. He's not punching her. He's not doing
11 things like that, according to the report that, that I
12 read. So I'm -- from these accounts, I'm ruling out a
13 diagnosis of sexual sadism, which is sexual arousal to
14 the, to the harm that you cause somebody. It's being
15 aroused by hurting somebody. It's being aroused by
16 humiliating them and degrading them. I'm not seeing
17 evidence of that.

18 I'm, I'm also considering whether he has a
19 paraphilic disorder related to non-consent. So whether
20 he's sexually aroused by the non-consent from the
21 victim. And for that diagnosis I have to look at what
22 is specifically arousing to him. If the victim is
23 fighting, if you are aroused by non-consent, then that
24 would be more arousing, not something that would
25 necessarily stop the events.

1 Now there, there can be other reasons that it
2 would stop the offense. Like if she's fighting, that
3 can make the sexual activity just more difficult, and
4 so it might be deemed not worth it. It can also draw
5 attention to you, and if you're in a public place it
6 might be something where you have to stop because
7 you're afraid you're going to get detected. But I have
8 to take the information that I have, and so, for me, I
9 ruled out that non-consent paraphilic disorder, as
10 well.

11 Q. And so you did not ultimately find that
12 Mr. Stewart has a paraphilia, correct?

13 A. Correct.

14 Q. All right. Now, is the fact that both of the --
15 and just for clarification, he was convicted of this
16 particular assault, correct?

17 A. He was convicted of criminal sexual conduct in the
18 first degree, and kidnapping.

19 Q. And that was his most recent conviction?

20 A. Yes.

21 Q. Okay. And before we go into his non-sexual
22 offending, did he have any other sexual charges in
23 South Carolina?

24 A. Yes, he had in January of 2016, he was charged
25 with indecent exposure for exposing himself to a

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1 detention center guard while he was awaiting
2 disposition of the, of that sexual assault and
3 kidnapping charges.

4 Q. Okay. And would that be significant to you in
5 terms of his level of self-control, if he's exposing
6 himself in prison?

7 A. It could be, but this charge was dismissed or
8 nolle prossed. So it wasn't proven that he did that
9 behavior. And he denied, essentially, doing that
10 behavior.

11 Q. Okay. So again, you didn't consider that for
12 diagnostic purposes, because you're not going to
13 diagnose something unless you have very clear evidence
14 and a conviction, right?

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

16 Q. Okay, great. Now, would the fact -- is the fact
17 that the two sexual convictions, that both of them were
18 committed in a public place, is that at all significant
19 to your evaluation?

20 A. Yes, it's -- it is significant because it
21 increases the likelihood that they're going to be
22 detected. It also increases the likelihood that
23 somebody is going to intercede. So not just that
24 they'll be caught but there -- somebody could
25 intercede. It really means that, in my opinion, that

1 they're having trouble controlling their behavior,
2 because they're making bad choices. They're making
3 choices to offend in a way where they're more likely to
4 get caught.

5 Q. It's highly likely that they would be detected in
6 the commission of the offense.

7 A. Yes, it's, it's more likely that they would be
8 detected than if they were not in a public place.

9 Q. Okay. So let's go into Mr. Stewart's nonsexual
10 offending history. He has a fairly extensive criminal
11 history, correct?

12 A. Yes, he has some nonsexual offenses.

13 Q. Okay, so in the context of an SVP evaluation, why
14 would you be considering noncriminal offenses and
15 convictions -- or I'm sorry, nonsexual offenses and
16 convictions? Why is that important?

17 A. Well, it's a part of the risk assessment measure.
18 So the risk assessment, assessment measures also look
19 at nonsexual offenses, because just -- it speaks to the
20 criminal behavior, and it increases their risk to
21 commit another sexual offense. I'm also looking at it
22 in terms of a diagnosis, especially antisocial
23 personality disorder. Because of the hallmark of that
24 disorder is violating the rights of others,
25 disregarding and violating the rights of others. And

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1 one of the criteria is committing acts that are grounds
2 for arrest.

3 Q. Repeatedly committing acts, correct?

4 A. Yes.

5 Q. Okay. So in Mr. Stewart's case, what kind of
6 nonsexual criminal history does he have? And please
7 list charges as well as convictions.

8 A. He has drug charges from 2010 that were dismissed.
9 He has an assault on, on a female from 2011 that was
10 dismissed. He has charges of assault on police officer
11 while resisting arrest, operating an unsolved -- unsafe
12 vehicle, giving false information. Those were
13 convictions in 2012. He has an escape conviction in
14 2012. He has, also in 2012, he has a failure to
15 register as a sex offender. And he also has a
16 probation violation in 2012 relating to the probation
17 that he received on the indecent -- taking the indecent
18 liberties with a child in Mecklenburg County in
19 North Carolina.

20 Q. So he was violated on his probation when he
21 incurred the next set of charges in South Carolina?

22 A. I don't think that's exactly how it worked
23 because, because that, that probation violation came in
24 2012.

25 Q. And that was after he had been convicted for the,

1 or I'm sorry, that was after he had been charged with
2 the second sexual offense in North Carolina, correct?

3 A. Yes, but that wasn't why he got the probation
4 violation, because --

5 Q. Tell me why he got the probation violation.

6 A. -- well, I don't know if I have, like, specific
7 information while he got that -- why he got that
8 probation violation, but I know it wasn't because of
9 that. Because that charge was dismissed when he was
10 sentenced for the first sexual offense. So he got the
11 first sexual offense charge, got the second sexual
12 offense charge in June of 2011. One was convicted, one
13 was dismissed, and he got probation then. So the
14 violation came after that charge.

15 Q. So you -- do you know why, or did he tell you why
16 he violated probation, and why he was charged?

17 A. He told me that he had left North Carolina where
18 he was supposed to be where he was being monitored, and
19 he came back to South Carolina.

20 Q. Okay. Did he attend the sex offender treatment
21 his probation required him to attend?

22 A. No, he did not -- said he attended, he attended
23 several sessions of sex offender treatment, and he did
24 not complete that.

25 Q. And was that a condition of his probation in

1 North Carolina?

2 A. Yes. And that, that is probably the reason that
3 he violated, yes.

4 Q. Then he -- once he got violated, he left the
5 state.

6 A. Yes.

7 Q. So would that, in your assessment, would that mean
8 he absconded from authorities?

9 A. Yes.

10 Q. Okay. Is there any -- never mind. I'll move on.
11 So when you were interviewing him, you asked him about
12 all these crimes, correct?

13 A. Yes.

14 Q. And what did he indicate to you? Like, what did
15 he tell you about the allegations and the convictions?
16 Do you remember?

17 A. Well, he said a lot of different things.
18 Essentially he gave me different accounts of, accounts
19 that were markedly different from what was reported in
20 the records. So he said about the first, that
21 14-year-old girl. He said that, that they had been
22 sexually active with each other. And that appeared to
23 be true, because the victim also reported that. He
24 said that she lied about her age and said she was 17.
25 And he said, I quote, I thought it was fair game,

1 because she was 17. He said that she lied. The victim
2 also said that he lied about his age. He told her that
3 he was 15 years old, and she later found out that he
4 was 19 years old.

5 Q. And is that why she terminated the relationship
6 with him?

7 A. It appeared like that had something to do with it,
8 yes.

9 Q. So did he make any specific comments about their
10 prior sexual activity, and why would she refuse him?

11 A. He said that she really liked him. And I don't
12 think that he understood that she could refuse him.

13 Q. And he, in fact, said, well, she gave it to me
14 before. Why would she refuse me this time?

15 A. Yes.

16 Q. Is that kind of a statement at all concerning to
17 you in terms of how this person views the world?

18 A. Yes. It, it speaks specifically to a lack of
19 understanding of what consent is. It seems that many
20 people have a misunderstanding of consent. And he
21 definitely has a misunderstanding of consent. He
22 appears to think that if somebody's had sex with him
23 one time, then they've consented to all sexual activity
24 when he feels like it after that, and that they can't
25 say no. They can't stop. Like he has reason to be

1 angry if they stop any sexual activity with him.

2 Q. And, in fact, most of his statements concerning
3 the offense behaviors, both alleged and convicted, were
4 inconsistent with the records, correct?

5 A. Yes.

6 Q. Okay. And is that uncommon in a case type like
7 this?

8 A. I don't know if I could say that it's common or
9 uncommon. I'm, I'm often surprised how many people are
10 honest, and give accounts that are pretty much in line
11 with what the victims have reported. I would say it's,
12 it's not that common to see an account that is so
13 markedly different from the victim's account, the
14 official account. And specifically with him, his
15 account of that 2011 sexual assault and kidnapping, his
16 account was so markedly different, that it was
17 surprising to me.

18 Q. Okay. And is that level of denial at all
19 indicative of a particular way an individual might view
20 the world, or interact with it?

21 A. Well, the way that I saw his, well, maybe
22 storytelling. I mean, denial -- I, I don't know if I
23 would even call what he did as denial. He made a
24 completely different story up. It had nothing to do
25 with the facts of the case. And I think it was him

1 being grandiose and narcissistic. And thinking that I
2 would just give him the benefit of the doubt, and just
3 believe what he had to say, because he was saying it.
4 That he's special.

5 Q. Okay. Now, two more things before we go into the
6 DSM. Mr. Stewart didn't have any SCDC disciplinary
7 (sic), did he?

8 A. No, he did not.

9 Q. Okay. And can individuals who have personality
10 disorders, specifically antisocial, can they function
11 well in a controlled environment?

12 A. Sometimes they can. Sometimes they don't.

13 Q. Okay. And did you make any conclusions or
14 findings regarding his functioning in a controlled
15 environment?

16 A. Well, he was able to do that without getting
17 disciplinary infractions.

18 Q. Okay. And that's actually a positive thing,
19 correct?

20 A. It's difficult to say. Typically, you would see
21 it as a positive if they don't get into trouble. But
22 the criminal -- the Department of Corrections is full
23 of people with lots of bad behavior. And sometimes
24 that just means that you're able to get involved with
25 people where you might be protected, or where you might

1 just be able to go undetected, but you're involved in a
2 lot of criminal activity in the prison.

3 Q. All right. But you didn't have evidence in this
4 case, and that wasn't a major factor in your diagnostic
5 considerations, was it?

6 A. Correct.

7 Q. Okay. And is prior sex offender treatment at all
8 relevant in these types of cases?

9 A. It can be.

10 Q. And in Mr. Stewart's case, he has prior failure to
11 comply with sex offender treatment from his probation,
12 right?

13 A. Yes.

14 Q. And has he had any further sex offender treatment
15 while he's been in prison?

16 A. No.

17 Q. Did you ask him at all whether he felt he needed
18 sex offender treatment?

19 A. Yes. He said he did not need sex offender
20 treatment. That he didn't have any problem with his
21 sexual behavior.

22 Q. Okay, and what was his self-estimated risk to
23 reoffend? And can you just tell the jury how you get
24 that number?

25 A. I just ask them to rate themselves what their risk

1 is to reoffend sexually on a scale of 1 to 10. One
2 being no risk, and 10 being very high risk. He gave
3 himself a one. And he said because he wasn't going to
4 do anything like that. It's not right, right to harm
5 people, and women, period, and it's against the law.

6 Q. Okay. So let's go to the DSM. Do you have your
7 DSM with you?

8 THE COURT: Why don't we -- let's take a break
9 right now.

10 MS. SHAW: Okay.

11 THE COURT: It would be appropriate to take a
12 break. We'll take a 10-minute break, a quick 10-minute
13 break. Refresh yourselves. We'll have you back here
14 in 10 minutes. Do not discuss the case at all while
15 you're out in the jury room. Everyone remain seated
16 while this panel is excused.

17 (WHEREUPON, the jury exited the courtroom at
18 10:29 a.m.)

19 THE COURT: All right, we'll be at ease for
20 10 minutes.

21 (WHEREUPON, the Court took a brief recess).

22 MS. SHAW: Your Honor, Mr. Thompson and I did
23 correct that exhibit. So before we go into further
24 testimony I'm just going to have Dr. Gehle discuss it.

