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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF CHRISTOPHER T. WILDER,

APPELLANT

APPELLATE CASE NO. 2023-001108

RECORD ON APPEAL

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JURY SELECTION

1 PROCEEDINGS

2 THE COURT: All right. Madam Clerk, call the
3 first case.

4 THE CLERK: The first case is 2022CP3700388.
5 This is State of South Carolina versus Christopher
6 Trent Wilder. We have Suzanne Shaw for the plaintiff,
7 and Don Thompson.

8 THE COURT: All right. Ladies and gentlemen,
9 this is unique proceeding, as you heard. This is a
10 case in the matter and care of Christopher T. Wilder.
11 Ladies and gentlemen, it is a civil case in which the
12 State of South Carolina alleges that the Respondent,
13 Christopher Trent Wilder, is a sexually violent
14 predator under the law.

15 The Respondent denies that he is a sexually
16 violent predator. And the burden of proof, therefore,
17 is on the State to prove beyond a reasonable doubt its
18 case. We are in civil court. So, it is a unique
19 proceeding.

20 Now, we are back to where I am going to ask
21 you a number of questions. I know I asked you a
22 significant number of questions a while ago to
23 determine your qualification and eligibility to serve
24 as jurors. These questions I am going to ask you now
25 are to ensure that both the State of South Carolina and

JURY SELECTION

1 the Respondent, Mr. Wilder, receive a fair and
2 impartial jury to hear the facts of this case.

3 Now, I will remind you that you are still
4 under oath. The clerk put you under oath a while ago.
5 So it is essential that we have accurate information
6 when you answer these questions. The first order of
7 business, let me get each attorney to introduce
8 themselves to the jury. And, Mr. Thompson, you can
9 introduce your client. Ms. Shaw.

10 MS. SHAW: Good morning, ladies and
11 gentlemen. My name is Suzanne Shaw. I am based in
12 Lexington, South Carolina and I work for the Attorney
13 General's Office.

14 MR. THOMPSON: Good morning, I'm Don
15 Thompson. I am an attorney in private practice. I'm
16 in Greenville. Today I am representing Mr. Christopher
17 Wilder sitting here with me.

18 THE COURT: Okay. Is there any member of the
19 jury panel related by blood or marriage, or has a
20 close, personal relationship with either attorney
21 involved in the case or the Respondent, Mr. Wilder?

22 (No response.)

23 THE COURT: There are none. Has any member
24 of the jury pool ever been represented by one of these
25 attorneys involved in the case, or had one of these

JURY SELECTION

1 attorneys represent someone against you in Court? If
2 so, please stand.

3 (No response.)

4 THE COURT: There are none. Now, ladies and
5 gentlemen, I'm going to read the list of potential
6 witnesses that have been submitted by the parties. So
7 listen very carefully to these names. Dr. Christopher
8 Gillen of the South Carolina Department of Mental
9 Health. Dr. Emily Gottfried from the Medical
10 University of South Carolina. Christopher Trent Wilder
11 and Val Wilder. Is any member of the jury panel
12 related by blood or marriage or a close personal friend
13 of any of these potential witnesses? If so, please
14 stand.

15 (No response.)

16 THE COURT: There are none. Has any member
17 of the jury panel ever been treated by one of the
18 physicians listed? If so, please stand.

19 (No response.)

20 THE COURT: There are none. Any further
21 witnesses from the State?

22 MS. SHAW: No, Your Honor.

23 THE COURT: Any further witnesses from the
24 defense?

25 MR. THOMPSON: No.

JURY SELECTION

1 THE COURT: Okay.

2 Ladies and gentlemen, as you heard
3 previously, this is a case involving an allegation that
4 the respondent is a sexually violent predator. Does
5 any member of the jury panel know anything about the
6 prior offense that Mr. Wilder was convicted of?

7 All right. I'll come forward.

8 THE COURT: Yes, ma'am, your number?

9 JUROR: Marcie Burns, Juror No. 25.

10 THE COURT: Yes, Ms. Burns?

11 JUROR: There was an article in our local
12 paper, I think Friday or Saturday, that I just happened
13 to read.

14 THE COURT: Okay. Did that article give any
15 details about his prior offense?

16 JUROR: Yes.

17 THE COURT: Okay. Like what?

18 JUROR: I don't remember everything, I
19 remember that there was a woman that was -- a woman
20 victim and something about a sledge hammer.

21 THE COURT: Okay. Do you think that you
22 could be fair and impartial if called to serve?

23 THE JUROR: Yes, I could.

24 THE COURT: Okay. Thank you, ma'am. You can
25 take your seat.

JURY SELECTION

1 Okay. I'm going to ask this next question
2 while I'm standing down here. Is there any member of
3 the jury panel a member of your immediate family or a
4 close personal friend who has been the victim of a
5 sexual assault? If so, please stand. All right. Come
6 forward.

7 Yes, ma'am, your number?

8 JUROR: 144.

9 THE COURT: Okay. Ms. Sanford?

10 JUROR: Okay. (Inaudible).

11 THE COURT: Okay. What? Who is it, you or a
12 member or your family?

13 JUROR: It was me.

14 THE COURT: How long ago was that?

15 JUROR: I was 12.

16 THE COURT: Was the individual who committed
17 that offense convicted?

18 JUROR: No.

19 THE COURT: Okay.

20 JUROR: We didn't pursue charges. It was a
21 family member.

22 THE COURT: Okay. With that knowledge, do
23 you feel that you could be fair and impartial if called
24 to serve?

25 JUROR: Yes.

JURY SELECTION

1 THE COURT: Okay. Thank you, ma'am. You can
2 be seated.

3 JUROR: Do I also need to tell you the other
4 one? Yes, my daughter, back in '20, but that man
5 committed suicide before he ever got tried.

6 THE COURT: Okay. Again, could you be fair
7 and impartial?

8 JUROR: Yes.

9 THE COURT: Okay. Thank you, ma'am. You can
10 be seated.

11 JUROR: Three.

12 THE COURT: Yes, ma'am. You are number
13 three?

14 JUROR: Marian Adkins. So we have someone in
15 our family accosted my half sister and myself. And
16 there was a rapist (inaudible) --

17 THE COURT: Okay. With that knowledge, Ms.
18 Adkins, do you believe that you could be fair and
19 impartial if called?

20 JUROR: Absolutely not.

21 THE COURT: I'll excuse you from this case,
22 but you can re-take your seat. Thank you.

23 JUROR: Okay.

24 THE COURT: Yes, ma'am, your number?

25 JUROR: Sixty-eight.

JURY SELECTION

1 THE COURT: Sixty-eight. Ms. Heath.

2 JUROR: I have been a victim of sexual
3 assault.

4 THE COURT: What?

5 JUROR: I have been a victim of sexual
6 assault.

7 THE COURT: How long ago was that?

8 JUROR: 2005-2006. And then (inaudible)
9 ended my marriage.

10 THE COURT: Was the perpetrator convicted?

11 JUROR: No.

12 THE COURT: Okay. With that knowledge, do
13 you feel that you could be fair and impartial if called
14 to serve?

15 JUROR: Possibly. I'm not real sure. I
16 guess I don't know the details.

17 THE COURT: It can't be possibly, it has to
18 be -- do you have any doubt about what happened?

19 JUROR: It could be emotional.

20 THE COURT: Thank you. I'll excuse you from
21 this case. You may have a seat.

22 JUROR: So sit back down?

23 THE COURT: Yes, ma'am, but you are excused
24 from this case.

25 Yes, ma'am, your number?

JURY SELECTION

1 JUROR: Number 56.

2 THE COURT: Stephanie Gansen?

3 JUROR: Yes. I have a family member who went
4 through it, and the gentleman done his time.

5 THE COURT: How long ago was that?

6 JUROR: It's been probably 20 years.

7 THE COURT: Okay. Was the person who was the
8 perpetrator, were they convicted?

9 JUROR: Yes.

10 THE COURT: And with that knowledge, Ms.
11 Gansen, do you feel that you could be fair and
12 impartial if called to serve?

13 JUROR: I don't think so.

14 THE COURT: Okay. I'm going to excuse you.

15 JUROR: I'm sorry?

16 THE COURT: Okay, that is fine. Thank you
17 for calling that to my attention. But I'll have you
18 take your seat.

19 MR. THOMPSON: What number, Judge?

20 THE COURT: Number 56.

21 Yes, ma'am, what is your number?

22 JUROR: My friend's ex-husband molested his
23 two-year-old daughter.

24 THE COURT: Hold on. You are Ms. McGaha?

25 JUROR: Yeah.

JURY SELECTION

1 THE COURT: With that knowledge, do you
2 believe that you could be fair and impartial?

3 JUROR: Yes.

4 THE COURT: All right. Thank you, ma'am.
5 You can be seated.

6 MR. THOMPSON: Her number?

7 MS. SHAW: Sorry, what was her number?

8 THE COURT: Number 101.

9 Yes, sir, your number?

10 JUROR: Number 30.

11 THE COURT: Yes, sir?

12 JUROR: Yes, my wife was a sexual assault
13 victim.

14 THE COURT: And how long ago was that?

15 JUROR: Before I met her, when she was
16 younger.

17 THE COURT: You are Mr. Canfield, number 30?

18 JUROR: Yes, sir.

19 THE COURT: With that knowledge, do you feel
20 that you could be fair and impartial?

21 JUROR: Yes.

22 THE COURT: All right. Thank you, sir. You
23 may be seated. Okay. We have got one more. All
24 right.

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

JURY SELECTION

1 JUROR: 61.

2 THE COURT: 61, okay. Ms. Glick?

3 JUROR: Yes. I have a granddaughter, adopted
4 granddaughter, who was abused. I don't know --

5 THE COURT: How long ago was that?

6 JUROR: A year. And then I have a friend, a
7 very close friend who was violently abused. I don't
8 know if you need to know it or not.

9 THE COURT: That is why I asked the question,
10 I need to know. But the question that I have for you
11 is, with that knowledge, do you feel that you could be
12 fair and impartial?

13 JUROR: Well, that is why I came up. I mean,
14 I'm sure that I would lean toward her. I mean, I don't
15 know. I would try to be fair to the best of my
16 ability, but it does affect my view.

17 THE COURT: That is why I asked that
18 question.

19 JUROR: That is why I came up.

20 THE COURT: Okay. I appreciate you, but I'll
21 excuse you from this case.

22 JUROR: Excuse me?

23 THE COURT: I'll excuse you. I don't want to
24 put if you an uncomfortable situation felt. But I'll
25 have you take your seat. Thank you, ma'am.

JURY SELECTION

1 JUROR: All right, that is fine.

2 THE COURT: Okay. Mr. Davis 42?

3 JUROR: Yes, sir. I had three sisters that
4 were abused back in the late '70s, early '80s.

5 THE COURT: Okay. With that knowledge, do
6 you feel that you could be fair and impartial?

7 JUROR: Yes.

8 THE COURT: All right. Thank you, sir. You
9 can be seated.

10 Okay. Anyone else?

11 (No response.)

12 THE COURT: Okay. Is there any member of the
13 jury panel, a member of your immediate family, or a
14 close personal friend ever been charged, criminally,
15 with a sexual offense? If so, please stand and come
16 forward.

17 JUROR: 95. This will be hard. My son was
18 convicted six years ago and --

19 THE COURT: Mr. Matheson, with that
20 knowledge, do you feel that you could be fair and
21 impartial?

22 JUROR: I'm not sure.

23 THE COURT: I don't want to put you in that
24 position. I'll excuse you from this case.

25 JUROR: Thank you, Your Honor.

JURY SELECTION

1 THE COURT: Thank you. You can take your
2 seat, but I'll excuse from you this case.

3 JUROR: Okay. When do I leave?

4 THE COURT: I will let you know. After we
5 have selected the jury.

6 All right. Anyone else?

7 THE COURT: All right.

8 JUROR: 150.

9 THE COURT: Mr. Singleton?

10 JUROR: My mom's second cousin, he is -- I'm
11 not exactly a hundred percent sure what he has done,
12 but he is on the sex offender registry.

13 THE COURT: Okay. With that knowledge, do
14 you feel you could be fair and impartial?

15 JUROR: Yes, sir.

16 THE COURT: Okay. You may take your seat.

17 MS. SHAW: Second cousin?

18 THE COURT: Mom's second cousin.

19 MS. SHAW: A victim or perpetrator?

20 THE COURT: Perpetrator.

21 Okay. Anyone else?

22 (No response.)

23 THE COURT: All right. I'm just going to
24 stand down here in case we have any others. I'll get
25 my exercise this morning.

JURY SELECTION

1 Okay. Does any member of the jury panel have
2 any training or experience in the field of psychiatry,
3 psychology, or law? If so, please stand.

4 (No response.)

5 THE COURT: There are none. Okay -- oh, I
6 have got one. Okay.

7 JUROR: 128.

8 THE COURT: 128, Ms. Porter.

9 JUROR: I have a BS in psychology from
10 Clemson. Like I'm not practicing in any way, but I'm
11 technically trained.

12 THE COURT: Okay. With that knowledge, can
13 you be fair and impartial?

14 JUROR: Yes, maybe more so with that
15 knowledge.

16 THE COURT: Okay. Again, that is why I'm
17 asking these questions, to ensure that we can get a
18 jury that can be fair and impartial in this case. Do
19 you believe that you could do that?

20 JUROR: Yes, sir.

21 THE COURT: Okay. Thank you, ma'am. You can
22 take your seat.

23 Yes, ma'am, your number?

24 JUROR: 152.

25 THE COURT: 152, Ms. Sluder.

JURY SELECTION

1 JUROR: I have a college degree in psychology
2 with a minor in sociology.

3 THE COURT: With that knowledge, do you feel
4 that you could be fair and impartial?

5 JUROR: Yes, sir.

6 THE COURT: All right, ma'am. Thank you.
7 You can be seated.

8 JUROR: All right. Thank you.

9 THE COURT: All right. Anyone else? We have
10 one more.

11 JUROR: I'm not sure, but I studied it in
12 college.

13 THE COURT: You are juror 106?

14 JUROR: Yes, sir.

15 THE COURT: With that knowledge, do you
16 believe that you could be fair and impartial?

17 JUROR: Yes, sir.

18 MS. SHAW: Sorry, what did she say?

19 THE COURT: She studied psychology in
20 college.

21 Any member of the jury panel been involved in
22 a prison ministry, a prison outreach program, or any
23 other program involving contact with incarcerated
24 persons? If so, please stand.

25 Yes, sir.

JURY SELECTION

1 JUROR: Daniel Wright, 175.

2 THE COURT: Okay. Mr. Wright.

3 JUROR: It wasn't anything formal, but I had
4 a friend, long-term friend, in the Texas penal system.
5 He was an alcoholic and used drugs. And I had
6 interaction with him, letters back and forth.

7 THE COURT: With that knowledge, do you
8 believe that you could be fair and impartial?

9 JUROR: Yes, absolutely.

10 THE COURT: Okay. Thank you, Mr. Wright, you
11 can be seated.

12 Okay?

13 JUROR: Let's do it again, Judge.

14 THE COURT: Mr. Canfield? (Juror Number 30)

15 JUROR: Member of Alcoholics Anonymous. And
16 I have been to prison to go in and speak, just to let
17 you know.

18 THE COURT: Okay. And I'll ask you again,
19 can you be fair and impartial?

20 JUROR: Yes.

21 THE COURT: Thank you, sir. You may be
22 seated.

23 JUROR: Thank you, sir.

24 THE COURT: All right. Anyone else?

25 (No response.)

JURY SELECTION

1 THE COURT: Okay. Now, does any member of
2 the jury panel contribute or is a member of any law
3 enforcement support group, such as the Citizens Against
4 Violent Crime, the rape crisis hotline, MADD, SADD,
5 South Carolina Law Enforcement Officers Association, or
6 any other group that is a law enforcement support group
7 or a victim's support group? If so, please stand.

8 (No response.)

9 THE COURT: There are none. Is any member of
10 the jury panel an employee ever been an employee,
11 worked with, or ever been affiliated in any way with a
12 rape crisis center or advocacy group? If so, please
13 stand.

14 Yes, ma'am.

15 THE COURT: Okay. Ms. Sluder? (Juror Number
16 152.)

17 JUROR: Yes, sir. I had an internship at the
18 Anderson Child Advocacy Center for about six months.

19 THE COURT: Again, I'll ask you the same
20 question: Can you be fair and impartial?

21 JUROR: Yes, sir.

22 THE COURT: All right. Thank you, ma'am.
23 You may be seated.

24 JUROR: Thank you.

25 THE COURT: All right. Anyone else?

JURY SELECTION

1 (No response.)

2 THE COURT: Okay. Has any member of the jury
3 panel been personally confined or had a member of your
4 immediate family or close personal friend confined with
5 the South Carolina Department of Mental Health for
6 inpatient or outpatient psychiatric treatment? If so,
7 please stand.

8 Okay?

9 JUROR: My children went to Marshall Pickens.

10 THE COURT: Okay. Ms. Sanford? (Juror
11 Number 144)

12 JUROR: Yes.

13 THE COURT: Again, I'll ask you the question
14 that I had before: Can you be fair and impartial?

15 JUROR: Yes.

16 MS. SHAW: I couldn't hear.

17 THE COURT: Her daughter went to Marshall
18 Pickens.

19 MS. SHAW: What is that?

20 THE COURT: A psychiatric facility with
21 Greenville Memorial.

22 MS. SHAW: Yes, sir.

23 JUROR: N87. My mother, grandmother, and
24 myself have gone to the eighth floor of AnMed to the
25 psychiatric ward.

JURY SELECTION

1 THE COURT: How long ago?

2 JUROR: For me, two years ago. My mother,
3 six months ago. And my grandmother, four or five years
4 ago, something like that.

5 THE COURT: With that knowledge, do you
6 believe that you could be fair and impartial?

7 JUROR: I think so.

8 THE COURT: You have to be definite. If you
9 can't, tell me.

10 JUROR: I guess that I would be more
11 sympathetic to someone who has been in that situation,
12 because I have personally so . . .

13 THE COURT: Again, can you be fair and
14 impartial?

15 JUROR: No.

16 THE COURT: All right. I'll excuse you from
17 this case. Thank you for calling that to my attention.

18 JUROR: Do I leave now?

19 THE COURT: No. You need to go back to your
20 seat and I will dismiss everyone.

21 JUROR: Thank you.

22 THE COURT: Yes, ma'am, what is your number?

23 JUROR: 39.

24 THE COURT: Number 39?

25 JUROR: My daughter had outpatient counseling

JURY SELECTION

1 ten years ago. I don't know if that qualified.

2 THE COURT: With that knowledge, do you feel
3 that you could be fair and impartial?

4 JUROR: Yes. And I'm also a nurse.

5 THE COURT: Okay. Can you be fair and
6 impartial?

7 JUROR: Yes, I can.

8 THE COURT: All right. Thank you, ma'am.

9 . You may take your seat. Anyone else?

10 (No response.)

11 THE COURT: All right. Ladies and gentlemen,
12 does anyone in the jury panel have any prior knowledge
13 about any of the facts from this case other -- from any
14 source? We had one juror who already responded, and
15 if you have already responded to it, you don't need to
16 respond again. But does anyone else have any prior
17 knowledge about the facts of this case?

18 (No response.)

19 THE COURT: There are none. Does any member
20 of the jury panel know of any other reason why he or
21 she could not be fair and impartial if called to serve
22 as a juror in this case? If so, please stand.

23 (No response.)

24 THE COURT: There are none. Any further
25 submissions from the State?

JURY SELECTION

1 MS. SHAW: No, I think that is fine.

2 THE COURT: Any further submissions from the
3 respondent?

4 MR. THOMPSON: No, sir.

5 THE COURT: Okay. Madam Clerk, draw us a
6 jury.

7 THE CLERK: Judge, alternates for this trial?

8 THE COURT: Two.

9 THE CLERK: Thank you.

10 THE COURT: Ladies and gentlemen, what is
11 happening now, the clerk generated a random list of
12 jurors and I'm giving the attorneys a moment to look
13 over that list before they strike. So, I appreciate
14 your patience. It'll be just a minute.

15 (Pause.)

16 MS. SHAW: Your Honor, the State is ready.

17 MR. THOMPSON: We are also.

18 THE COURT: All right. Let's proceed.

19 THE CLERK: State strikes first, and the
20 numbers are on the left.

21 MS. SHAW: State strikes number 16.

22 THE CLERK: State strikes number 16.

23 MR. THOMPSON: Defense strikes number 14.

24 THE CLERK: Defense strikes number 14.

25 MS. SHAW: State strikes number 11.

JURY SELECTION

1 THE CLERK: State strikes number 11.
2 MR. THOMPSON: Defense would strike number 6.
3 THE CLERK: Respondent strikes number 6.
4 MS. SHAW: State strikes number 5.
5 THE CLERK: State strikes number 5.
6 MR. THOMPSON: Respondent strikes number 19.
7 THE CLERK: Respondent strikes number 19.
8 MS. SHAW: State strikes number 20.
9 THE CLERK: State strikes number 20.
10 MR. THOMPSON: And we would strike number 7.
11 THE CLERK: Respondent strikes number 7.
12 I will repeat, please.
13 State strikes number 5, number 11, number 16,
14 and number 20?
15 MS. SHAW: Correct.
16 THE CLERK: And respondent strikes number 6,
17 number 7, number 14, and number 19?
18 MR. THOMPSON: Correct.
19 THE CLERK: Thank you. And to our first
20 alternates.
21 MS. SHAW: State strikes number 23.
22 THE CLERK: State strikes number 23.
23 MR. THOMPSON: Respondent strikes number 22.
24 THE CLERK: Respondent strikes number 22.
25 MS. SHAW: State strikes number 25.

JURY SELECTION

1 THE CLERK: State strikes number 25.

2 MR. THOMPSON: And respondent strikes number

3 26.

4 THE CLERK: And respondent strikes number 26.

5 So the strikes on the first alternates, we have number

6 -- on our first alternate, is number 22 and 23.

7 And then, on the second alternate, it is 25

8 and 26?

9 MS. SHAW: Correct.

10 MR. THOMPSON: (Nods in the affirmative).

11 THE CLERK: Thank you. As I call your name
12 and juror number, please come forward, bringing all of
13 your belongings with you. And you will have a seat in
14 the jury box.

15 Juror number 26, Ricky Burrell.

16 Juror number 100, Marla McEwen.

17 Juror number 12, Candace Blackwell.

18 Juror number 60, Shannon Gibson.

19 Juror number 94, Kilby Martin.

20 Juror number 110, Heather Nalley.

21 Juror number 37, John Cochell.

22 Juror number 78, Nancy James.

23 Juror number 149, Scott Simmons.

24 Juror number 7, Jesus Beatriz.

25 Juror number 114, Craig Northcote.

JURY SELECTION

1 Juror number 5, Molly Ball.

2 And then for our alternates, we have juror
3 number 86, John Land. And juror number 33, David
4 Carroll.

5 THE COURT: All right, the jury has been
6 selected. Are there any motions or exceptions to the
7 selection of the jury from the State?

8 MS. SHAW: No, Your Honor.

9 THE COURT: Are there any motions or
10 exceptions to the selection of the jury from the
11 respondent?

12 MR. THOMPSON: No.

13 THE COURT: All right.

14 Madam Clerk, would you swear our jury?

15 THE CLERK: If you will please stand and
16 raise your right hand. You shall well and truly try
17 the issues joined in the case, and a true verdict
18 render according to the law and evidence? If you
19 accept this oath, please indicate by saying, "I will"
20 and being seated.

21 (Jurors comply.)

22 THE CLERK: Thank you. Please let the record
23 reflect that all members of the jury have accepted the
24 oath.

25 THE COURT: All right. Ladies and gentlemen

JURY SELECTION

1 in the remainder of the jury pool, that will conclude
2 your jury service. Thank you for your attendance this
3 morning. If you have any questions regarding a work
4 excuse or compensation, you can see the clerk. And
5 there is also one that can help you downstairs. So,
6 thank you for your attendance, you are now excused.

7 (The jury pool exits the courtroom at 11:51
8 a.m.)

9 THE COURT: Okay. Ladies and gentlemen,
10 before we start let me explain our roles in this trial.
11 I am the judge of the law, and you are the judges of
12 the facts. As a judge of the facts, you will have the
13 duty to evaluate the evidence that is presented. You
14 and you alone determine the credibility of the
15 witnesses and how much weight to give their testimony.

16 What is evidence? Evidence is the sworn
17 testimony from the witness stand, plus any exhibits
18 that may be entered into evidence.

19 The attorneys will have an opportunity to
20 speak to you in opening statement, in which they will
21 outline their positions and the evidence that they
22 intend to use to support those positions. They will
23 also have an opportunity to make closing arguments to
24 you at the conclusion of the trial. Keep in mind that
25 the statements of the attorneys are not evidence, but

JURY SELECTION

1 merely tools that they use to help you understand their
2 respective positions.

3 As I mentioned to you before, the State has
4 the burden of proof in this trial. It must prove its
5 case beyond a reasonable doubt. If the State does not
6 prove beyond a reasonable doubt that the respondent,
7 Christopher T. Wilder, is a sexually violent predator,
8 then you shall find that he is not a sexually violent
9 predator. If the State does prove its case beyond a
10 reasonable doubt, then you would find that he is a
11 sexually violent predator.

12 A few more things. This is not an endurance
13 contest. We are going to take breaks as we go along.
14 I'm very aware that I often have jurors who have to
15 stretch their legs, they have back problems and other
16 health issues that make it to where they can't sit for
17 long periods of time. I try to schedule breaks as we
18 go along. But if you get in distress at any point and
19 you need a break, let the lady seated over here, your
20 bailiff, know, and she will relay that to me and we
21 will do our best to accommodate you.

22 Now, while we are taking breaks, when you are
23 outside of this courtroom, there are three things that
24 you are strictly prohibited from doing. This is very
25 important. The first of those is independent

JURY SELECTION

1 investigation. In this era of smart phones and
2 internet access, it's very easy for someone to attempt
3 to research either the law or the facts of the case.
4 You are strictly prohibited from doing that.

5 The second thing is, you are not to discuss
6 this case with third parties. When we recess for lunch
7 here in just a little while and you walk outside, if
8 some third party comes up to you trying to talk about
9 this case, you let the bailiffs know and they will let
10 me know and I will tend to that. But it is very
11 important that you not talk to third parties about the
12 case. You go outside, these attorneys may see you,
13 they are going to go to you, they just know that they
14 can't have any contact with you.

15 The last thing is, you are not to deliberate
16 amongst yourselves until I instruct you to do so at the
17 end. Deliberation means you as jurors talk about what
18 is going on in the courtroom. When you go back to the
19 jury room or you are at lunch, you can talk about
20 anything that you want to talk about, except this case.
21 I'll instruct you when you may begin discussing or
22 deliberating this case at the end.

23 Ladies and gentlemen, the reason for these
24 rules is that you should base your decision solely on
25 the evidence that is presented in this courtroom, and

JURY SELECTION

1 not outside influences. You also should not decide the
2 case prematurely, until all of the evidence is in.

3 Now, just a few more things. There may come
4 times during the trial when one attorney objects to a
5 question or a piece of evidence, I have to make a
6 ruling on that. That should not be interpreted to mean
7 that the Court favors one side or the other. And along
8 that same line, there may come times when you are asked
9 to leave the courtroom and go to the jury room so that
10 we can take up a matter of law outside of your
11 presence. That is not to hide things from you, it is
12 just to ensure that each side receives a fair trial in
13 accordance with the rules of evidence.

14 So we are going to send you to the jury room
15 now. You have one order of business before lunch, and
16 that is, I want you to elect a foreperson. This will
17 be the presiding juror over your deliberations at the
18 end. It will also be the juror that communicates with
19 the Court if there are any problems. Any communication
20 between the jury and the Court should be in the form of
21 a written note signed by the foreperson.

22 So, Madam Bailiff, would you take our jury to
23 the jury room now? When you have elected a foreperson,
24 just write that juror's name and number on a slip of
25 paper and knock on the door and let the bailiff know.

JURY SELECTION

1 (The jury exits the courtroom at 11:57 a.m.)

2 THE COURT: Okay. Anything from either side
3 before we take a short recess?

4 MS. SHAW: Not from the State. Your Honor, I
5 assume that we are going to handle motions in limine
6 when we get back?

7 THE COURT: Well, we can do that before
8 lunch. Mr. Thompson, you stated that y'all were in
9 agreement on the --

10 MR. THOMPSON: I think we are in agreement.

11 THE COURT: While the jury is out, go ahead
12 and tell me and we will deal with that now.

13 MS. SHAW: Your Honor, the State files three
14 standard motions in limine. The first one is to
15 prohibit any reference to where Mr. Wilder would
16 receive treatment, if he were in fact to be committed.
17 It is well known among the attorneys that handle these
18 types of cases that the sexually violent treatment --or
19 the sexually violent predator treatment program is
20 located on the Broad River Correctional Facility
21 campus, but it's not actually part of the prison. So,
22 we would respectfully request that there be no
23 references to him being incarcerated for life, to be
24 put on the old death row which is where the program
25 used to be located. It is not anymore. Or any other

JURY SELECTION

1 such suggestions that this would be anything other than
2 a civil commitment, or that he would be punished for
3 the crimes that he's committed in the past. That is
4 not what we are here about.

5 THE COURT: All right. Mr. Thompson, you are
6 in agreement that there be no reference to where he
7 would receive treatment?

8 MR. THOMPSON: The only thing that I refer
9 to, Judge, is the treatment facility or long term care
10 treatment.

11 MS. SHAW: That is fine. I have no problem
12 with that.

13 THE COURT: So the reference would be, a long
14 term treatment facility?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Okay, all right, so noted.

17 MS. SHAW: Our second motion in limine --

18 THE COURT: Hold on.

19 THE BAILIFF: I have a diabetic that has one
20 of those new things on her arm and she has to keep her
21 cell phone because that is what tells her what is going
22 on.