25 BAILIFF: Your Honor, we have one in the restroom.

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1 THE COURT: All right.

2 (WHEREUPON, the jury entered the courtroom at
3 10:43 a.m.)

4 THE COURT: Thank you, ladies and gentlemen.
5 Ms. Shaw.

6 MS. SHAW: Thank you, Your Honor.

7 BY MS. SHAW

8 Q. Dr. Gehle, we were about to get into the DSM. Do
9 you happen to have yours with you?

10 A. Yes.

11 Q. Can you show the jury that book? And what is
12 that?

13 A. The Diagnostic and Statistical Manual of Mental
14 Disorders, Fifth Edition, and it's a textual revision.

15 Q. Okay. The most recent edition?

16 A. Yes.

17 Q. When was it issued?

18 A. 2022.

19 Q. Okay. And what do you do with that book? Why is
20 that book important?

21 A. This book is relied on by almost all mental health
22 professionals in understanding and diagnosing mental
23 illnesses. So it lists all of the recognized mental
24 illnesses and personality disorders, and the symptoms,
25 and some information about each one.

1 Q. Okay. It also recognizes the paraphilias?

2 A. Yes.

3 Q. Now, did you use this book in your diagnostic
4 formulations in this case?

5 A. I did.

6 Q. And do you use it in every case you do?

7 A. I do. I use it in every case.

8 Q. Okay. So what are the personality disorders that
9 you would consider in the context of an SVP matter?

10 A. Well, any personality could be considered. The
11 ones that are primary are antisocial personality
12 disorder, narcissistic personality disorder could be
13 considered, borderline personality disorder could be
14 relevant, but primarily it's antisocial personality
15 disorder.

16 Q. Okay, and can you please turn to Page 748? And
17 what does that page contain?

18 A. This contains the diagnosis of antisocial
19 personality disorder. So, the diagnostic criteria,
20 diagnostic features, and associated features, and some
21 of that background information about it.

22 Q. Okay, can you please read the diagnostic criteria
23 to the jury?

24 A. Yes. The first is a pervasive pattern of
25 disregard for, and violation of the rights of others,

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1 occurring since age 15 years as indicated by three or
2 more of the following. Number one is failure to
3 conform to social norms with respect to lawful
4 behaviors, as indicated by repeatedly performing acts
5 that are grounds for arrest.

6 Q. Does that apply to Mr. Stewart?

7 A. Yes.

8 Q. Okay, what's number two?

9 A. Number two is deceitfulness as indicated by
10 repeated lying, use of aliases, or conning others for
11 personal profit or pleasure.

12 Q. Does that apply to Mr. Stewart?

13 A. Yes.

14 Q. Number three.

15 A. Number three is impulsivity or failure to plan
16 ahead.

17 Q. Does that apply to Mr. Stewart?

18 A. Yes, it does.

19 Q. How about number four?

20 A. Number four is irritability and aggressiveness as
21 indicated by repeated physical fights or assaults.

22 Q. Does that apply to Mr. Stewart?

23 A. It does.

24 Q. Number five?

25 A. A reckless disregard for safety of self and

1 others.

2 Q. Does that apply?

3 A. Yes.

4 Q. And number six?

5 A. Consistent irresponsibility, as indicated by
6 repeated failure to sustain consistent work behavior or
7 honor financial obligations.

8 Q. Did you have any evidence that this applies?

9 A. I think that this one was possibly not -- this one
10 wasn't very relevant for him.

11 Q. Okay. And how about number seven?

12 A. Number seven is lack of remorse as indicated by
13 being indifferent to, or rationalizing having hurt,
14 mistreated, or stolen from another.

15 Q. And does that apply to Mr. Stewart?

16 A. Yes.

17 Q. Now, there's also three additional criteria,
18 correct?

19 A. Yes.

20 Q. Will you tell the jury what those are and whether
21 they apply?

22 A. So the individual is at least 18 years old. And
23 it applies to him. He's, he's in his 30s. There is
24 evidence of conduct disorder with onset before age
25 15 years. That applied to him, there was evidence of

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1 conduct disorder. And the occurrence of antisocial
2 behavior is not exclusively during the course of
3 schizophrenia, or bipolar disorder. And Mr. Stewart
4 has no history of schizophrenia or bipolar disorder. I
5 observed no symptoms of those disorders in the
6 interview, and he reported no history of those
7 symptoms.

8 Q. Okay, so based on those diagnostic criteria, and
9 your findings following the clinical interview and the
10 records review, did you diagnose Mr. Stewart with any
11 personality disorder or mental abnormality?

12 A. I diagnosed him with antisocial personality
13 disorder. Also with narcissistic features.

14 Q. Okay. Now, can you tell me what narcissistic
15 features means?

16 A. It means that he had characteristics of
17 narcissism, but not to the level where he meets
18 criteria for narcissistic personality disorder.

19 Q. And can you please turn to the narcissistic
20 personality disorder diagnostic criteria in your DSM?

21 A. Yes.

22 Q. It's Page 760.

23 A. I have my book tabs on there.

24 Q. Okay. So can you tell the jury what the
25 diagnostic criteria are for narcissistic personality

1 disorder, and which of them apply to Mr. Stewart?

2 A. Okay. It's a pervasive pattern of grandiosity, in
3 fantasy or behavior, a need for admiration, and a lack
4 of empathy beginning by early adulthood and present in
5 a variety of contexts, as indicated by five or more of
6 the following.

7 Number one: Has a grandiose sense of self
8 importance, e.g. they exaggerate achievements and
9 talents. Expects to be recognized as superior without
10 commensurate achievements. I believe that applies to
11 Mr. Stewart.

12 Number two is: Preoccupied with fantasies of
13 unlimited success, power, brilliance, beauty, or ideal
14 love. I don't think that that necessarily applies to
15 him.

16 Number three: Believes that he or she is special
17 and unique, and can only be understood by or should
18 associate with other special or high status people. I
19 believe that he presented that he is special, but not
20 necessarily that second part where you can only
21 associate with other special people or people with high
22 status.

23 Q. Okay.

24 A. Number four: Requires excessive admiration. I
25 believe that that's possible. I would have liked to

1 see more evidence to make -- to be firm about that.

2 Q. Okay.

3 A. Number five is: Has a sense of entitlement. So
4 unreasonable expectations of especially favorable
5 treatment, or automatic compliance with his or her
6 expectations. And I do believe that that applies to
7 him.

8 Q. Okay.

9 A. Number six is: Interpersonally exploitative,
10 takes advantage of others to achieve his or her own
11 ends. I think that that possibly applies to him.

12 Q. But that's also sort of a feature of antisocial as
13 well, correct?

14 A. Yes, that's correct.

15 Q. Go ahead then, please, the last two.

16 A. Number seven: Lacks empathy. Is unwilling to
17 recognize or identify with a feeling or needs of
18 others. I think that that possibly applies to him. I
19 saw some evidence for that and against that.

20 Number eight is: Often envious of others or
21 believes that others are envious of him. I didn't see
22 much evidence of that in the interview.

23 Q. What's the last?

24 A. Sorry. Number nine: Shows arrogant, haughty
25 behaviors, or attitudes. I did see some arrogance in

1 the interview, which he presented as just, you know, he
2 was a very good person. But I don't think that he was
3 arrogant in the ways that we typically think of
4 somebody being arrogant. Like, it wasn't with that
5 tinge of hostility or rudeness.

6 Q. Okay, so you did not diagnose him with
7 narcissistic personality disorder, but you did consider
8 it, correct?

9 A. Yes.

10 Q. And in your opinion, does antisocial with
11 narcissistic features best capture the mental health
12 portrait you saw in your interview?

13 A. Yes.

14 Q. Okay. Now, as part of your evaluation, you also
15 perform a risk assessment, correct?

16 A. That's correct.

17 Q. All right. And now tell the jury, what is the
18 purpose of a risk assessment. What does it do, and how
19 does it help you in coming to a conclusion regarding
20 the likelihood to reoffend?

21 A. Well, a risk assessment is, excuse me. It's a
22 formal way of determining if somebody is likely to
23 reoffend and what, what their estimated risk is to
24 reoffend. So the way that I conduct a risk assessment
25 is, I use two actuarial risk assessment tools. And

1 then I look at a large study of sex offenders, and I
2 look at some risk factors that are outside of those
3 actuarial tools.

4 Risk factors are anything that increases the
5 likelihood that somebody's going to reoffend sexually.
6 And we typically defy -- divide those risk factors into
7 two different types. The first one is static. Those
8 are things that are in their history, they're not
9 changeable. And the other is dynamic. Those are
10 things that can be targets of treatment, and that can
11 possibly be changed.

12 Q. And are -- is there one actuarial instrument for
13 the static factors? Or is there more than one?

14 A. I use two instruments that assess the static
15 factors.

16 Q. Okay, and can you describe it -- and the static
17 factors themselves are an estimate. They are not
18 tailored to the individual, are they?

19 A. That --

20 Q. Maybe I'm describing it incorrectly. Why don't
21 you describe it.

22 A. Well, the way that we do this is you take a large
23 group of sex offenders, all who have been convicted of
24 a sex offense, or charged with a sex offense. And then
25 you look at the factors that separate the people from

1 that group, into the people who don't offend and the
2 people who do reoffend. You want to see -- when we
3 figure out what makes, of the sex offenders, what makes
4 them go on and do it again, and what makes them not go
5 on and do it again. Or, or what are those factors that
6 differentiate them.

7 So that's kind of the, the basic background of how
8 you develop a risk assessment measure like this.

9 Q. And there are a variety of static risk factors,
10 like for example, having a male victim.

11 A. Yes.

12 Q. Having more than one victim. These are things
13 that can't change, and those have been found to be
14 supported as risk factors for people who did reoffend?

15 A. Yes.

16 Q. Okay. Can you give the jury, maybe, a real-world
17 example of how these actuarial instruments -- Sorry, I
18 couldn't say the word -- actually function and what
19 they -- information they give you?

20 A. I think an example of this would be if you had a
21 heart attack. And if you survive the heart attack, you
22 can go to your doctor afterwards, and they'll talk
23 about what your risk is to have another heart attack.
24 So if you're a smoker, if you don't exercise, if you
25 have a family history of a heart attack, if you, if

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1 you've had a previous heart attack before this one, all
2 those things would increase your likelihood of having
3 another heart attack. And a doctor can tell you kind
4 of what your estimated risk is based on large studies
5 of people who had heart attacks, and went on to have
6 another heart attack or, or not.

7 They'll look at those risk factors and they'll
8 collate those to see what your estimated risk is. So
9 that's what we're looking at. We're looking at
10 combinations of risk factors. I look at these risk
11 factors on the, on the two actuarial risk assessments.
12 I score the individual on each item. I add up the
13 number of points that they receive. I take that number
14 and I get several pieces of information. So I'll get
15 a, I'll get a risk category that they're in. I will
16 get a five-year risk estimate. And then sometimes, I
17 think, on one of the instruments I'll get a 10-year
18 risk estimate, a five and a 10-year. And on the other
19 one, it's just a five-year risk estimate.

20 I can also see, like, individuals with this score,
21 like, how common was that, to have that score. And
22 compared to the average sex offender, how much more
23 likely are they to reoffend.

24 Q. Okay. Now, then the statics are the '99R and the
25 2002R.

- 1 A. That's correct.
- 2 Q. Okay. And were they created by the same set of
3 researchers?
- 4 A. They were.
- 5 Q. And how -- is it recommended to use them together,
6 or in some other fashion?
- 7 A. It's recommended in high stakes evaluations, like
8 we're in today, that you use them together. The
9 primary instrument is the Static 99R, and then you can
10 add the Static 2002R because it adds a little bit more
11 of accuracy to your estimation.
- 12 Q. Okay. And you scored Mr. Stewart on both of these
13 assessments?
- 14 A. I did.
- 15 Q. Okay, and so let's start with the Static 99R.
16 What is the scoring range for that instrument?
- 17 A. The scoring range is negative 3 to 12 points.
- 18 Q. Okay, and, and why does it go from negative 3 all
19 the way up to 12?
- 20 A. Because as people age, their risk to reoffend
21 typically goes down. And so you can get negative
22 points for age.
- 23 Q. And what is the average score on the 99R?
- 24 A. It's a score of 2.
- 25 Q. Okay. And what did Mr. Stewart score?

1 A. He scored an 8.

2 Q. Okay. And can you tell me a little bit about how
3 you came to that number, and what that number means in
4 terms of his risk to reoffend?

5 A. You want me to tell you how I came to that number?

6 Q. Well, just tell me how -- what factors did you
7 consider in coming to that number?

8 A. Let me get his scoring sheet. Sorry. Just give
9 me a second, I know it's in here somewhere.

10 Q. Take your time.

11 A. I just have to find it. I'm having trouble
12 finding it. I'm not finding it.

13 Q. That's all right. We can go through each factor.
14 You recall them, correct?

15 A. Do I recall each factor?

16 Q. Yes.

17 A. I can, I can probably remember each factor, yes.

18 Q. Okay. Great. So for a score of eight, and
19 specifically Mr. Stewart's case, what risk factors did
20 you score him on? If you require -- if you recall.

21 A. Well, there are 10 questions. I would score him
22 on age, whether he has lived with a romantic partner
23 for two years, whether he has any prior nonsexual
24 violence, any sexual violence -- or sorry, nonsexual
25 violence at the time of his last incident, There would

1 be number of prior sex offense charges and convictions.
2 Whether he's had four or more sentencing dates.
3 Whether he has a noncontact sex offense. Whether he
4 has a stranger victim, unrelated, like nonfamily member
5 victim, and whether he has a male victim.

6 Q. And he obtained points for how many of those
7 categories, if you recall?

8 A. It would -- that's a little bit hard to answer
9 just off the top of my head. I have to find his form.

10 Q. Okay.

11 A. I'm really struggling, and I'm not sure exactly
12 what I've -- I guess I might have left it at my seat,
13 or I might not have brought it with me today. I
14 thought I did, but I'm not seeing it.

15 Q. If you don't have your scoring sheet, I'll just
16 ask you, are you confident in your scoring that it was
17 accurate?

18 A. Yes, I am.

19 Q. Okay. And with a score of eight on the
20 Static 99R, what risk category does that place him in,
21 Mr. Stewart in?

22 A. It places him in the highest category. The well
23 above average.

24 Q. Okay. And what is the actuarial risk for an
25 individual with that score? What is their percentage

1 likelihood to reoffend within five years, if you
2 recall?

3 A. So an individual with a score of 8, 31% of the
4 individuals with that score reoffended sexually in
5 five years, and 40.9% reoffended within 10 years,
6 sexually.

7 Q. And how many times more likely is he than the
8 average sex offender to reoffend just based on that
9 score?

10 A. Just based on that score? I can look at, like, a
11 relative risk ratio, and when I compare him to the
12 average sex offender with a score of 2, he's like,
13 well, over seven times more likely to reoffend.

14 Q. Okay, 7.32 times more likely than average?

15 A. Yes.

16 Q. Okay. Now in -- is there another way where you
17 can look at how many individuals out of 100 would
18 reoffend with that score? Or not reoffend?

19 A. Yes. So within five years it would be roughly 31
20 people would reoffend sexually, and 69 would not. And
21 within 10 years, it would be around 40 people would
22 reoffend sexually, and about 60 would not.

23 Q. And in fact, with a score of 8, he is in less than
24 1% of the population. Is that accurate?

25 A. A score of 8 is very high on this instrument,

1 hardly anybody scores that high. Most people score
2 well below a 6, the average is 2. So that's, that's
3 where most people are scoring. But it's about 99% of
4 people score below an 8.

5 Q. Okay. So let's move on to the Static 2002R. Did
6 that add any incremental validity to your actuarial
7 assessment?

8 A. Yes, using that in conjunction with the 99R it's a
9 little bit more accurate.

10 Q. Okay. And what did you assign in terms of the
11 scoring from Mr. Stewart on the 2002R?

12 A. A score of 6.

13 Q. Six. And that's two points less than the 99R.

14 What is the scoring range for the 2002R?

15 A. Those scores range from negative 12 to 13. And
16 the average score on the 2002R is a 3. The main
17 difference between this instrument and the 2002R is
18 this takes into account more convictions, and generally
19 disregards charges where the 99R puts more weight on
20 charges that -- even if they don't result in
21 convictions.

22 Q. Okay, so with a score of 6, what risk category
23 would Mr. Stewart be in on the 2002?

24 A. It puts him in the above average risk category.

25 Q. And how much more likely than the average sex

1 offender is an individual with that score likely to be?

2 A. About 2.63 times.

3 Q. Okay. And what is the five-year recidivism rate
4 for an individual with a 6 on the 2002R?

5 A. 19.2% of individuals with a score of six
6 reoffended sexually within five years.

7 Q. Okay. And so, do these actuarial instruments take
8 into account undetected, or uncharged offenses?

9 A. It doesn't take into account undetected offenses.
10 The 99R does -- I guess it doesn't take into account
11 uncharged offenses either.

12 Q. Okay. So they only take into account detected and
13 charged offenses, both?

14 A. Correct.

15 Q. Okay. And what is the average rate of reporting
16 for sex offenses, if you know?

17 A. I've read estimates that it's about 30 percent of
18 sex offenses get reported to law enforcement.

19 Q. Okay. So knowing that only about 30 percent of
20 sex offenses are reported, can the statics potentially
21 over or underestimate an individual's risk?

22 A. Yes.

23 Q. Okay. And in this situation, in this particular
24 case, do you believe that the static results, the well
25 above average to above average risk category, do you

1 believe that that's accurate as applied to Mr. Stewart?

2 A. Yes. I mean, they, the scores are just what they
3 are.

4 Q. Well, are they consistent with his presentation
5 and his criminal history?

6 A. The scores come from his criminal history not from
7 his presentation, so. The scores are -- they're just
8 numbers.

9 Q. Okay. But you take them into account when
10 assessing overall risk.

11 A. Yes.

12 Q. Okay. And these tests are routinely and generally
13 accepted in the course of this type of evaluation?

14 A. These measures are used by almost all evaluators
15 in these types of cases.

16 Q. Okay. So, talk to me about dynamic risk factors.
17 What are they?

18 A. They are risk factors that are related to sexual
19 reoffending, and that can be addressed in treatment, or
20 can be changed.

21 Q. And which ones are most strongly correlated with a
22 risk of sexual reoffense?

23 A. I'm not sure I understand your question.

24 Q. Which dynamic risk factors are most strongly
25 correlated with risk of sexual reoffense. There was a

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1 particular study that identified these back in, I
2 believe, 2010.

3 A. I'm sorry. I was misunderstanding what you are
4 asking. So in 2010 there was a meta analysis done that
5 was -- researchers took all of the valid research
6 studies in this area that they could find, and they
7 combined the results to get a big mega study of the
8 risk factors. And they found, I believe, like a dozen
9 or so risk factors to be very relevant to sexual
10 reoffending.

11 Q. Okay.

12 A. Do you want me to name those?

13 Q. Well, actually I would just like you to go through
14 the ones that Mr. Stewart is currently presenting with.

15 A. For him I found that he has the risk factor sexual
16 preoccupation. He spoke a lot about sex being just
17 pretty much for gratification. He has an intense
18 interest in sex. He said he wanted sex every day.
19 Said he watched pornography once or twice a day. And
20 that he had a lot of impersonal sex, which, that's how
21 that risk factor is described in the literature.

22 Q. Okay.

23 A. He has a lack of emotionally intimate
24 relationships with adults since he has a history of
25 conflict and infidelity in his relationships. His

1 lifestyle impulsiveness. He had some history of an
2 unstable lifestyle, little routines, difficulty keeping
3 steady, legitimate work. He put his immediate
4 gratification over other considerations, and gave
5 little regard to future consequences. He has poor
6 problem solving. He had problems identifying problems,
7 understanding, conceptualizing problems. Tends to deny
8 or ignore problems, and is solutions focused on
9 immediate gratification versus long-term consequences.

10 He has a resistance to rules and supervision.
11 Violated the terms of supervision, and then fled to
12 avoid prosecution and escape from custody. He has
13 negative social influences. He talked about spending a
14 lot of his time with individuals who are involved in
15 criminal activities. Said his friends in prison were
16 motivated to engage in sexual acts that violate others
17 and the rules of the institution.

18 Q. Okay. And did Mr. Stewart evidence any insight
19 into his criminal and/or sexual behavior offenses?

20 A. I don't think that he has insight into what led
21 him to commit sexual offenses, no.

22 Q. Okay. And you talk about future plans with
23 interviewees, correct?

24 A. Yes.

25 Q. Okay. Did you talk about them with Mr. Stewart in

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1 this case?

2 A. Yes.

3 Q. What did he indicate to you?

4 A. He said that he would have some community
5 supervision. That he wanted to have that transferred
6 to North Carolina so he can live there with his father.
7 He wanted to seek work in landscaping and food service.
8 He plans to reestablish a relationship, or continue a
9 relationship with a woman who he has been involved with
10 in the past.

11 Q. Okay. So essentially he told you he is planning
12 to go right back to his old lifestyle.

13 A. It sounded that way, yes.

14 Q. Okay. Did he express any motivation whatsoever to
15 engage in sex offender treatment?

16 A. No. He indicated that he didn't need sex offender
17 treatment.

18 Q. Okay. And at this time what is your understanding
19 of his community supervision requirement? Will it be
20 active if he is released, or will he not be under any
21 form of supervision, if you know?

22 A. I do not know if he has any time left on his
23 community supervision. That starts when he leaves the
24 prison system so I'm not sure if it's still active.

25 Q. Okay. Did you ask him about whether he has any

1 plans on how to avoid future reoffending?

2 A. I did.

3 Q. Okay, and what did he say to you?

4 A. Basically that he was just going to stick with one
5 woman. And that was the woman he was with right now.
6 He wasn't going to put himself in situations where he
7 could commit another offense.

8 Q. Okay.

9 A. That is what he said.

10 Q. Okay. Was it where he could commit another
11 offense, or where someone would lie on him?

12 A. When I asked him he said -- I asked him if he
13 could tell me about situations where he would be at an
14 increased risk to commit another offense. He said that
15 there was -- that there were no situations and he said,
16 because I am not going to put myself in that position
17 no more. When I asked what position he was referring
18 to he said, pretty much I'm going to stick with one
19 woman. That is the woman I am with right now.

20 Q. Okay. So did you consider those plans realistic?

21 A. I thought his plans -- they were, they were fine.
22 I don't ask a lot of questions about their future plans
23 because I have to make a decision regardless of their
24 future plans.

25 Q. Okay. So that's not really something you take

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1 fully into account.

2 A. It's something that I consider. It's not given a
3 lot of weight because --

4 Q. It's not the question you have to answer?

5 A. It's not the question I have to answer.

6 Q. Okay. So in answering that question did you come
7 to any conclusions about whether Mr. Stewart
8 individually presents a risk of reoffense?

9 A. Are you asking if I think he's likely to reoffend?

10 Q. I'm asking if you think he presents a risk of
11 reoffense.

12 A. Yes, I think all sex offenders have a risk to
13 reoffend.

14 Q. Okay. And in Mr. Stewart's case, in -- the
15 personality disorder in combination with the
16 presentation, is it your opinion that he is likely to
17 reoffend?

18 A. Yes.

19 Q. Okay. Do you believe he is predisposed toward
20 committing sexually violent offenses?

21 A. Yes.

22 Q. Okay. And do you believe he has serious
23 difficulty controlling that predisposition?

24 A. I think that he does have serious difficulty
25 controlling his behavior, yes.

1 Q. Okay. And do you believe that that predisposition
2 poses a menace to the health and safety of society?

3 A. Yes.

4 Q. Okay. And are the use of the record review, the
5 interview, the actuarial assessments, and the
6 assessment of dynamic risk factors, are those all
7 standard practice in your field?

8 A. Yes.

9 Q. Generally accepted in the community?

10 A. Yes.

11 Q. Okay. Did you draw all of your conclusions
12 regarding Mr. Stewart to a reasonable degree of
13 psychological certainty?