23 THE COURT: Okay. Well, she can keep it, but
24 she is not allowed to connect to the Internet.

25 THE BAILIFF: Okay.

JURY SELECTION

1 MS. SHAW: Your Honor, I believe what Madam
2 Bailiff is referring to is called CGM, continuous
3 glucose monitor. My significant other is a type I
4 diabetic and he is required to keep his phone with him
5 at all times. It is connected directly by a wireless
6 connection to the phone, so if there is an emergency or
7 if her blood sugar should spike or fall, she will get a
8 notification. But it's not necessarily an Internet
9 connection. And I have no objection to it.

10 THE COURT: Okay. Just reiterate that she is
11 not to do any research, independent research.

12 All right. Go back to the second motion.

13 MS. SHAW: You might could ask her if she
14 could put her phone in airplane mode, which would
15 prohibit her from receiving and sending text messages
16 but might allow her to continue monitoring her glucose.
17 I don't know if that is possible, but that could be a
18 solution to prevent any access.

19 THE BAILIFF: Should I bring her in? I don't
20 understand this, what she is talking about.

21 MS. SHAW: I'll be happy to ask the juror a
22 couple of questions if the Court would like, Your
23 Honor? I am very familiar with these things.

24 THE COURT: All right. Mr. Thompson, any
25 objection to that?

JURY SELECTION

1 MR. THOMPSON: I think that I understand what
2 is going on, Judge. I have no objections.

3 THE COURT: All right. Bring her in here.
4 But airplane mode, will airplane mode send a signal?

5 MS. SHAW: I'm not sure. That is why I would
6 ask. To be honest with you, I have never had to ask
7 him that question.

8 (The juror enters the room.)

9 THE COURT: Yes, ma'am. Just come around
10 here. You are? What is your name, ma'am?

11 JUROR: I am Molly Ball.

12 THE COURT: Okay. You are juror number 5?

13 JUROR: Yes, sir.

14 THE COURT: Now, the bailiff indicates that
15 you have a monitor through your phone for diabetes that
16 you need to keep on?

17 JUROR: Yes, sir. I am a type I diabetic and
18 I have a dexcom. And it tells my phone what my blood
19 sugar is. And too fast or it will go off if it's going
20 up too fast.

21 THE COURT: Okay.

22 JUROR: And I honestly don't want that to be
23 a distraction as well. Because I would like to hear it
24 so I can know, and I don't want to get up and leave. I
25 just don't know.

JURY SELECTION

1 THE COURT: And, certainly, you keep your
2 monitor on and do what you need to as far as the notice
3 that you get. If it is a situation where you have an
4 issue that you have to leave, again, we can deal with
5 that at that time. That won't be a problem.

6 The question that I had is, as you heard
7 earlier, we strictly prohibit anyone from getting on
8 the Internet and trying to research the case.

9 JUROR: Yes, sir.

10 THE COURT: So, Ms. Shaw had a suggestion
11 that maybe you could do it on airplane mode. Would
12 airplane mode work for this?

13 JUROR: I'm not sure if it works through it.
14 But I could also put my phone on do not disturb where
15 you can allow only select certain apps to go through,
16 so you mute everything else but the dexcom app. That
17 would be a possibility.

18 MS. SHAW: That is fine, Your Honor.

19 JUROR: I do that at night, so it's just the
20 dexcom that goes through.

21 THE COURT: Okay. Well, let's try that.
22 Again, you can't get on Wifi or Safari or whatever and
23 try to research the case.

24 JUROR: Yes, sir.

25 THE COURT: But certainly keep your monitor

JURY SELECTION

1 on so that your condition doesn't deteriorate while you
2 are here. And if you have any issues, let the bailiff
3 know and we will do our best to accommodate you.

4 JUROR: Yes, sir. Thank you so much.

5 THE COURT: Ms. Shaw, anything else? Mr.
6 Thompson?

7 MS. SHAW: No, I'm very familiar with the
8 treatment so . . .

9 MR. THOMPSON: No, sir.

10 THE COURT: Okay. Thank you, ma'am. You may
11 go back to the jury room.

12 Okay, let's go to number two.

13 Hold on.

14 (The juror exits the courtroom.)

15 THE COURT: Okay, go ahead.

16 MS. SHAW: Your Honor, that second motion in
17 limine would be to prohibit references to any and all
18 details of any proposed future treatment that Mr.
19 Wilder might receive at the SVPTP program. That is not
20 a matter that the jury needs to opine on. The
21 evaluators who are going to be testifying, they do not
22 make any treatment recommendations for the respondent.
23 I mean, they would certainly be qualified to as
24 psychologists, but that is not their role in this case.

25 And so any reference to whether treatment

JURY SELECTION

1 will be offered, what kinds of treatment, whether it
2 would be effective, that is also in Kansas V. Haynes --
3 or Kansas v. Hendricks where, if treatment cannot be
4 helpful, it doesn't mean that we cannot proceed with
5 the commitment. So we would just request any
6 references to that be prohibited.

7 THE COURT: Mr. Thompson.

8 MR. THOMPSON: I don't plan to, Judge.
9 They -- everybody in the program has an individualized
10 treatment program and we have no idea what it is going
11 to be, so I won't go into that.

12 THE COURT: All right. So noted. And that
13 would also be granted without objection.

14 All right. Tell me the third one.

15 MS. SHAW: And the last motion in limine for
16 the State, Your Honor, is to prohibit any references to
17 total amount of time Mr. Wilder has remained
18 incarcerated after the expiration of his SCDC sentence.
19 I am sure as Your Honor knows, once we conduct a
20 preliminary probable cause hearing, a detainer is
21 automatically placed on the individual and they remain
22 incarcerated past their max-out date until the matter
23 can be resolved one way or another.

24 And so we would request that that be
25 prohibited, just because the sentence is prejudicial to

JURY SELECTION

1 the jury and it might confuse them and mislead them.
2 Otherwise, it is not relevant or a concern of theirs
3 how long he's been in, just the fact that he remains
4 incarcerated while on detainer if any of that comes up.

5 THE COURT: Yes, ma'am.

6 Mr. Thompson.

7 MR. THOMPSON: No plan to pursue that, Your
8 Honor.

9 THE COURT: So noted. Without objection.

10 All right. Mr. Thomson, what is your motion
11 in limine?

12 MR. THOMPSON: Judge, I had filed a motion in
13 limine. Dr. Gottfried in her report, she diagnoses Mr.
14 Wilder as having psychopathic disorder, which she
15 indicates is a part of a personality disorder. Our
16 motion in limine is that he not be referred to as a
17 psychopath. That has some very negative connotations
18 to it, and it is not really, in our opinion, relevant
19 to this matter. She can testify as to the personality
20 disorder and the element of it, but to actually call
21 him a psychopath, we would say is not relevant.

22 THE COURT: Okay. Ms. Shaw.

23 MS. SHAW: Your Honor, Mr. Thompson and I
24 have discussed this. And I would agree that the term
25 "psychopath" itself is highly prejudicial and

JURY SELECTION

1 potentially could prejudice the jury unfavorably to Mr.
2 Wilder's situation. We would just request that Dr.
3 Gottfried be permitted to testify about what
4 psychopathic disorder is, the elements of it, and how
5 it relates to Mr. Wilder's other mental health
6 diagnoses and how it factors into his risk. But we
7 agree that I will not use the noun "psychopath" to
8 refer to Mr. Wilder.

9 THE COURT: Okay.

10 MR. THOMPSON: That's correct.

11 THE COURT: So that one is also granted
12 without objection. Do I have a foreman or a forelady?

13 (Pause.)

14 THE COURT: Okay. Shannon Gibson, juror
15 number 60, is the forelady of the jury. Mona, let's
16 make that a Court's exhibit.

17 *(Whereupon, Court's Exhibit No(s). 1 marked*
18 *for identification and received in evidence.)*

19 THE COURT: We will break for lunch and then
20 we will start back at 2:00, okay.

21 MS. SHAW: Thank you, Your Honor.

22 THE COURT: You can tell the jurors that they
23 can go to lunch, just come back at 2:00. Be here
24 before 2:00.

25 (Lunch recess.)

COLLOQUY

1 THE COURT: All right. Ms. Shaw.

2 MS. SHAW: Thank you, Your Honor. I just
3 need to bring an issue to the Court that came up during
4 the lunch break. My witness and I were sitting out in
5 the hallway, as was Mr. Wilder's mother. And one of
6 our jurors -- it was a taller, thin man with black
7 pants and white hair -- he approached her and he spoke
8 to her. And it appeared that they had a nice
9 conversation. But given that she did disclose that she
10 is here for her son's trial from what my doctor heard.

11 So, I don't know if that would affect him,
12 but I mean for purposes of juror tampering or any
13 improper communications between a juror and a family
14 member that may or may not testify in this matter, I
15 would have to ask for a mistrial or at least some sort
16 of admonishment to the jurors that they are not to
17 speak to parties and/or witnesses in this case.

18 THE COURT: Do you know what juror it was?

19 MS. SHAW: I am not sure, but I could point
20 him out. He is very distinctive. He is tall -- well,
21 everybody is taller than me, but he was tall, thin,
22 white hair. I believe he had a white shirt on and
23 black pants. An older gentleman.

24 THE COURT: White hair, white shirt, black
25 pants.

COLLOQUY

1 MS. SHAW: Yes. And it did appear that they
2 might know each other. I was not close enough to hear.

3 THE COURT: And that was -- what was her
4 name?

5 MR. THOMPSON: His mother's name is Val
6 Wilder.

7 THE COURT: Val Wilder. That is the name
8 that I read to the jury.

9 MS. SHAW: And I don't believe that it was
10 either one of the alternates, Your Honor. It might
11 have been Mr. Northcote.

12 (The juror enters the courtroom.)

13 THE COURT: Okay. Is this him?

14 MS. SHAW: Yes, yes, sir.

15 THE COURT: Okay. You are Mr. Northcote, is
16 that correct?

17 JUROR: Yes.

18 THE COURT: Mr. Northcote, it has been called
19 to the Court's attention that you had a conversation
20 out in the lobby with Ms. Wilder, Val Wilder?

21 JUROR: I don't know the lady's name. I said
22 hello and said, you have been here a long time. She
23 just said that she is waiting for her son.

24 THE COURT: Okay. That was the extent of the
25 conversation?

COLLOQUY

1 JUROR: Yes.

2 THE COURT: Was there anything discussion
3 about the facts of the case or the trial?

4 JUROR: No.

5 THE COURT: Did you know this woman before?

6 JUROR: I did not.

7 THE COURT: Okay. Ms. Shaw, do you have
8 anything further?

9 MS. SHAW: Your Honor, I just -- it was
10 noticed and I felt that I had to bring it to the
11 Court's attention, because I don't know if Mr.
12 Northcote may know her or if there is a relationship,
13 or if there was any communication, because I couldn't
14 hear the contents of the conversation. And I was not
15 listening. But it is a concern just because she may
16 testify.

17 THE COURT: And, Mr. Thompson, anything for
18 the record?

19 MR. THOMPSON: No, sir.

20 THE COURT: Mr. Northcote, no one is accusing
21 you of doing anything wrong. I have to ask about that
22 whenever there is contact between a juror and a third
23 party.

24 JUROR: Right, I understand.

25 THE COURT: And Ms. Shaw did what she was

COLLOQUY

1 supposed to and called it to the Court's attention. So
2 that is what why I called you in and questioned you.
3 You don't know this woman, and the juror indicated
4 there was no discussion of facts, so I don't believe
5 anything improper took place. So, Mr. Northcote I am
6 going to have you return to the jury room.

7 JUROR: All right.

8 THE COURT: Okay. Anything further?

9 MS. SHAW: No, Your Honor, the State is
10 ready.

11 THE COURT: All right. Madam Bailiff, you
12 can get our jury, please.

13 And you can proceed with opening statements.

14 MS. SHAW: Your Honor, Mr. Thompson and I
15 have noticed one other thing. Could we just have a
16 sidebar?

17 THE COURT: Yes, ma'am.

18 THE BAILIFF: We have one in the restroom.

19 THE COURT: Okay. Well, just hold up.

20 (Off-the-record
21 discussion held.)

22 THE COURT: Anything before we bring our jury
23 back in?

24 MR. THOMPSON: Yes, sir. Judge, I realize
25 that this is an open courtroom, and it is a jury trial.

COLLOQUY

1 But there is going to be some testimony concerning
2 mental health records of Mr. Wilder, and those are
3 confidential under HIPAA. This case was sealed in the
4 clerk's office, filed and sealed. And I think any
5 testimony concerning mental health issues, as I say,
6 would be privileged under HIPAA.

7 I realize that there's press in the
8 courtroom. And I would ask for a restraining order.
9 They can say he was tried as a sexual predator, and
10 they can say, the doctor testified to like his past
11 record and things like that, that is not an issue.

12 But as to his mental condition, I would argue
13 that that is privileged under HIPAA. And I would ask
14 for a restraining order that they not be allowed to
15 publish that information.

16 MS. SHAW: Your Honor, the State doesn't
17 object to Mr. Thompson's request, but we would just add
18 that, in the context of a forensic evaluation, no
19 doctor/patient privilege attaches and there is no
20 expectation of confidentiality. But I certainly do
21 understand that the information Mr. Thompson seeks to
22 keep from the public eye are sealed document. This is
23 a sealed document.

24 And I understand that it could be highly
25 prejudicial. And I don't take a position, other than

COLLOQUY

1 to say that we don't object. .

2 THE COURT: Okay. Well, this is sort of an
3 unusual type proceeding. It is in common pleas Court
4 with a jury, which makes it a public case. But, Mr.
5 Thompson, your point regarding HIPAA records, that is
6 well taken. Now, I have had requests from our local
7 newspaper and our local radio station are here, which
8 it being an open forum, they are entitled to be present
9 and report on what is happening.

10 I will just -- I'll grant your motion that
11 the HIPAA records would not be reproduced. So, guys,
12 you can report on what is happening, but just don't
13 report on mental health records, anything that is
14 protected by Federal law by HIPAA. And y'all are aware
15 of the HIPAA regulations.

16 This is a hybrid type proceeding. It is
17 technically a confidential case, but it is one that is
18 done in a term of common pleas with a jury. So, it is
19 unlike other types of confidential cases that you would
20 have in family court where no one is allowed in the
21 courtroom and there is no jury, it is just a judge and
22 the parties.

23 So, just don't report anything protected by
24 HIPAA. But y'all are familiar with that I know. Okay.
25 Does that answer your concerns?

OPENING STATEMENT BY THE STATE

1 MR. THOMPSON: It does, Your Honor.

2 THE COURT: All right. Let's get our jury.

3 (The jury enters the courtroom at 2:50 p.m.)

4 THE COURT: Okay. Madam Forelady, ladies and
5 gentlemen of the jury, I appreciate your patience. We
6 have had some matters of law that we have had to take
7 up outside of your presence. But we are ready to get
8 started. The first stage will be opening statements by
9 the attorneys. Is the State ready?

10 OPENING STATEMENT BY THE STATE

11 MS. SHAW: Yes, Your Honor, the State is
12 ready. Thank you, Judge. Mr. Thompson.

13 Good afternoon, ladies and gentlemen. We all
14 met this morning, but I'll introduce myself to you
15 again. My name is Suzanne Shaw, I am an attorney with
16 the AG's Office representing the State in this
17 particular case. Now, before we start I'm actually
18 going to apologize to you. The facts that you are
19 going to hear in these cases are very difficult for,
20 you know, the average person to hear. They will be
21 disturbing. And you will probably not like Mr. Wilder
22 by the end of this trial. But it's extraordinarily
23 important that you not let your personal feelings get
24 in the way of your good judgment in making a decision
25 in this matter. So that is my first apology.

OPENING STATEMENT BY THE STATE

1 My second apology is, I am hard of hearing in
2 my left ear. You will occasionally see me kind of cock
3 my head. That is not me trying to telegraph anything
4 to you or make any suggestions, it is just me trying to
5 do my job.

6 So, as you have probably already guessed,
7 this is an unusual case. It is very atypical for
8 common pleas. When you got your summons a few weeks
9 ago, you probably expected you would be here for a car
10 wreck or maybe a property boundary dispute, or
11 something of that nature. But this is a case with far
12 greater impact, both to Mr. Wilder, the respondent, and
13 the community at large because there are very
14 significant constitutional implications of whatever you
15 decide at the end of this case.

16 So it is a sexually violent predator case.
17 What does that mean? What that means is that the State
18 is alleging that Mr. Wilder, he meets criteria under a
19 very specific statute to be labeled a sexually violent
20 predator. And if you agree and decide that, yes, he
21 does meet criteria, he will be civilly committed for
22 long term control, care, and treatment at a secure
23 facility in Columbia.

24 He will not be released. And I want to
25 emphasize to you, though, this is not about punishment.

OPENING STATEMENT BY THE STATE

1 He has served his time. He owes the State no further
2 debt for his criminal convictions.

3 This case is about treatment. And it is
4 about keeping both him and the public safe, and about
5 making sure that an individual that very much needs a
6 very specific kind of treatment, that they get it, and
7 that it is ensured that they get it. So we are not
8 here to punish them. We are not here to continue his
9 incarceration. We are here trying to get him
10 treatment, and that is all.

11 So what is the definition of a sexually
12 violent predator? I will tell you what the background
13 is, because the legislative intent in enacting this
14 statute back in 1998 was to identify a very specific
15 and small subset of offenders who have committed sexual
16 crimes and who are likely to go on to reoffend in a
17 sexual way.

18 And that is also very important for you to
19 think about, because in a case like this, an individual
20 may go on and commit another robbery, commit another
21 burglary, but that is not what you need to think about.
22 You need to think about whether it's likely, or more
23 likely than not, that he will reoffend in a sexual way.
24 That is the crux.

25 So, there are two elements to this case.

OPENING STATEMENT BY THE STATE

1 Number one is, the individual must have a qualifying
2 sexually violent offense. Those are specifically
3 enumerated offenses that are in the statute. And I
4 will represent to you that you will be given certified
5 court documents confirming that Mr. Wilder has in fact
6 been convicted of criminal sexual conduct in the first
7 degree in 2014. This meets the definition of a
8 qualifying offense because CSC first is listed in the
9 statute.

10 So, the bigger question of what you
11 ultimately really have to focus on and decide is
12 whether you believe, because this is the second part of
13 it, that Mr. Wilder has a mental abnormality and/or
14 personality disorder that makes it likely that he would
15 reoffend. And it is going to ultimately come to
16 "likely". Because the testimony that you are going to
17 hear is from two well-qualified experts. I have put
18 both of them up myself at various times in handling
19 these types of cases. But they each have a little bit
20 of different information based on their evaluations.

21 They all have the same factual information
22 about Mr. Wilder and his criminal history and his
23 background. They both interviewed him. And they both
24 did additional testing and scored actuarial measures to
25 access his actual level of risk. One expert came down

OPENING STATEMENT BY THE STATE

1 saying, no, he does not meet criteria. The other, who
2 you will hear from today, came down saying, yes, he
3 does.

4 And it is up to you to decide whether you
5 think he, A, has these personality disorders; and, B,
6 whether you think, based on the information you hear,
7 that he's likely to reoffend. So, that is it. It is
8 your good judgment about what you think is likely to
9 happen.

10 So what does "likely" mean? It means that an
11 individual -- and we just had a recent statutory
12 change, so I wrote this down to make sure I say it to
13 you correctly -- that the individual himself is
14 predisposed to engage in sexual violence and more
15 probably than not will reoffend sexually. And if that
16 risk is to such a degree as to pose a menace to the
17 health and safety of the public. That is it.

18 So we determine this through experts, because
19 none of us have the right letters after our name to
20 make a diagnosis or make a recommendation. I don't
21 know how to score the measures, and I don't have a
22 Ph.D. Both of the experts you will hear from do. And
23 they are both very experienced. And I ask that you
24 listen to them. I ask that you dispassionately
25 evaluate the evidence that you are given, and that you

OPENING STATEMENT BY THE RESPONDENT

1 make a fair judgment at the end of this case.

2 It is going to be fascinating. You will hear
3 some very interesting information and you will hear
4 some very interesting testimony. So just, please, pay
5 attention and do whatever you think is right. Thank
6 you.

7 THE COURT: Mr. Thompson.

8 OPENING STATEMENT BY THE RESPONDENT

9 MR. THOMPSON: Thank you, Your Honor. May it
10 please the Court. My opening argument is not going to
11 be a whole lot different than hers. I'm going to
12 apologize upfront too. I feel like I'm hollering at
13 you, but when I try to talk in a normal voice, for some
14 reason my voice leaves me, so I'm having to talk loud
15 to get it out.

16 Y'all are witnessing something that I have
17 never done in my 43 years of practice. I have never
18 walked up to an opening argument with a piece of paper
19 in my hand, but as Ms. Shaw told you, the statute
20 changed I believe about six weeks ago. And I want to
21 make sure when I say something to you I am telling you
22 what is correct now, not what I have been accustomed to
23 for years. I don't want to inadvertently go back to
24 the old law.

25 But you are going to hear, as she said, from

OPENING STATEMENT BY THE RESPONDENT

1 two doctors, Dr. Gottfried today, and Dr. Gillen
2 tomorrow. Mr. Wilder, you are going to hear has a long
3 history, starting in childhood of run-ins with the law.
4 You are going to hear that he has -- he's been
5 incarcerated. And he has a sex conviction he has been
6 incarcerated for. You are going to hear that during
7 his incarceration he had numbers of disciplinary, okay.

8 He's already paid the price and been
9 sentenced, convicted and sentenced, on everything he's
10 done. He doesn't have any time hanging over his head.
11 And we are not here to punish him or give him extra
12 time for what he's done in the past. What we are here
13 today to decide is whether or not he needs to be in
14 treatment. That is because, is he a sexually violent
15 predator. What you have got to decide is, is he a
16 sexually violent predator. One doctor says yes, one
17 doctor says no. The State has to prove it beyond a
18 reasonable doubt.

19 Now, as Ms. Shaw told you, a sexually violent
20 predator is a person who has been convicted of a
21 sexually violent offense. Mr. Wilder has. And he
22 suffers from a mental abnormality or personality
23 disorder that makes a person likely to engage in acts
24 of sexually violence if not confined in a secure
25 facility for long-term control, care, and treatment.

OPENING STATEMENT BY THE RESPONDENT

1 The key thing that I think we are dealing
2 with today, at least in my opinion, is the term
3 "likely" to engage. Our statute defines likely to
4 engage -- and the Judge is going to give you the law,
5 but I am just going to tell you what my opinion on it
6 is. Listen to him instead of me if he says something
7 different.

8 Likely to engage in acts of sexual violence
9 means that a person is predisposed to engage in acts of
10 sexual violence. And more probably than not will
11 engage in acts of sexual violence to such a degree as
12 to pose a menace to the health and safety of others.

13 I think there's two things in there. And I
14 want you to listen to all of the testimony. First is
15 the word predisposed. Does that mean that he's
16 inclined to commit sex acts? If you will listen to all
17 of his convictions and all of his disciplinary, you are
18 going to find that 90 percent of everything he's done
19 is burglary, assault and battery, things like that. It
20 is not -- it is disobeying the rules in the Department
21 of Corrections, it is not sex offenses. So is there an
22 inclination to commit sex offenses.

23 And secondly, that he will more probably than
24 not engage in acts of sexual violence. And that is
25 going to be a hard hill to climb, to predict whether

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 somebody is more probably than not likely to engage.

2 Dr. Gottfried who is from the Medical
3 University, she is going to I believe testify that she
4 believes that he is. Dr. Gillen, who is from the
5 Department of Mental Health, is going to testify that
6 he doesn't believe that he is. It is going to be up to
7 y'all to make that decision. But you have to make that
8 decision if the State proves to you beyond a reasonable
9 doubt that he is a sexual predator under the law and
10 under the definitions.

11 So, with that I am going to sit down and let
12 them start the case. Thank you.

13 MS. SHAW: Your Honor, the State calls Dr.
14 Emily Gottfried.

15 Before Dr. Gottfried takes the stand, can
16 y'all hear me okay? I am very soft spoken, so if you
17 can't just raise your hand and the Judge will yell at
18 me to speak louder.

19 Thereupon,

20 DR. EMILY GOTTFRIED
21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. SHAW

25 Q. Good afternoon, Dr. Gottfried.

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. Good afternoon.

2 Q. Would you please state and spell your last name
3 for the record?

4 A. Yes. Dr. Emily, Gottfried. G-O-T-T-F-R-I-E-D.

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

6 A. I work at the Medical University of South Carolina
7 in Charleston. I have been there almost eight years now.
8 August, or maybe the beginning of September will be eight
9 years. I'm currently an associate professor in the
10 department of psychiatry and behavioral sciences. And in
11 that capacity I serve as the director of our sexual
12 behaviors clinic and lab. I do forensic evaluations for the
13 Court. And I do a lot of teaching and supervision of a
14 variety of trainees, medical students, psychology interns,
15 psychology residents, and forensic fellows.

16 Q. Thank you. Now, in order to be employed in this
17 capacity, are you required to have certain expertise and
18 experience and education?

19 A. Yes.

20 Q. Can you tell the jury what that is, starting with
21 your undergraduate training.

22 A. Yes, so for undergrad I went to San Diego State
23 University where I obtained a Bachelor of Arts Degree in
24 psychology. I then attended Columbia University in New York
25 where I got my Masters Degree in Psychology. It is a Master

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1 of Arts. And then in 2009 I started at Florida State
2 University where I obtained a Master of Science in
3 psychology, clinical psychology. And then a Ph.D. or
4 doctoral degree in clinical psychology.

5 Q. And did you pursue any further specialized
6 training in addition to your undergrad and graduate degrees?

7 A. Yes.

8 Q. Can you tell the jury what that is, please?

9 A. So, as part of your training for a clinical Ph.D.
10 in psychology, you have to do practicums, so that is a
11 certain number of hours of practical experience. So, when I
12 was a graduate student -- when I was a graduate student in
13 New York City, I worked for the Federal Bureau of Prisons
14 doing forensic evaluations in a Federal prison. And then
15 when I was at Florida State I worked at a state forensic
16 psychiatric hospital, two of them, doing forensic
17 evaluations.

18 I worked at outpatient forensic facilities. So, a
19 variety of forensic experiences there, in both Florida and
20 Georgia. And then for my pre-doctoral internship, which is
21 a full year, 2000-hour experience where you work full time
22 before you actually graduate with your Ph.D., I moved to
23 southern California and I worked at Patton State Hospital,
24 which is a really large state psychiatric hospital for
25 forensic individuals, so people committed there by the legal

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1 system. A large portion of that work was doing evaluations
2 and running groups for individuals who had been convicted or
3 charged with sexual offenses.

4 And then when I finished that year, I went to the
5 Medical College of Georgia in Augusta where I did a
6 one-year, post doctoral fellowship in forensic psychology.

7 MR. THOMPSON: Your Honor, we will stipulate
8 if the State wishes to accept it.

9 MS. SHAW: Your Honor, there's some
10 additional information we do need to get into the
11 record, but I'll make it brief.

12 THE COURT: Yes, ma'am. Go ahead.

13 MS. SHAW: Thank you, Your Honor.

14 BY MS. SHAW

15 Q. So, you were required to have a license to
16 practice psychology as part of your employment, correct?

17 A. Correct.

18 Q. And you are licensed in South Carolina?

19 A. I'm licensed as a clinical psychologist in the
20 South Carolina and the State of Georgia.

21 Q. How long have you held those licenses?

22 A. Almost eight years.

23 Q. And you have been conducting sexual offender
24 research, as well as forensic evaluations and treatment at
25 the SBCL for approximately eight years?

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. Yes.

2 Q. And do you do any research specifically with
3 regard to sex offenders?

4 A. I do.

5 Q. Okay. Can you tell the jury what that is, please?

6 A. Sure. So, the Sexual Behaviors Clinic and Lab is
7 primarily a clinic where we do evaluations, but then we also
8 try to further our knowledge by studying people that we have
9 evaluated, combining our data with other sexual behavior
10 labs in U.S. and Canada. So, my research focuses on sexual
11 arousal, predictors of sexual recidivism, personality
12 characteristics related to offending in general.

13 Q. Okay. And are those publications peer reviewed,
14 or have you presented in any conferences or symposium?

15 A. Yes, I have presented at conferences and I have
16 published in peer review journals.

17 Q. Okay. And how frequently do you do that?

18 A. How frequently do I present?

19 Q. Uh-huh. (Indicating affirmatively.)

20 A. Several times a year. So, I present both at
21 scientific psychology conferences, as well as invited
22 lectures. And they are almost always having to do with
23 sexual behavior. That may be for other universities or
24 other hospitals who do this kind of work all around the
25 country now that everything can be on Zoom. And in Canada

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1 I'm able to give trainings in that area as well.

2 Q. And you are a member of several professional
3 organizations, correct?

4 A. Yes.

5 Q. Which ones?

6 A. I am a member of the Association for the Treatment
7 and Prevention of Sexual Abuse, ATPSA. That is like our
8 national organization for this type of work. I am actually
9 on the Board of Directors for ATPSA. I serve as the
10 research representative.

11 I am a member of APA, the American Psychological
12 Association. And then within APA, Section 12, Division 9 is
13 our assessment section, and I serve as president elect for
14 psychology. I'll be president this coming August.

15 I serve -- or I'm a member of American Academy of
16 Forensic Sciences, American Psychology and Law Society.
17 There is a couple of others. A variety of psychology
18 forensic professional organizations.

19 Q. Those organizations that you just mentioned are
20 the major organizations in the United States, correct?

21 A. Yes.

22 Q. Now, in the context of a sexually violent predator
23 case, what is your primary job function? What is the
24 question that you are asked?

25 A. Basically, does the person have a mental

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 abnormality and/or personality disorder that predisposes
2 them to commit future acts of sexual violence. So,
3 basically, is the reason that he did it because of a mental
4 abnormality or personality disorder, and what are the
5 chances that he's going to do it again.