14 A. Yes, I did.

15 MS. SHAW: Thank you. Please answer any questions
16 that Mr. Thompson has for you.

17 THE COURT: Mr. Thompson.

18 CROSS-EXAMINATION

19 BY MR. THOMPSON

20 Q. Good morning, Dr. Gehle.

21 A. Good morning.

22 Q. I'm not going to go back through everything that
23 Ms. Shaw went through. I'm going to hit the points
24 that I think may be important in this case. You said
25 that during the interview with him he seemed to be

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1 impatient, he was talkative, had a grandiose opinion of
2 himself, he was frustrated at times but he seemed to
3 have a normal affect. Is that correct?

4 A. Yes.

5 Q. Does that apply to just about everybody you
6 interview? I mean, aren't they kind of uncomfortable
7 in an interview of this kind?

8 A. No, it does not apply to everybody by any means.
9 I see a wide variety of presentations in the
10 interviews.

11 Q. Well, what do you mean by normal affect?

12 A. Well, affect is just the way that you are showing
13 emotion outwardly. So normal would mean his affect,
14 like, was congruent with what we were talking about.
15 It wasn't -- he wasn't laughing when we were talking
16 about sad things. He wasn't doing anything that was
17 odd or out of the ordinary in terms of the way he
18 showed his emotion outwardly.

19 Q. So his responses were not inappropriate.

20 A. His emotional response.

21 Q. Not inappropriate.

22 A. Correct.

23 Q. Okay. Now a lot of the -- you say he does not
24 have a mental abnormality such as a paraphilia?

25 A. Correct.

1 Q. You have made your diagnosis of needing treatment
2 based solely on personality disorder, correct?

3 A. I have diagnosed him with antisocial personality
4 disorder with narcissistic features.

5 Q. But no mental illness.

6 A. No mental abnormality.

7 Q. Okay, I'm sorry. You and I probably speak
8 different languages.

9 A. I would say mental illness would -- that would be
10 a more typical term, but --

11 Q. The law is mental abnormality.

12 A. But you could consider a personality disorder a
13 mental illness, but I think that the way the statute is
14 written it's not considered -- a personality disorder
15 is separated from the mental abnormality in the
16 statute.

17 Q. And you went back and you looked at everything on
18 Mr. Stewart, basically, from his childhood to the
19 present.

20 A. I looked at everything that I could get.

21 Q. And one of the things for an antisocial
22 personality disorder is there has to be evidence of the
23 disorder prior to age 15, correct?

24 A. There needs to be evidence of conduct problems,
25 yes.

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1 Q. Conduct problems, okay. And he has to be at least
2 18 at the time you make the diagnosis.

3 A. Yes.

4 Q. Now you went through -- or let me ask this
5 question. There were no health problems, were there?
6 No medical conditions that you were aware of?

7 A. Correct. Based on the records and his
8 self-report.

9 Q. Right. And I believe I asked you in your
10 qualifications, you are not a medical doctor.

11 A. You're right. I am not.

12 Q. You found no history of substance abuse.

13 A. He reported no history of substance abuse, yes.

14 Q. There was a conviction for some drugs, correct?

15 A. Yes.

16 Q. Okay. Now in his past charges, his past
17 convictions, you went into detail of all the, the
18 details, the elements of the sex offenses, correct?
19 You told what happened --

20 A. Yes.

21 Q. -- in your testimony. But you didn't go into the
22 details of the other charges that were not sex charges,
23 is that correct?

24 A. I answered the questions that I was asked.

25 Q. Okay. Now as to the first sex charge in

1 North Carolina, now I believe you testified to this but
2 I want to make sure. There had been a history of
3 consensual sex between he and the girl, correct?

4 A. Yes.

5 Q. And then when they found out their ages were
6 different she didn't want to consent anymore. Is that
7 correct?

8 A. Well, that was talked about in her account. I
9 think that there was also indication that he had a
10 girlfriend, and that she knew about that. So it could
11 have been both of those things, either of those things.

12 Q. Okay. And could it have been payback for having a
13 girlfriend?

14 MS. SHAW: Objection, Your Honor. That calls for
15 speculation.

16 THE COURT: Yeah. I sustain the objection.

17 BY MR. THOMPSON

18 Q. All right. The second charge in North Carolina,
19 law enforcement -- not law enforcement, the prosecutor
20 in North Carolina refused to prosecute, right? He
21 rejected to prosecute.

22 A. That's correct.

23 Q. So that was just simply an allegation.

24 A. That's right.

25 Q. And then the charge down here that we are here in

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1 court on today. All right, well, I mean the underlying
2 charge that brought us to court today, the CSC and
3 kidnapping, he was convicted of that, correct?

4 A. Yes.

5 Q. And I believe you testified that there wasn't any
6 indication of violence in that except for the threat of
7 a knife.

8 A. Yes.

9 Q. Do you have any indication in any of these sex
10 offenses of violence except for this one where there
11 was the threat of a knife?

12 A. I think what I testified to was gratuitous
13 violence. So there's -- I didn't see any indication
14 that he was physically punching them, strangling them,
15 stabbing them, shooting them, you know, things like
16 that. A sexual assault in and of itself is a violent
17 act. So outside of that I think his behavior was -- it
18 appeared to be what was necessary to accomplish the
19 offense, and not a lot more.

20 Q. And you say you did not find any sexual sadism.

21 A. Correct.

22 Q. Nor did you find any pleasure that he derived from
23 nonconsent.

24 A. I don't think that there was enough indication
25 that that was the case. And primarily in that second

1 offense when she started fighting back, he stopped. So
2 that would give me an indication that that wasn't what
3 he was specifically aroused to.

4 Q. And I found -- correct me if I'm wrong. In your
5 testimony, I believe you testified that he had a lack
6 of understanding as to what consent was, or is.

7 A. About the interview? Yeah, I found that to be the
8 case. That he seemed to not quite get what was
9 happening.

10 Q. And I believe you further testified that a lot of
11 people seem to have a lack of understanding as to
12 consent.

13 A. Well, I'm sorry. I misunderstood what you were
14 saying.

15 Q. Okay. You testified that Mr. Stewart seemed to
16 have lack of understanding as to what consent is.

17 A. Okay, yes.

18 Q. And I believe you also further stated that a lot
19 of people seem to have a lack of understanding.

20 A. Yes.

21 Q. How does that differentiate him from the general
22 public?

23 A. I think that it's a lot of the people that I
24 evaluate. So people who have been convicted of sexual
25 offenses have a lot of misunderstanding about consent.

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1 Q. No disciplinaries (sic) in the Department of
2 Corrections.

3 A. That's correct.

4 Q. And when you considered all the personality
5 disorders, the ones that you found was antisocial
6 personality disorder, correct? With narcissistic
7 features.

8 A. Yes.

9 Q. How many -- what percentage of the population has
10 antisocial personality disorder? Do you know?

11 A. I can tell you what the, what this book says about
12 it. It looks like that they report a couple different
13 prevalence rates. Under 1% to 3.6% when you're looking
14 at people who have alcohol use. It's pretty high with
15 people who use alcohol.

16 Q. Does it tell what the percentage is with people
17 who have a narcissistic feature?

18 A. No.

19 Q. Okay. So we're looking at somewhere about --
20 between 1 and 4 percent of the people have antisocial
21 personality disorder.

22 A. Yeah, I think that that's a fair estimate, yes.

23 Q. And that's of the general population.

24 A. Yes.

25 Q. Not just the people with sex offenses.

1 A. That's correct.

2 Q. Okay. Does that mean that somewhere between 1 and
3 4 percent of the population needs treatment?

4 A. That's a good question. Probably 1 -- between 1
5 and 4 percent of people with this disorder could use
6 that treatment. But there are a lot of disorders, and
7 there's probably 25% of the world could use some
8 treatment.

9 Q. Okay. Let's talk a minute about the static
10 factors and the dynamic. Static 99, you testified that
11 it -- you scored it out and you scored him out as an 8.

12 A. Yes.

13 Q. And you do that scoring yourself?

14 A. Yes.

15 Q. And it's based on the past, not the present or the
16 future, correct?

17 A. It's based on the, the information typically from
18 the past, yes.

19 Q. And when you scored it out you say that in a
20 five-year period there is a probability of about 31%
21 recidivism.

22 A. Well, the way to say it most technically is that
23 individuals with the same score, 31% of them reoffended
24 within five years with a sexual offense.

25 Q. And 40.9% within ten years..

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1 A. Yes.

2 Q. All right. So that 31%, now, you testified to
3 this. That means 69% did not reoffend within
4 five years.

5 A. That's correct.

6 Q. And if we use the high number of 40.9 in 10 years,
7 that still means what, 59.1% did not reoffend, correct?

8 A. Yes.

9 Q. And on the Static 2002R, you say that's a more
10 accurate test.

11 A. I didn't say that.

12 Q. You didn't say that it gives it more -- adds more
13 accuracy to the score?

14 A. Well, when you use those two things together, then
15 your estimations are more accurate.

16 Q. Okay. And it was a 6 he scored on that, correct?

17 A. Yes.

18 Q. And you said there's a 19.2% chance of reoffending
19 within five years, correct?

20 A. 19.2% of the individuals with a score of 6
21 reoffended --

22 Q. Which would mean --

23 A. -- within five years.

24 Q. -- 80.8% did not.

25 A. Yes.

1 Q. How do we know which one of these groups he's
2 going to fall in? Is he going to fall in the 30% group
3 that does, or the, or the approximately 70% group that
4 doesn't under the Static 99? Or is he going to fall
5 into the 19% group under the Static 2002, or the 80%
6 group that doesn't?

7 A. Well, that's what make this work very challenging
8 is that I can't predict the future. I can use the best
9 tools that are available to estimate his risk. Really
10 the jury gets to decide.

11 Q. Now this, these Static 99 and Static 2002, the
12 scores and the percentages, is that based on people who
13 have had treatment, or who have not had treatment?

14 A. So I compared him to the routine sample. So that
15 would be a mix of people who did and did not.

16 Q. And I believe you testified that as he grows older
17 his risk goes down, correct?

18 A. Yes.

19 Q. Okay. So these numbers, these numbers were based
20 on convictions of some years ago -- maybe eight years
21 ago or so.

22 A. That was when his last conviction was, but for
23 him, when I have to -- I have to pick -- the
24 instrument, the 99R guides you as to what is the, what
25 they call the index offense. And for him that was, I

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1 think, the 2000, maybe 11 -- or I think it was actually
2 after that. Was it 2016 when he had an indecent
3 exposure charge in the detention center?

4 Q. I believe you testified that all sex offenders
5 have a risk to reoffend. Is that correct?

6 A. Yes.

7 Q. In fact, I would assume that there are people out
8 there that are not sex offenders that may offend again.

9 A. Yes.

10 Q. You are saying that you are just using your best,
11 your opinion is your best estimate or best -- I don't
12 want to use the word guess but, it's your best estimate
13 of what may happen.

14 A. I use the science that's available in risk
15 assessments. And the best practices available for
16 doing these evaluations of sexually violent predators
17 for civil commitment, and I apply the factors in regard
18 to that science.

19 Q. But that science isn't applied -- isn't based on
20 him specifically. It's based on a group, an actuarial
21 calculation.

22 A. Well, looking at risk assessment -- just so that
23 we are clear, because when -- your question was a
24 little bit more broad initially. So that diagnosis
25 applies to him specifically. The risk assessment, in

1 terms of the dynamic risk factors, I'm looking at
2 factors that apply to him specifically. In the static,
3 those risk factors apply to him specifically, and then
4 I add them up and I compare them to groups of
5 individuals who reoffended and didn't reoffend. So I
6 compared it to a large group of sex offenders. So
7 that's the comparison.

8 Q. But you cannot say with any degree of certainty
9 that he will reoffend in the future.

10 A. I can say in terms of what the statute says, I
11 think that his "likely" is to such a degree as to pose
12 a menace to the health and safety, which is how the
13 statute defines that term, likely. So in my opinion he
14 meets, he meets that threshold of likely.