6 Q. Okay. And you have produced -- well, you have
7 done multiple evaluations in this category, correct?

8 A. Yes.

9 Q. How many?

10 A. In South Carolina I have been referred 60 sexually
11 violent predator cases.

12 Q. Okay. And in Georgia, have you done any testimony
13 concerning, not specifically sexual predators, but sexual
14 offenders?

15 A. Yes. I think in February of this year I testified
16 in a case regarding sexual behavior in Georgia.

17 Q. Okay. And so how many times have you been
18 qualified and testified in the State of South Carolina?

19 A. Thirty-eight times.

20 Q. Okay. And how many times in Georgia?

21 A. Six times.

22 Q. Okay. And how many -- I may have just asked you
23 this, I am sorry. How many sexually violent predator
24 specific evaluations have you done in total, or do you have
25 pending?

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. Sixty total have been referred to me. I believe
2 about eight of those are in progress, so I haven't written a
3 report yet. But sixty total, and about eight of those are
4 still being worked on.

5 Q. And you also do non-sexually violent predator
6 evaluations and treatment, correct?

7 A. Yes.

8 Q. And you do that through the SBCL?

9 A. I do.

10 MS. SHAW: And, Your Honor, based on that
11 foundation, I would like to offer Dr. Gottfried as an
12 expert in both forensic and clinical psychology, and
13 specifically in sexually violent predator evaluations.

14 MR. THOMPSON: No objection.

15 THE COURT: The witness will be classified as
16 an expert in forensic and clinical psychology and --

17 MS. SHAW: Specifically sexually violent
18 predator evaluations and risk assessments. I forgot to
19 add that, Judge.

20 THE COURT: -- sexually violent predator
21 evaluations and risk assessments. So noted.

22 MS. SHAW: Thank you, Your Honor.

23 BY MS. SHAW

24 Q. All right. So, Dr. Gottfried, are you familiar
25 with Christopher Trent Wilder?

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. Yes.

2 Q. How are you familiar with him?

3 A. Your office requested a pre-commitment evaluation
4 pursuant to the sexually violent predator act.

5 Q. Okay. Is he here in this courtroom today?

6 A. Yes, he is.

7 Q. Would you please point him out?

8 A. Yes, he is sitting with Mr. Thompson, his
9 attorney.

10 Q. Okay. Now, did you produce a report in connection
11 with your evaluation?

12 A. I did.

13 Q. And what was the date of that report?

14 A. I believe it was March 28th of this year.

15 Q. Okay. And describe what you are requested to do
16 when you get a referral to evaluate an individual as a
17 possible sexually violent predator?

18 A. So, what I'm asked to do when I do sexually
19 violent predator cases is, they are always, I guess, second
20 opinions. So, the Department of Mental Health here in South
21 Carolina does the evaluations, and then I believe either
22 side has an opportunity to have an independent evaluation.

23 So, when I get them they are either -- they are
24 usually for the AGs office, but sometimes I get them from
25 the other side as well. Either side can hire somebody to do

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 them. And so I am doing a full evaluation. I get a lot of
2 collateral records, reviewing a lot of data. I am
3 administering assessment measures or tests. And then based
4 on putting all of that together, I issue a report where I
5 describe my opinion regarding a mental abnormality or
6 personality disorder that predisposes them to reoffend and
7 their likelihood to reoffend.

8 Q. And just before we go into the specifics for this
9 case, you do both work for the State, as well as for defense
10 counsel, correct?

11 A. Yes.

12 Q. Okay. And you do not always recommend commitment,
13 is that accurate?

14 A. That's correct.

15 Q. And so discuss what the actual pre-commitment
16 evaluation is. Like, what is your process; what do you do?

17 A. So when my office at MUSC gets a request for this
18 kind of evaluation we -- your office, your office, the one
19 requesting it, or either side will send all of the
20 documentation. So that is going to be police reports, court
21 records, records from SCDC or Department of Corrections here
22 in South Carolina, jail records. There might be mental
23 health treatment records. Somebody that -- there is also
24 going to be the Department of Mental Health's initial
25 evaluation and report.

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1 I am going to go through and review all of that
2 material. Look to see if I think that I'm missing something
3 and request that. Then I schedule three evaluation dates
4 for the examinee to be transported to Charleston for the
5 evaluation. I do a day of testing. I do some physiological
6 measures of male sexual arousal. And then I do a clinical
7 interview, a pretty comprehensive clinical interview,
8 because I'm not just looking for something that, you know,
9 is related to sexual behavior, I'm looking at the full
10 spectrum of mental illnesses. And then kind of starting
11 wide and then narrowing it down to see if it's related to
12 the sexual offense.

13 So I do the clinical interview. Sometimes I
14 conducted collateral interviews if they are necessary. I
15 usually contact the Department of Probation, Parole, and
16 Pardon to see what the persons requirements are in the
17 community when they are released from prison.

18 I put all of that information together. I score
19 some measures, I interpret all of the tests. And then I
20 write all of my findings in a report.

21 Q. Okay. And in the context of information you get,
22 do you also occasionally receive medical records from
23 victims of sexual assaults?

24 A. Yes.

25 Q. And you consider those in terms of the relative

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1 level of injury that the victim suffered?

2 A. Yes.

3 Q. Okay. And were you able to review Dr. Gillen's
4 report of the DMH evaluation?

5 A. Yes.

6 Q. You received that in the context of your referral?

7 A. Yes.

8 Q. Now, were you able to review information with Mr.
9 Wilder prior to meeting with him? Such as your consent
10 forms and any other form of documentation you would need in
11 order to complete your evaluation?

12 A. Yes.

13 Q. And what was that?

14 A. So, every time an examinee comes in, we have them
15 consent to the evaluation. So on the first day I go through
16 the eval -- the consent form. And it is really long and
17 detailed. I have them read a portion of it to me out loud
18 to make sure that their reading ability is okay. I have
19 them read some of it to themselves and ask questions. And
20 then we go through the rest of it together where I read it
21 aloud to them and answer any questions that they might have.

22 It is detailed about pretty much any test that we
23 may or may not give them, explaining the non-confidential
24 nature of the evaluation. That it has been requested by a
25 third party. And that the report will go to the third

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1 party. Those kinds of things. So, the examinees they agree
2 to what is in the consent forms. They will sign the consent
3 form, and then on each subsequent evaluation, appointment
4 date, they will go back over it and sign a re-reading of it.

5 Q. Okay. And what dates did you meet with Mr.
6 Wilder?

7 A. I had him scheduled for January 3rd of this year,
8 but he wasn't transported for some reason. That happens
9 sometimes. So I actually saw him on January 9th of 2023,
10 January 24th of 2023, and February 2nd, 2023.

11 Q. And in connection with this particular case, did
12 you do any collateral interviews?

13 A. I did not do any interviews. I reached out to an
14 attorney who works at probation, pardon, and Parole via
15 email, but I didn't interview anybody.

16 Q. Okay. And does Mr. Wilder have a conviction for a
17 sexually violent offense?

18 A. Yes.

19 Q. Okay. I am going to show you documents marked as
20 State's 1, and I am just going to ask you to identify those.

21 MS. SHAW: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, ma'am.

24 MS. SHAW: Thank you.

25 BY MS. SHAW

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 Q. If you will just go through those and tell me what
2 that is.

3 A. Yes. So the first is a sentencing sheet from the
4 Oconee County Court of General Sessions.

5 Q. And what is the crime that he was sentenced -- or
6 actually what is the Defendant's name on that sentencing
7 sheet?

8 A. Christopher Trent Wilder.

9 Q. And what is the crime for which he was sentenced?

10 A. Criminal sexual conduct first degree.

11 Q. And what was the actual sentence?

12 A. The sentence was ten years in the Department of
13 Corrections.

14 Q. All right. Can you look at the next few pages and
15 tell me what those documents are?

16 A. Next is a general sessions tracking sheet. It has
17 the same information for the most part. Then we have the
18 indictment for criminal sexual conduct that has a
19 description of the offense. And then the arrest warrants
20 and affidavit out of Oconee County for criminal sexual
21 conduct in the first degree. There's some other court
22 documents, motion for bond to be set. Motion for discovery
23 and inspection. Checklist for magistrate and municipal
24 judges. An Oconee County Sheriff's Office victim witness
25 assistance program information. Victim rights form. And

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1 then a sheet that says, Special conditions, general sessions
2 bond. It looks like it has instructions on it.

3 Q. Thank you.

4 MS. SHAW: Your Honor, at this time I would
5 move the sentencing sheet affidavit and indictment into
6 evidence under the business records exception, subject
7 to redaction of victim personal identifying
8 information.

9 THE COURT: State's Exhibit 1?

10 MS. SHAW: Yes, sir.

11 THE COURT: Any objection?

12 MR. THOMPSON: No, sir.

13 THE COURT: So, State's Exhibit No. 1 would
14 be admitted without objection.

15 MS. SHAW: Thank you, Your Honor.

16 *(Whereupon, State's Exhibit No(s). 1 marked*
17 *for identification and received in evidence.)*

18 BY MS. SHAW

19 Q. So when you met -- so, you have your base
20 information that he has been convicted of a sexually violent
21 offense, correct?

22 A. Yes.

23 Q. Okay. And you have that information prior to
24 meeting with him?

25 A. Yes.

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1 Q. Okay. And when you met with Mr. Wilder, can you
2 describe his demeanor and appearance on each date that you
3 met with him?

4 A. Yes. He was pretty glib. So he like -- he said a
5 lot of words that didn't necessarily answer the question at
6 hand. There were times where he seemed a little bit
7 superficially cooperative. There were some times where he
8 was oppositional and defensive about his sexual history and
9 his sexual offense history. His eye contact ranged from
10 appropriate to being kind of intense. He made good eye
11 contact.

12 Q. Did he exhibit any hostility at any point, or any
13 aggression, verbal or otherwise?

14 A. He was not aggressive. He was oppositional I
15 would say. And defensive. But I wouldn't -- I mean, I
16 think that he became angry at times, which is not
17 necessarily uncommon. In this evaluation we have to
18 challenge them a little bit, to a degree about the offenses
19 in the records, but more kind of oppositional and not very
20 cooperative.

21 Q. Okay. And you were able to sit down with him and
22 go over the consent form for each meeting?

23 A. Correct.

24 Q. And did he sign the consent form each time?

25 A. Yes.

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1 Q. Okay. And was there any indication that he did
2 not understand?

3 A. No.

4 Q. Now, just give us a brief history of Mr. Wilder's
5 relevant personal history as it factored into your
6 evaluation of him?

7 A. Sure. So from my clinical interview, I learned
8 from Mr. Wilder that he was born in 1985. He was born in
9 Alabama. He was raised a little bit in Alabama, but also
10 here in South Carolina. He grew up with his biological
11 parents. He had two half sisters who he was raised with.
12 He didn't report any personal history of abuse. So he
13 didn't report being physically or sexually abused himself.

14 He reported pretty significant youth conduct
15 problems. So he reported leaving home without parental
16 permission, shoplifting, getting into fights, setting a
17 couple of fires in the woods, some vandalism, throwing
18 rocks, and accidentally breaking a car window. I think he
19 said that happened one or two times. And all of those
20 behaviors were between the age of seven and 13.

21 He left school when he was in tenth grade because
22 he was working. He told me that he didn't get a high school
23 equivalent degree, he didn't get a GED, but he told the DMH
24 evaluator that he did get his GED. He told me that he began
25 getting suspended from school in approximately the eighth

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1 grade. And that, if he had to estimate, that he was
2 suspended approximately ten days per school year.

3 He told me that he had a behavioral contract,
4 which he violated and then was sent to alternative school.
5 But he didn't give me any other details on that. From Dr.
6 Gillen's report it was noted that his dad wanted him to go
7 to like a boot camp alternative school after he was
8 suspended from school. And that he was ultimately expelled
9 from that and sent to another alternative school.

10 Regarding his employment history, he has worked in
11 like tile and flooring, fast food, landscaping. He told me
12 that he was fired from one job for failing a drug urine test
13 for cocaine. He reported getting into multiple physical
14 fights with other people beginning at the age of 12 and
15 continuing through adulthood. He told me that he was never
16 married. From Dr. Gillen's report, it looks like he told
17 Dr. Gillen that he got married in 2020.

18 He reported having a 16-year-old daughter and an
19 11-year-old son. Some inconsistent information about the
20 current status of their relationship. He told me that he, I
21 believe, was writing to them pretty regularly. Yeah -- no,
22 I'm sorry, he told Dr. Gillen that they exchanged letters, a
23 couple of letters a week, between him and his children. But
24 he told me that he had had no contact with his daughter in
25 about eight years -- or his son for eight years and his

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1 daughter since 2019. He reported to me that he got arrested
2 approximately two times for failure to pay child support.
3 Yep. I think that is the relevant history I noted from my
4 interview.

5 Q. So, you would agree that there's evidence before
6 you of a juvenile conduct problem?

7 A. Yes, yes.

8 Q. And are the -- why is that relevant to your
9 inquiry; how does it factor in?

10 A. So I'm looking at the spectrum of potential
11 diagnoses. We know that when someone has problems,
12 behavioral problems, legal problems as a juvenile that
13 continues onto adulthood, that that is a pattern that is
14 important to assess for. Yeah.

15 Q. Okay. And is there any specific diagnosis that
16 juvenile conduct disorder is not just needed for, but it is
17 required for a diagnosis?

18 A. Yes, so there is a disorder called conduct
19 disorder. It is primarily diagnosed in children and
20 adolescence. And then as the person is in adulthood that,
21 the presence of at least some symptoms of conduct disorder
22 prior to the age of 15 is a prerequisite, or it is necessary
23 in order to later diagnose antisocial personality disorder.

24 Q. Okay. And that is, in fact, what you diagnosed
25 Mr. Wilder with; is that correct?

DIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. That is one of the diagnoses, yes.

2 Q. Okay. And did Dr. Gillen concur in that
3 diagnosis?

4 A. Yes.

5 Q. So you both diagnosed him with antisocial
6 personality disorder?

7 A. Correct.

8 Q. Okay. Now before we get into the diagnostic
9 criteria, can you tell me, did Mr. Wilder disclose any
10 current medical conditions?

11 A. I believe he said that he had high blood pressure.

12 Q. Okay. But he doesn't have any history of
13 traumatic brain injury or anything of that nature, does he?

14 A. None that he reported, and none that I saw in the
15 records.

16 Q. Okay. And does he have a substance abuse history?

17 A. Yes.

18 Q. Okay. Can you discuss that, please?

19 A. He described symptoms and problems consistent with
20 an alcohol use disorder. He reported drinking from the age
21 of 15, approximately 15 or 16 until he was incarcerated for
22 his most recent offense. He endorsed that alcohol caused
23 problems for him. And endorsed some -- or he reported,
24 agreed with having some symptoms of an alcohol use disorder.
25 He gave a little bit inconsistent information to Dr. Gillen.

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1 The ages were different on when he last drank and when he
2 first drank. And he said that he didn't have any problems
3 with it. And then he told Dr. Gillen that he never used any
4 substances. But during my evaluation, he told me that he
5 smoked marijuana on one occasion at the age of 17. And then
6 using cocaine on the weekends from the age of 17 until he
7 said about eight and a half years ago.

8 He described some problems related to cocaine use,
9 including some legal problems, arrests related it to. Being
10 fired from that job because he tested positive in a
11 urinalysis. And then spending a lot of time in
12 cocaine-related activities, specifically like spending a lot of
13 time either getting cocaine, using cocaine, or recovering
14 from cocaine. So, some problems secondary to his cocaine
15 use.

16 Q. Okay. And in the context of this type of
17 evaluation, substance abuse is not uncommon, is it?

18 A. No.

19 Q. Okay. And is substance abuse in and of itself a
20 cause of an individual sexually offending?

21 A. No. Basically in the field we know that
22 individuals who engage in criminal behavior have a
23 likelihood or there is a high prevalence of substance abuse
24 disorders. However, we also know that there is no substance
25 or like drink that is going to make somebody do something

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1 that they would never do before. So alcohol or drugs don't
2 make you rape somebody, they don't cause that behavior.

3 It is a risk factor for future offenses, because
4 we know that substances can lower your inhibition, make it
5 harder for you to control your behavior and your impulses.
6 So while it is a risk factor for future offending, it
7 doesn't cause the offense.

8 Q. Okay. So, before we go into his nonsexual
9 criminal history, let's go into Mr. Wilder's sexual criminal
10 history. So, can -- obviously we know that he's been
11 indicted -- or he has been convicted of criminal sexual
12 conduct in the first degree. Describe what happened based
13 on your review of the records and your discussions with him.

14 A. Yeah, so this crime happened in June of 2014 where
15 Mr. Wilder went to the house of a female acquaintance who
16 was in her 50s. I believe he was about 28 years old at the
17 time. He brought beer and they consumed some beer. He
18 began touching her on her body. He told her that he wanted
19 to have sex with her. She said that she did not want to,
20 she said no. There were some acts where he, like, he put
21 his hand over her mouth, he threw her to the floor. He got
22 on top of her. He like put a lot of pressure on her ribs
23 like by being on top of her.

24 He took his penis out and told her to perform oral
25 sex. And he rubbed his penis on her face. He took a knife

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1 out of his pocket and threatened her with it and told her to
2 feel the blades and see how sharp it was. He bit her lip.
3 And there was some injuries. He pulled her to the floor,
4 spread her legs open, and then he penetrated her vagina with
5 three to four fingers. It was reported that that occurred
6 about three times. And he scratched her and told her, This
7 is what we do to white women, we tear them up.

8 She was bleeding. And it was reported that he
9 kind of wiped the blood on his T-shirt. He threatened to
10 kill her if he didn't give him oral sex. It was noted that
11 she kept like a mallet or a hammer under her couch, and she
12 tried to grab that for protection, but he got it from her.
13 He held it over her head, and he threatened her with it. He
14 wouldn't let her leave.

15 And then after this occurred he kind of flipped
16 and said like, I'm bad. He apologized. And then he took
17 her cell phone. He told her not to call the police. And
18 then he left.

19 She underwent a medical exam where it was noted
20 she had injuries to her arm, her lip, and there were scrapes
21 and lacerations inside of her vagina.

22 Q. Okay. So what did he indicate to you about this
23 offense; what did he say?

24 A. Mr. Wilder said that this offense did not occur.
25 That he was at the wrong place at the wrong time. That he

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1 was framed. And that really nothing happened. Like he went
2 to her house, he was waiting for two other women that he
3 knew who maybe lived there or they were expected to come,
4 and that nothing happened and then he left.

5 Q. But the injuries to the victim clearly indicated
6 otherwise?

7 A. Correct.

8 Q. You saw that in the medical records?

9 A. I believe that it was reported in the police
10 report.

11 Q. Okay. Now what did he say to Dr. Gillen about
12 this incident?

13 A. He gave him a little bit of a different story from
14 what he told me. He said that they had a sexual
15 conversation, that she was kind of leading him on. She was
16 making statements that suggested to him that she was
17 flirting with him. He said that they, quote, messed around.
18 They were rubbing on each other. That he offered her money
19 so that she would be more comfortable having sex with a
20 black man. He said that he didn't pay her, because they
21 didn't have sex, and so like he said that her accusing him
22 of doing this was kind of retaliation for not giving her
23 money.

24 In Dr. Gillen's conversation with him, he kind of
25 fought against that this was a crime or an assault. He made

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1 a statement about her just being fingered like, and asking
2 how that was considered rape.

3 Q. Okay. So he didn't express any remorse for
4 committing this offense?

5 A. Not to me, and not that I noted in Dr. Gillen's
6 report.

7 Q. And he was very inconsistent with his stories to
8 both of you?

9 A. Yes. Not just about this, but throughout the
10 evaluation.

11 Q. We will get into that. But I would like you to
12 tell the jury why inconsistencies in an individual's
13 statements across multiple interviews to multiple evaluators
14 are significant, at least to your investigation?

15 A. I mean, based on the collateral records that I
16 have, the information from Dr. Gillen's report, and then the
17 interview that I did, it suggests almost an inability to be
18 truthful. So, there was evidence of pathological lying. So
19 it's not unexpected for somebody to try to protect
20 themselves and say, no, I didn't do this, or, no, I am not
21 aroused by that. But these were things that seemed to me,
22 at least in my opinion, to be kind of inconsequential.

23 So things like, I'm not sure why he would lie
24 about or you forgot what you told somebody else. So when
25 I'm looking at personality disorders and antisocial

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1 personality disorders, and I am looking at things like
2 psychopathic personality disorder, one of the symptoms or
3 criterion for those disorders is pathological lying, so that
4 is important.

5 Q. Before we get further into your diagnostic
6 formulations and conclusions, can you describe briefly Mr.
7 Wilder's nonsexual criminal offending history. What, if
8 anything, was very significant about it?

9 A. Yes, I can do all of that. I think what was
10 significant is that his first arrest occurred at the age of
11 ten years old. And his last, I'm not sure arrest or set of
12 criminal charges, occurred in June of 2023, so a very long
13 history of interactions with the criminal justice system or
14 law enforcement. As a juvenile he was charged with about 14
15 offenses and convicted of about five.

16 As an adult he's been charged with approximately
17 29 or 30. He has been convicted and -- he's been charged
18 numerous times and convicted several times of criminal
19 domestic violence against his romantic partners. He has
20 several assault and battery charges. He has burglary,
21 robbery, weapons charges, drug charges. So I think the, the
22 span of the charges is significant. So, first arrest at the
23 age of ten, all the way up to this month. It is only June.
24 So the sheer number of the charges, the variety of the
25 different crime types, those are significant to me. And

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1 then the -- some significant violent offenses, in addition
2 to the sexually violent offense.

3 Q. And, in fact, he has also been convicted or at
4 least charged with assault of a high and aggravated nature,
5 correct?

6 A. Yes.

7 Q. Okay. And, if you know, is that a more severe
8 assault charge than simple assault and battery or something
9 else?

10 A. It is more severe.

11 Q. Okay. And he's also been charged with grand and
12 petit larceny, correct?

13 A. Yes.

14 Q. And violation of probation?

15 A. Several times, yes.

16 Q. Unlawful carrying of a pistol?

17 A. Yes.

18 Q. All right. So we know criminal history is very
19 long. What happened once he was -- and actually, the 2014
20 conviction, that was his most recent conviction, correct?

21 A. Yes.

22 Q. And that was for the CSC first?

23 A. Criminal sexual conduct, yes.

24 Q. Thank you. Now once Mr. Wilder was convicted of
25 the CSC first, he was sent to SCDC, the South Carolina

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1 Department of Corrections; right?

2 A. Yes.

3 Q. Okay. And did he incur any disciplinary
4 infractions while he was there?

5 A. Yes.

6 Q. Okay. And can you first tell the jury what
7 disciplinary infractions are, and then discuss the number
8 and the nature of them?

9 A. Yes. So when you are in a correctional setting,
10 facility, when you break the rules they can, you know,
11 charge you with disciplinary infractions and then take away
12 some of your privileges. So they might take away your
13 visitation, your ability to go to commissary, to make phone
14 calls. They might move you to a different unit. They
15 might, you know, take away your recreation time. Sometimes
16 it can reach the level where they will actually bring
17 criminal charges. But disciplinary infractions are how the
18 institution handles their own rule violations.

19 Q. Okay. And, in fact, that June of 2023 charge
20 incurred while he was in the Oconee County jail; correct?

21 A. Yes. It looks like he has one charge. It says
22 the offense date or the arrest date was in May of 2023, and
23 then two more in June.

24 Q. But we were -- you were not able to get records
25 regarding that, correct?

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1 A. I was not. I spoke with a lieutenant at the
2 detention center who gave me a little bit more information,
3 but I didn't, I didn't have access to like the actual arrest
4 report for those.

5 Q. Okay. And what information did you receive?

6 A. So he was charged with malicious injury that, some
7 kind of real injury or malicious injury to, or damage, it is
8 a property damage charge, to either a courthouse or a jail.
9 So it was reported that he broke a television at the
10 detention center.

11 He was charged with threatening the life of a
12 public official. And that was -- it was reported that he
13 was being observed on suicide watch precautions, and he
14 threatened an officer of what he was going to do to him once
15 he got out or got off of suicide watch. Some kind of threat
16 on the officer.

17 And then he was charged with throwing a bodily
18 fluid by a prisoner or an inmate. And I don't think that I
19 wrote it down. It was alleged, he hasn't been convicted,
20 that he threw some kind of his -- his own body fluids,
21 whether that was urine or something else, on an officer.

22 Q. So it could be urine, feces, saliva; you don't
23 know?

24 A. I don't know.

25 Q. Okay. So how many total disciplinary infractions

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1 has he had, to the best of your knowledge?

2 A. Mr. Wilder told me that he had 74 disciplinary
3 infractions in the prison. I have all of those records and
4 I was counting them. It is was a lot to count. And I don't
5 think that that is right. I think between -- because he had
6 some prior incarcerations, so between 2006 and 2022 -- and
7 he wasn't in for that whole period of time -- I counted that
8 he was charged with 72, or close to 74, and he was convicted
9 of around 50 of those.

10 Q. And what were -- disciplinary infractions in SCDC
11 are classified as assaultive, non-assaultive, or sexual;
12 correct?

13 A. Yes.

14 Q. And how many of those infractions were assaultive?

15 A. About eight of them were assaultive.

16 Q. How many were non-assaultive?

17 A. It depends on which number you are looking at.
18 Approximately 63.

19 Q. Okay. And how many of them are sexual?

20 A. Eight.

21 Q. Okay. And why are sexual misconduct infractions
22 while in a controlled environment such as a correctional
23 institution significant to your inquiry, if at all?

24 A. It is significant. So we know that the majority
25 of people who commit sexual offenses don't go on to reoffend

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1 sexually. I think that is a misconception that, you know,
2 all sexual offenders are really, really high risk. The
3 majority of them don't go on to reoffend. And so especially
4 when they are sanctioned, so they were arrested, they got a
5 prison sentence, they were told like, hey, you can't do
6 this, you are going to get in a lot of trouble for doing
7 this. So when we see people reoffend after they have been
8 caught and punished, that is significant.

9 So, Mr. Wilder's disciplinary infractions in the
10 prison are related to exposing himself and masturbating to
11 female staff. I believe soliciting a staff member. But
12 primarily related to targeting female staff. This
13 promontory behavior was continued on to the detention center
14 as well. And so he sexually recidivated, he reoffended
15 sexually while in this really controlled environment.

16 And after doing it several times and getting a lot
17 of his privileges taken away from him, he repeatedly -- or
18 he did it several times. He couldn't stop himself because
19 he didn't want to stop himself because he has trouble
20 following the rules. So that was significant to me that he
21 was acting out sexually within the prison when he was there
22 serving a sentence for criminal sexual conduct.

23 Q. Okay. And is -- why is that relevant to your
24 question whether his ability to control himself is present,
25 absent, or somewhere in between? So, why is it important?

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1 A. Well, part of what I'm looking for in this
2 evaluation is like does he have -- can he control himself,
3 does he have volitional control over his sexual behavior.

4 Q. And would those sexual offenses in prison suggest
5 he does not?

6 A. Correct. It suggests that he cannot control that
7 behavior.

8 Q. Cannot, or will not, or both?

9 A. I think, based on the sheer number, it would be my
10 opinion that he can't. But also that he doesn't want to.

11 Q. Now while Mr. Wilder was in SCDC, did he
12 participate in any sort of prison programs, such as sex
13 offender treatment, alcohol or drug treatment, pyros, any of
14 the programs that are available to individuals to begin
15 rehabilitating themselves and make themselves ready to
16 re-enter society?

17 A. Yes, it looks like he was referred, and maybe was
18 on a special unit for individuals with substance or alcohol
19 use disorders. He did some substance abuse treatment while
20 in SCDC.

21 Q. Okay. And to the best of your knowledge, was he
22 offered sex offender treatment?

23 A. I have no record that he took sex offender
24 treatment. He said that he didn't. But whether or not he
25 was offered, I believe that he told me that he wasn't

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1 offered, but I don't have a record stating whether or not he
2 was actually offered the treatment.

3 Q. Okay. And did you ask him whether he thinks that
4 he needs sex offender treatment?

5 A. I did ask him.

6 Q. What was his response?

7 A. He does not need treatment.

8 Q. That is what he believes?

9 A. Correct.

10 Q. Now, based on the available documentary
11 information, your interviews over three separate dates with
12 Mr. Wilder, as well as additional testing that you did,
13 which we will get into in a minute, did you come to any
14 conclusions about whether mister -- we have already
15 discussed that you diagnosed him with antisocial. Did you
16 come to any conclusions about whether he has any other
17 mental abnormalities, in addition to the antisocial
18 personality disorder?

19 A. Yes.

20 Q. And what were those?

21 A. I diagnosed him with antisocial personality
22 disorder. It is my opinion that he has psychopathic
23 personality disorder. And I also diagnosed an alcohol use
24 disorder and a cocaine use disorder in remission, in a
25 controlled environment. Because he doesn't have access to

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1 that, so he hasn't exhibited those symptoms. The criteria
2 is at least a year, but it's been longer than a year. But
3 those have historically been a problem for him.

4 Q. Now is antisocial personality disorder listed in
5 the DSM V?

6 A. Yes.

7 Q. What is the DSM V first?

8 A. So, the DSM V is the diagnostic statistical
9 manual. We are on the fifth edition. And we are on the
10 text revision of that edition. So it is published by the
11 American Psychiatric Association. This version was
12 published in 2022, but it's been around for a really long
13 time. It is the manual, the guide that we use to diagnose
14 mental illnesses. So all mental illnesses or psychiatric
15 disorders are listed in the DSM. And then it lists all of
16 the criteria and information necessary for a psychologist or
17 psychiatrist, anybody who has a license to diagnose mental
18 illnesses, they base it off of the criterion and the
19 diagnoses listed in the DSM V.