15 MR. THOMPSON: Okay. Thank you.

16 THE COURT: Any redirect?

17 MS. SHAW: Very briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. SHAW

20 Q. All right. Dr. Gehle, on cross-examination you
21 were asked about the second sex abuse charge out of
22 North Carolina, which was just an allegation, correct?
23 It was dismissed.

24 A. Yeah.

25 Q. Okay. You testified earlier, just to remind me,

1 that you did not consider that in your diagnostic
2 formulation, correct?

3 A. Not in the diagnosis, correct.

4 Q. Okay. And you testified earlier about that there
5 was no gratuitous violence used. Okay? Do you recall
6 that?

7 A. Yes.

8 Q. And you wouldn't expect to necessarily see
9 gratuitous violence unless you had a diagnosis of
10 sexual sadism or nonconsent, correct?

11 A. Well, gratuitous violence would potentially be
12 indicative of that, so it's more like one leads to the
13 other.

14 Q. Okay. But again you didn't diagnose that so you
15 did not see it here.

16 A. That's correct.

17 Q. Okay. But he did use violence in his offending
18 behaviors, enough to obtain compliance.

19 A. Yes.

20 Q. Okay. Now you said you think that lots of people
21 don't get the concept of consent. Do you recall that?

22 A. Yes.

23 Q. And just to be clear you were referring to people
24 who you evaluate, not to the general public.

25 A. Yes. When he initially asked that question I

1 thought that he was referring to something that I wrote
2 in my report about Mr. Stewart kind of failing to
3 understand the evaluation process. That's what I
4 thought he was asking initially.

5 Q. Okay. I think he was talking about something
6 totally --

7 A. He was talking about something different, yes.

8 Q. Okay. And you were asked about that, you know,
9 you were just comparing Mr. Stewart to a group, and
10 this is not an individualized risk assessment. Is that
11 a fair characterization?

12 A. I don't believe so, no.

13 Q. Okay. And, in fact, risk varies by individual.
14 Not every individual with antisocial personality
15 disorder meets criteria for SVP, do they?

16 A. Of course not, no.

17 Q. And, in fact, you have diagnosed antisocial
18 personality disorder, and not recommended commitment in
19 the past, have you not?

20 A. Yes, I have.

21 Q. Okay. So in this situation you have a diagnosis,
22 you have the actuarial risk, and you factor that in
23 with the dynamic risk factors, and that's how you came
24 to your ultimate conclusion?

25 A. That's correct.

1 MS. SHAW: Thank you. I have nothing further.

2 THE COURT: Recross?

3 MR. THOMPSON: No, sir.

4 THE COURT: All right. Dr. Gehle, you can step
5 down. Thank you. All right, State, call your next
6 witness.

7 MS. SHAW: Your Honor, the State rests.

8 THE COURT: All right. Ladies and gentlemen,
9 we're going to take another 10-minute break. I'll give
10 you 10 minutes to refresh yourselves. Do not -- even
11 though the State has indicated they have rested, which
12 means they have presented all the evidence that they
13 intend to introduce up to this point in the trial, you
14 still are not allowed to discuss the case. Do not
15 discuss the case during the break. We'll have you back
16 here in 10 minutes. Everyone remain seated while this
17 jury is excused.

18 (WHEREUPON, the jury exited the courtroom at
19 11:37 a.m.)

20 THE COURT: Any motions?

21 MR. THOMPSON: Your Honor, we would move for a
22 directed verdict as the evidence presented does not
23 reach the level necessary to hold him as a sexually
24 violent predator.

25 THE COURT: All right. Does the State wish to be

1 heard?

2 MS. SHAW: Yes, Your Honor. In this matter we
3 have presented direct evidence that the respondent
4 suffers from both a mental abnormality or a personality
5 disorder, as well as his contributory offense so we
6 believe there has been an adequate basis laid which
7 constitutes a material question of fact that the jury
8 must decide. So Your Honor must go to the jury.

9 THE COURT: All right. Thank you. I find taking
10 all of the evidence that has been presented in the
11 light most favorable to the nonmoving party, in this
12 particular case the State, that the State has met --
13 presented sufficient evidence to overcome the motion
14 for directed verdict. So I will deny the motion for
15 directed verdict. All right, Mr. Thompson, do you have
16 any witnesses?

17 MR. THOMPSON: Your Honor, may I have a few
18 minutes to talk with Mr. Stewart?

19 THE COURT: Yes. All right.

20 MR. THOMPSON: Is it okay with the Court to
21 include his family in the conversation?

22 THE COURT: That's fine. Or you'll just -- well,
23 that's -- the security issue will be --

24 MS. SHAW: Your Honor, I will step out so he can
25 talk to his client.

1 THE COURT: Yeah, and I will step out as well.
2 I'll be back in 10 minutes.

3 (WHEREUPON, the Court took a brief recess.)

4 THE COURT: Are y'all ready for closings?

5 MR. THOMPSON: I am.

6 THE COURT: All right.

7 MS. SHAW: I'm fine, too. Give me maybe
8 10 minutes.

9 THE COURT: Okay. We'll bring the jury in, and
10 I'll talk to them briefly about closings, and y'all can
11 do closings. And then I'll go ahead and charge and
12 we'll go ahead and send it to the jury.

13 MR. THOMPSON: Do I need to rest in front of the
14 jury, Judge?

15 THE COURT: Yes. I'll ask you if you have any --
16 call your first witness, and then you can rest.

17 MR. THOMPSON: All right.

18 MS. SHAW: And then, Your Honor, when Dr. Gehle
19 was on the stand I forgot to have her identify that
20 extra document that got put back into State's 1. So
21 can we just put it on the record so they -- the jury
22 hears that the documents are now complete?
23 Mr. Thompson and I have gone through them.

24 THE COURT: You're good with --

25 MR. THOMPSON: I have no problem. What it -- we

1 looked at the documents beforehand, and the documents
2 were okay. But apparently what got put in on one of
3 them was just the face of the document, not the body.
4 But we had agreed that the whole thing would go in so I
5 don't have a problem.

6 THE COURT: All right. Well, let's handle it this
7 way. When the jury comes in, Ms. Shaw, I'm going to
8 say, do you have a matter for the record. You handle
9 that. Then I will ask Mr. Thompson, call your next
10 witness -- call your witness, and then you can rest.

11 MR. THOMPSON: Okay.

12 MS. SHAW: I think that will do it.

13 THE COURT: And then on a civil case of this
14 nature, Mr. Thompson goes first and you go last.
15 Right, or is it the other way around?

16 MS. SHAW: I go first --

17 THE COURT: All right. We're going to give you
18 rebuttal, an opportunity for rebuttal. Okay. All
19 right.

20 MS. SHAW: I may or may not take it, Your Honor,
21 just depending on Mr. Thompson's argument.

22 THE COURT: Okay. All right. Well, I'm going to
23 instruct the jury that the State will go first. They
24 have the opportunity to address you after Mr. Thompson
25 addresses you if they wish.

1 MS. SHAW: Thank you, Your Honor.

2 THE COURT: I'll handle it that way. All right?

3 MS. SHAW: May I approach the witness stand and
4 grab those documents?

5 THE COURT: Yes. All right, let's bring the jury
6 in.

7 (WHEREUPON, the jury entered the courtroom at
8 11:53 a.m.)

9 THE COURT: Thank you, ladies and gentlemen.
10 Ms. Shaw, I believe the State had an issue they wanted
11 to put on the record.

12 MS. SHAW: Yes, Your Honor, thank you. After
13 Dr. Gehle's testimony regarding the incompleteness of
14 State's 1, Mr. Thompson and I had an opportunity to go
15 back through the certified documents which I intended
16 to put into the record, and we found the missing page.
17 So I just want to put on the record that the document
18 itself is now complete with regard to the charges that
19 Mr. Stewart was convicted of involving the sexually
20 violent offense.

21 THE COURT: All right, and you have made that --
22 you have corrected that on what's in evidence.

23 MS. SHAW: Correct, Your Honor, yes.

24 THE COURT: All right, thank you. All right,
25 thank you. Mr. Thompson, your opportunity to present

1 any evidence.

2 MR. THOMPSON: Your Honor, the respondent would
3 rest.

4 THE COURT: All right. Ladies and gentlemen of
5 the jury, what that means is the respondent, or in this
6 case Mr. Stewart, has indicated that they have no
7 evidence to present to you. That means you have heard
8 all of the evidence in the case. So what we're going
9 to do now is hear closing arguments from the attorneys.
10 Ms. Shaw will have an opportunity to speak to you
11 first. Then Mr. Thompson will follow. Then Ms. Shaw,
12 if she wishes, can offer -- can follow Mr. Thompson in
13 what we call rebuttal. Once that is done I'm going to
14 then instruct you, read you what the law is in the
15 case. Then you will be allowed to go back and begin
16 deliberations. So with that I'm going to allow the
17 attorneys to give their closing arguments. Please give
18 them your close attention. Ms. Shaw.

19 MS. SHAW: Thank you, Your Honor. Ladies and
20 gentlemen, this has been a real quick trial, and so I
21 am not -- well, actually first, can y'all hear me?
22 Everybody's good? Okay, cool.

23 So this has been a real quick trial. We've only
24 had one witness and I'm not going to go back through
25 every single detail that Dr. Gehle testified to you

1 about. I can tell y'all have been paying very close
2 attention for which I appreciate you because this is a
3 very important case. Mr. Stewart's liberty, now that
4 he has completed his criminal sentence, is at stake.
5 Very high stakes. And there are significant
6 consequences.

7 If you determine that he does meet criteria as a
8 sexually violent predator, he will be civilly committed
9 indefinitely at a secure facility in Columbia for
10 long-term control, care, and treatment. So I'm just
11 going to briefly go back through the elements. And I
12 know you remember what you heard, so I'll leave it in
13 your good judgment. So, first things first.

14 Qualifying conviction. These are the records.
15 They are in evidence. You will have these in the jury
16 room. This is not an issue in this case, but I do
17 encourage you to read these documents. Read the
18 narratives contained in them. Read the sentencing
19 information, and everything else that you think might
20 be relevant on those documents. I encourage you to do
21 that.

22 Secondly, does Mr. Stewart have a mental
23 abnormality or personality disorder that makes him
24 likely to reoffend? So first thing, does he have it?
25 We have established that he does. He suffers from

1 antisocial personality disorder with narcissistic
2 features. You heard Dr. Gehle go through the
3 diagnostic criteria. He meets full criteria for
4 antisocial. He also meets several criteria for
5 narcissistic, and that's how she came to her diagnosis.
6 She discussed his behaviors, his attitudes, his
7 presentation, and so there we go. We have the
8 diagnosis.

9 He does not have a paraphilia, but he is not
10 required to have one because our statute says
11 personality disorder, or mental abnormality. So one or
12 the other. Sometimes folks have both of them. In this
13 case we just have the personality disorder.

14 So now that we've established that, and you heard
15 Dr. Gehle has established this diagnosis before, but
16 not recommended commitment, we need to look at the
17 actuarial risk, and the individualized risk in the form
18 of the statics and the dynamic risk factor analysis.
19 What do the statics show you? He scored a 6 and an 8.
20 That places him in the well above average category on
21 the Static 99, which takes into account charges and
22 convictions, and it puts him in the above average risk
23 category on the 2002R, which really only takes into
24 account convictions. So he got a little bit of a lower
25 score because even though he's had four separate sexual

1 charges, he's only been convicted of two. So we had a
2 little bit of a discrepancy between the statics because
3 they look at different things.

4 But what is the net result? That he is almost
5 seven and a half times more likely than the average sex
6 offender, average, not the average member of the
7 public, but the average sex offender to commit a new
8 sexual offense. We are not looking at robberies.
9 We're not looking at drug possession. We're looking at
10 new sex offenses. And according to those actuarial
11 risk assessments he is more than seven times more
12 likely to reoffend. That's very high. It's the
13 highest risk category we have. His risk literally
14 could not be much higher. So we have that.

15 That's comparing him to the group as a whole.
16 Then Dr. Gehle didn't stop there. She went into the
17 dynamic risk factors. He has 6 out of 12. And they
18 are all very significant. They are all active. He has
19 sexual preoccupation, resistance to rules and
20 supervision. He's got the VOPs. He's got a variety of
21 other relevant behaviors that increase his
22 individualized risk. Based on all that information she
23 concluded that, yes, he has a mental (gibberish)
24 personality -- I'm sorry. He has the personality
25 disorder, and he has the risk, and therefore, he meets

1 criteria under the statute for indefinite civil
2 commitment.

3 So with that information in mind I ask that you go
4 back into that room, talk about this matter. You mull
5 it over, and you make the best decision that you feel
6 is consistent with the facts as they have been
7 presented to you. It's incredibly important because in
8 this situation the State is looking to limit
9 Mr. Stewart's liberty indefinitely. And in such cases
10 the State may not -- it's not you can't, it's not
11 should not, it's the State shall not interfere with an
12 individual's liberty interest without due process of
13 law. And that is why you are all so important.
14 Because you guarantee that he is going to get justice
15 under this law. It's your decision. I leave it in
16 your good hands. I thank you for your service because
17 without you we couldn't do this. Thank you.

18 THE COURT: Thank you, Ms. Shaw. Mr. Thompson.

19 MR. THOMPSON: May it please the Court, Your
20 Honor. Ms. Shaw.

21 MS. SHAW: Thank you, sir.

22 MR. THOMPSON: Ladies and gentlemen, I'm sorry I
23 can't talk as fast as Ms. Shaw just did. It's going to
24 take me a little bit longer. I'll hand this to the
25 Court, please.

Closing Argument - Mr. Thompson

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1 My wife and my son laugh at me about the way I
2 talk. They say I talk slow and I talk Southern.
3 That's because I was born and raised in the South.

4 In opening arguments I told y'all that we were
5 told in law school to tell you what you're going to
6 hear, to let you hear it, then tell you what you heard
7 again. Well, if I told you what you were going to
8 hear, we would have been just now probably starting
9 with Dr. Gehle's testimony because it would have taken
10 an hour and a half to have gotten there. I'm not going
11 to go over everything, again, either. I'm going to go
12 over a few highlights.

13 First thing I want to tell you though is the judge
14 is going to give you some jury instructions in a
15 minute. And if I say anything that is different from
16 what he says, you forget what I say, and you listen to
17 him, okay? He's the giver of the law. I'm just an
18 attorney.

19 But in this case the burden of proof is a
20 reasonable doubt. It's not a preponderance of the
21 evidence which is, is it more likely than not, that's
22 preponderance of the evidence. Reasonable doubt is are
23 you firmly convinced that whatever it is you are
24 considering fits this case. If there's a possibility
25 that it's something else, then you find in favor of

1 Mr. Stewart.

2 I'm going to go into that a little bit more in a
3 few minutes, but in this case the State has alleged
4 Mr. Stewart meets the definition of a sexually violent
5 predator. The first being that he's been convicted of
6 a sexually violent offense. Yes, he has been. You
7 don't even need to consider that. The second being
8 does he suffer from a mental abnormality or personality
9 disorder. Well, we know he doesn't suffer from a
10 mental abnormality because the doctor testified to
11 that, no paraphilia. What you have got to decide is,
12 is there a personality disorder. Now if you decide
13 there is a personality disorder, you then have to
14 decide whether or not that personality disorder makes
15 him likely to engage in acts of sexual violence if not
16 confined in a secure facility for long-term control,
17 care, and treatment.

18 Ladies and gentlemen, words mean things. Words
19 have consequences. Phrases mean things, have
20 consequences. The phrase in this that really means the
21 most is, makes a person likely to engage in acts of
22 sexual violence if not confined in a secure facility
23 for long-term control, care, and treatment. That's an
24 indefinite confinement. And confinement means you are
25 just not free to come and go. We don't know how long

1 treatment will take. There was no testimony to that.

2 In this case the things that I think really give
3 rise to concern, she talked to -- Dr. Gehle talked to
4 Mr. Stewart and she looked at records, but she did no
5 collateral interviews. She testified she didn't talk
6 to family or anything like that. We don't know what
7 she would have gotten from that, but she didn't try.

8 She did testify that he had no deviant sexual
9 attraction, my memory of that. If your memory is
10 different than mine, you go with yours. But my memory
11 is -- and I tried to make notes as we went, that he has
12 no deviant sexual attraction.

13 Yes, he has a sexual conviction, and he had a
14 charge in North Carolina back years ago with a
15 14-year-old that had been having consensual sex prior
16 to that. He's got a history of having some problems as
17 a juvenile. Okay. He was -- got some convictions that
18 aren't sex-related. We didn't go into the facts of
19 those. She has the facts of those, but she's only
20 interested in the facts of the sex-related ones. I
21 used to work with a guy who had a saying, when you're
22 holding a hammer, everything looks like a nail. She
23 does sex offense evaluations. Everything looks like a
24 sex offense. She works with violent predators,
25 everything looks like a violent predator. She's the

1 hammer. He's the nail.

2 We talked about whether or not he had an
3 understanding about what lack of consent is. And I
4 think her initial testimony was a lot of people have a
5 misunderstanding as to lack of consent. I think she
6 came back and changed that somewhat later on, but
7 initially her statement was a lot of people seem to
8 have a lack of understanding.

9 He's been in the Department of Corrections for a
10 period of time. He has no disciplinaries (sic) there.
11 Unfortunately, had no treatment there either. That
12 would have been nice, but that's the Department of
13 Corrections.

14 The main thing I want to talk about really is the
15 actuarial test. The Static 99, the Static 2002R. Now
16 she testified that she scored those herself, and I
17 don't doubt her score. You know, it's a simple form,
18 10 questions. You know, you look over here has he been
19 convicted of this? Yes. Okay, number of points. Her
20 scores are probably accurate on that.

21 But on the Static 99, the people who scored the
22 same as him-- now this is almost like insurance. It's
23 actuarial. They look at it, and like a life insurance
24 company would say, well, this person, he should live
25 this long. It's just a prediction that they use

1 financially in insurance. They can't predict the day
2 you're going to die. They can't predict the year
3 you're going to die. But in this case she came on the
4 Static 99 and said, well, a person that scores an 8,
5 statistically, our actuarial table show that he's got a
6 31% chance of reoffending in a five-year period. Okay.
7 That means he's got a 69% chance of not reoffending.

8 Let's go out to ten years on that. And it's a
9 49 -- a 40.9%, let's say a 41% chance of reoffending.
10 Well, that means there's a 59% chance of not
11 reoffending. How do we know -- and I asked her, how do
12 we know whether he's going to be in that reoffending
13 category, or in the not-offending category. We don't
14 know that. It's just actuarial tables. This is what
15 it says.

16 Now we go to the second static test. And these
17 statics are based on everything in the past. They
18 don't predict, you know, they can't predict the future.
19 A doctor can't predict the future. I submit to you,
20 ladies and gentlemen, y'all can't predict the future.
21 The Static 2002, she scored a 6 on it. That gave him a
22 19.2% chance of reoffending within five years. That
23 means there's an 80.8% chance he would not.

24 And what did she testify to. The Static 2002R
25 adds more accuracy. What does adds more accuracy mean?

1 Does it mean it's more accurate than the 99? That
2 seems to be what her testimony was. So, you know,
3 given that we are looking at somewhere -- putting the
4 two together we are looking at between a low of 19.2%
5 to reoffend up to a high of 40.9 -- oh, I'm sorry 40.9
6 is a ten-year. In a five-year period we are looking at
7 a 19.2 and 31 percent chance of reoffending. That
8 still means there's a greater chance he would not
9 reoffend.

10 She did testify that all sex offenders have a risk
11 to reoffend. And that's probably true. Because we
12 can't predict the future. I ask of you, is there a
13 risk that somebody that has never been convicted could
14 offend. Yeah. I'm telling y'all this because what we
15 are being asked to do at this point in time, and I
16 realize the wording isn't exactly this, but what we are
17 being asked to do is -- you're being asked to do is to
18 determine whether or not you have been proven, the
19 State has proven to you beyond a reasonable doubt, in
20 other words are you firmly convinced that Mr. Stewart,
21 if he is likely to reoffend if he is not confined, the
22 word confined, in a secure facility, secure facility
23 for long-term control, care, and treatment. Again,
24 long-term. Indefinite.

25 The statute, and the judge will tell you this, but

1 the statute goes on to say that likely to engage in
2 acts of sexual violence can be defined as the person's
3 propensity to commit acts of sexual violence to such a
4 degree as to pose a menace to the health and safety of
5 others. You have heard the testimony as to what
6 occurred. You heard there was no gratuitous violence.

7 Now if I were a woman I wouldn't want to be raped.
8 Okay. I wouldn't want a -- I'm a man. I don't want a
9 knife pulled on me. But there's been no indication of
10 any harm to anybody other than these criminal sexual
11 conduct. There's been no physical abuse, hitting,
12 choking, cutting.

13 I think what we are dealing with is we're being
14 asked to, we're being asked to suspend reality. The
15 reality is the State has not, in my opinion, and it's
16 got to be y'all's opinion, the State has not firmly
17 convinced anyone that he will reoffend in the future
18 and violate the statute.

19 In fact, I would submit to you, ladies and
20 gentlemen, that the State has, I would say, has firmly
21 convinced he's probably not going to, given the
22 numbers. But that's not what you have to consider.
23 Have they firmly convinced that he will reoffend, or is
24 there a real possibility, a real possibility that he
25 won't? A real possibility that he won't is that the

1 numbers go in his favor, the actuarial numbers. And
2 that the elements, not the elements, but the details of
3 what he has done don't fit the statute either as to
4 what's required to put him in treatment. I would ask
5 you to return a verdict in his favor. Thank you.

6 THE WITNESS: Ms. Shaw, any rebuttal?

7 MS. SHAW: Very brief, Your Honor. Thank you.
8 Ladies and gentlemen, this is the last time you are
9 going to have to listen to me. And then you can
10 deliberate. I just want to respond to a couple of
11 things Mr. Thompson argued. He first went to a
12 discussion of what does the word likely mean. Well,
13 I'm not going to define it to you because Judge Hall
14 will. That's part of your jury charge. He will define
15 these terms for you so you will have no question what
16 the word likely means under the statute. So I'm not
17 going to waste your time with that.

18 But he then went into the question of collateral
19 interviews. Dr. Gehle did not do any. But if you were
20 listening on direct I did ask her if she does, and she
21 said she did not feel she needed to in this particular
22 instance. But when she feels she does need to, she
23 will.

24 Second, Mr. Thompson mentioned that there is no
25 deviant sexual attraction, like necrophilia or

1 pedophilia. That's a paraphilia. And, no, we don't
2 have that in this case, but it is not required. It's
3 the personality disorder that is driving this
4 underlying sexual behavior. Mr. Stewart wants what he
5 wants, when he wants it, and he doesn't care how he
6 gets it. That's the hallmark of antisocial personality
7 disorder. And he's been doing this since before he was
8 age 15.

9 Rest assured, ladies and gentlemen, you heard the
10 testimony about what a personality disorder is. It's a
11 way of interacting with the world. It's a way of
12 seeing the world that markedly differs from your
13 culturally accepted norms. That's exactly what
14 Mr. Stewart has been doing. So I would submit to you
15 that there is more than adequate evidence in this
16 record for you to find that he has antisocial.

17 And then we go into the actuarial risk assessment.
18 Well, that's how you can tell if he's likely. Seven
19 times greater risk than the average sex offender. The
20 99R average is a 2. He scored four points higher than
21 that. So I would submit to you that's one basis. Then
22 you add in all the dynamic risk factors, there's your
23 second basis. That's where likely comes from.

24 And he said something about that. She's the
25 hammer and he's the nail. What you heard from her is

1 that she doesn't even consider unconvicted conduct when
2 making her diagnoses, even if it presents a pattern of
3 behavior. She only considers convictions because she
4 would rather err on the side of caution, and not
5 recommend commitment for someone who may or may not be
6 fully meeting criteria. She is not going to do it.
7 So, no, she's not the hammer, and he's not the nail.