20 Q. Okay. And antisocial personality disorder is in
21 the DSM, right?

22 A. Yes.

23 Q. And do you have yours with you?

24 A. I do.

25 Q. Can you open it up and is tell the jury what

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1 diagnosis the diagnostic criteria are?

2 A. Okay. Well, first, can I just tell them what the
3 diagnostic features are and then the --

4 Q. Yes, go ahead.

5 A. So it says -- I'm on Page 748 of the DSM. The
6 essential feature of antisocial personality disorder is a
7 pervasive pattern of disregard for and violation of the
8 rights of others that begin in childhood or early
9 adolescence and continue into adulthood. So the diagnostic
10 criteria are that you have to have three or more of the
11 following symptoms. So, failure to conform to social norms,
12 with respect to lawful behaviors as indicated by repeatedly
13 performing acts that are grounds for arrest -- grounds for
14 arrest. So violating the rules of society. Doing things
15 that you could be arrested for, not necessarily that you
16 were arrested for. Deceitfulness as indicated by repeated
17 lying, use of aliases or fake names, or conning others for
18 personal profit or pleasure, impulsivity or failure to plan
19 ahead, irritability and aggressiveness, as indicated by
20 repeated physical fights or assaults, reckless disregard for
21 safety of self or others, consistent irresponsibility as
22 indicated by repeated failure to sustain consistent work
23 behavior, or honor financial obligations, and lack of
24 remorse as indicated by being indifferent to or
25 rationalizing having hurt, mistreated, or stolen from

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1 another.

2 Q. And is there also the juvenile conduct disorder
3 requirement?

4 A. Yes. So you have to have at least three of those
5 symptoms. And the individual is at least 18 years old when
6 you diagnose him. There is evidence of conduct disorder
7 with onset before age 15 years old.

8 Q. And those criteria that you have to have at least
9 three of, how many of those did you observe in Mr. Wilder?

10 A. Multiple. Let's see. I thought that he had a
11 failure to conform to social norms, as evidenced by numerous
12 arrests and disciplinary infractions. He engaged in
13 pathological lying, he is impulsive, he is irritable and
14 aggressive within custodial and community settings. He has
15 consistent irresponsibility, and a profound lack of remorse.

16 Q. Now, can you talk about that profound lack of
17 remorse? Like why was that so significant to your
18 investigation?

19 A. I don't know that it's necessarily more
20 significant than some of the other symptoms that I'm
21 exploring, but as I'll discuss when we talk about
22 psychopathic personality disorder, the level of callousness
23 and lack of concern for other people, and lack of remorse
24 for his own action was really notable I'll say. He, in
25 talking about some of his other crimes, so some of his

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1 criminal domestic violent offenses, talking about
2 disciplinary infractions within the institution, talking
3 about other criminal behaviors such as selling drugs, his
4 criminal sexual conduct, he really demonstrated a lack of
5 empathy for other people, remorse for anything that he had
6 done wrong. And really when he did express anything, kind
7 of related to that, it was in terms of how he had been
8 wronged or the affect that it had on his life.

9 Q. So no empathy for his victims, and no remorse for
10 his behavior. Why is that significant in his likelihood to
11 sexually abuse, not just beat somebody up?

12 A. Well we know that individuals with psychopathic
13 personality disorder, when they commit sexual offenses they
14 tend to be like more aggressive and more violent, like
15 opportunistic, impulsive. And individuals who are high on
16 psychopathy are at greater risks to reoffend than those that
17 are not high on psychopathy.

18 Q. We have been skirting around the psychopathy
19 question. You also diagnosed Mr. Wilder with psychopathic
20 personality disorder, correct?

21 A. Yes.

22 Q. And is that formally listed in the DSM at this
23 time?

24 A. No. Well, psychopathy was in DSM versions I and
25 II. And then for DSM III, they removed psychopathy and kind

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1 of replaced it with antisocial personality disorder. But
2 there's an issues with that because they are not the same
3 thing. Only about one-third of people who have antisocial
4 personality disorder would meet for psychopathic personality
5 disorder. So while a lot of people who have psychopathic
6 would meet for antisocial personality disorder, the reverse
7 is not true.

8 The reason they took it out of the DSM is they
9 thought that it could be a really stigmatizing label. And
10 it certainly could be. And then they worried about
11 clinicians in a clinical or treatment setting, their ability
12 to assess for, like, the callousness associated with
13 psychopathy. They had concerns that that would be difficult
14 for someone to assess, and that is why they replaced it with
15 antisocial personality disorder.

16 But there is a wealth of literature and research
17 studies on psychopathy, people dedicate their entire lives
18 to studying it, and they are distinct constructs.

19 Q. Okay. And you talk a little bit about the
20 presentation of someone with this particular disorder and
21 the diagnostic criteria and whether there are any tests
22 which you performed that specifically assess for these
23 traits and behaviors?

24 A. Yes. So, psychopathy is a disorder. So it is how
25 you interact with your environment and the world. How you

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1 interact with other people. How you view yourself.
2 Individuals who are high on psychopathy can be like really
3 superficially charming and grandiose, so like think really,
4 really highly of themselves. They might be pathologically
5 lying, impulsive, irresponsible, engage in promiscuous
6 sexual behavior, has many short term marital like
7 relationships, really serious romantic relationships but
8 lots of them.

9 They have a parasitic lifestyle, so they like use
10 other people for things that they need from them, often
11 financially. Criminal versatility, so they have lots of
12 different crime types or crime classifications, like driving
13 offenses, assault offenses. They would all go in different
14 categories. So those are some of the traits of psychopathy.
15 In order to assess psychopathy I use the Hare psychopathy
16 checklists revised, the PCLR. That is the gold standard,
17 both in sexually violent and predator evaluations and in the
18 field in general of looking at psychopathy in a person -- in
19 an individual.

20 Q. Okay. And Mr. Wilder, how did he score on the
21 PCLR?

22 A. He scored above the clinical cut-off to identify
23 somebody who has psychopathic personality disorder.

24 Q. Okay. And specifically, there are several factors
25 and facets to it. Can you tell the jury the percentile rank

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1 he fell into in each one of those? And just maybe a brief
2 explanation of what each facet is.

3 A. Yes, let me find that.

4 All right. So first you look at the total score.
5 So you are scoring the individual on 20 items or symptoms of
6 psychopathy. And you score it either at a zero, which means
7 that symptoms not present. A one, that is like sometimes
8 present, partially present. Or a two, that, yes, the
9 symptoms are present. So the total score is the first thing
10 that you look at. And Mr. Wilder's score, I compared his
11 score to studies -- well, this is what is in the manual to
12 score the measure, but they are using a comparison group
13 from studies of North American offenders, so you are looking
14 at his score in relation to individuals who were studied
15 when they were in prison. And his total score was greater
16 than 91.2 percent of a prison population. So that means
17 only 8.8 percent of that normative or comparison group data,
18 which is based on large studies scored higher than Mr.
19 Wilder did.

20 Q. And is that typical; do you often see that in SVP
21 evaluations?

22 A. No. It is atypical. I think out of the 60 that I
23 have done, I think two, maybe three, people total scored
24 above the clinical cut-off. So certainly I have evaluated
25 people who had certain traits, but they didn't meet like the

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1 cut-off to say this person has psychopathic personality
2 disorder.

3 Q. So that is what the PCLR tests for, and it came
4 back that his potential for these behaviors is greater than
5 98 percent of prison population?

6 A. Right. Not his potential for these behaviors, but
7 the fact that he has these behaviors. So in order to score
8 the PCLR, you are using your clinical interviews. You are
9 asking them specific questions to rank items. You can't
10 score a PCLR without collateral information. So you would
11 have to have an official criminal history report. There are
12 certain things that you need to have. You can't just go off
13 of what somebody says when you are scoring a measure like
14 this. So this is not like, is he going to act like this.
15 It is, yes, he has a history of exhibiting all of these
16 traits.

17 Q. All right, thank you. So, in addition to the
18 PCLR, you performed multiple additional scored measures as
19 well as individual testing on Mr. Wilder, whether it be
20 computer-based or paper-based. Can you discuss that with
21 the jury, please?

22 A. Yes. So I administer a battery of psychological
23 measures, because I'm looking at the full spectrum of
24 psychiatric disorders. So I give the MMPI, the Minnesota
25 Multiphasic Personality Inventories, version III. That is

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1 looking at the personality functioning. It is looking at
2 psychopathology, so symptoms of a mental illness.

3 I give a substance use measure. So their self
4 report of their history with substance use and alcohol use.

5 I give the personality assessment inventory.
6 Again, looking at similar things as the MMPI, but it also
7 can identify some strengths, which is why I like to use both
8 of them.

9 And then I also administer the MIDSA, which is the
10 Multidimensional Inventory of Development Sex and
11 Aggression.

12 Q. And is the MIDSA specifically designed to assess
13 sex offenses?

14 A. Yes, individuals who have been charged with or are
15 convicted of sexual offenses.

16 Q. Okay. And why do you do all of these tests?

17 A. Multiple data points. So you never want to base
18 your clinical opinion on just one piece of data, that would
19 not be appropriate. So I want to get as much data as I can
20 get. And whether that data corroborates or supports other
21 data I have, or it conflicts with it, that is important to
22 do a comprehensive assessment of this person.

23 I also want to do a multi-method assessment. So
24 even though I'm going to ask him questions about his sexual
25 functioning and sexual history, research suggests not just

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1 for sexual behavior, but for things like suicide and
2 headaches and all kinds of things, sometimes people are more
3 forthcoming when you just ask them. Sometimes persons are
4 more comfortable when they are sitting in a room by
5 themselves answering the answers on a computer. So I might
6 ask them the same question multiple ways to really get those
7 data. They are important to my overall opinions.

8 Q. Okay. Because you do a global assessment?

9 A. Yes.

10 Q. You are not just looking at any one date point or
11 any one measure, or statistics alone, or interview alone,
12 that would be professionally inappropriate; correct?

13 A. Correct. So I like to start really, really broad
14 and wide. There is a lot of different reasons why someone
15 may be engaging in illegal or inappropriate sexual behavior
16 and I don't want to just go in assuming, oh, it must be
17 this, and then only test for that. I want to rule out the
18 other things. So I start as wide as possible to help me
19 kind of narrow down that net.

20 Q. Okay. So what did the PAI and the MMPI III, which
21 are the personality testing measures that you used, what did
22 those indicate about Mr. Wilder?

23 A. On those I was a little bit surprised. It seemed
24 like Mr. Wilder was pretty forthcoming, so all of the tests
25 that I give have validity measures, so they look to see how

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1 valid it looks like that administration is. So, are they --
2 does it look like they are exaggerating or crying for help,
3 does it look like they are being defensive, unwilling to
4 paint themselves in a negative light. And we usually see
5 underreporting in these kinds of evaluations on the
6 measures, so that is why I was surprised, because that would
7 be like a normal finding. But there really was not
8 significant evidence that he was underreporting.

9 On the MMPI, he reported significant externalizing
10 or acting out behaviors. He acknowledged that he had
11 engaged in behaviors that had gotten him in trouble across
12 his lifetime from juvenile to adulthood. He endorsed
13 juvenile conduct problems. And then his responses suggested
14 that he was reporting like just a generalized sense of
15 physical wellbeing. And then no other clinical scales,
16 nothing else was elevated or significant. That was the
17 MMPI.

18 And then on the PAI he reported some problematic
19 alcohol use that had caused consequences, negative
20 consequences for him. Based on his responses to the PAI,
21 there's indication that he might have like little ability to
22 recognize his own personal limitations, and such that to the
23 point that he might not be able to think clearly about what
24 he's capable of. So maybe this like inflated sense of what
25 he's able to do. Other people likely view him as being

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1 really self-centered, narcissistic. He probably prefers
2 relationships where he can exert some measure of control
3 over that relationship. And those were the significant
4 findings from that measure.

5 Q. Okay. And why are those findings in particular
6 significant to sexually recidivation potential?

7 A. So those are personality characteristics related
8 to antisocial, related to psychopathic personality
9 disorders. So they are more data points supporting that
10 diagnosis. And we know that individuals with psychopathic
11 personality disorder are more likely to reoffend than
12 somebody who doesn't have or is lower on psychopathic
13 personality disorder and also with the antisocial.

14 Q. Okay. Now you also did a substance abuse
15 assessment, correct?

16 A. Correct.

17 Q. It is called the SASSI?

18 A. Correct.

19 Q. Can you tell them what the acronym actually means
20 for the SASSI?

21 A. Yes. The SASSI the Substance Abuse Subtle
22 Screening Inventory, edition III, or the third one.

23 Q. What are the results of that?

24 A. These results suggested a high probability that he
25 has or has had a substance use disorder. That could be

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1 alcohol or that could be drugs. It doesn't tell you if that
2 is, like he currently has it or he has had it in the past.
3 But it is just kind of looking at the probability. And the
4 results suggested a high probability that he, at some point,
5 has had problems with substances or alcohol.

6 Q. And that would be consistent with his statements
7 across both interviews, right?

8 A. Across my interview, yes.

9 Q. Now you also performed MDSA?

10 A. Yes.

11 Q. Can you tell the jury what that assesses for and
12 what your results were?

13 A. Yes, so that is a sexual history questionnaire, so
14 it is going to ask the question about general sexual
15 behavior, consensual sexual behavior, and then also
16 offending behaviors. It has a couple validity scales. So
17 looking at how valid the administration was. And he scored
18 pretty high on the validity scales. So on the positive
19 image scale, he scored in the 82nd percentile compared to
20 other individuals who are currently incarcerated for sexual
21 offenses. So people who score high on a positive image
22 scale may be inclined to like exaggerate their positive
23 traits.

24 He also scored in the 99th percentile on the
25 negative emotions denial scale. So people who have high

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1 scores on that scale often are not admitting that they have
2 like undesirable or negative reactions to things that people
3 would typically have a negative reaction to. And then he
4 also scored in 99th percentile on the sexual lying scale.
5 And high scores on the sexual lie scale indicates that the
6 examinee is denying engaging in sexual behaviors and having
7 sexual thoughts. So that was the first notable thing.

8 So the fact that all three of those validity
9 scales were so significantly elevated, that leads me to
10 caution the interpretation of other results, because they
11 might not be an accurate representation of what he or how he
12 would answer if he wasn't trying to paint himself in a
13 positive light and deny sexual behavior.

14 Q. So based on those results, did you conclude that
15 he had some behaviors consistent with depression management?

16 A. Yes, on the MIDSA, he did have some depression
17 management.

18 Q. Okay. And how is that relevant to your inquiry?

19 A. It is not unusual for people to engage in positive
20 depression management. So when they are undergoing an
21 evaluation, for somebody to render an opinion if they are a
22 sexually violent predator, it is not only expected that they
23 are going to want to deny negative things about themselves
24 and kind of try to paint themselves as positively as
25 possible.

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1 Q. Okay. So not unexpected, but it just goes to show
2 that Mr. Wilder was not being as forthcoming as possibly you
3 would have liked?

4 A. That is what the test results suggest. But there
5 were some I thought interesting findings despite the
6 validity issues. His scores and results indicated some
7 evidence of sexual preoccupation, callousness, lack of
8 guilt, lifestyle impulsiveness. Resistance to rules,
9 supervision for both like juvenile delinquency problems and
10 adult conduct problems. And that was all that I noted.
11 There were no other elevations.

12 Q. Okay. Now you also, you did the clinician scored
13 testing, correct?

14 A. Yes.

15 Q. And which were those two tests?

16 A. I did the PCLR, so the psychopathy checklist
17 revised. I did the Static-99R, the Static-2002R, and the
18 SVR-20.

19 Q. Okay. Now you also did a physiological measure of
20 male sexual arousal, correct?

21 A. Yes, I did.

22 Q. And what is that called?

23 A. Penile plethysmography or PPG.

24 Q. Okay. And that didn't give you any data which you
25 were able to use, correct?

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1 A. Yes, that is correct. So that is a physiological
2 measure of male sexual arousal where we are seeing what they
3 sexually respond to in the lab. And essentially he
4 flat-lined, so he didn't show arousal to anything, not
5 consenting adults engaging in sexual behavior and not rape
6 or anything abusive. So that -- it is not interpretable
7 because he had a flat line, so we don't do anything with
8 that data.

9 Q. So you didn't consider it, or it didn't factor
10 into your ultimate conclusions?

11 A. No.

12 Q. Okay. Now, let's discuss the Statics. Can you
13 tell the jury what they are, and what they look for, and how
14 they are scored? And then, ultimately, what you scored Mr.
15 Wilder on?

16 A. Yes. So the Static family of instruments, they
17 are what is called actuarial risk assessment measures. And
18 so we are looking at large studies of men who had a sexual
19 offense and then had -- some of them had at least one
20 detected sexual re-offense, so they went on to reoffend
21 sexually. And some of them didn't have any detected sexual
22 offenses, re-offenses. And so the studies are looking at
23 what makes those two groups different.

24 And so then it is identifying risk factors that
25 put them more likely to be in the reoffending group than in

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1 the non-reoffending group. And these measures don't tell you
2 anything about the person sitting in front of you. They are
3 only comparing the number of risk factors we think that that
4 person had with the normative sample.

5 So an example that I like to use is life
6 insurance. So you know a life insurance company doesn't
7 know exactly when you are going to die, but they are going
8 to look at risk factors for early death when they are going
9 to try to figure out how much they are going to charge you
10 for the premium. So they are going to send you to get a
11 physical. Do you have high blood pressure? Do you have
12 other medical conditions that are associated with heart
13 attacks? Do you smoke? What is your driving history like?
14 What is your age? What is your gender? We know that women
15 live approximately five years longer than men.

16 So they are going to take all of that information
17 and they are going to come up with a premium price for you
18 based on the risk factors that you have for an early death.
19 So they don't know when you are going to die, but they are
20 going to charge you more if you have more risk factors. So,
21 essentially the Static instruments, that is exactly what
22 they are doing.

23 They are not telling you anything about the person
24 in front of you, just how many risk factors that have been
25 shown in the literature to be more prevalent in people who

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1 reoffended, how many of those risk factors does this person
2 have.

3 Q. Okay. And are these two measures used in most, if
4 not almost all, sexual offender evaluations, and
5 specifically SVP?

6 A. I would say the vast majority, if not all
7 individuals who do SVP evaluations use the Static-99R.

8 Q. Okay. And what were the scores that you assigned
9 or were able to come to regarding Mr. Wilder?

10 A. So I scored him in two measures, the Static-99R
11 and the Static-2002R. And he had a score of five on both of
12 those. So you are going to score and then you have got some
13 percentiles. You have got a risk description, so for both
14 of those fives that he had on both of those measures, that
15 places him in the above average risk for committing another
16 sexual offense.

17 Q. Okay. And what percentage of individuals who go
18 on to reoffend would be encompassed by those scores? What
19 percent would you give, 5 percent, 20 percent, 50 percent,
20 what is it?

21 A. So the way that they developed this measure is
22 they look at other individuals who had a five. So let's say
23 250 -- I am making this number up -- but let's say 250
24 people in the normative sample also had a five. They are
25 looking at what percentage of that 250 went on to reoffend

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1 with a detected sexual offense. And then they are using
2 statistics, they are using the impression, and they are
3 basically doing a statistical model to look and see how they
4 can basically capture that number, so what it looks like the
5 risk percentage would be. So this is done mathematically
6 based on samples of individuals who went on to reoffend.

7 And then, so they will give you those numbers for
8 five years from now, ten years from now, and then they
9 estimate the 20 year percentage. So in the normative
10 sample, individuals with a score of five, over five years
11 the recidivism rate was 12.2 percent of 15.6 percent,
12 thinking of like the score for error, so the confidence
13 interval. After ten years they had a recidivism rate
14 between 16.4 percent and 21.5 percent. And then the 20 year
15 estimated rate was approximately 23.4 percent.

16 Q. Okay. And so you said something specific, that
17 they take only detected offenses into account. So, what do
18 we know about the frequency of sexual offenses being
19 reported?

20 A. We know that sex offenses are amongst the least
21 likely of all crime types to ever be reported to
22 authorities. There's a lot of different reasons for why
23 they are not reported, but we know that the literature
24 suggests only about 30 percent of all sexual offenses are
25 actually reported to the police. And so we don't know the

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1 number of people in these comparison groups that actually
2 had reoffended sexually that were not detected so they put
3 them in the wrong pile thinking that they were
4 non-reoffending people.

5 Q. Okay. And so in the context of sexually violent
6 predator evaluation, just this actuarial portion, could that
7 lack of taking into account undetected or unconvicted
8 offenses, could that be a potential underestimation of risk?

9 A. Certainly. I mean it can be -- it can
10 underestimate a couple of different places. Mainly when
11 they are doing these studies when they are establishing
12 percentages and these estimates for predicting recidivism,
13 if a lot of people who actually did have a sexual re-offense
14 but they weren't detected, that is going to skew all of your
15 numbers. So, yes, there could be problems with undetected
16 or under-, yes.

17 Q. And professionally, would it be appropriate for an
18 evaluator to rely almost solely on these actuarial measures
19 and risk assessments?

20 A. In my opinion it is not appropriate.

21 Q. Okay. And so we have already gone over the PCLR.
22 Talk to me about the SVR-20. What does it look for? What
23 is this assessment looking for?

24 A. So the Sexual Violent Risk assessment 20, version
25 II, or the SVR-20 is looking at dynamic risk factors. So

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1 the STABLE -- or, I am sorry, the Static-99R that we just
2 talked about, that is looking at what is called static runs,
3 and then the SVR is looking at dynamic.

4 So static risk factors are things that you cannot
5 change. I cannot give you treatment to change them. So age
6 is something that we look at. So we know you are always
7 going to get older, but there is no treatment that I can
8 give you to make you chronologically a victim. The presence
9 of a male victim, we know that that gets you an extra point
10 on the Static because that is what the normative sample
11 shows, if they had male victims they reoffended more often.
12 There is no treatment that I can give you to make you not
13 have a male victim in your history. So those are static
14 factors.

15 The dynamic factors are things that are treatable.
16 So they might be really hard to treat, so things like
17 substance use, paraphilic arousal, so like sexual arousal to
18 children, really tough to treat, but treatable. There can
19 be treatment targets. And so the SVR-20 is a structured way
20 to look at the dynamic risk factors identified in the
21 literature where they studied thousands of men who went on
22 to reoffend and who didn't. And these were the risk factors
23 that they had that could be treatment targets.

24 Q. And in Mr. Wilder's case -- and the SVR-20 is
25 clinician scored, and it is a guided method, correct?

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1 A. Yes.

2 Q. It is not just, Oh, I think this person has this.
3 You actually have to go based on the data in front of you;
4 is that correct?

5 A. Correct. So people look at dynamic risk factors a
6 lot of different ways. You can use a more formalized, like
7 let me add up some numbers. Sometimes people use an
8 article, there is meta analysis where they take the results
9 of lots of studies and combine them statistically. And
10 since they are familiar with those risk factors, they are
11 going to think about those.

12 But I use what is called SPJ, so it is Structural
13 Professional Judgment is the -- a way they make a risk
14 assessment measure. So it is going to take you through the
15 risk factors that are empirically supported, which means
16 they have studies behind them showing that they were present
17 in people who reoffended. And it is going to give me a
18 structured way to think through this risk, than just trying
19 to remember what those risk factors are. But it really is
20 no different than just consulting the literature. This is
21 giving me a place where I have them all listed and helping
22 me really think through it so I am not missing anything, so
23 I am not seeing something as making them more risky when it
24 actually doesn't.

25 Q. Okay. So it is essentially to keep you on track

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1 and focusing on the correct things in terms of assessing
2 dynamic risk factors?

3 A. Yes.

4 Q. Okay. Now with respect to Mr. Wilder in
5 particular, was there anything notable about the SVR-20?

6 A. Yes. So, the SVR-20, when it is looking at
7 dynamic risk factors, it splits them into three domains. So
8 psychosocial adjustment risk factors, sexual offending risk
9 factors, and future plan risk factors. So for Mr. Wilder I
10 noted under psychosocial adjustment risk factors, he had had
11 problems with antisocial and psychopathic personality
12 disorders -- which is a risk factor for reoffending --
13 substance use problems, non-sexual offending, possible
14 problems with suicidal and homicidal ideations, relationship
15 problems, and employment problems.

16 For the sexual offending risk factors, I noted
17 that Mr. Wilder had a history of problems with physical harm
18 in sexual offending, psychological coercion in sexual
19 offending, extreme manipulation/denial in sexual offending,
20 and attitudes that support or condone sexual offending, and
21 possible problems with diverse sexual offending. And I
22 noted that he had the criminal sexual conduct event, as well
23 as these exhibitionism ones.

24 And then for the future plan risk factors, I noted
25 that Mr. Wilder has a negative attitude towards supervision,

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1 possible problems with lacking future realistic plans, as
2 well as negative attitudes towards intervention. And then
3 when I took all of those risk factors into account, the
4 summary risk rating was rated as being high. So he has a
5 high number of dynamic risk factors associated with sexual
6 reoffending.

7 I thought that he was moderate to high risk for
8 risk for serious physical harm based on the harm caused
9 during the criminal sexual conduct, as well as his
10 non-sexual violent offenses related to assault and battery
11 of a high and aggravated nature, criminal domestic violence.
12 And I thought that he needed a high level of care and
13 immediate intervention because of all of the risk factors
14 that he possesses.

15 Q. Okay. And, in fact, your report suggests that
16 there was an immediate need for intervention if he were to
17 be released from incarceration, correct?

18 A. Correct.

19 Q. Okay. And can you discuss a little bit about
20 that, that individuals with his particularized profile have
21 a considerable number of criminogenic needs, and discuss
22 that with the jury?

23 A. Yes. So when we think about different risk
24 levels, we are often thinking about resources. So that is
25 important, so I'm not like saying, well, Mr. Wilder needs

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1 this treatment. That is not what anyone is asking me to do.
2 When you are thinking about levels of risk, you are thinking
3 about the amount of resources that people have and whether
4 or not I am in charge of those resources. But we know that
5 the higher risk that you have, you need more of those
6 resources.

7 Somebody who is at low risk probably doesn't need
8 weekly treatments, or intensive inpatient treatments. They
9 can be managed in the community because they have a lower
10 risk and we have -- we don't have unlimited resources. So
11 that is kind of how we quantified the level of intensity of
12 treatment somebody needs. And because Mr. Wilder has a high
13 level of risk factors, he is at above average risk to
14 sexually reoffend. And he has personality disorders that
15 predispose him to commit acts of sexual violence. All of
16 that taken together, he needs an intensive level of
17 treatments.

18 Q. Okay. And is it your opinion that an inpatient
19 setting for whatever treatment is offered to him would be
20 most appropriate in terms of his safety and safety of the
21 community?

22 A. I guess I could opine on that. But that is really
23 no one -- like that is not what people are asking me. So I
24 do this kind of evaluation, does he have a mental
25 abnormality or personality disorder that predisposes him to

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1 acts of sexual violence that makes him more probably than
2 not to do it again. And something about being a menace to
3 the health and safety of other people.

4 So we don't have any outpatient programs that I
5 know of that would give that intense level of care. But I
6 believe that he checks all of those boxes, and the only
7 option is the inpatient treatment which I believe that he
8 needs because I think that he is at a high risk to reoffend.

9 Q. And you believe he meets criteria as a sexually
10 violent predator?

11 A. Yes.

12 Q. Okay. Now, what are protective factors?

13 A. Protective factors, they are a newer thing in the
14 literature. So there's some difference of opinion. So the
15 way that I think about protective factors are things that
16 mitigate or like decrease your risk. So examples of
17 mitigating factors are old age. So we know that individuals
18 like under the age of 40, different age levels are at higher
19 risk. So when you get over the age of 60 and then beyond,
20 that decreases your risk. That is going to mitigate your
21 risks, because we know that they tend to be younger.

22 Having a significant medical illness, so you look
23 really high risk, but I also know that you can't breath
24 anymore or you are, you know, attached to a machine, that is
25 going to mitigate your risk. Treatment, so engaging in

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1 treatment, that can mitigate your risk. So those are some
2 examples of either factors than can mitigate your risk, or
3 sometimes they are called protective factors.

4 Q. And how old is Mr. Wilder, just remind me?

5 A. He is 37.

6 Q. So he is under 40?

7 A. Correct.

8 Q. And does he have any protective factors, such as a
9 medical illness or having had treatment in the past that
10 would suggest that he has -- his risk is lower than it would
11 actually appear?

12 A. No.

13 Q. Okay. Now did you talk to Mr. Wilder about his
14 future plans?

15 A. I did.

16 Q. And what did he indicate to you?

17 A. They changed a little bit. I think his plan is to
18 go live with his mother. He wants to -- he said for a
19 little bit. He didn't really say how long that is. He
20 wants to figure out with supervision, he wants to get it
21 transferred to Greenville. But then he also says that he
22 wants to go back to Alabama. He didn't really say when.
23 So, yeah, that is basically what he told me.

24 Q. All right. Did he express any plans to prevent
25 himself from committing future acts of sexual violence or

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1 indecent exposure?

2 A. No. So Mr. Wilder didn't admit to the offenses,
3 so even though he plead guilty and told the Judge, yes, that
4 is what I did, he said that he was at the wrong place, wrong
5 time. He didn't admit to committing the offenses, so
6 therefore he wasn't able to identify strategies that was
7 going to keep him and other people safe, what he would do in
8 high-risk situations, how he could mitigate his risk, his
9 own insight into his need for treatment, all of those
10 things. Because he wasn't able or willing to discuss it, he
11 had no insight into his need for treatment and how he can,
12 like, keep himself safe.

13 Q. Okay. So would you say that his plan for once he
14 is released is adequate to prevent him from reoffending or
15 not?

16 A. No, I think that he is going to go back into the
17 same or similar environment probably as when he committed
18 this offense in 2014. All of the dynamic risk factors that
19 I identified are still present. So he's still dealing with
20 what caused him to offend in the first place. None of those
21 factors have been treated because he hasn't received
22 treatment for sexual behavior or for the personality
23 pathology or problems that he has. So all of that is still
24 there. So I don't think that he has realistic plans to
25 avoid acts -- future acts of sexual violence.