8 There's no hammer and nail in this because
9 remember we are not here to punish him. We are
10 absolutely not here to do that. We need to get him
11 treatment so that maybe one day he can successfully
12 rejoin society once his mental abnormality slash
13 personality disorder may have changed. And that is the
14 sincerest hope. The hope is not to keep these
15 individuals locked up forever. It's not why we are
16 here. So that suggestion is simply not accurate.

17 Lastly, there was mention that there is no
18 indication of any harm to these victims other than the
19 sexual assault itself, that there was no gratuitous
20 violence. Gratuitous violence is not necessary. Some
21 level of violence is. Mr. Stewart used just enough
22 violence to get what he wanted, which was sex in one
23 case from a girl he previously had known, and who had
24 broken it off with him for various reasons. And the
25 second time from a total stranger. He didn't know this

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1 girl. He approached her at night with a knife, forced
2 her into her car, made her drive him around, and then
3 vaginally and orally raped her. Then when she started
4 fighting back, that's when he stopped and walked away.
5 And then he told her he gave her AIDS. That's the kind
6 of individual we're dealing with, and that is the kind
7 of behavior that this statute seeks to protect the
8 public from, and, hopefully, rehabilitate in these
9 offenders. So with that I leave it in your capable
10 hands. I thank you, again.

11 JURY CHARGE

12 THE COURT: Thank you. Mr. Foreperson, ladies and
13 gentlemen of the jury, it's now my duty as the trial
14 judge under the constitution of this state to charge
15 and instruct you on the law applicable in this case.
16 And, in fact, basically what that means is I'm going to
17 read to you what the law is. And then you'll be able
18 to take that law back with you as -- what I've read to
19 you, to your jury room.

20 It's your duty to accept and apply the law as I
21 will now state to you. The State has brought this case
22 under the Sexually Violent Predator Act of
23 South Carolina. The State seeks the civil commitment
24 of Merrildd C. Stewart, the respondent for long-term
25 control, care, and treatment in a secure facility

1 administered by the South Carolina Department of Mental
2 Health. This is not a criminal proceeding seeking
3 incarceration. Rather it is a proceeding seeking civil
4 commitment.

5 The state of South Carolina alleges that the
6 respondent Merrildd C. Stewart is a sexually violent
7 predator under the law. The respondent denies that he
8 is a sexually violent predator, and the burden of proof
9 is therefore on the State to prove by evidence
10 sufficient to satisfy each of you beyond a reasonable
11 doubt that Mr. Stewart is a sexually violent predator.
12 If the State is unable to meet that burden of proof as
13 to one or more of the elements of this claim, the
14 respondent is entitled to a finding that he is not a
15 sexually violent predator.

16 Ladies and gentlemen, I want to make sure that you
17 understand that Mr. Stewart is not accused of
18 committing a crime in this proceeding. As you have
19 heard from the testimony he did have previous charges
20 for which he was convicted and sentenced by the Court.
21 The respondent has now completed his sentence for those
22 charges, and the State is alleging that Mr. Stewart is
23 a sexually violent predator as defined by the Sexually
24 Violent Predator Act. The State has the burden of
25 proof in this case and must prove its case beyond a

Jury Charge

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1 reasonable doubt.

2 If you find that the State has not met this
3 burden, the respondent will be released to the
4 community. If you find that the State has met its
5 burden of proof and find that the respondent is a
6 sexually violent predator, he will not be released, but
7 rather he will be civilly committed and transferred to
8 a secure treatment facility in Columbia.

9 Now during this trial you and I have separate
10 duties to perform. As the trial judge it's my
11 responsibility to preside over this trial, and I also
12 have the duty to rule upon the admissibility of the
13 evidence offered during the process of this trial. In
14 that regard you are to consider only the competent
15 evidence before you, and you are to disregard any
16 testimony ordered stricken from the record of this case
17 during the progress of this trial.

18 If there was any, you are to consider only the
19 testimony which has been presented from the testimony
20 of the stand, together with any exhibits admitted into
21 the record of this case, and any stipulations of
22 counsel made into the record, if there were any.
23 Furthermore, I have the additional duty to charge you
24 on the applicable law of this case. And in that regard
25 I am the sole judge of the law of this case. It is

1 your duty to accept and apply the law as I now state it
2 to you. If you have any preconceived ideas about -- as
3 to what the law is or what the law ought to be, and
4 those ideas do not agree with what I tell you the law
5 is, you're obligated under your oath to abandon those
6 preconceptions because you are sworn to accept the law
7 precisely as I now state it to you.

8 In this trial you are the sole and exclusive judge
9 of the facts, and I am the judge of the law. Do not
10 infer that I have any opinion about the facts in this
11 case from anything I have said during the course of
12 this trial. In ruling upon -- excuse me. In this
13 trial you are the sole and exclusive judge of the
14 facts, and I'm the judge of the law. Do not infer that
15 I have any opinion about the facts in this case from
16 anything I have said during the course of this trial in
17 ruling upon the admissibility of evidence or otherwise.
18 Or from anything that I now say during the course of
19 this charge to you. In this regard the law simply does
20 not permit me to have an opinion about the facts. As
21 jurors it is your duty alone to determine the effect,
22 value, weight, and accuracy of the evidence presented
23 during the course of this trial. While argument of
24 counsel is a beneficial part of every trial, you should
25 remember that the statements made by counsel are not

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1 evidence. In presenting arguments counsel often refer
2 to the evidence. However, you should base your verdict
3 on the evidence as you remember it. Therefore, if
4 there are any conflicts between the recollection of
5 counsel about the evidence, and your own recollection,
6 you should rely upon your own understanding of the
7 evidence.

8 Ladies and gentlemen, in most civil cases tried in
9 the Court of Common Pleas the burden of proving a claim
10 is by the preponderance or greater weight of the
11 evidence. However, in this type of case under this
12 particular statute, the State's burden is greater than
13 that. Here the standard of proof is beyond a
14 reasonable doubt. As I already stated to you the State
15 has the burden of proof under the law of this state
16 according to the sexually violent predator statute.
17 The State must prove its case to you beyond a
18 reasonable doubt. If the State fails to meet this high
19 burden, then you must find that Mr. Stewart is not a
20 sexually violent predator.

21 What is a reasonable doubt in the law? Well,
22 proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced that the respondent is a sexually
24 violent predator. Ladies and gentlemen, there are very
25 few things in this world that we know with absolute

1 certainty. In this type of case the law does not
2 require proof that overcomes every possible doubt. If
3 based on your consideration of the evidence, you are
4 firmly convinced that Mr. Stewart is a sexually violent
5 predator, then you must return a verdict for the State.
6 If, on the other hand, you think there is a real
7 possibility that he is not a sexually violent predator,
8 you must give him the benefit of the doubt and return a
9 verdict for the respondent. Reasonable doubt may arise
10 from evidence that is in this case, or from the lack of
11 evidence in this case. It is up to you, the jury, to
12 determine whether or not a reasonable doubt exists in
13 this case.

14 Evidence may be direct or circumstantial. Direct
15 evidence is testimony by a witness about what the
16 witness personally saw, heard, or did. Circumstantial
17 evidence is indirect evidence. That is, it is a proof
18 of one or more facts from which one can find another
19 fact. You are to consider both direct and
20 circumstantial evidence. The law permits you to give
21 equal weight to both, but it is for you to decide how
22 much weight to give any evidence.

23 In determining what the facts in this case are,
24 you must judge the credibility which simply means the
25 believability of the witnesses, and the value or weight

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1 to be given to their testimony. You alone must decide
2 the force, effect, and accuracy of the testimony. In
3 making this decision there are many things you may and
4 should take into consideration such as one: The
5 appearance and manner of the witness on the stand. A
6 characteristic often referred to as the demeanor of the
7 witness. Two: Was the witness forthright or hesitant?
8 Three: Was the witnesses' testimony consistent, or did
9 it contain discrepancies? Four: What was the ability
10 of the witness to know the facts about which he or she
11 testified? Five: Was there some reason a witness
12 would want to give testimony which would help or hurt
13 one side or the other? In other words, was the witness
14 biased or prejudiced? Six: Was the witness or the
15 testimony reasonable when considered in the light of
16 all the evidence in the case, in the light of your own
17 experience and common sense? Seven: Was the testimony
18 of the witness corroborated or made stronger by other
19 testimony and evidence? Or was it made weaker and
20 impeached by such other testimony and evidence?

21 As jurors, please understand you have the right to
22 believe a small portion of the witnesses' testimony,
23 and discard the larger portion, or vice versa. You may
24 believe all of a witnesses' testimony or none. You may
25 believe the testimony of a single witness against that

1 of many witnesses, or the other way around. And, of
2 course, you do not determine the case merely by
3 counting the number of witnesses presented by each
4 side. The fact that testimony is not controverted does
5 not mean you must accept it as valid and undisputed.
6 You still must gauge the credibility of the witness to
7 determine the believability of the facts offered
8 through the testimony.

9 In exercising your mental processes and attempting
10 to decide the accuracy of testimony, the law simply
11 requires that you exercise your good judgment, your
12 common sense, your sense of logic and reason, and your
13 experience in life. You then apply these attributes to
14 the evidence and apply the law as I'm giving it to you,
15 or going to state to you, and thus arrive at a verdict.

16 During the course of this trial you heard the
17 testimony of an expert witness. The Rules of Evidence
18 ordinarily do not permit witnesses to testify to
19 opinions or conclusions. Instead, they can testify as
20 to facts they perceive such as what they saw, smelled,
21 heard, or touched. However, an exception to this rule
22 exists for a witness we call an expert witness. A
23 witness who has special knowledge, skill, experience,
24 training, or education in a particular field may state
25 an opinion as to relevant and material matters in which

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1 the witness claims to be an expert.

2 In determining the weight to be given to such an
3 opinion, you should likewise consider the
4 qualifications and credibility of the expert, and the
5 reasons given for the opinion. You are not bound by
6 such opinion. Rather you should give it the weight, if
7 any, which you think it deserves.

8 The value and effect of expert testimony is a
9 matter to be solely estimated by you, the jury. No
10 opinion of an expert can be accepted in and of itself
11 as accurate or reliable but must be weighed by you, and
12 convince your judgment beyond a reasonable doubt with
13 the same force and effect as any other fact proved in
14 this case before you can rely on it. You must consider
15 expert testimony in the same manner as you do any other
16 testimony, and give to it such weight as you believe it
17 to be entitled when considered with all the other
18 evidence in this case. Such testimony is given for the
19 purpose of helping you, and not for the purpose of
20 controlling your judgment.

21 The elements which a state must prove beyond a
22 reasonable doubt for a sexually violent predator is
23 one: That the respondent has been convicted of at
24 least one sexually violent offense. And two: That the
25 respondent suffers from a mental abnormality and/or

1 personality disorder. And three: That the mental
2 abnormality or personality disorder makes him likely to
3 engage in acts of sexual violence if not confined in a
4 secure facility for long-term control, care, and
5 treatment.

6 Merrildd C. Stewart has been convicted of criminal
7 sexual conduct first-degree, and kidnapping. This is a
8 sexually violent offense, and the State has met its
9 burden as to the first element. Inherent in the second
10 and third elements is that the State must prove that
11 the respondent first has a mental abnormality or
12 personality disorder, and second, that it makes him
13 likely to engage in acts of sexual violence. Likely to
14 engage in acts of sexual violence will be defined for
15 you in just a moment. In other words, the State must
16 prove beyond a reasonable doubt that the individual it
17 seeks to commit suffers from a mental illness which he
18 cannot sufficiently control without the structure and
19 care provided by a mental health facility. And that
20 that illness renders him likely to commit another
21 sexually violent offense.

22 In order for you to better understand the elements
23 of the State's cause of action I'm going to define for
24 you some of the terms that I just used. One: Mental
25 abnormality means a mental condition affecting a

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1 person's emotional or volitional capacity that
2 predisposes the person to commit sexually violent
3 offenses. This mental abnormality or personality
4 disorder must cause Mr. Stewart serious difficulty in
5 controlling his sexual behavior. Two: Likely to
6 engage in acts of sexual violence means the person's
7 propensity to commit acts of sexual violence is of such
8 a degree as to pose a menace to the health and safety
9 of others so that he is dangerous to the public.