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1 Q. Okay. And you have already went into this a
2 little bit, but how does the psychopathic disorder
3 exacerbate the antisocial personality disorder; how does
4 that relate to his likelihood to sexually reoffend?

5 A. Yeah, so -- I mean, the way that I conceptualize
6 it is that when you look at the risk measures, Mr. Wilder is
7 at above average risk to reoffend. His dynamic risk
8 factors, which I mentioned that are present now, that are
9 exactly the same that were present at the time of the
10 offense. His antisocial personality disorder -- only a
11 minority of people with antisocial personality disorder
12 commit sexual offenses. They commit offenses, but not
13 sexual offenses. And most individuals who commit sex
14 offenses, even those who have antisocial personality
15 disorder don't sexually reoffend.

16 So Mr. Wilder already has sexually reoffended with
17 the exhibitionism. He engaged in targeting behaviors within
18 the prison. That really highlights that they were caused by
19 the personality problems that he has. So I think that it is
20 both of his kinds of sexual offenses are related to his
21 personality. And that his antisocial and psychopathic
22 personality disorder predispose him to commit acts of sexual
23 violence.

24 He doesn't have remorse. He is really callous.
25 He engaged, in my opinion, in the criminal sexual conduct

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1 because he wanted to have sex and she rejected him. He was
2 angry. He was getting revenge. And his needs were -- his
3 sexual needs, or his needs in general were more important
4 than the need of safety and wishes of the victim.

5 So the personality disorders that he has is what
6 caused him to sexually offend. They are what caused him to
7 continue to sexually offend within these really controlled
8 environments, despite numerous times of being punished. And
9 at the detention center. We know that individuals who are
10 high on psychopathy and commit sex offenses are more likely
11 to reoffend than individuals who are not high on
12 psychopathy. We know that they have a history of violence
13 instrumental -- they are opportunistic. And I believe that
14 all of those things describe Mr. Wilder.

15 Q. Okay. And do you believe that these engrained
16 personality pathology affects his volitional control,
17 meaning his ability, not just his willingness, but his
18 actual ability to control himself to not sexually reoffend,
19 or reoffend in general?

20 A. Yes, I don't think that Mr. Wilder has the ability
21 to stop himself based on his institution behavior.

22 Q. Okay. And do you believe that his propensity to
23 commit future sexual offenses is to such a degree that it
24 poses a menace to the health and safety to the public at
25 large?

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1 A. Yes.

2 Q. And do you believe that, given that menace, that
3 if he's not committed to a secure facility for long term
4 control, care, and treatment, that he is more likely than
5 not to sexually reoffend?

6 A. Yes, I think that he is more probably than not
7 going to sexually reoffend. I think that he gets what he
8 wants, he does what he wants, he doesn't follow the rules,
9 he can't follow the rules. I think that the next person
10 that says no to him, I think that that -- that the data
11 would suggest that that is going to be a bad situation.

12 Q. Okay. Now, in reviewing Dr. Gillen's report, you
13 noted that he did the Static-99; correct?

14 A. Yes.

15 Q. Did he perform any other measures of risk other
16 than the 99?

17 A. He did the VRS-SO.

18 Q. What is that?

19 A. I am not -- I will have to look at his report as
20 to what that stands for. But he did another risk assessment
21 measure.

22 Q. Okay. And -- but he didn't do the Hare? He
23 didn't do the psychopathy, the PCLR?

24 A. He did not.

25 Q. He did not do the MMPI?

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1 A. No.

2 Q. The MDSA?

3 A. No.

4 Q. The SVR-20?

5 A. No.

6 Q. The PPG?

7 A. No.

8 Q. PAI?

9 A. No.

10 Q. I may have missed another one. He didn't do any
11 of that additional testing, did he?

12 A. Correct. He did just the Static-99R and the
13 VRS-SO, I believe.

14 Q. And different evaluators use different measures,
15 correct?

16 A. Yes.

17 Q. Okay. And, in general, that would not be an
18 inappropriate way to conduct an evaluation, would it?

19 A. No.

20 Q. But what is the net results? Does he have more
21 information, less information, or the same amount of
22 information as you do?

23 A. I would say that he has less information, based on
24 the amount of measures and data that I collected. I would
25 also say there is different information based on the huge

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1 discrepancies between what Mr. Wilder told me during my
2 clinical interview and what he told Dr. Gillen. So
3 different information and less, I would say.

4 Q. So the combination of that additional data, even
5 though you agree on the initial personality diagnosis, that
6 led you to conclude that his risk is unacceptably high and
7 that he is more likely to reoffend than not?

8 A. Yes. I mean, he is more probably than not,
9 because he already has reoffended sexually. It wasn't a
10 violent sexual offense, but I think that the combination of
11 his history of sexually violent offenses and nonsexual
12 violent offenses, and then predatory nonviolent sexual
13 offenses makes him more probable than not to sexually
14 violently reoffend.

15 Q. Okay. And are the use of the record review, the
16 testing you used, and the clinical interviews, as well as
17 the physiological measures, are those all accepted in your
18 field as standard and desirable protocols for conducting
19 these evaluations?

20 A. Yes.

21 Q. Okay. And did you draw all of your conclusions
22 regarding Mr. Wilder's current functioning and risk to a
23 reasonable degree of psychological certainty?

24 A. I did.

25 MS. SHAW: Thank you, Doctor. Please answer

1 any questions that Mr. Thompson has.

3 THE COURT: Yes.

6 THE COURT: All right. Ladies and gentlemen,
7 I have been conferring with the attorneys, we are
8 through with the direct examination of Dr. Gottfried.
9 Mr. Thompson has cross examination, which is going to
10 be somewhat lengthy and it is after 4:30. I don't like
11 keeping juries after 5:00 if I can avoid it. I know
12 that y'all have lives that you have to get back to, and
13 you have children to get supper for. So we are just
14 going to break for the day. We will start back at 9:00
15 in the morning.

20 I hope everyone has a good evening. And we
21 will see you at 9:00 in the morning.

22 (The jury exits the courtroom at 4:42 p.m.)

23 THE COURT: We will go into recess. Dr.
24 Gottfried, you are under oath and still on the stand so
25 don't discuss your testimony.

CHRISTOPHER T. WILDER SWORN AND QUESTIONED BY THE COURT

1 (Proceedings adjourned for the day.)

2 6-27-2023 PROCEEDINGS

3 THE COURT: Anything before we bring the jury
4 back in?

5 MS. THOMPSON: Yes, sir. We have one issue
6 that we need to address.

7 THE COURT: Okay.

8 MS. THOMPSON: Mr. Wilder has just showed me,
9 he had written a letter to the Supreme Court asking to
10 dismiss me as his attorney, to disciplinary council.
11 They responded. The letter he showed me, it was their
12 response that they didn't have the authority to do
13 that. But I guess we need to inquire if he wants me to
14 still go forward as his attorney, or if he wants to
15 represent himself?

16 THE COURT: Okay. Madam Clerk, would you put
17 Mr. Wilder under oath, please?

18 Thereupon,

19 CHRISTOPHER T. WILDER

20 was called as the Defendant in the case, having been first duly
21 sworn, was examined and testified as follows:

22 THE COURT: Mr. Wilder, you heard Mr.
23 Thompson's statement that you have informed him that
24 you seek to terminate his representation, so I will be
25 happy to hear from you. Is there anything you would

CHRISTOPHER T. WILDER SWORN AND QUESTIONED BY THE COURT

1 like to tell me regarding that?

2 THE DEFENDANT: A few times that me and my
3 litigator, Mr. Don Thompson, had met, we really got off
4 on the bad side. And at the time I was a little
5 frustrated and going through some things. And I felt
6 like I wasn't being represented to the fullness of his
7 ability, with him being a litigator. And my mother was
8 telling me to go ahead and proceed on and let him do
9 his job because he is a trained professional. But it
10 just -- something, like, wasn't rubbing me right.

11 But I would like to proceed on today with
12 this case. But we just had gotten on the wrong start a
13 few times. And he's came to the jail and visited me a
14 few times, and we spoke right before this trial was to
15 start. And he really touched bases that I could
16 understand and I want to proceed on.

17 THE COURT: Okay. All right. Thank you, Mr.
18 Wilder.

19 With that, Mr. Thompson, we will continue.

20 MS. THOMPSON: Thank you. I just wanted that
21 on the record.

22 THE COURT: Yes, sir. Yes, sir. All right.
23 Let's -- we will get our jury and then we will proceed.

24 (The jury enters the courtroom.)

25 THE COURT: Okay. Madam Forelady, ladies and

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 gentlemen of the jury, I hope everyone had a good
2 evening. We are ready to proceed.

3 Dr. Gottfried, would you retake the witness
4 stand, please ma'am?

5 It is a new day, so Madam Clerk, would you
6 put Dr. Gottfried under oath again, please?

7 Thereupon,

8 DR. EMILY GOTTFRIED

9 was recalled as a witness, having been first duly sworn by the
10 Clerk, was examined and testified as follows:

11 CROSS EXAMINATION

12 BY MS. THOMPSON

13 Q. Good morning, Doctor.

14 A. Good morning.

15 Q. Again, like yesterday, I'm sorry for hollering at
16 you. But my voice is gone, and if I try to talk in a normal
17 voice, it goes away. So I'm going to be a little shorter
18 than I thought I was going to be after going home last night
19 and reflecting on your testimony. So, I'll get right to it.

20 You work for the Medical University of South
21 Carolina?

22 A. Correct.

23 Q. And you are the director of what?

24 A. Of the Sexual Behaviors Clinic and Lab.

25 Q. The what?

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 A. It is the Sexual Behaviors Clinic and Lab.

2 Q. Okay. Got you. And you do research there, is
3 that right?

4 A. Yes.

5 Q. What kind of research?

6 A. I do a range of research. So regarding sexual
7 behavior, I do research about male sexual arousal,
8 paraphilic disorders, correlates of reoffending, personality
9 characteristics. And then I also do research about
10 competency to stand trial, criminal responsibility. Then a
11 large part of my research is personality disorders and the
12 assessments of personality in general.

13 Q. So you say males; you do not assess females?

14 A. I have.

15 Q. Now, I don't know how to say this question, so
16 I'll just ask it. You use the clients that have been
17 referred to you to do this research, right?

18 MS. SHAW: Objection, Your Honor, relevance.

19 THE COURT: Overruled.

20 A. Well, we don't have clients, so we have examinees,
21 yes. So a lot of our research comes from the evaluations
22 that we do. That is part of the consent form that the
23 individual signs at the onset of the evaluation. And then
24 we only do research projects with institutional review board
25 approval.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 Q. Okay. And most of your clients come as a referral
2 from the Attorney General?

3 A. For sexually violent predators, the majority of
4 them are referred by the Attorney General's office. But I
5 do a lot of sexual behavior evaluations and treatment with
6 men on Federal probations, after they get out of Federal
7 prison, we have a contract where we provide all of those
8 mental health services regarding sexual behavior.

9 I do pretrial evaluations for, primarily men,
10 being charged with sex offenses. Their private attorney or
11 their public defender will request an evaluation. So for
12 sexually violent predator, it is primarily through the AG's
13 office, but I -- that is not the only kind of evaluation
14 that I do.

15 Q. You actually were hired in this case by the
16 Attorney General's office, correct?

17 A. MUSC was retained.

18 Q. Okay. And they were paid by the Attorney
19 General's office?

20 A. Yes, the Attorney General's Office pays MUSC.

21 Q. So you were not court appointed?

22 A. Correct.

23 Q. Now, your report is dated I believe March 28th of
24 this year; is that correct?

25 A. Yes.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 Q. That is before the change involving May of this
2 year?

3 A. Correct.

4 Q. Did you go back and reconsider anything to apply
5 to the new law?

6 A. Yes, I thought about the new language in the
7 statute for all of the recent reports that I had issued.

8 Q. Okay. Did you issue an addenda report?

9 A. No.

10 Q. Okay. Now, you have diagnosed him with having
11 antisocial personality disorder?

12 A. Correct.

13 Q. And I believe you have got Dr. Gillen's report; is
14 that correct?

15 A. Yes.

16 Q. He made the same diagnosis?

17 A. Yes.

18 Q. You have also diagnosed him with substance abuse
19 disorder?

20 A. Yes.

21 Q. Dr. Gillen gave that same diagnosis?

22 A. I believe Dr. Gillen gave unspecified alcohol use
23 disorder. I had a specified alcohol and cocaine use
24 disorder.

25 Q. All right. One of the things that you indicated

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 was -- sorry, let me find my notes -- psychiatric
2 personality disorder; is that correct?

3 A. Correct.

4 Q. But you also testified that that is not a part of
5 the DSM?

6 A. Correct. It is mentioned in the DSM, but it's not
7 a stand-alone diagnosis.

8 Q. If it's not a stand-alone diagnosis, how could you
9 make that diagnosis?

10 A. Well, the research suggests that it is a distinct
11 construct. Although it is similar to antisocial personality
12 disorder, psychopathic personality is the more severe
13 presentation with a different compilation of symptoms. So
14 it is recognized, widely accepted in the field as being a
15 distinct diagnosis.

16 Additionally, my understanding of the sexually
17 violent predator act, statute, it doesn't say where the
18 mental health abnormality or personality disorder comes
19 from. So it doesn't specify that it has to be from the DSM.
20 And so that is what is most widely used to diagnose, but we
21 also have the ICD, and there are other authoritative manuals
22 in addition to the DSM. And I think that is probably why
23 they don't specify. I don't know why they don't specify.

24 Q. I believe that you just testified that it is a, I
25 believe you said, widely accepted in the field as a distinct

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 diagnosis?

2 A. Yes.

3 Q. If it is a distinct diagnosis, why is it not
4 included in the DSM, which is the bible of your profession?

5 A. Yeah, so as I testified to you yesterday, it was
6 in the first and second version of the DSM. And then each
7 version that comes out -- we are on the fifth one right
8 now -- they add a diagnosis, they take diagnoses away.
9 Sometimes they take it away for one version and add it for a
10 version later. It appears that it was taken out of the DSM
11 III because of the stigmatizing nature of the diagnosis of
12 psychopathic personality disorder. That was the first
13 thing. And then also the concern that clinicians treating
14 somebody would have difficulty assessing things like
15 callousness.

16 Q. Okay. Now, the only actual sexual event that Mr.
17 Wilder has is this CSC first, right?

18 A. He has the CSC first, but then I also considered
19 the exposing and masturbating in prison and jail.

20 Q. Okay. Well, let's go into that just a little bit.
21 How many instances of that did you say occurred?

22 A. The exposing?

23 Q. Yes.

24 A. I believe that there were seven or eight of those,
25 but he received punishment or, I don't know if you would

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 call it conviction in SCDC, but he was punished for four of
2 them, or five of them I believe. Let me refer to my report.

3 And then an instance in a detention center as well.

4 Q. Is one of those that you considered from August
5 21st of 2015?

6 A. Yes.

7 Q. And that was, what, exhibitionism?

8 A. Exhibitionism and public masturbation.

9 Q. Did you have the facts surrounding that, or did
10 you just look at the disciplinary title and say, that is it?

11 A. I had the statement from the officer.

12 Q. All right. A one-sentence statement?

13 A. Yes.

14 Q. The statement you got, does it say the accuser
15 observed the inmate in the shower with his pants down and
16 penis in his hand, moving in a back and forth motion?

17 A. Yes.

18 Q. He was in the shower?

19 A. Correct.

20 Q. Does it say that was directed at anybody?

21 A. I believe a female officer wrote that
22 disciplinary, but it just contains that sentence.

23 Q. Do you know why the female officer was at the
24 shower?

25 A. I would assume that it was an officer or guard,

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 but no I don't know the reason.

2 Q. So how much weight did you give to that?

3 A. It was a data point that I considered in
4 connection with all of the different disciplinaries.

5 Q. All right. Was there another one of those
6 instances on October the 2nd, 2015?

7 A. Yes.

8 Q. And that was exhibitionism and public
9 masturbation?

10 A. Correct.

11 Q. A disciplinary while in prison?

12 A. I am sorry?

13 Q. A disciplinary while he was in prison?

14 A. Yes.

15 Q. Did you have information pertaining to that
16 charge?

17 A. I had the statement as well.

18 Q. Is that statement a one-sentence statement also?

19 A. Yes.

20 Q. Does it say the accuser observed the inmate
21 standing in the door with his hand in his boxers, pulled out
22 his penis and began moving it in a back and forth motion?

23 A. Yes.

24 Q. Does that indicate that there was anybody there
25 that he was directing that at?

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

- 1 A. It doesn't say that in this sentence, no.
- 2 Q. I guess what I'm getting at -- I could go through
3 all of these, but I'm not going to. What I'm getting at is,
4 is it unusual for a male to masturbate?
- 5 A. No.
- 6 Q. Is it a sex offense for a male to masturbate?
- 7 A. It depends on where they are masturbating. And I
8 would say it is not common for someone to get a masturbation
9 charge in prison.
- 10 Q. Okay. So, that is a pretty common charge in
11 prison?
- 12 A. No, I would say that it's not common.
- 13 Q. Okay. I thought that you just said that it's not
14 uncommon for them to get one in prison?
- 15 A. If I did, then I misspoke.
- 16 Q. Okay. It would be a serious offense if he was
17 intentionally directing that towards somebody; is that
18 correct? I mean, at the risk of being crude, and I am
19 sorry, but if I were to stand here and masturbate looking at
20 y'all right now, that would be directed at you; right?
- 21 A. You could make that assumption, I think.
- 22 Q. Okay. Is there anything in these reports that
23 allows you to make the assumption that he was directing his
24 pleasure towards anybody?
- 25 A. I believe there was some note about something on

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 the wreck yard and he might not have been convicted of that.
2 There were some things that made it seem like he was
3 targeting.

4 Q. But that was your opinion that you thought he was
5 targeting?

6 A. That was my interpretation, yeah.

7 Q. Okay. Now as to his assault disciplinarys, do
8 you know when the first one was?

9 A. January of 2007.

10 Q. January of 2007. That was a striking an employee
11 with or without a weapon, right?

12 A. Yes.

13 Q. Prior to that, there were no assaultive
14 disciplinarys?

15 A. The other ones in 2006, there were disciplinarys,
16 but not assaultive ones.

17 Q. No assaultive disciplinarys?

18 A. Correct.

19 Q. Okay. And the ones earlier were -- I mean, he's
20 got a lot. Let's just -- instead of going through each one
21 of them individually, there's a number of disciplinarys for
22 refusing or failing to obey orders?

23 A. Yes. Lying, making false statements, damaging
24 property.

25 Q. Out of place?

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 A. Yes.

2 Q. Possession of contraband?

3 A. Yes.

4 Q. Using obscene, vulgar, or profane language?

5 A. Yes.

6 Q. I believe that you testified that there was about
7 50 something disciplinaries?

8 A. Yes.

9 Q. And out of those 70 something, you said that eight
10 of them you thought were sexual?

11 A. I believe so, yes.

12 Q. That is your interpretation based on what you
13 thought was going on from the incident reports, or from the
14 reports?

15 A. Yes. And I would have to look at the SCDC
16 records, but I think that they classified some as sexual and
17 some as assaultive, and some are major and some are minor.
18 So it might would come from that, but I would have to pull
19 the SCDC records.

20 Q. But that is SCDC classifications, right?

21 A. Yes.

22 Q. It is not necessarily classifications for this
23 courtroom? It is not the law, it is just the way that they
24 classify in SCDC?

25 A. Right, I don't know what they base it off of, what

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 makes something major versus minor. But, yeah, that is how
2 they classify it.

3 Q. His problems in life started as a juvenile,
4 correct?

5 A. Yes.

6 Q. And they have continued to this day?

7 A. Yes.

8 Q. I believe yesterday in testimony, you said when
9 you interviewed him you believed he was forthcoming?

10 A. I don't believe that I said that. To some of the
11 tests that I gave him I found the results suggested that he
12 was being forthcoming.

13 Q. Okay. So some of the tests?

14 A. Yes.

15 Q. Let's see if I can find it and let's go over what
16 tests you are talking about. I apologize, there is so many
17 papers here.

18 On the PPG, you said that you were not able to
19 make any determination based on that, right?

20 A. Determination of what?

21 Q. Whether or not -- well, let me find your exact
22 wording.

23 The results were such that they were not
24 interpretable; is that correct?

25 A. Yes.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 Q. So you couldn't say yes or no based on that test?

2 A. Sorry, yes or no to what?

3 Q. Whether or not he should be a sexually violent
4 predator.

5 A. I would never base anything on one test, or that
6 test.

7 Q. So you wouldn't use just one test?

8 A. Correct.

9 Q. Did you use that test at all in making your
10 determination?

11 A. No. That data point I stated didn't weigh
12 anything. It was invalid, not an interpretable test.

13 Q. Now, on the Minnesota Multiphasic Personality
14 Inventory you said that he had significant externalizing and
15 acting out; is that correct?

16 A. He reported that on the test, yes.

17 Q. Okay. Did any of your testing support that, his
18 reporting?

19 A. Sorry?

20 Q. Okay. You said that this was based on his
21 reporting?

22 A. Yes. So the MMPI, the SASSI, the PAI and the
23 MIDSA are all self-reports, so he's answering the questions
24 to the computer by himself in a room.

25 Q. Did you consider those responses in making your

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 assessment?

2 A. Yes.

3 Q. How much weight did you give them?

4 A. It is hard for me to quantify the weight. It is
5 definitely a data point that I consider. I wouldn't solely
6 base an opinion on a test, but it is the aggregate. I kind
7 of put it all together.

8 Q. And the personality assessment, the PAI.

9 A. Yes.

10 Q. Is that something that he reported, self reported?

11 A. Correct.

12 Q. And did you put weight on that?

13 A. I did.

14 Q. Can you tell me how much weight you put on that?

15 A. Not a number. I kind of put all of the test
16 results together with the risk assessments. It certainly
17 had information that supported personality disorder
18 diagnoses.

19 Q. How about the MIDSA, Multidimensional Inventory
20 Development Sex and Aggression, is that a self report?

21 A. Yes.

22 Q. Again, did you consider that in your evaluation?

23 A. Yes, I did.

24 Q. And can you tell us how much weight you put on it?

25 A. Not with a number.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 Q. Let's go to the Static-99 and the Static-2002.
2 The Static, those are tests that basically just assign
3 numbers to what has happened in the past; is that correct?

4 A. Yes.

5 Q. So the only way any of those numbers can change
6 is, as he ages there is certain levels where the number
7 would go down?

8 A. Correct.

9 Q. Okay. But other than that, no other numbers can
10 change; you can't change the past?

11 A. Right. Those numbers would go up if he committed
12 a new offense. That would be counted. But, right, they are
13 static.

14 Q. I was about to say, there is nothing that he can
15 do in the future to cause them to go down except age?

16 A. Correct. Or get married or live with a partner
17 for at least two years.

18 Q. All right. Now, yesterday on the Static-99, I
19 believe that you testified that the -- it was a five-year
20 recidivism rate, ten year, and twenty year. Let's go
21 back -- I mean, not the numbers -- this is an actuarial
22 table, correct?

23 A. Yes.

24 Q. In other words, you do the numbers on a test, or
25 evaluate it on a schedule. You take that number and you go

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 to some actuarial table, for lack of a better word, that
2 indicates that people that have this number recidivate --
3 not certain I am saying that right -- a certain percentage
4 of the time?

5 A. Not exactly. So what the -- how the test works is
6 they have large comparison groups or normative samples, what
7 they norm the measures on. So let's say they have 20,000
8 people, they score them on the Static and then they put them
9 -- they assign them the numbers. And then they look, let's
10 say, 300 people in that 20,000 sample, 300 were scored a one
11 on the Static. And then they look into percentage of the
12 300 people who scored a one who had a detected sexual
13 re-offense, and then they use a statistical test called a
14 logistic regression where then they try to predict the
15 percentage. It is a predictive recidivism rate.

16 So it doesn't tell you, like, the number of people
17 that will go on to reoffend, it is only telling you about
18 the normative data and then trying to predict. That is the
19 best way that we can do it.

20 Q. So there is absolutely no sure-fire way that you
21 can predict whether an individual is going to reoffend or
22 not?

23 A. No, you definitely can't.

24 Q. Now on the Static-99 I believe your testimony
25 yesterday was, on the five-year recidivism rate, was a

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 little bit over 12 to approximately 15 percent; is that
2 correct?

3 A. With the competence interval at 12.2 percent to
4 15.6 percent reoffended.

5 Q. The ten year was 16.4 to 21.5?

6 A. Correct.

7 Q. And the 20 year is, I believe you said, about 23.4
8 percent?

9 A. Yes.

10 Q. So does that mean that, if 20 years from now,
11 almost one in four people would reoffend?

12 A. I mean, it -- yeah, 23 out of a hundred.

13 Q. Twenty-three out of a hundred would reoffend. So
14 that means that 77 out of a hundred would not reoffend; is
15 that correct?

16 A. Right. Based on those predictive recidivism rates
17 for the Static.

18 Q. And we can't predict who will reoffend and who
19 won't for a particular individual?

20 A. That is why you need additional risk assessment,
21 so you can't just go off of that one number. You have to
22 determine, like, the number of risk factors, the reason they
23 offended in the first place to help you determine if they
24 are more likely than not to be in the group that reoffended
25 versus the group that did not reoffend.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 Q. And that is a subjective determination on your
2 part?

3 A. A lot of this is objective, yes.

4 Q. To do that, you used a test called SVR 20; is that
5 correct?

6 A. That's one test I used, yes.

7 Q. What is that? Tell us again what the SVR-20 is.

8 A. It is the Sexual Violence Risk Assessment 20 V2.
9 It is looking at dynamic risk factors associated with sexual
10 recidivism.

11 Q. Okay. And the Static-99 and Static-2002 gave
12 numbers?

13 A. Yes.

14 Q. Does SVR-20 give numbers?

15 A. No.

16 Q. Why not?

17 A. Because it is a type of risk assessment in the
18 family of risk assessments called Structured Professional
19 Judgment, SPJ. It is one way to do risk assessment. I like
20 to do an SPJ with an actuarial, because I think they
21 complement each other.

22 Q. Okay. You did a number of tests, right?

23 A. Yes.

24 Q. And basically some of the tests you came up with
25 the same thing; is that correct?

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 A. I'm not sure that I came up with the same thing.
2 They all looked at something slightly different.

3 Q. Okay. You did not diagnose Mr. Wilder as having a
4 mental abnormality, did you?

5 A. I guess that they would both be considered
6 personality disorders. Psychopathic personality might be a
7 mental abnormality.

8 MS. SHAW: Your Honor, I just need to object.
9 Because there has been a lack of foundation laid for
10 the difference between personality disorder versus a
11 mental abnormality.

12 THE COURT: All right. Mr. Thompson,
13 rephrase your question and lay some foundation for that
14 question.

15 BY MS. THOMPSON

16 Q. Doctor, what did you use to determine that Mr.
17 Wilder had a personality disorder?

18 A. My clinical interview, my review of the collateral
19 records and information, the testing, and my clinical
20 interview with him if I didn't say that already.

21 Q. What would you use to determine whether or not he
22 had a mental abnormality?

23 A. The exact same.

24 Q. The exact same thing. So in using the exact same
25 information, did you make the determination whether there

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 was a mental abnormality or a personality disorder?

2 A. So I think maybe that mental abnormality is a
3 legal term. We don't use that term in psychology. So my
4 understanding -- I'm not a lawyer -- of a mental abnormality
5 would be a psychiatric condition. So things that are in the
6 DSM, things that are widely recognized as mental illnesses.
7 And personality disorders are in the DSM, and they are
8 mental disorders. So I'm not clear, necessarily, on the
9 nuances between a mental abnormality and how personality
10 disorder fits in that.

11 Q. Well, now you do these assessments on a regular
12 basis; correct?

13 A. I do.

14 Q. And the law says, one of the things that needs to
15 be proven is he, Mr. Wilder, either suffers from a mental
16 abnormality or personality disorder. So that would make
17 them different from each other, wouldn't it?

18 A. I think that is a legal term. We don't -- like I
19 said, we don't use mental abnormality in medicine, or
20 psychiatry or psychology.

21 Q. Your SVR-20 that you used -- and I may have asked
22 this question already, but I'm going to make sure -- it does
23 not assign a number to your findings, does it?

24 A. It does not.

25 Q. Okay. So there is no quantitative analysis on

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 those issues?

2 A. Correct. It is a structured way to go through the
3 empirically research supported dynamic risk factors.

4 Q. You used a different test, you used the SVR-20,
5 and Dr. Gillen, he used the VRS-SO; is that correct?

6 A. Yes.

7 Q. Does the VRS-SO assign numbers?

8 A. To my understanding, based on his report and
9 others I have read, I believe it -- I think it takes into
10 account the Static and provides a number.

11 Q. But it also takes into account the issues that you
12 have covered under your SVR; is that correct?

13 A. I believe so. The VRS-SO is newer, so I have only
14 read some literature about it. But I am not -- I don't use
15 it yet, because I'm not familiar with it. I haven't been
16 trained on it.

17 Q. Okay. So it takes out -- let me just ask this
18 question: To your understanding, you said you haven't been
19 trained on it, would it take out some of the subjectivity?

20 MS. SHAW: Your Honor, objection. The
21 witness has already said she hasn't been trained on
22 this particular measure, so she would not necessarily
23 know that information.

24 MS. THOMPSON: I'll withdraw the question.

25 THE COURT: Okay.

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 BY MS. THOMPSON

2 Q. The only quantitative numbers, quantitative issue
3 that you have done is the 99 -- not 99, I am sorry, my mind
4 just -- the train just pulled out of the station. The
5 Static-99 and the Static-2002; is that correct?