10 Again, I remind you that the burden of proof is on
11 the State to prove to your satisfaction beyond a
12 reasonable doubt that the respondent has been convicted
13 of a sexually violent offense as I have instructed you.
14 And that he also suffers from a mental abnormality or
15 personality disorder that makes him likely to engage in
16 acts of sexual violence if not confined in a secure
17 facility for long-term care, control, and treatment.

18 If the State carries its burden of proof and
19 convinces you beyond a reasonable doubt as to each of
20 the three elements of its cause of action, it is
21 entitled to a finding that Mr. Stewart is a sexually
22 violent predator. If the State does not meet that
23 burden of proof as to one or both of these elements,
24 the respondent is entitled to a finding that he is not
25 a sexually violent predator.

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1 In just a few moments when you go back to your
2 jury room and begin your deliberations, I ask that
3 you -- I'm sure that you will take your oath seriously,
4 and be mindful of the importance of your
5 responsibility. The proper performance of your duty as
6 jurors requires that each of you free your mind of all
7 improper influences and preconceptions, and weigh the
8 merits of this case fairly and without prejudice.

9 And, again, when you go to your jury room I
10 instruct you, you are not allowed to use any electronic
11 devices to look up terms, or try to define things that
12 you've heard, or even consult anything outside of what
13 you have heard in this courtroom, and what you discuss
14 in the jury room. And that you weigh that evidence
15 fairly and impartially, and I'm sure that you will do
16 that.

17 Your verdict in this case cannot be based on
18 sympathy, compassion, prejudice, or emotion, or some
19 other consideration not found in the evidence. Your
20 verdict must be unanimous. I'm going to explain to you
21 in a moment -- right now the verdict form. Unanimous
22 means there's going to be 12 of you in the jury room.
23 All 12 jurors must agree on the verdict. When you 12
24 go back to your jury room, if someone steps out of
25 bath -- out of the jury room, maybe to go to the

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1 bathroom, or outside the jury room, Mr. Foreman, you
2 are to cease deliberations and wait till all 12 people
3 are present during deliberations.

4 If you have any questions for the Court, there
5 should be a pad and paper in the jury room. You can
6 simply write your question down on that piece of paper,
7 knock on the door, hand that to the bailiff, and he'll
8 bring that to the Court's attention.

9 The verdict form in this case simply states that
10 has the petitioner, the State of South Carolina, proven
11 beyond a reasonable doubt that Merrilld C. Stewart is a
12 sexually violent predator under the South Carolina
13 Sexually Violent Predator Act? The answers are we the
14 jury unanimously answer the question as follows. And
15 the order that I call them out has no particular
16 meaning. Just one has to be in front of the other, the
17 other. The first is yes, Merrilld C. Stewart is a
18 sexually violent predator. Or the second is no,
19 Merrilld C. Stewart is not a sexually violent predator.

20 Mr. Foreman, once the jury has reached that
21 verdict if you check the appropriate line on the
22 verdict form, sign your name. It's already dated
23 February the 14th. Hold -- keep the verdict form in
24 your hand, knock on the door. Tell the bailiff you
25 have a verdict. He'll bring you back in the courtroom.

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1 I will then ask you if you have reached a verdict, and
2 if you have then you will pass the verdict form up to
3 the bailiff who will present it to the Court.

4 There was some evidence presented in this case.
5 We will send that evidence back with you into the jury
6 room. When you go back don't start deliberating until
7 we bring the verdict form and the evidence that has
8 been submitted back to you. Once that is done you will
9 be able to begin deliberations. With that I'm going to
10 allow you to go back to your jury room in just a
11 moment. Anything further from the State?

12 MS. SHAW: No, Your Honor.

13 THE COURT: From the defense?

14 MR. THOMPSON: No, sir.

15 THE COURT: All right. My two alternates, if you
16 will just come stand right here in front of the bench,
17 and then I'm going to allow the rest of the jury panel
18 to be excused to the jury room. Everyone else remained
19 seated.

20 (WHEREUPON, the jury exited the courtroom at
21 12:35 p.m.)

22 THE COURT: All right. Thank y'all for being
23 here. You are -- in this Covid world, sick world we
24 live in, it's not often even in a very short trial that
25 an alternate doesn't get put, moved up into the, into

1 being one of the 12. Thankfully, that didn't happen in
2 this case. Y'all are free to leave. You can discuss
3 the case with anybody you want to. On the other hand
4 you are not required to talk to anybody about it.
5 Sometimes the attorneys may contact you, and want to
6 talk to you about the case, get into it. You can do
7 that. That's fine for them to do that. On the other
8 hand you are not required to talk to them, or talk to
9 anybody if you don't wish to do that. So with that you
10 are free to leave, and I think the instructions are you
11 will need to call in tonight on the number that the
12 clerk gave you about what we are going to do tomorrow.
13 All right, thank y'all.

14 All right. If the lawyers -- I -- look at the
15 evidence up here. I think the evidence was simply --
16 hold on Mr. Honeycutt, I need you to take the jury the
17 verdict form. Y'all are free to go. You can go out
18 that door there. Let us make sure the lawyers look at
19 that. Make sure that's the right -- Mr. Honeycutt, you
20 can tell them they can start deliberating.

21 (WHEREUPON, the jury began deliberations at
22 approximately 12:37 p.m.)

23 THE COURT: I need the -- this is the note where
24 the foreperson's name is on that. I just need to make
25 that a Court's exhibit. Just hand that to Ebony. All

1 right, we'll be at ease while the jury is out.

2 (WHEREUPON, the Court took a brief recess.)

3 THE COURT: All right. Let's bring the jury in.
4 I'm sorry, yeah, we need to, yeah. Thank you. We need
5 to have Mr. Stewart come up.

6 (WHEREUPON, the respondent entered the
7 courtroom.)

8 THE COURT: All right. Thank you. Let's bring
9 the jury in.

10 (WHEREUPON, the jury entered the courtroom at
11 1:20 p.m.)

12 THE COURT: Thank you, ladies and gentlemen.
13 Mr. Foreman, has the jury reached a verdict?

14 JURY FOREMAN: Yes, Your Honor.

15 THE COURT: If you will hand the verdict form to
16 the bailiff. Pass that up.

17 VERDICT

18 CLERK: The State of South Carolina, County of
19 York, in the Court of Common Pleas, case number 2021 CP
20 1603109 in the matter of Care and Treatment of Merrilld
21 C. Stewart, has the petitioner, the State of
22 South Carolina, proven beyond a reasonable doubt that
23 Merrilld C. Stewart is a sexually violent predator
24 under the South Carolina Sexually Violent Predator Act?
25 We the jury unanimously answer the question as follows:

Verdict

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1 Yes, Merrilld C. Stewart is a sexually violent
2 predator. Signed by Foreperson (inaudible) Jackson,
3 February 14th, 2023.

4 Ladies and gentlemen, is that your verdict?
5 Signify by raising your right hand. Let the record
6 reflect all jurors confirm their verdict.

7 THE COURT: Thank you. Anything further from the
8 State?

9 MS. SHAW: No, Your Honor.

10 THE COURT: From the defense?

11 MR. THOMPSON: No, sir.

12 THE COURT: Ladies and gentlemen, we appreciate
13 your serving on this particular jury. You're going to
14 be released for the rest of the day. You're going to
15 need to call tonight to get instructions about tomorrow
16 and the rest of the week.

17 You can talk to anybody you want to about the case
18 now. Sometimes lawyers will call you to get input.
19 They are allowed to do that, on the other hand you are
20 not required to talk to them. You can talk to anybody
21 that you wish to talk to, and discuss the case. On the
22 other hand you don't have to talk to anybody about the
23 case. Thank you for your attention in this case.

24 I'm going to allow you to go. You need to go out
25 that door. They may have, yeah, may have items in the

1 jury room. Thank y'all for your service. Everyone
2 remain seated while this panel is excused.

3 (WHEREUPON, the jury exited the courtroom at
4 1:22 p.m.)

5 THE COURT: Is there anything further from the
6 State?

7 MS. SHAW: Your Honor, I just realized something.
8 We did not redact the victim's name from those
9 indictments. How does the Court want us to handle
10 that? Both Mr. Thompson and I forgot to do it.

11 THE COURT: The original indictments as a guilty
12 plea would not have been redacted.

13 MR. THOMPSON: That's right.

14 THE COURT: In fact, that would have been a matter
15 of public record being on the indictment. It could
16 have been redacted in other forms but indictments are
17 not redacted. So I assume what you're telling me is
18 that you have a certified copy of the indictment. I
19 think it just stays exactly like it is.

20 MS. SHAW: Okay, no problem, Your Honor. Thank
21 you.

22 THE COURT: Mr. Thompson, you have been at this a
23 pretty long time as far as criminal court. I don't
24 know if -- other than minor -- minor's may have to be
25 redacted.

1 MR. THOMPSON: I was going to say the indictments
2 are public record in the court.

3 THE COURT: And what's been presented to the Court
4 is a certified copy of the public record. We're not
5 going to -- that's not a concern.

6 MR. THOMPSON: I would think that if it needs to
7 be redacted I will file an appeal for Mr. Stewart. The
8 public defense will redact any documentation they need
9 to.

10 MS. SHAW: Yes, sir. That was just my concern.
11 Normally we do, do that. We do redact victim's names
12 so we have just the initial -- we forgot it in this
13 case, but as long as there is no prejudice.

14 THE COURT: Common practice in these cases is that
15 you redact the victim's name on the indictment?

16 MS. SHAW: To -- when it comes to minors,
17 absolutely we fully redact the name. We usually just
18 use initials, but since these are public record
19 documents, I just wanted to make the record clear that
20 that wasn't done. And as long as there is no
21 substantial prejudice to Mr. Stewart, which I don't
22 believe there would be, I just wanted to make the Court
23 aware.

24 THE COURT: It is -- that indictment is a matter
25 of public record. It's been on public record since the

1 time of his conviction, I believe.

2 MS. SHAW: Thank you, Your Honor.

3 THE COURT: All right. Mr. Thompson, anything
4 further?

5 MR. THOMPSON: I think in order to protect the
6 record I need to make a motion for a new trial, Judge.
7 I'll just move that the verdict is not supported by the
8 evidence.

9 THE COURT: All right, thank you. I note your
10 objection. I overrule the objection.

11 MR. THOMPSON: Okay. Thank you, Judge.

12 THE COURT: All right, thank you. That concludes
13 this matter.

14 (END OF TRANSCRIPT OF RECORD)

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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF YORK)

5 I, the undersigned Emily H. Walker,
6 official Court Reporter for the 16th Judicial Circuit
7 of the State of South Carolina, do hereby certify that
8 the foregoing is a true, accurate, and complete
9 transcript of the record of all proceedings had and
10 evidence introduced in the hearing of the captioned
11 case, relative to appeal, in the Court of Common Pleas
12 for York County, South Carolina, on the 13th & 14th of
13 February, 2023.

14 I do further certify that I am
15 neither kin, counsel, nor interest to any party hereto.

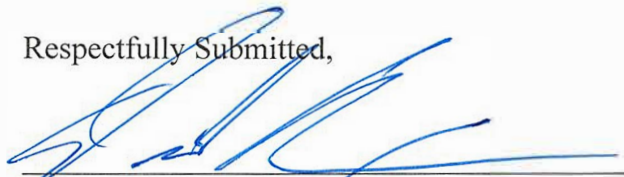
16 In witness whereof, I have hereunto
17 subscribed my name, this 28th of July, 2023.

18
19
20
21 Emily H. Walker, CVR
22 Court Reporter
23
24
25

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,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

Feb 01 2024

SC Court of Appeals

This 1st day of February, 2024.

RECEIVED

Feb 01 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MERRILL D. STEWART,

APPELLANT

APPELLATE CASE NO. 2023-000311

CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Deborah R.J. Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 1st day of February, 2024.



David Alexander
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