6 A. The PCLR is quantitative. The MMPI is
7 quantitative. The SASSI is quantitative. The PAI is
8 quantitative.

9 Q. What numbers did assign to those?

10 A. Well, they are scaled. So that is how you
11 interpret clinical elevations.

12 Q. Well, they are scales and you say they are
13 quantitative, so you had to apply something to them;
14 correct?

15 A. Yes. So, standardly when they give you T scores,
16 so in looking at how many standard deviations from the mean,
17 the normative groups scored on each of those measures, a T
18 score of 65 and above is one and a half standard deviations
19 greater than the mean, and so those are clinically
20 significant.

21 Q. But it don't -- at the end it don't spit out a
22 number that says, there is this percentage chance of
23 recidivism?

24 A. Oh, no, they are not recidivism measures.

25 Q. Okay. You are basing your opinion of him being

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 predisposed to engage in acts of sexual violence, and more
2 probably than not, will engage in the acts of sexual
3 violence based upon one conviction of CSC first and the
4 eight masturbations in his disciplinary; is that correct?

5 A. Yes, the combination of his diagnoses, the affect
6 that his diagnoses have on his risk level, the fact that he
7 hasn't had treatment. He doesn't have factors that are
8 mitigating his above average level of risk. The fact that
9 the dynamic risk factors that are present at the time of the
10 offense are still present now. And that, I don't believe he
11 has realistic strategies to further mitigate his risk. That
12 is what I'm basing it off of.

13 Q. He has got a long history of other convictions for
14 other things and disciplinaries for other things, so what
15 makes you think that he would sexually reoffend?

16 A. He does have a long disciplinary history, a long
17 offending history, and I think based on his personality
18 characteristics, as I testified yesterday, most people with
19 antisocial personality disorder do not -- like, they are not
20 more likely to commit sexual offenses and not more likely to
21 sexually reoffend. But he already has engaged in this
22 inappropriate sexual behavior. He has psychopathic
23 personality disorder which, like, exacerbates his antisocial
24 disorder. He can't follow the rules. He violates the
25 rights of others. And it's been a continued pattern. And

CROSS EXAMINATION OF DR. EMILY GOTTFRIED BY MR. THOMPSON

1 that is what makes me think that it is more probably than
2 not.

3 Q. Doctor, there is psychiatry/psychology; it is not
4 a hard science, is it?

5 A. What do you mean?

6 Q. Well, like chemistry, I can mix two chemicals
7 together and I know what the reaction is going to be. In
8 psychiatry, there is no hard evidence, is there?

9 A. I would agree with that, there is no, like, blood
10 test that you can give somebody to see if they have
11 depression or they are going to reoffend. In that sense, I
12 would agree with you.

13 Q. All right. And there is also no standard
14 procedure in doing evaluations between different places, is
15 there?

16 A. Some states mandate, like, they have to do the
17 Static-99 and the PCLR. In South Carolina there is no
18 protocol that everybody has to follow.

19 Q. Because yesterday you testified that you did all
20 of these tests but Dr. Gillen only did, I believe, three; is
21 that correct?

22 A. Maybe two he did. I know he did the Static-99R
23 and the VRS-SO. I am not sure if he did any others.

24 Q. Well, the point that I am getting to is, there is
25 no standardized way to do an evaluation?

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. I don't know that I would agree with that. So I
2 give a lot of trainings. I attend a lot of trainings.
3 There is a general standardized way to do them. Whether you
4 use the VRS-SO or the STABLE-2007, there's some leeway
5 there. But there definitely are textbooks and other
6 authoritative or professional sources that talk about how to
7 do that. But there is no law in South Carolina where every
8 single person being evaluated has to have a certain protocol
9 like there is in California, for example.

10 Q. Okay. And I guess what I'm getting at is, if you
11 are doing the Static-99, there is an outline as to how it is
12 to be done, an instruction manual; right?

13 A. There is a manual for all tests, yes.

14 Q. But there is no requirement that this test be
15 done, this test be done, this test be done?

16 A. There is no manual for SVP evaluations.

17 Q. Okay. That was my point that I was trying to get
18 to.

19 MS. THOMPSON: No further questions.

20 THE COURT: Redirect?

21 MS. SHAW: Yes, Your Honor, briefly.

22 REDIRECT EXAMINATION

23 BY MS. SHAW

24 Q. Hello again, Dr. Gottfried. So I'll actually work
25 from Mr. Thompson's cross examination back to the beginning

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 of it. So you were just asked about whether there was a
2 standard procedure. Yesterday you testified that there are
3 multiple ways that these evaluations can be done; do you
4 recall that?

5 A. Yes.

6 Q. Okay. And are there any professional bodies, such
7 as the ATSA or the Psychology in Law Society that publish
8 recommendations for how to do these types of evaluations, or
9 guidelines?

10 A. To my knowledge, not necessarily for sexually
11 violent predator, but there are professional guidelines for
12 assessing men who have been charged with or convicted of
13 sexual offenses. So ATSA has their standards or their
14 guidelines, but they are not specific for sexually violent
15 predator evaluations.

16 Q. Okay. Well, can you tell the jury a little bit
17 about what those guidelines the ATSA publishes regarding
18 people who have been convicted of sexual offenses and their
19 evaluation, what do those recommendations suggest or
20 recommend that professionals do?

21 A. Kind of a big question. It is a pretty long set
22 of recommendations and guidelines and ethical principles.
23 It should not rely on one data source. You should assess
24 things in multiple ways. Penile plethysmography isn't like
25 a lie detector trying to make -- there is a pretty big set

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 of guidelines.

2 Q. Okay. And in those guidelines, is there support
3 for using multi-modal testing methods such as multiple
4 personality measures, both Statics and the VRS-SO, or the
5 SVR-20, but basically it is recommended to get as many data
6 points as you possibly can in order to accurately assess an
7 individual; would that be fair to say?

8 A. Yes. I mean, in an assessment, in general, you
9 would never want to rely on one result or one number. So, I
10 mean, that is the overarching ethical principles related to
11 assessment in general. ATSA says that, you know, you
12 shouldn't take one piece of data and that be the sole basis
13 of your opinion, you should incorporate collateral
14 information, multi-method testing. So, yeah, they stress
15 not one data point.

16 Q. Okay. And to go back to the -- Mr. Thompson's
17 question about predisposition, Mr. Wilder, in particular,
18 predisposition to commit sexually violent offenses; would
19 you agree or disagree that even though most antisocial
20 personality disorder, individuals who have this particular
21 personality disorder, they -- most of them don't sexually
22 offend; is that correct?

23 A. Right. But they are not more likely to sexually
24 offend than someone else. But the presence of antisocial
25 personality disorder as being the cause or related to the

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 offending, that can increase their risk when you are looking
2 at things about their empathy and their putting their needs
3 before anyone else's.

4 Q. So it is a risk relevant diagnosis for sexually
5 violent predators, but it is not the end all be all?

6 A. Right.

7 Q. You need more information, just other than saying
8 this guy has got antisocial personality disorder?

9 A. Yes.

10 Q. Okay. And so, in fact, you didn't base your
11 decision to recommend commitment based on just that
12 diagnosis?

13 A. I didn't, no.

14 Q. Okay. And you didn't come to the conclusion that
15 he's predisposed solely based on that diagnosis, did you?

16 A. No.

17 Q. And what -- in addition to his one sexually
18 violent conviction, he has got these other exhibitionistic
19 convictions, right?

20 A. Yes.

21 Q. And you were asked about those.

22 A. Yes.

23 Q. And I'm going to show you, and please tell me --

24 MS. SHAW: Your Honor, may I approach the
25 witness?

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 THE COURT: Yes, ma'am.

2 BY MS. SHAW

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. What is that?

6 A. That is the civil action coversheet that -- I
7 believe it has the petition. It is all of the information
8 related to this court proceeding.

9 Q. Okay. And do you recognize this document?

10 A. Yes.

11 Q. What is it?

12 A. These are a list of Mr. Wilder's disciplinary
13 infractions while in SCDC.

14 Q. Okay. And there are certain dates on there that
15 are circled; can you tell me what those relate to, those
16 circled dates, type of infraction?

17 A. Those are all exhibitionism and public
18 masturbation.

19 Q. Okay. And can you give me the dates of those,
20 please?

21 A. Yes. May 11, 2019. October 22nd, 2016. August
22 13th, 2016. October 2nd, 2015. August 21st, 2015. October
23 23rd, 2013.

24 Q. Okay. And since 2019, is it your understanding
25 that Mr. Wilder has incurred yet another exhibitionistic

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 offense?

2 A. Yes. There was a report in the detention center.

3 Q. Okay. Now, I'm going to refer you to -- Mr.

4 Thompson referred you to several incident reports. And I
5 would like you to read that one. Did you see that in your
6 evaluation as part of the record?

7 A. I believe so. I reviewed all of the
8 disciplinaries.

9 Q. Okay. And what does that one say, specifically?
10 What did the individual who accused him observe?

11 A. It says, I officer, and then it lists a woman's
12 name, was doing my round by Edisto's rec yard when I
13 witnessed Inmate Wilder Christopher, and it gives his SCDC
14 number, was moving his hand in an upward and downward motion
15 on his penis. When I yelled at him he ran back inside the
16 building. I went inside the Edisto B wing to identify the
17 inmate. And then a corporal and an officer confirmed an
18 inmate, Christopher Wilder, was the correct person. I'm
19 charging the inmate with Code 854, masturbation. End of
20 report.

21 Q. Okay. So that occurred actually outside, that
22 wasn't in the shower?

23 A. Correct. The rec yard.

24 Q. It wasn't in his cell?

25 A. Correct.

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 Q. Okay. Thank you. And that occurred outside in
2 full view of the officers?

3 A. That is what it sounds like.

4 Q. Okay. And actually can you just confirm what date
5 that was?

6 A. 9-17-2021.

7 Q. Now this next, this disciplinary report is dated
8 10-5-15; can you read that and tell me if you recall reading
9 that?

10 A. Read it out loud?

11 Q. To yourself.

12 A. Yes, I recall reading that.

13 Q. Okay. And where does that indicate Mr. Wilder was
14 located when he committed that particular infraction? And
15 what did he do?

16 A. It says, the accuser observed the inmate standing
17 in the door with his hands in his boxers and pulled out his
18 penis and begin to move it in a back and forth motion.

19 Q. All right. So that doesn't suggest he was in the
20 shower?

21 A. It doesn't say shower.

22 Q. Okay. It doesn't suggest that he was alone in his
23 cell?

24 A. It says, standing at the door, so I don't know the
25 door to what.

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 Q. Okay. But it was visible to officers?

2 A. Yes.

3 Q. Okay. And this is another one. Can you please
4 read that to yourself and tell me if you are familiar with
5 it?

6 A. Yes, I reviewed this.

7 Q. Okay. What was the date of that infraction?

8 A. December 20th, 2018.

9 Q. Okay. And what does it indicate that Mr. Wilder,
10 in fact, did on that date?

11 A. Let's see, he came inside the rec door, the
12 officer told him, you need to get out. The inmate said,
13 quote, "I have something to tell you". The officer said, No
14 you don't, now go. The inmate stated, quote, "I want you
15 bad, I want you so bad." The officer then told him to go to
16 A wing.

17 Q. Okay. And he was charged with what, if you will
18 read here?

19 A. Soliciting an employee.

20 Q. Okay. So that is no fewer than four offenses that
21 were committed outside of a private area and did not include
22 private masturbation in the shower?

23 A. Correct.

24 Q. Thank you. And that is roughly half of the sexual
25 offenses he's committed while in a controlled environment?

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. Yes.

2 Q. Okay. So how do those factor in, again?

3 A. I mean, it represents sexual recidivism, so he's
4 serving a prison sentence for a sexual offense. He has
5 demonstrated in a highly controlled environment, where there
6 are a lot of very clear rules, that he can't follow the
7 rules, that he already is acting out sexually inappropriate
8 or sexually illegal behaviors that, in my opinion, are
9 caused by his personality disorders.

10 Q. And they are exacerbated by the psychopathic
11 personality traits and disorder?

12 A. Yes, I mean, it is a combination of both of them,
13 I believe, would predispose him to reoffending.

14 Q. All right. So those two diagnoses and the facts
15 of his underlying sexually violent offense, plus the facts
16 of multiple other sexual offenses while in prison, that led
17 you to conclude that there is a predisposition; correct?

18 A. Yes.

19 Q. All right. Is a quantitative analysis necessarily
20 required for you to come to that conclusion?

21 A. No.

22 Q. Okay. And so there was a lot of cross examination
23 on numbers, quantitative measures. Are there any rules out
24 there that suggest that that is absolutely required in order
25 to determine if there is a predisposition and if that

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 individual is more likely than not to reoffend?

2 A. No. In fact, the letter that we used for general
3 violence risk assessment, when we determine like if somebody
4 needs to be warned that their life is in danger, things like
5 that, the gold standard measure for that is similar to the
6 SVR-20, is the HCR-20 looking at -- that is the gold
7 standard one that we use. So there is no requirement for it
8 to be quantitative.

9 Q. Okay. So whether it's quantitative or whether it
10 is a structured professional judgment, in the field those
11 two measures are considered of equal value; would that be
12 fair to say?

13 A. Yeah, yeah. I mean, they have pros and cons
14 related to what research study you are looking at. They are
15 both widely used, widely accepted ways to do risk
16 assessment. Equal is a hard thing to say, because it --
17 that really is speaking to the research. And some research
18 shows that the SVR-20 is actually better predictive than the
19 Static. And some studies -- like there's a lot of studies
20 showing the reliability of the Static that has a comparative
21 to SVR-20. So it's hard to say, like, put them as -- well,
22 they are both widely used and accepted.

23 Q. Okay. And you did read Dr. Gillen's report?

24 A. I did.

25 Q. And are you familiar with the lifetime recidivism

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 risk that he actually assigned after doing both the
2 Static-99 and the VRS-SO?

3 A. I don't believe in his report he used that
4 calculator.

5 MS. SHAW: Your Honor, just beg the Court's
6 indulgence for a moment.

7 THE COURT: Yes, ma'am.

8 MS. SHAW: Oh, here it is. May I approach
9 the witness stand, Your Honor?

10 THE COURT: Yes, ma'am.

11 BY MS. SHAW

12 Q. So, Dr. Gottfried, are you familiar with this
13 document?

14 A. You showed me this document yesterday, but I
15 didn't have it in advance.

16 Q. Okay. On Page 1 Dr. Gillen has revised his
17 five-year recidivism rate to 18 percent; is that accurate?

18 A. That is what he wrote with the confidence
19 intervals, a 13.9 percent and 22.9 percent.

20 Q. Okay. And that is higher than you actually
21 estimated, correct?

22 A. I believe so, yes.

23 Q. Okay. And so, on Page 2, the second to last
24 paragraph, can you read that to yourself briefly and just
25 tell me whether you have read that and are familiar with it?

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 A. I skimmed it yesterday when you showed me this, so
2 I saw it yesterday.

3 Q. Okay. And that circled part, what does that say?

4 A. "The best estimate of Mr. Wilder's sexual
5 recidivism rate is 37.4 percent."

6 Q. And that is lifetime?

7 A. I believe he's saying it is lifetime, yes.

8 Q. Okay. So based on Dr. Gillen's most recent update
9 of his own report, he is saying that Mr. Wilder has an
10 almost 40 percent chance of sexual reoffending over the
11 course of the rest of his life; is that fair to say, based
12 on that?

13 A. It looks like he's saying that that is the best
14 estimate of his recidivism rate, is 37.4 percent.

15 Q. Okay. Thank you. So you briefly mentioned -- you
16 were questioned about the psychopathic personality disorder
17 not being in the DSM but was in the first two or three and
18 then it got taken out due to concerns regarding ability to
19 evaluate certain aspects and stigma related associated with
20 that label; is that right?

21 A. Yes.

22 Q. But you also mentioned the ICP-10; what is that?

23 A. I don't use that, the ICP-10. It is another
24 authoritative source that has, you know, the diagnostic
25 codes used to bill insurance and has a list of diagnoses.

REDIRECT EXAMINATION OF DR. EMILY GOTTFRIED BY MS. SHAW

1 But personally I don't use that manual, but it was just an
2 example that the DSM isn't the only manual that could be
3 used.

4 Q. And in the guidelines published by the various
5 professional organizations, is there any indication that
6 psychopathic personality disorder should not be considered
7 simply because it is not in the DSM any more?

8 A. No, I believe it's highly relevant. I believe
9 most tests discuss the use of the PCLR or the consideration
10 of psychopathy in these type of evaluations.

11 Q. Okay. And the last thing that I was going to ask
12 you, you were asked about my office retaining MUSC and
13 whether MUSC was, in fact, paid for the services that you
14 rendered; correct?

15 A. Yes.

16 Q. Were you paid at all for those services?

17 A. I get a salary. I get my paycheck once a month,
18 but I don't -- like my salary stays the same. I don't get a
19 check from your office, just from MUSC.

20 Q. Okay. So you don't get paid any extra for doing
21 these evaluations?

22 A. No.

23 Q. And there is no incentive for you to say yes or
24 no?

25 A. No.

MOTION FOR DIRECTED VERDICT

1 Q. Okay. You are just asked to evaluate, find out if
2 there is a mental abnormality and whether you believe that
3 individual, based on all of your data, is predisposed and
4 more likely than not to reoffend?

5 A. Correct.

6 MS. SHAW: Okay. That is all that I have.

7 THE COURT: Anything further of this witness?

8 MS. THOMPSON: No, sir.

9 THE COURT: All right. Any objection to this
10 witness being excused?

11 MS. THOMPSON: No, sir.

12 THE COURT: All right. Thank you, Doctor,
13 you are excused.

14 MS. SHAW: Your Honor, at this time the State
15 has no further witnesses and we rest.

16 THE COURT: All right. Madam Bailiff, would
17 you take our jury to the jury room, please?

18 (The jury exits the courtroom at 10:05 a.m.)

19 THE COURT: Okay. The State rested. Are
20 there any motions?

21 MS. THOMPSON: Your Honor, I would move for a
22 directed verdict. Dr. Gottfried's testimony in this
23 matter, although her -- I realize that she is an expert
24 witness, but a lot of things that she says, I won't use
25 the word "speculative," but it is speculative. She's

MOTION FOR DIRECTED VERDICT

1 assuming things based on her evaluation.

2 I am sorry, for some reason this morning my
3 thought process just quit on me. She said that she
4 could not predict whether any individual would reoffend
5 or not. And by her own testimony, the only
6 quantitative measures she has are the Static-99 and
7 Static-2002. And there were a less than one in four
8 chance of being a recidivist, according to those. And
9 after that she started adding things that she thought
10 was speculative.

11 As to the disciplinary records, she even
12 testified on that, that she had to make some
13 assumptions on that. So, we would move for a directed
14 verdict.

15 THE COURT: Thank you, Mr. Thompson. Ms.
16 Shaw, anything for the record?

17 MS. SHAW: Your Honor, I would most
18 respectfully disagree with Mr. Thompson's
19 characterization of the testimony. Dr. Gottfried had
20 quantitative and qualitative and subjective measures
21 that she used. She specifically testified on cross
22 examination that the MMPI, the PAI, the MIDSA -- and I
23 am sorry the name is escaping me right now -- those are
24 all quantitative measures because the individual's
25 responses, they fall within scales, and so the computer

MOTION FOR DIRECTED VERDICT

1 does spit out a number. And if there is over a certain
2 T score, which I am sure the Court heard her say, that
3 it is considered clinically significant. As well as
4 the Statics, which are the gold standard. So she did
5 have a considerable amount of quantitative information,
6 in addition to the qualitative.

7 And, more importantly, her testimony has
8 identified two risk-relevant diagnoses, a history of
9 one sexually violent offense, and multiple sexual
10 offenses which were directed at female staff, as well
11 as considerable history of violence. So I believe
12 there is enough factual information before the Court at
13 this time for this matter to go to the jury.

14 THE COURT: Well, for a directed verdict
15 motion the Court is only concerned with the existence
16 or nonexistence of evidence to support the State's
17 case. And I find the State has produced evidence to
18 support the case and meet the elements of the case.
19 Mr. Thompson, I believe your arguments go toward the
20 weight of the evidence rather than the existence of the
21 evidence. So I am going to deny your motion for
22 directed verdict and find this is a jury question.

23 So, with that we would take a break for a few
24 minutes, and then Mr. Thompson we can proceed with the
25 respondent's case.

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 (Brief recess.)

2 (The jury enters the courtroom.)

3 THE COURT: State has rested. Call your
4 first witness.

5 MS. THOMPSON: Your Honor, we would call Dr.
6 Gillen.

7 Thereupon,

8 DR. CHRISTOPHER GILLEN

9 was called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. THOMPSON

13 Q. Doctor, would you give us your full name?

14 A. Christopher Gillen.

15 Q. And where are you employed?

16 A. I'm employed as a psychologist with the South
17 Carolina Department of Mental Health.

18 Q. In Columbia?

19 A. Yes, that's correct.

20 Q. Are you licensed in South Carolina to be a
21 psychologist?

22 A. I am, yes.

23 Q. How long have you been licensed?

24 A. In the State of South Carolina, I have been
25 licensed since January 2020.

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 Q. Okay. What does your work with the Department of
2 Mental Health entail?

3 A. So I primarily conduct sexually violent predator
4 evaluations at the Department of Mental Health. My
5 responsibilities have also included conducting sex offender
6 registry -- sex offender registry release evaluations as
7 well as psychosexual evaluations at the forensic hospital in
8 Columbia as well. Those have been primarily the cases that
9 I have been assigned since I have been employed there since
10 2019.

11 Q. Okay. Can you give us the benefit of your
12 education, please?

13 A. So I completed my doctorate in clinical psychology
14 in 2018 from the University of Southern Mississippi. Before
15 that I completed my Master's degree and Bachelor of Science
16 degree in psychology from Carlton University.

17 Following completion of my degree, I completed a
18 one-year intensive post-doctoral fellowship in forensic
19 psychology in Wisconsin. That was specialized in clinical
20 training in order to do evaluations, including sexually
21 violent persons evaluations for the State of Wisconsin, sex
22 offender treatment for individuals committed in Wisconsin as
23 SVPs, as well as competency to stand trial, evaluations at
24 the forensic hospital there in Wisconsin, violence risk
25 assessments for patients who are committed there, as well as

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 some evaluations and treatment work with juvenile offenders
2 who are committed there as well.

3 Prior to that, as part of my doctoral training, we
4 all have to complete a year of -- it is called a clinical
5 internship year. So for that year I was able to get
6 clinical experience in conducting competence to stand trial
7 evaluations for the courts, criminal responsibility
8 evaluations for the courts, domestic violence risk
9 assessments out of the court in Shelby County in Memphis, as
10 well as juvenile transfer evaluations for juveniles going to
11 adult court because of crimes they have been alleged to have
12 committed.

13 Q. Let me just ask a question to follow-up on that.
14 Does your training include forensic evaluation?

15 A. Yes, as I had mentioned before, I completed a year
16 of intensive, supervised post-doctoral hours in forensic
17 psychology up in Madison, Wisconsin.

18 Q. Okay. Now, have you, since you have been licensed
19 in South Carolina, have you had any training that you are
20 continuing, any professional training?

21 A. Yes. So as part of maintaining a license, there
22 are requirements to continue receiving continuing education
23 credits, so I have done that. Predominantly the trainings
24 that I have received have been in sex offending risk
25 assessment approaches and measures and tools, as well as

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 more broad forensic psychology topics to include juvenile
2 transfer, competent to stand trial evaluations, among
3 others.

4 Q. Now, are you a member of any professional
5 associations?

6 A. I am a member of the American Psychology Law
7 Society, which is an organization devoted to the interface
8 between psychology and the justice system.

9 Q. And have you been the author or the coauthor of
10 any publications?

11 A. Yes, I have been published in approximately 11
12 peer review journals, most of which have been first author
13 publications. They covered a range of topics, to include
14 sexually violent person or SVP evaluator decision making,
15 assessment tools that are used in forensic context, as well
16 as personality assessment in individuals that are justice
17 involved.

18 Q. Do you present at conferences, or are you a
19 lecturer?

20 A. I'm not a lecturer currently, so I don't teach
21 courses at a university. However, in the past I have
22 presented at symposia, conferences related to the research
23 that I have published in academic peer review journals.

24 Q. And how long have you done sexually violent
25 predator evaluations?

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 A. So I started in Wisconsin in 2018. And I have
2 been continuing to do sexually violent predator evaluations
3 almost exclusively as part of my work here in South Carolina
4 since 2019.

5 MS. THOMPSON: Your Honor, at this time we
6 would offer Dr. Gillen as an expert in forensic sexual
7 predator evaluations.

8 THE COURT: Any objection?

9 MS. SHAW: Your Honor, I just have a few
10 questions based on Dr. Gillen's updated CV that I would
11 like to ask.

12 THE COURT: Yes, ma'am. Yes, ma'am.

13 MS. THOMPSON: I will step out of your way.

14 MS. SHAW: Okay.

15 VOIR DIRE EXAMINATION

16 BY MS. SHAW

17 Q. Dr. Gillen, good morning again.

18 A. Good morning.

19 Q. It is always good to see you. I have a couple of
20 questions for you. You did your post-doctoral fellowship in
21 forensic psychology at Sand Ridge Secure Treatment Center in
22 Madison, right?

23 A. Yes, that's correct.

24 Q. Okay. That was from 2018 to '19?

25 A. Yes, that's correct.

DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 Q. Okay. And you did do some risk assessments for
2 sexual violence while you were there, correct?

3 A. Yes, that's correct.

4 Q. Okay. But that was not the focus of what you were
5 doing, it was a general track; correct?

6 A. Well, it was part of the focus. So it was -- so
7 in Wisconsin they call their sexually violent predator law
8 the sexually violent persons law. It actually works in the
9 same sort of way, but it uses a different term. So that
10 part of the forensic fellowship was exclusively working
11 either in terms of evaluating individuals who are sexually
12 violent persons, or SVPs there, as well as providing
13 treatment to people who were committed as SVPs. So that
14 rotation or training experience included both providing
15 treatment, sex offender treatment for those individuals, as
16 well as doing the risk assessments and evaluations for them.

17 Q. Okay. And you were supervised by Dr. Supra Minyon
18 (phonetic)?

19 A. Yes, that is correct. She was the supervisor for
20 the evaluations portion of the training experience.

21 Q. Okay. So that portion, according to your CV,
22 lasted from December 2018 through March of 2019, so roughly
23 four months, right?

24 A. Yes, that's correct.

25 Q. Okay. And before that, you had been in the

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1 general tract, though APA accredited, with University of
2 Tennessee, right?

3 A. Yes. So that is the clinical internship that I
4 was talking about earlier, which is part of the doctoral
5 degree requirements. So everyone who is completing a
6 doctorate in clinical psychology completes a year-long,
7 intensive clinical internship experience. And so mine was
8 completed at the University of Tennessee Health Science
9 Center in Memphis.

10 Q. But that didn't include sexually violent persons
11 or predator evaluations, right?

12 A. Yes, that's correct.

13 Q. It did not?

14 A. Yes, that is correct, it did not.

15 Q. Okay. So before starting at DMH, you had a total
16 of four months of experience doing sexually violent predator
17 evaluations?

18 A. Yes, that's correct.

19 Q. And so at DMH, and actually I am going to -- prior
20 to that I note that you have multiple, from 2016 to 2018,
21 multiple internships; did any of those include sexual
22 offender research or evaluation?

23 A. Prior to 2018, no, the focus of those evaluations
24 were more general pop forensic evaluations and psychological
25 evaluations and treatment.

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1 Q. Okay. Thank you. So since you have been with DMH
2 since 2019, so roughly three years, when did you do your
3 first pre-commitment evaluation?

4 A. Actually my first case that I got when I started
5 at the Department of Mental Health was a pre-commitment
6 case, which would have been October of 2019.

7 Q. Okay. And since then how many of them have you
8 done, specific pre-commitment evaluations?

9 A. Pre-commitment evaluations, I believe -- let me
10 check my numbers -- 22 have been completed and submitted.

11 Q. Okay. And you have several more pending, correct?

12 A. Yes, that's correct. I'm still working on a few
13 others that have been assigned.

14 Q. All right. You also, in the context of your work
15 with the sexually violent predator treatment program at DMH
16 Forensic Services, you don't do just pre-commitment
17 evaluations for sexually violent predators, do you; you also
18 do periodic reviews?

19 A. Yes, that's correct.

20 Q. And how many of those have you done?

21 A. I have done approximately 70 of those sexually
22 violent predator periodic review evaluations.

23 Q. And those are for individuals who have already
24 been civilly committed, right?

25 A. Yes.

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1 Q. All right. And is the question that you are asked
2 to do those periodic reviews the same as you are asked to do
3 for a pre-commitment evaluation?

4 A. It is very similar. So they both involve looking
5 at mental abnormalities and someone's diagnoses which might
6 predispose them towards sexual violence, and whether that,
7 in the case of the periodic review evaluation, whether that
8 mental abnormality or personality disorder still makes them
9 likely to commit acts of sexual violence at the least. So
10 very similar to the type of work that we do in the
11 pre-commitment evaluations, it involves assessing
12 personality disorders, other forms of relevant mental
13 abnormalities that might be related to sexual violence, as
14 well as doing a comprehensive risk assessment.

15 Q. Okay. And so in those evaluations you want to
16 know, does this person still have the mental abnormality or
17 has it changed so they are safe, right?

18 A. So specifically looking to see, has it changed so
19 that they are no longer likely to commit acts of sexual
20 violence if released from the facility.

21 Q. Okay. And so out of roughly, say 92,
22 approximately 70 of those evaluations have been that latter
23 type?

24 A. Yes, that's correct.

25 Q. Okay. So I would like to go to your publications.

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1 And you had said that you have a number of peer review
2 publications. Would you say that the majority of those, or
3 even 50 percent, have been related to sexual offenders, or
4 specifically sexually violent predators?

5 A. No, the majority of those peer review publications
6 have not involved sexually violent predator research.

7 Q. Okay. And, in fact, I'm guessing that it would
8 appear as maybe 20, only one of them has dealt with sexual
9 violent predator; is that correct?

10 A. So there is 11 peer review publications and, yes,
11 one of them, that is the most recent one that was just
12 published this month, was involving sexually violent
13 predator or -- because it was from Wisconsin, sexually
14 violent person -- evaluator decision making.

15 Q. And the Wisconsin sexually violent person act is
16 not the same as the South Carolina sexually violent predator
17 act, is it?

18 A. Well, the wording isn't exactly the same. But
19 they are, for all intents and purposes, very, very similar.
20 They define, likely to commit acts of sexual violence very
21 similarly. The types of crimes that they designate as
22 sexually violent might be different, but the -- the best way
23 to put it is, the nuts and bolts of the two laws are
24 actually quite similar. They involve a relevant mental
25 abnormality or personality disorder which would predispose

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1 acts of sexual violence, as well as their definition of
2 likely is also the same.

3 Q. But they are not the same?

4 A. That is right. So that is a Wisconsin law, and
5 today we are talking about a law in South Carolina. Those
6 are different states.

7 Q. All right. In reviewing your new CV last night, I
8 noted that all of them -- well, all of your publications, or
9 at least the vast majority of them, actually have to deal
10 with youth psychopathic at-risk youth, not sexually violent
11 individuals or sex offenses in general?

12 A. Yes, so that was predominantly what most of my
13 research and graduate school was, was examining adolescence
14 with callous and emotional traits, psychopathic traits,
15 youth with justice involved. But I have also done some
16 research with more adult samples and looking at those types
17 of personality traits, as well as assessment of forensic
18 instruments that get used in the courtroom by psychologists.

19 Q. Typically assessment tools for youth are not the
20 same as for adults, isn't that accurate, as youth are not
21 fully developed?

22 A. Well, there are certainly different tools that are
23 accomplishing different sorts of things. So to give an
24 example, some of the research that I did as a graduate
25 student was looking at a tool that could aid in judges'

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1 decision making about transfer of juveniles to adult court.
2 So it is going to be looking at different types of factors
3 which are relevant in those types of decisions. So that
4 could be things like, sophistication and maturity, their
5 risk for violence, how amenable they are going to be towards
6 treatment. So it's really examining how well the tool
7 worked at being able to assess those types of things for
8 that type of referral question.

9 Q. So it would be fair to characterize your
10 experience from 2016 up to 2019 as primarily focused on
11 at-risk youth with behavioral issues, and not sex offenses?

12 A. I would say that is fairly accurate based on the
13 research that I was conducting at that time.

14 MS. SHAW: Thank you. No objections, Your
15 Honor.

16 THE COURT: Okay. So the witness would be
17 admitted as an expert in forensic sexually violent
18 predator evaluations without objection.

19 Okay, Mr. Thompson, proceed.

20 MS. THOMPSON: Thank you, Judge.

21 DIRECT EXAMINATION CONTINUED

22 BY MS. THOMPSON

23 Q. Mr. Gillen, have you had an opportunity to
24 evaluate Mr. Wilder?

25 A. Yes, I evaluated him in October of 2022.

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1 Q. Okay. And did you have access to his records when
2 you did the evaluation?

3 A. Yes, so as part of the process for my evaluation I
4 examined records from the Department of Corrections, his
5 criminal history record, including the official rap sheet,
6 also includes the Department of Juvenile Justice, or DJJ
7 records, as well as other records that were included in the
8 original petition from the Attorney General's office.

9 Q. Okay. Now, did you do any testing on him?

10 A. So as part of my evaluation and the risk
11 assessment, I completed a structured, standardized risk
12 assessment tool to measure both static risk factors, and I
13 also completed a structured, standardized actuarial tool to
14 measure dynamic risk factors. Static-99R to measure static
15 factors, and the violence risk scale sex offense version,
16 VRS-SO, in order to quantitatively measure the dynamic risk
17 factors for Mr. Wilder.

18 Q. Have you had access to Dr. Gottfried's report in
19 this matter?

20 A. Yes.

21 Q. Dr. Gottfried did a lot of tests, MMPI, SASSI,
22 PAI, MADSI, PCLR; did you do all of those tests?

23 A. No, I did not.

24 Q. And why did you not do those?

25 A. So there is just a few reasons for that. Probably

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1 the most broad reason is one of the foundations of clinical
2 psychology training, even when you are an early grad student
3 conducting any sort of psychological evaluation, is trying
4 to make sure that you are using tools that are specifically
5 designed to answer the specific question that you are being
6 asked to opine on or to provide an opinion on. And one of
7 the key hallmarks that psychologists are supposed to look
8 at, whether to choose to add a test or not is, does it add
9 an incremental value in the work that you are doing.

10 In other words, is that test going to give you
11 something that you otherwise wouldn't have already done. I
12 like to use an example of, people go to the doctor, there's
13 lots of tools that a medical doctor would be able to give
14 you when you come in for a check-up. If you were to come
15 into a doctor's office with a cough or maybe a fever, it
16 might be appropriate for them to run some preliminary tests,
17 they will take your temperature, for example, maybe they
18 will listen to your lungs with a stethoscope, things like
19 that. It would be unusual and uncommon for that medical
20 doctor to start, just on that information alone, to order a
21 CAT scan, an MRI, a full blood workup, a surgical procedure
22 to see what is going on inside you. That would be highly
23 unusual.

24 And it is really no different when it comes to
25 psychology. The tools and tests that we administer, it's

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1 incredibly important to make sure that we are not just
2 adding those for the sake of adding them. There needs to be
3 a reason and to get some sort of incremental value or
4 information from them.

5 And so, the second part with this is, what you do
6 from the tests that you use, just like a medical doctor,
7 need to be relevant to the opinion that they are asked to
8 provide. So in this sort of case, there is very specific
9 sorts of things that a psychologist is asked to create an
10 opinion on. One of those is, does the individual that we
11 are evaluating have a mental abnormality or personality
12 disorder. And so that could be done through a thorough
13 review of records and with an interview of the individual.

14 So in my case, I was able to diagnose Mr. Wilder
15 with relevant personality disorders based on that
16 information alone. Adding something like the personality
17 assessment inventory or MMPI or some of those other
18 broad-band scales wouldn't really have given me any more
19 information being able to answer that sort of question. I
20 already had the information, I didn't need to give him the
21 blood test.

22 Q. Okay. I am sorry to interrupt. So the number of
23 tests that you perform is not -- does not correlate to the
24 issue that you are looking at; is that correct?

25 A. That is exactly right. The types of tools and

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1 tests that you administer need to, again, be incrementally
2 useful. They need to actually give you something more than
3 you otherwise wouldn't have. And they need to be relevant
4 to the question that you are answering. If someone's -- for
5 example, if someone's personality disorder, is that
6 predisposing for them to commit the acts of sexual violence.
7 The research says that the way to do that is to, again, go
8 back and look at some of the underlying offense dynamics, so
9 the patterns of what was going on at the time that the sex
10 offense happened.

11 And also, want to take a look at records of what
12 has been going on while they have been incarcerated, for
13 example. It is very much an individualized assessment of
14 how their personality disorder has been expressing itself
15 over time. That is done through records and interview.
16 There is no tool or test that allows you to answer that
17 question.

18 Relatedly, the risk assessment, is someone more
19 probably than not to commit acts of sexual violence. That
20 is done through a standardized, structured risk assessment
21 of relevant risk factors, static risk factors, and dynamic
22 risk factors. But my evaluation did that, was able to
23 accomplish that in order to be able to answer that question
24 and provide an opinion on that question for the Court.

25 Q. Now, you work for the Department of Mental Health;

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1 is that correct?

2 A. Yes, that's correct.

3 Q. And were you court appointed, or did I hire you to
4 do this?

5 A. I was appointed by the Court to do this
6 evaluation.

7 Q. Okay. In your evaluation, were you able to make a
8 diagnosis?

9 A. I was, yes.

10 Q. What was that diagnosis?

11 A. I diagnosed Mr. Wilder with antisocial personality
12 disorder as well as an unspecified alcohol related disorder.

13 Q. All right. Now, I believe Dr. Gottfried diagnosed
14 him with antisocial personality disorder also, did she not?

15 A. I believe so, based on my review of her report.

16 Q. And she evaluated -- you said unspecified alcohol
17 related disorder; what does that mean?

18 A. So it essentially means that Mr. Wilder has
19 alcohol problems. Specifically, what I think his problems
20 with alcohol are involved with his offending, his nonsexual
21 offenses as well, some of the violent offenses that he has
22 had, as well as the sexual offense in 2014, alcohol seemed
23 to play a role. And because of that he suffered legal
24 consequences because of his drinking, so that is essentially
25 what that unspecified alcohol related disorder is getting

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1 at.

2 Q. Okay. Did you find any drug usage?

3 A. So he denied all drug usage during our interview
4 and exclusively focused in his alcohol use when we were
5 discussing substances.

6 Q. Now, you did a Static-99 test, did you not?

7 A. Yes, I completed and scored Mr. Wilder on the
8 Static-99R or Static-99 Revised.

9 Q. Okay. Would you briefly explain what that is?

10 A. Sure. So in actuarial risk assessment tool of
11 static risk factors. Just briefly, static risk factors are
12 largely historical items which are related to someone's risk
13 of sexually reoffending. And so the Static-99R has
14 scientifically derived historical items that are related to
15 or predictive of sexual offending. These are things like
16 whether someone has maintained a long-term relationship,
17 whether they have committed or been convicted of violent
18 offenses, the types of victims that they have had in their
19 sexual offenses.

20 And you score these items based on a specific
21 coding manual and that generates a score between negative
22 three and twelve. And the higher the number on that score,
23 that corresponds with or is related to a higher risk of
24 sexual reoffending.

25 Q. All right. Now, I'm going to get to this in a

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1 minute. But I am going to go ahead with this in a second.

2 Did you determine whether or not there were any future risk
3 factors dealing with Mr. Wilder?

4 A. Could you define what you mean by a future risk
5 factor?

6 Q. Well, maybe not -- maybe future is not the word.
7 Did you find -- decide whether or not Mr. Wilder had any
8 risk factors?

9 A. Yes, so as part of my evaluation, I don't just
10 look at the static risk factors. The research is pretty
11 clear that that only essentially covers a portion or part of
12 risk for sexual reoffending. Dynamic risk factors are also
13 incredibly predictive of someone's risk of sexually
14 reoffending.

15 Dynamic risk factors are different from static
16 risk factors. These are things that are typically
17 changeable with treatment. They can fluctuate over time. A
18 great example that kind of tees up the differences between
19 those two is with car insurance. I am not sure if anyone is
20 familiar with those drive safe apps that car insurance
21 companies are using, but that is almost like dynamic risk
22 factors. Your historical sort of car insurance is based on
23 a lot of your history, are you married, what is your
24 accident history, how much does it cost to fix the car when
25 you got into an accident in the past. You can't change that

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1 stuff. The insurance company already has all of that
2 information. But the drive safe app is kind of similar to a
3 dynamic risk assessment, because you can change your driving
4 habits, how fast you stop, how fast you turn, the speed you
5 go when you drive, that all may be relevant for an insurance
6 company knowing how risky you are behind the wheel, but
7 those are all things that you can change.

8 And so it is -- and sexual offending is very
9 similar in that respect, in that we are trying to look at
10 the historical factors that can't be changed that are
11 related to recidivism as well as some of those things that
12 can be changed.

13 Q. Could you identify the dynamic risk factors that
14 you assessed Mr. Wilder to have?

15 A. So, I used a structured, standardized actuarial
16 risk assessment tool to assess dynamic risk factors called
17 the violence risk scale sex offense version. The dynamic
18 scale on that tool has 17 different possible dynamic risk
19 factors that are related to sexual reoffending. And each of
20 those items is scored on a scale from zero to three, and so,
21 again, kind of similar with the static tools, the higher the
22 score on those specific items, the more risk relevant or the
23 more risky it communicates the person is.

24 Q. Okay. I guess my question, can you tell me what
25 risk factors you found?

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1 A. Yes. Using that violence risk scale sex offense
2 version, out of the 17 dynamic risk factors that are
3 assessed, Mr. Wilder had 12 of those 17. And so that
4 includes things like sexual compulsivity, so a high drive
5 towards sex. Criminal personality, so certain traits like
6 lack of remorse, manipulation, deceit. It also included
7 interpersonal aggression, which again is how it sounds,
8 physical violence and history of that nature.

9 Substance abuse. His impulsivity. His compliance
10 with community support, so his history, for example, of not
11 abiding by probation and violating community supervision
12 rules. It also includes his level of community supports.
13 So, for example, how is he able to benefit from potential
14 positive supports in his life, versus, does he have the type
15 of positive supports that can help manage his risk in the
16 community. I believe there was some deficits in those areas
17 that related to a risk factor.

18 His insight into his sexual offending, so does he
19 understand why he did what he did in 2014. I believe he
20 does not have a well-developed insight. That is certainly a
21 risk factor for him. Cognitive distortion is another of
22 those twelve. That basically just means the types of
23 minimizing, excuse making, victim blaming sort of statements
24 that people have about sexual offenses. I believe that is a
25 risk factor for Mr. Wilder.

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1 I believe his release plans as well are also a
2 risk factor for him. I think there's certainly improvement
3 that can be done within his release plans to help further
4 lower his risk. Lastly, I think he has intimacy deficits.
5 So that is related to not having strong emotional
6 connections and attachments with others. And then what is
7 called emotional control, so specifically in Mr. Wilder's
8 case, there is a history of emotional under-control. What
9 that means is that he is someone who doesn't do a very good
10 job controlling their anger, and that that difficulty has
11 been related to his 2014 sexual offense.

12 Q. It sounds to me like Mr. Wilder has some issues,
13 doesn't he?

14 A. Yes, he has -- he has many dynamic risk factors
15 related to sexual reoffending.

16 Q. But, again, you don't think that he needs to go
17 into treatment; is that correct?

18 A. Well I don't think that his risk is more probably
19 than not to sexually reoffend if he is released.

20 Q. These dynamic risk factors, how subjective are
21 they?

22 A. There is limited subjectivity with these. The
23 reason being, each item of those twelve that I mentioned,
24 and the other ones that I assessed as well, there is very
25 specific scoring criteria with different types of examples

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1 for how someone might meet or might present with that
2 dynamic risk factor. There is specific coding instructions
3 for what score to assign. And so, in that sense, it limits
4 subjectivity because there is a very structured standardized
5 way of doing the assessment.

6 Q. So this assessment is a quantitative assessment?

7 A. That's correct. And so both the Static-99R and
8 the VRS-SO, one of the, I guess, most important aspects of
9 using them is that each of those tools is able to quantify,
10 put a number on how risky all of this information is. So
11 saying someone has twelve dynamic risk factors and has
12 static risk factors, well how risky does that really make
13 them. Without using this sort of approach and these sort of
14 tools, you don't know. But by using these tools, you can
15 actually get an idea about how risky someone really is to
16 commit a sexually violent offense or sexually reoffend after
17 they have been released. So that is a big strength of using
18 those, these two tools, in this sort of evaluation.

19 Q. Now, with this Static-99 alone, what did it -- you
20 are aware that he was convicted of criminal sexual conduct
21 in the first degree, correct?

22 A. Yes.

23 Q. And you are aware that he has had all kinds of
24 disciplinary problems in prison?

25 A. Yes.

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1 Q. And some of his disciplinary problems were
2 exhibition and masturbation?

3 A. Yes, approximately four of the 49 substantiated
4 infractions.

5 Q. Okay. Do you have any reason to believe that
6 those exhibition and masturbation disciplinaries should not
7 be included as a sex offense for him?

8 A. So there is actually very clear evidence and
9 guidance from the Statistic-99R manual that those should not
10 be included. So, again, one of the benefits of these
11 structured, standardized tools is they provide very
12 concrete, very specific rules of how to score instruments.
13 As it relates with institutional infractions, the manual is
14 very, very clear. It states that certain criteria need to
15 be met in order for some sort of sexual misconduct in prison
16 to rise to the threshold of a new sex offense charge. And
17 one of those is that the behavior needs to be clearly
18 targeted.

19 So some of the examples that they use in the
20 manual would be, for example, someone exposing themselves
21 during a formal count. So, a time when they know a guard is
22 supposed to walk by. Or it might include exposure out in a
23 very public area, for example like the medication line. So,
24 those are the types of examples they use to distinguish
25 between someone who is engaging in a more targeted offense

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1 that is similar to a sexual offense you get in the
2 community, as opposed to more just general sexual misconduct
3 information.

4 Based on those very specific coding rules, there's
5 nothing in the Department of Corrections' records to suggest
6 that what Mr. Wilder did was targeted or consistent with a
7 sexual offense. The descriptions of what he was infracted
8 for are actually quite vague. They say things like, he was
9 masturbating in a shower, or he was masturbating by a door.
10 There was no indication that it was during formal count,
11 that he was targeting a specific staff member or other
12 prisoner by his behavior.

13 And those are types of things that I come across
14 in other work where those incident reports do document those
15 details. But they were available in this case. And there
16 is no actual evidence from the records to suggest that he
17 targeted or engaged in any sort of offense-similar behavior
18 with those misconducts.

19 Q. Okay. Now on the Static-99 when you scored it,
20 what score did you give on it?

21 A. He scored a four on the Static-99R.

22 Q. Okay. What does that make his risk level?

23 A. So, again, he can use these tools in lots of
24 different ways. Very quickly, kind of like I was thinking
25 of like a hammer. A hammer has this, the side that you, you

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1 know, pound the nails into the wood, and it also has the
2 side that you can remove the nail out of. It is the same
3 tool but you can use it in different ways. And Static-99R
4 is no different than that.

5 And so why I use that example is a score of four
6 can mean a lot of different things depending on how you want
7 to use the tool. It can be associated with a specific
8 probability or percentage of sexual reoffending. It can
9 also be associated with a category. In other words, how
10 much more or less risky is this person compared to others.
11 So when kind of looking at the category, I think that the
12 best way to think of this is with percentile ranks. And
13 what that basically means is, how much greater or less than
14 is that score compared to others.

15 So to answer that question, it puts him at the
16 79th percentile. Basically what that means is that people
17 who score four, 79 percent of sexual offenders scored lower
18 than him. So that kind of gives you an idea about where his
19 risk is relative to others.

20 Q. Did you use the Static-99 for comparison with what
21 you said was the VRS-SO?

22 A. Yes, exactly. So each of the tools on their own
23 are going to be able to generate risk estimates. What I
24 mean by that is they are going to be able to give you a
25 probability about how risky that combination of risk factors

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1 is.

2 One of the other really important aspects of using
3 these two tools is there's research that says that you can
4 actually combine them. And what I mean by that is you can,
5 you can measure how much risk is accounted for by the static
6 risk factors and how much risk is accounted for by the
7 dynamic risk factors. You get a total, absolute risk
8 assessment or risk probability for the individual.

9 And so, if you don't use these types of
10 structured, standardized tools, you are not able to come up
11 with that sort of opinion to be able to pinpoint what
12 someone's probability of sexual reoffending is. However, by
13 using these two tools like I did, I am able to do that.

14 Q. Okay. In combining the two tools, did you come up
15 with a risk factor for Mr. Wilder?

16 A. I came up with a risk percentage for Mr. Wilder.
17 So based on his unique combination of static risk factors as
18 measured by the Static-994R, and based on his unique
19 combination of his dynamic risk factors, which I explained
20 to you earlier, that puts his five-year risk of sexually
21 reoffending at around 18 percent. So what that means is
22 that his risk of being charged or convicted of a new sex
23 offense within five years is 18 percent, based on his unique
24 combination of static risk factor and dynamic risk factors.

25 Q. Okay. Did you also figure a ten year?

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1 A. So initially, yes. So on my original report is
2 ten year risk, based on that same combination.

3 Q. Now you said, initial report. Did you do an
4 addendum to your report?

5 A. Yes, I submitted an addendum which allowed for
6 extrapolation beyond just what the risk assessment tools do.
7 Very briefly, what extrapolation is, is it is using extra
8 data of other risk relevant information, so other things
9 that are related to sexual reoffending and being able to put
10 a quantity or an amount on how much that affects someone's
11 risk, and that causing to incorporate that factor into the
12 static and dynamic risk assessment.

13 So I submitted that information as an addendum for
14 this trial. But the original question was, what was his ten
15 year risk based on those two tools. That was 26.8. So five
16 years was 18. Over ten, so that is a longer period of time,
17 the risk of reoffending based on, again, just solely on
18 static and dynamic risk factors was about 26.8 percent.

19 Q. These are basically actuarial numbers, correct?

20 A. That is exactly right. These are actuarial
21 numbers, so it is providing a quantity of what his
22 probability of sexual reoffending is based on that
23 information that was entered into the model.

24 Q. So, they can't predict whether any one individual
25 is going to be a recidivist or not?

DIRECT EXAMINATION CONTINUED OF DR. GILLEN BY MR. THOMPSON

1 A. Right. So it is presenting risk. And so what is
2 important to know about risk is that it is tied in with the
3 probability of a likelihood of an outcome. So, for example,
4 what is the probability that it is going to rain tomorrow,
5 you will often hear the weather man or the weather woman
6 report that as a percentage. She is not saying that, or
7 he's not saying that it is definitely going to rain tomorrow
8 or it's definitely not going to rain tomorrow, it is
9 communicated as a probability or a likelihood of something
10 happening.

11 Risk is the exact same thing. We are looking at a
12 probability or a likelihood of some future event happening
13 based on what we know about what contributes to those types
14 of problems in the future.

15 Q. Okay. Based on that, have you established a
16 lifetime percentage for Mr. Wilder as possible recidivism?

17 A. Yes. So this gets into the extrapolation
18 procedures I mentioned earlier. And so the static and
19 dynamic tools is measured by the Static-99R and VRS-SO are
20 very good at being able to measure those specific things.
21 And both of those things are related and predictive of risk
22 of sexually offending. But it doesn't necessarily get the
23 full picture of what someone's individual risk is for the
24 remaining lifetime. So there's a published, peer reviewed
25 study that has looked at, you know, based on someone's five

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1 or ten year risk, how does that translate into the risk for
2 the rest of their life. Because it is important to realize
3 that the law here in South Carolina, they are not just
4 asking whether Mr. Wilder is going to commit a sexually
5 violent offense within five or ten years, they want to know
6 if he is ever going to do it. And so simply relying on a
7 five or ten year number isn't giving you the whole picture.
8 So what I did with my methods is I was able to quantify and
9 extrapolate out, or predict out, how much risk would he have
10 for his foreseeable lifetime based on what we know about
11 sexual reoffending rates over time. And so what that
12 translates into is actually a twenty year rate, and so that
13 was accounted for in my model as well.

14 Q. Okay. And what was that number?

15 A. So that number I can't provide because I didn't
16 look at that in isolation of other accounted risk factors.
17 Specifically his risk of committing crimes he is undetected
18 for. So I actually looked at that first before I
19 extrapolated out for the rest of his lifetime.

20 Q. Well, his lifetime, did you come up with a sexual
21 recidivism rate?

22 A. I did. So that is going to be based on a few
23 factors. That original 18 percent I told you about, which
24 is looking at how much static risk he has, how much dynamic
25 risk he has. The next thing is, okay, well, that number

DIRECT EXAMINATION CONTINUED OF DR. GILLEN BY MR. THOMPSON

1 tells you what his risk of being charged or convicted is.
2 It doesn't tell you what his risk of committing a sex crime
3 is. There is a chance that people commit sex crimes and
4 they don't get caught, and so what I would want to try to do
5 with this evaluation is, again, quantify what that amount of
6 risk is for committing undetected crimes, not getting caught
7 by the police.

8 And so I was able to do that through, again, peer
9 review literature looking at individuals who had been
10 released after a conviction for sex offense, and then how
11 many of their crimes within a five year period are adverse.
12 So how many are victims, I should say, within a five year
13 period end up being detected. So accounting for that in the
14 model increases his risk. Specifically it takes his risk
15 from 18 percent up to 21.3. So when you take a look at his
16 risk of committing crimes within that five year period
17 without getting caught, it ups it from 18 to 21.3, so that
18 is now accounted for in the prediction.

19 Next, how much risk does he have over his
20 remaining lifetime. And so you use what is called the
21 lifetime and residual risk calculator. It is a published
22 Excel tool basically that allows you to predict out risks
23 over longer periods of time. And for Mr. Wilder that risk
24 goes up from 21.3 percent to 37.4 percent.

25 Q. Based on your findings, Doctor, do you believe

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1 that Mr. Wilder is a person who is predisposed to engage in
2 acts of sexual violence and will more probably than not
3 engage in sexual violence?

4 A. So I believe that he's not, specifically because
5 of that number that I just reported. So more probably than
6 not means that someone's risk is going to be over 50 percent
7 for the rest of their lifetime. It means that the
8 likelihood, or the risk of the outcome, in this case we are
9 talking sexual offending, is more likely to be true than not
10 true.

11 So what courts around the country have decided is
12 that that means someone's risk is more than 50 percent, if
13 you clear that bar, you clear that threshold. Looking at
14 all the risk relevant information that I did as part of this
15 evaluation, static risk factors, dynamic risk factors, risks
16 of essentially getting away with it, and then also his risks
17 throughout his remaining lifetime, he is well below that
18 bar. Well below 50 percent. In fact it's almost 15 points,
19 15 percentage points below. That is not a small number.
20 That is quite a bit below 50.

21 And because of that, I cannot believe that he has
22 a predisposing condition that makes him more probably than
23 not to sexually reoffend.

24 Q. Dr. Gottfried used the SVR-20?

25 A. I believe so, yes.

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1 Q. What is the difference between the VRS-SO that you
2 used and SVR-20 that she used? Are you familiar with both
3 of them?

4 A. Yes, I'm familiar with both. So probably the best
5 way to describe this is that they are both tools. Anyone
6 who is familiar with tools will know that different -- you
7 know, lots of different tools are good, but you are going to
8 want to use the specific tool that you need to do a specific
9 job.

10 And so the SVR-20 is what is known as a
11 structured, professional judgment tool. Now what that means
12 is that there's a lot of clinical judgment that goes into
13 rating the dynamic risk factors that are identified in the
14 tool. There is no numbers or scores that are assigned when
15 evaluating those risk factors in that type of tool. And so
16 ultimately how it works is that the final opinion that
17 someone gives when looking at something like an SVR-20 is
18 based on how they feel that person's risk is.

19 For example, does that person feel their risk is
20 high, medium, or low based on the clinical assessment of
21 those items. There is no scores that are attached to it.
22 However, the VRS-SO that I used, there is -- it is a
23 structured and standardized dynamic risk assessment tool
24 unlike the SVR-20.

25 And, again, as I testified earlier, what that

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1 means is that I am actually able to score and combine
2 specific numbers and probabilities associated with the
3 dynamic risk factors that I evaluated. You are not able to
4 do that when using a tool like the SVR-20. I guess, kind of
5 relatedly, to finish my thought, for this specific type of
6 evaluation, that is actually very important.

7 Again, if you want to know if someone's risk is
8 above 50 percent, you need to be able to quantify the impact
9 of these different risk relevant items. And, again, if you
10 can't do that you can't say that, with that level of
11 precision, whether someone's risk is above or below that
12 sort of specific number.

13 Q. Well let's ask a question about the 50 percent.
14 This is the new law in South Carolina, became effective last
15 week. This language is more probably that will engage. Is
16 that where you are coming up with 50 percent?

17 A. Yes, and it is not just me coming up with it. So,
18 again, there are multiple states in the country that use
19 what we refer to as a quantitative threshold for likely.
20 There is only one state in the country that uses the more
21 probably than not standard that South Carolina uses now, and
22 that is Washington State.

23 The courts in Washington have looked at this
24 issue, and they were unequivocal, there is no doubt in what
25 they were saying. The courts have issued opinions that more

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1 probably than not is that person's risk to sexually reoffend
2 is more than 50 percent. If you look at other similar
3 states that use a more likely than not standard, it has been
4 interpreted the same way. Again, if that person's risk is
5 more than 50 percent. And that is what the new law in South
6 Carolina is saying as well, based on that language.

7 Q. At the Department of Mental Health, are you the
8 only doctor that does these evaluations?

9 A. No, we have a team of evaluators that do this type
10 of work there.

11 Q. And how many, can you estimate and tell me?

12 A. That do sexually violent predator work
13 specifically, or just kind of a general --

14 Q. That works in the area.

15 A. Approximately five, maybe six that will do
16 sexually violent predator work. They have a few other
17 evaluators that do other types of forensic evaluations for
18 the State of South Carolina. I would say my best guess is
19 about six of us are doing SVP work in some capacity.

20 Q. And I guess that leads to my question: With this
21 new law, is this the way that the Department of Mental
22 Health interprets this law, 50 percent?

23 A. Yes, it is. And that is consistent with how other
24 state are doing their work. Specifically, Wisconsin, so I
25 mentioned that earlier, that is where I was trained back in

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1 2018-2019. This is also how they are approaching answering
2 their question whether someone is more than 50 percent. So,
3 it is something that our department is doing, and it is also
4 something that other departments around the country are
5 doing as well. Which, again, it makes sense when you
6 consider the type of question that is being asked here. The
7 law is saying, is this person's risk at a very specific
8 threshold. So it requires a very sort of specific tool, a
9 very specific method in order to provide that sort of
10 answer.

11 Q. Okay. Now your evaluation of him, I believe you
12 said, was sometime last year, right?

13 A. That is right. I met with Mr. Wilder in October
14 of last year.

15 Q. And at that point in time we were still operating
16 under the old law?

17 A. Yes, that's correct.

18 Q. And I believe your opinion at that point in time
19 was, he didn't meet the statute to be a sexual predator?

20 A. Yes, that's correct, my opinion was the same at
21 that time as well.

22 Q. Okay. And have you issued an addendum opinion
23 since this new law came out?

24 A. So I issued an addendum report, which outlines
25 some of those extrapolation procedures I was telling you

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1 about, in order to quantify our measure, undetected risk as
2 well as lifetime risk. Because I didn't measure those
3 things under the old law or old statute.

4 Q. Okay. And it is your opinion that Mr. Wilder does
5 not meet the definition of a sexually violent predator?

6 A. Yes, that is my opinion. Because I believe he
7 does not have a predisposing mental condition. So what I
8 mean by that is, his antisocial personality disorder does
9 not -- does not predispose him to commit sexually violent
10 offenses. He has had the one sexually violent offense in
11 2014, despite having an extensive criminal history dating
12 back to when he was ten years old up until currently. There
13 is just the one sexually violent offense in a very long
14 criminal history.

15 And the research talks about trying to
16 differentiate people with antisocial personality disorder
17 who are predisposed to commit sex crimes versus those who
18 are just more antisocial, kind of an equal opportunity
19 offender, so to speak, committing all sorts of crimes. Mr.
20 Wilder is in that latter category. He commits all sorts of
21 crimes.

22 Very few, only one is actually sexual. And what
23 that means is, it is hard to really tie-in that he has a
24 chronic pattern of sexually violent offending and behavior
25 over time when you have only got the one data point. So

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1 that is why I don't believe his personality disorder is a
2 predisposing condition for him.

3 The second part of that is, if you were to for
4 example assume that that was a predisposing condition, does
5 it make him more probably than not to commit a sexually
6 violent offense if he is released. And the answer to that
7 is also no. Because, again, his risk to commit a sexually
8 violent offense is well below 50 percent. It is well below
9 the threshold that has been established here within the
10 state. So however you slice it, he is not a sexually
11 violent predator.

12 Q. A couple of last questions. Can antisocial
13 personality disorder be cured?

14 A. No, there is no cure for it. It is not like, you
15 know, a bacterial infection that you go to your doctor for
16 and take an antibiotic. So, no, there is no cure for
17 antisocial.

18 Q. So treatment cannot cure it?

19 A. Yes, that's correct, there is no treatment for
20 antisocial personality disorder.

21 MS. THOMPSON: Thank you. Answer any
22 questions that the State may have, please.

23 THE COURT: All right. Ms. Shaw.

24 MS. SHAW: Thank you. Mr. Thompson.

25 CROSS EXAMINATION

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1 BY MS. SHAW

2 Q. So, Dr. Gillen, I am going to kind of walk you
3 back. You evaluated Mr. Wilder in October of 2022. Since
4 then, have you had the benefit of any updated records
5 regarding disciplinary infractions and Mr. Wilder's behavior
6 while either at SCDC or the Oconee County jail?

7 A. No, so I wasn't given records for that. The only
8 information that I reviewed following submitting my report
9 was from Dr. Gottfried's report that I reviewed prior to
10 this trial.

11 Q. Okay. So you are not aware that in 2023 he has
12 been charged with an additional sexual-based infraction
13 while at the Oconee County jail?

14 A. I'm not aware of any infractions at the Oconee
15 County jail.

16 Q. Okay. And you've mentioned in your report, and I
17 am going to take you back to Mr. Wilder's juvenile history.
18 If you recall in your report you noted that he had been
19 either expended or expelled from his regular school, and
20 then he got sent to two different alternative schools;
21 correct?

22 A. Yes, that's correct.

23 Q. Okay. And do you recall in your report where you
24 note that he had been accused of sexually harassing two
25 female peers in that alternative school?

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1 A. That's right. So the records from the school
2 records that I had access to talked about there were
3 attractions at the alternative school. And the quote was,
4 "sexually harassing" them. There was no additional details
5 of what behavior happened beyond that, that was the only
6 information that was provided.

7 Q. Okay. So you didn't consider that removal when
8 you were assessing his overall sexual behavior in the
9 community and in prison?

10 A. Well, I wouldn't say that is true. Because I did
11 look at that information as part of the overall risk
12 assessment. So as I mentioned earlier, I assigned Mr.
13 Wilder a sexual compulsivity risk factor. A lot of that
14 information as a risk factor for him came from those sorts
15 of behaviors. Based on his own self report and the one
16 sexually violent offense, that probably wouldn't have been
17 enough on its own to say that that was a risk factor for
18 him.

19 So as part of my risk assessment I did consider
20 those sexual misconducts and the juvenile offending history
21 that Ms. Shaw had mentioned as a part of scoring that item.
22 So it was certainly considered as part of the risk
23 assessment.

24 Q. Okay. And, just for the record, how old was he
25 when he allegedly sexually harassed those two females?

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1 A. I'm not sure of the specific age. I believe it
2 was middle school alternative school that he was at when
3 that happened. But I'm not sure of the specific age he
4 would have been. I think around 14 or 15.

5 Q. So somewhere between 13 and 15 years old he would
6 have done that particular behavior?

7 A. That sounds about right. Again, I'm not sure on
8 the specific age, but it would have been around that time,
9 yes.

10 Q. Okay. And you testified earlier that there is
11 absolutely no evidence in the SCDC records that any of his
12 sexual behaviors in prison were targeted?

13 A. Yes, that's correct.

14 Q. Okay. I am going to show you some documents, and
15 I am going to ask you to read them for me.

16 MS. SHAW: Judge, may I approach the witness?

17 THE COURT: Yes, ma'am.

18 MS. SHAW: Thank you.

19 BY MS. SHAW

20 Q. And you said, Dr. Gillen, please excuse me, that
21 targeted behaviors would be consistent with exposing himself
22 in public areas, either outside in the rec yard, during
23 count, pill line, things like that, right?

24 A. Yes, as long as there's a formal sanction that is
25 applied to that. That is one of the other criteria that is

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1 important when assessing whether an institutional
2 infractions or misconducts rise to the level of a sexual
3 offense. There needs to be a formal documented sanction
4 that is associated with that type of behavior.

5 Q. Okay. I am going to ask you to read this
6 narrative. And if you can tell me what it is, and the date
7 please?

8 A. Okay. So the narrative here?

9 Q. Yes, please.

10 A. Okay.

11 Q. And --

12 A. I am sorry, I am still going.

13 Q. Oh, I am sorry.

14 A. I am not the fastest reader, I apologize.

15 (Pause.)

16 Yes?

17 Q. And that narrative was dated what year?

18 A. The date -- there is two dates. It looks like it
19 was created, the incident report, of an alleged misconduct.
20 So this is an alleged misconduct that happened, or at least
21 was entered into the Department of Corrections' system on
22 September 17th, 2021.

23 Q. Okay. And does that indicate he was exposing
24 himself out in the rec yard and an officer, a female one,
25 noted that he was doing that and sanctioned him for it?

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1 A. Yes. So, this is a specific allegation that was
2 made. I am familiar with this, with this incident report.
3 And I reviewed it for my evaluation. As I just testified
4 earlier, this wouldn't rise to the threshold of a new sexual
5 offense, because there was no formal sanction. He wasn't
6 found guilty of this by the Department of Corrections. So
7 this specific act, based on the Static-99R scoring manual,
8 doesn't rise to the occasion of a new sexual offense because
9 of that.

10 Q. But it is what you would consider open, sexual
11 behavior? Even if he wasn't convicted, he was still charged
12 with it. So you might not take it into account on the
13 Statistic, but it still exists?

14 A. It is an allegation that was made that was
15 unfounded. And what I mean by that is no trier of fact, no
16 individuals in the Department of Corrections substantiated
17 that that allegation actually happened.

18 Q. And do you know why it wasn't substantiated?

19 A. I believe the time ran out on it, if I remember
20 reading that. They didn't submit the document or the
21 appropriate documentation in time. So there was no formal
22 hearing, there was no formal sanction that was provided
23 because of that behavior.

24 Q. Okay. So it was a time limitation, not that he
25 didn't do it? You don't know if he did it or not; you

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1 weren't there, were you?

2 A. No, I wasn't there. And the records, again, for
3 his substantiated infractions are very clear that it was not
4 targeted. And as I testified earlier, for institutional
5 misconducts to be considered a new sexual offense, there has
6 to be, has to be a formal sanction that results in
7 disciplinary proceedings. That was not the case in that
8 particular alleged infraction, so you wouldn't be able to
9 count it as a new sexual offense.

10 Q. But you are speaking specifically about the
11 Static, not about the overall behavioral pattern, right?

12 A. So, exactly, I'm talking about his risk of
13 sexually reoffending. So, for instance, being able to
14 assign that he has sexually reoffended, has a new indexed
15 offense, the answer is not based on the very specific
16 standardized scoring and rules, the answer is no.

17 Q. Okay. And I am going to show you another
18 disciplinary report created on December 20th of 2018. And
19 can you please read that and tell me if you are familiar
20 with it?

21 A. Yes, I'm familiar.

22 Q. And can you just tell the jury what that says?

23 A. Sure. So this is a substantiated solicitation
24 infraction that Mr. Wilder received in 2018 in the
25 Department of Corrections. Specifically what he says, what

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1 he tells the officer, "I have something to tell you." And
2 then he says, I want you bad, I want you so bad. And then
3 the officer told him to leave. And so he was infracted for
4 solicitation of an employee in this example. So what is
5 significant to me about that --

6 Q. Before you go into significance, was he convicted
7 of that infraction?

8 A. Yes, that was a substantiated infraction. So what
9 that means, he received some form of sanction or penalty or
10 disciplinary action because of that behavior.

11 Q. Okay. And that was targeted at a very specific
12 female employee?

13 A. So actually, no, not based on Static-99R scoring.
14 Again, the rules are very clear, they are very specific
15 because it is such a standardized assessment. This type of
16 behavior is explicitly ruled out as being counted as a new
17 sexual offense. They say any sort of untoward or sexually
18 egregious sort of comments towards staff, those do not
19 count. Even if they are substantiated.

20 So in terms of looking at targeted behavior, that
21 doesn't fall into that category at all. Again, this is
22 because the rules are very clear, very specific. And,
23 again, it talks specifically about that type of behavior and
24 why it wouldn't fit as a new sexual offense.

25 Q. And, again, that is only relevant as to the

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1 Static, but not as to the overall behavioral pattern?

2 A. Well, so again, as I testified before, it is
3 certainly something that I considered. And I used this
4 information in scoring the dynamic risk assessment tool, so
5 specifically his sexual compulsivity as I mentioned earlier.
6 This is the sort of thing that goes in in elevating the
7 score on that item. So I certainly considered it as part of
8 his risk assessment, but it certainly doesn't change his
9 Static score. It certainly does not count as a new sexual
10 offense. Under any sort of way you look at this, it can't
11 really be viewed as sexual recidivism based on how those
12 types of behaviors are conceptualized and looked at based on
13 the tools that we have available.

14 Q. But you would agree that he has at least one
15 sexually related disciplinary accusation of masturbating out
16 in public in front of everybody, and then another one where
17 he specifically accosted a specific female employee and was
18 sanctioned for it. And regardless of whether it is
19 incorporated in the Static, you are saying that this would
20 not be relevant in assessing whether he is a current risk?

21 A. Oh, no, it is certainly relevant. And that is --
22 this is probably my fault. I probably didn't explain this
23 well enough. So I'll try and explain again. So different
24 tools are going to assess for us in different ways. And so
25 these types of behaviors, allegations, substantiated

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1 infractions that I just talked about, they get
2 conceptualized in his risk assessment through the violence
3 risk scale sex offense version. And what that means is
4 these sort of behaviors went into increasing his score on
5 some of those items.

6 So, that final number that I reported, that 37
7 percent, it includes those sort of infractions. That has
8 been considered, it is in that number. And so to say that
9 it is not important is certainly not the case. It was
10 considered. It was quantified. And he is not above 50
11 percent.

12 Q. Okay. And so, Dr. Gillen, in scoring the Static,
13 you assigned Mr. Wilder a score of four; right?

14 A. Yes, that's correct.

15 Q. Okay. And you know Dr. Gottfried assigned him a
16 score of five?

17 A. I believe so, yes.

18 Q. Okay. And is the reason you assigned him a score
19 of four because he reported to you he had had a cohabiting
20 relationship at one point?

21 A. No, no, that is not true.

22 Q. Okay. Why did you assign him a four instead of a
23 five? And would that typically, that discrepancy of one
24 point, be within the range of acceptable professional
25 judgment in those scores?

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1 A. Yes, those are both very good points. I think
2 there is two questions there. I'll try and answer both.

3 So, for the first one about, if I believe I am
4 remembering what you were talking about, why I scored him a
5 four rather than a five, so for that specific thing, it was
6 because of those sexual misconducts that I mentioned
7 earlier. So he doesn't get a point on the Static-99R for
8 having prior sex offense convictions. And that is one of
9 the items that the Static-99R has. And the reason for that
10 is, again, as I just testified earlier, none of those prison
11 misconducts, the substantiated prison misconducts, based on
12 the Static-99R coding manual count as a new sexual offense.

13 So those don't count as sexual -- that does not
14 count as sexual recidivism, so I didn't give him a point for
15 that item. And so that is why he has a score of four rather
16 than a score of five.

17 Q. Okay. Thank you. But the difference between the
18 scores would not be considered professionally inappropriate?

19 A. Yes, sorry, that was the second part of your
20 question. So there is something that we actually quantify
21 on these tools, it is called a standard error of measure.
22 The way I like to explain that is, you know, typically two
23 people relying on the same information, same case facts, the
24 same level of training, we would expect them on average
25 there could be a difference of about between one and two

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1 points on the Static-99R. That is kind of a built-in error
2 associated with that structured, standardized tool.

3 Q. Okay. So, both scores would be accurate?

4 A. I would disagree with that, because of just how
5 clear the Static scoring rules are in this sort of case. I
6 had actually consulted with my colleagues on this and we had
7 a unanimous agreement that none of those sexual misconducts
8 that happened in the Department of Corrections rise to the
9 threshold of a new sexual offense. So I actually do think
10 that that score of four is accurate and is the correct score
11 based on, again, the specific coding instructions and rules
12 on how to use that sort of tool.

13 Q. Okay. Now going on we discussed, or you discussed
14 with Mr. Thompson earlier, that Mr. Wilder has alcohol
15 problems, and Mr. Gottfried gave him alcohol and cocaine use
16 disorder and sustained remission in a controlled
17 environment. You gave him an unspecified alcohol use
18 disorder. Those two diagnoses are not inconsistent with
19 each other, are they?

20 A. Sorry, but alcohol and cocaine?

21 Q. No, your diagnosis of unspecified alcohol use
22 disorder and her diagnosis of alcohol use disorder in
23 sustained remission in a controlled environment. Would
24 those be fairly consistent?

25 A. I would assume so. There is more, I guess,

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1 problems or symptoms that need to be associated with an
2 alcohol use disorder versus an unrelated alcohol related
3 disorder. But for all intents and purposes, it is basically
4 talking about the same thing, someone who has a drinking
5 problem who experiences problems because of their drinking.

6 Q. But you know that just having an alcohol, or
7 potentially cocaine use problem, that is not going to cause
8 someone to sexually reoffend, is it?

9 A. Probably not. I mean, I think theoretically there
10 could be some sort of example where someone sexually offends
11 every time they drink and they would never do it when they
12 are sober. So I don't want to say theoretically it couldn't
13 happen, but I think in this case, and more generally, no,
14 alcohol related disorders aren't something that, you know,
15 would really rise to the threshold of a predisposing mental
16 condition for sexual violence.

17 Q. And generally substance abuse disorders are not
18 considered to be anything more than adding fuel to a fire;
19 would that be fair to say?

20 A. That could be a good way of looking at it,
21 specifically because of the dynamic risk assessment. So,
22 for example, I assigned Mr. Wilder with a dynamic risk
23 factors of substance abuse, and according to VRS, and so
24 what that means is that there is a substance abuse problem
25 as directly related to sexual offending. I believe that is

CROSS EXAMINATION OF DR. CHRISTOPHER GILLEN BY MS. SHAW

1 the case for Mr. Wilder, and that certainly increases his
2 level of dynamic risk.

3 Q. So if he were to be released and not be civilly
4 committed and he goes out in the community and starts
5 drinking again, would that increase his risk overall?

6 A. Well, it wouldn't increase it from what is already
7 being captured in the tool. So, for -- one of the nice
8 things with the VRS-SO is that you can actually quantify an
9 amount of change. And so let's say for example someone like
10 Mr. Wilder were to go out and get treatment and make
11 progress on some of these risk factors that I identified,
12 that actually lowers risk. So improving in these areas
13 would help reduce that number. But the absence of change
14 doesn't increase the risk, it is already baked into the
15 instrument.

16 The risk of him having a drinking problem, that is
17 already captured in that 37 percent.

18 Q. And Mr. Wilder, in fact, denied all drug use to
19 you, correct?

20 A. Yes, that is true.

21 Q. And would you say he was forthcoming about his
22 history, based on the inconsistencies between what he told
23 you and what he told Dr. Gottfried?

24 A. I would not say he was particularly forthcoming,
25 no. There were several inconsistencies in our interview for

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1 sure. And that was captured as part of my dynamic risk
2 assessment.

3 Q. Okay. And you did not consider him a reliable
4 historian, when he was talking about his own history or his
5 own plans, things of that nature?

6 A. I think the best way to answer that is that, a lot
7 of what he said was inconsistent with the records that I
8 reviewed and the other people that I talked to.

9 Q. Okay, thank you. Now, let's go into the VRS-SO.
10 You are familiar with this; you have been trained in it,
11 correct?

12 A. Yes, that's correct.

13 Q. Okay. And so the initial score that you assessed
14 him, the pretreatment dynamic score, can we talk a little
15 bit about how you come to that score?

16 A. Sure. So as I testified to earlier, there is 17
17 dynamic risk factors that the VRS-SO has. Each of those
18 risk factors is scored between a zero and a three. So that
19 makes for a range of possible scores of zero to 51. And,
20 again, similar as I testified before, the higher that number
21 is, between zero and 51, that is related to a higher risk of
22 sexually reoffending.

23 Q. Okay. And you assigned him a pretreatment plan,
24 and as a part of that I just want to ask you, what are the
25 average Static-99 score for the average sex offender who is

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1 no more or less risky than any other?

2 A. Well, I am not sure about an average. We talk
3 about the median, which is going to be another measure of
4 central tendency. Basically it is a different way of, you
5 know, talking about what the typical person is like. You
6 might hear that a lot when talking about incomes, so they
7 talk about like what is the typical or median income in an
8 hour, people use that. Essentially what it means is, it is
9 the middle number in a group. So that is what it means, so
10 half of the numbers are smaller than that number and half of
11 the numbers are bigger. So that is one way of looking at
12 kind of the typical case.

13 So to answer the question about, well, what is the
14 median Static-99R score, it is two.

15 Q. Okay. And you gave him a four?

16 A. Yes, that's correct.

17 Q. So, would that equate to above average risk?

18 A. Yes, that is certainly a higher amount of risk
19 than the median sex offender.

20 Q. Okay, thank you. Now getting back to the VRS-SO,
21 pretreatment dynamics score that you assigned for Mr. Wilder
22 is 32.9; do you recall that?

23 A. Yes, I believe that was a round number I assigned.

24 Q. Okay. And on Page 14 of your report you document
25 that that falls between 88th and 90th percentile in terms of

CROSS EXAMINATION OF DR. CHRISTOPHER GILLEN BY MS. SHAW

1 initial risk; would that be fair?

2 A. Yes, that's correct.

3 Q. Okay. So he falls within the 90th percentile when
4 it comes to those basic dynamic risk factors that they
5 present; is that fair?

6 A. Yes, so the 88th to 90th percentile, the reason
7 why you can't give a specific number on that is the score
8 was prorated to 32.9. So looking at the charts, that number
9 falls somewhere between 88 and the 90th percentile.

10 Q. Okay. That is greater than 50 percent, right?

11 A. Well, actually no, those are completely different
12 questions. So, remember I was telling earlier about how you
13 can use a tool in different ways, the different sides of the
14 hammer can do different things, this is exactly what I was
15 talking about with this. And so when we are talking about
16 percentiles, we are talking about relative risk. In other
17 words, how much more risky is it. So, not how much, but
18 this is someone more risky than someone else. It doesn't
19 tell you how risky they are, it just tells you that they are
20 more risky.

21 So we are talking percentiles. What that means is
22 that those people who score on a test, about 88 to 90
23 percent of them scored well. But that doesn't tell you what
24 his absolute recidivism risk is. Or, in other words, what
25 the probability of his risk is. Those are completely

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1 different questions. One side is the hammer, the other side
2 is the one that takes up the nail. Same tool, different
3 ways of interpreting it.

4 Q. Okay. And when we get to -- beg the Court's
5 indulgence, Your Honor.

6 (Pause.)

7 BY MS. SHAW

8 Q. AS to those dynamic risk factors, you testified
9 that there is 17, right?

10 A. Yes.

11 Q. You got this count by the VRS-SO?

12 A. Yes, that's correct, there are 17 unique factors.

13 Q. And they are pretty different domains. There is
14 sexual deviance, criminality, and treatment responsivity;
15 correct?

16 A. Yes, our treatment anti-ability -- let me just
17 make sure.

18 Q. I'm looking at the Page 16, the title is Treatment
19 Responses.

20 A. Yes, treatment responsivity is the name of that
21 third factor.

22 Q. And when it comes to sex offender treatment
23 specifically, has Mr. Wilder had any form of sex offender
24 treatment in the community or outside of the community, or
25 in the prison environment?

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1 A. No, he's never been offered. There is no record
2 or evidence that he was ever offered sex offender treatment
3 while he was an inmate in the Department of Corrections.
4 And he's never participated in sex offender treatment.

5 Q. So, let's go into the sexual deviance. On Page 14
6 you noted that he showed evidence of sexual compulsivity.
7 Did you have assigned any other risk factors under that
8 particular domain?

9 A. No, there was just the sexual compulsivity for
10 that one.

11 Q. So that means that he needs sex, he is going to
12 engage in it, and you know whenever he feels the need, he
13 has just got to do it; is that fair?

14 A. So, when it -- how it is described in the manual
15 is it talks about someone's total sexual outlets that they
16 have. Now that can include both deviant sex as well as
17 nondeviant sex. So it is really looking towards his drive
18 for sex. And so why I assigned that specific risk factor
19 for Mr. Wilder was because of things like having a lot of
20 one-time stands, having a large number of sexual partners.
21 There is nothing offending about it, just having a large
22 number of sexual outlets contribute to that score.

23 The second piece of that was, as I testified to
24 earlier, some of those sexual misconducts, the criminal --
25 or not criminal, I am sorry -- the solicitation of

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1 employees. Some of those masturbatory infractions while in
2 prison, that also contributed to why that dynamic risk
3 factor was assigned to him.

4 Q. Okay. Now moving on to the criminality portion,
5 also Page 14. There is approximately six factors under that
6 subheading, right?

7 A. Yes.

8 Q. Okay. And you indicated that Mr. Wilder currently
9 showed evidence of each of those risk factors?

10 A. Yes, that is exactly correct.

11 Q. Okay. And those are criminal personality,
12 interpersonal aggression, poor compliance with community
13 supervision, impulsivity, substance abuse, and lack of
14 positive community supports?

15 A. Yes, that is exactly right.

16 Q. And were those factors all present in 2014, the
17 date of his sexually violent offense?

18 A. Yes, I would believe so.

19 Q. Okay. And they are still present today?

20 A. Yes. So each and every single one of those, I
21 believe, is still an ongoing and active risk factor for Mr.
22 Wilder.

23 Q. Okay. And the same thing with sexual devious, was
24 that present in 2014 when he assaulted his victim?

25 A. Well, it depends on how you define sexual

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1 deviance. Looking at the VRS-SO, the answer would be no.

2 So there is different items that the VRS-SO has that capture
3 that domain. Sexual deviant preference and sexual deviant
4 lifestyle are two of the factors that come to mind.

5 So in both of those cases, you are really again
6 looking at this kind of chronic, longstanding, and engrained
7 pattern of sexual deviance. And that could be a lot of
8 different things. It could be attraction to children. It
9 could be attraction to forcing and nonconsensual sex.
10 Anything that could be considered sexually deviant or
11 abnormal.

12 And again looking at the whole body of his
13 history, as I testified to earlier, that there really isn't
14 that clear chronic pattern of sexually deviant behavior
15 outside of that one night in 2014. And so, based on how the
16 items are supposed to be scored for this dynamic risk
17 assessment tool, that there is no indication of that really
18 engrained sexually deviant lifestyle that really seemed to
19 run his life.

20 And there is no indication of a sexually deviant
21 preference. In other words, preferring deviant acts over
22 non-deviant acts.

23 Q. That just basically means he hasn't been caught?

24 A. I wouldn't say that. Again, it is based on the
25 available information/data that we have. And so, again,

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1 looking at his time in the community, we are not seeing any
2 sort of sexually deviant behavior. A key part of this is
3 also, it doesn't just include crimes. So things like
4 sexually deviant lifestyle can include somewhat seemingly,
5 maybe non-problematic behaviors at their surface.

6 So, for example -- and this doesn't apply to Mr.
7 Wilder, obviously, but someone who is volunteering at a Big
8 Brothers or a Big Sisters sort of program, there is nothing
9 wrong with that; however, if you are doing that to gain
10 access to children or because you are interested in
11 children, that is a risk factor. That is a risk factor
12 element. That is the sort of stuff that those items are
13 getting at, and that doesn't really fit with Mr. Wilder's
14 history.

15 Q. Okay. But yet in 2014, and I will just back you
16 up, Mr. Wilder reported possibly 40 to 50 sexual partners,
17 at least 40 of which were one-night stands or strangers at
18 the time that the contact occurred; correct?

19 A. Yes, that's correct.

20 Q. Okay. And when he was loose in the community, he
21 actually had consenting sexual partners at the same time
22 that he committed this particular offense; right?

23 A. Yes, I believe so, based on his time line of
24 things, yes.

25 Q. Okay. But yet he still did it?

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1 A. Yes, he was convicted of that crime in 2014.

2 Q. Well, and he easily could have potentially gotten
3 one of his consensual partners if he was really needing to
4 have sex that bad, yet he chose to violently, physically
5 assault someone and threaten to kill them. That doesn't
6 suggest a certain amount of compulsivity at that point in
7 time?

8 A. I think it certainly can give data on the sexual
9 compulsivity. That, again, that is why I assigned that risk
10 factor for him with the VRS-SO. That sort of information
11 was considered, included, quantified as part of his risk
12 assessment. And as I testified again, despite all of this
13 evidence and all of these dynamic risk factors, he is not
14 more probably than not. His risk is below 50 percent.

15 Q. Okay. And again I will just go back over this.
16 His score on the Static-99 put him in the 79th percentile.
17 That means roughly 21 more people would score higher than
18 him and -- I am sorry, I was never very good at math. More
19 than 70 percent would score lower than him. So, he is in
20 that top percentile, according to at least that raw score?

21 A. Yes. So, again, that is getting at the
22 differential validity of a tool, as I kind of testified
23 earlier. And it is looking at the two ways a hammer, for
24 example, can be used. The same tool used different ways.

25 One of those is with percentiles and relative

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1 risk. And so, yes, that is exactly what that is
2 communicating, what that score means relative to others in
3 terms of it being higher or lower than others.

4 Q. Okay. And that risk is compared only to other
5 convicted sex offenders, it is not convict -- it is not
6 comparing him to the male population at large, or those who
7 haven't been convicted of sexual offenses or those who have.
8 It is only this specific subset?

9 A. Yes, that's right. So with each of these tools,
10 the Violence Risk Scale Sex Offense version, Static-99R,
11 each of these have what is called a norm sample and, yes,
12 the research is based on individuals who have been convicted
13 of sex offenses. Which is similar to Mr. Wilder, he has
14 also been convicted of a sexual offense.

15 Q. Okay. And getting to the end. So you testified
16 earlier that these actuarial numbers are exactly that, they
17 are actuarial numbers? They don't tell you whether this
18 individual will do it if he gets out tomorrow, or if he will
19 do it ten years from now, or if he will ever do it at all,
20 they don't tell you that? All they give you is a percentage
21 of risk?

22 A. Well, that is exactly right. So what these
23 actuarial tools do is they allow us to figure out what the
24 likelihood or the probability of sexual reoffending is based
25 on an individual's unique combination of risk factors. So

CROSS EXAMINATION OF DR. CHRISTOPHER GILLEN BY MS. SHAW

1 that includes Mr. Wilder's unique combination of static risk
2 factors, Mr. Wilder's unique combination of dynamic risk
3 factors, and other relevant risk information in addition to
4 what is captured by those two tools. So, yes, that is
5 exactly what it's doing, it is providing a probability or
6 likelihood of this sort of thing happening again within his
7 lifetime.

8 Q. And just like your reference to the weather man
9 who can say, there is an 80 percent chance it is going to
10 rain tomorrow, there is a 10 percent chance it is going to
11 have a thunderstorm, and you end up with a tornado; that
12 could happen, right?

13 A. Yes, that is right. It just would be
14 statistically unlikely, or statistically untenable is the
15 way that it has been described to me. It would be contrary
16 to what the models, you know, what the probabilities would
17 suggest is happening. And that is important because, again,
18 for this question, this referral, it is very specific. It
19 is, is this male's risk more than 50 percent.

20 It is talking about probabilities. It is talking
21 about likelihood. It is -- it is calling for an answer of
22 what this man's quantity is, or measured risk actually is.
23 And in doing so, it is far below 50 percent. There is no
24 evidence to suggest that his risk would be above that
25 number.

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1 As I testified to earlier, he is not even really
2 all that close to 50. He is almost 15, 16 points below
3 that. So, again, this is a question of probabilities. And
4 based on his probability he is not near that.

5 Q. And you testified at length that it has to be 50
6 percent or more. That is brand new.

7 A. It is brand new here in the state, but it is not
8 brand new in the United States of America.

9 Q. And this is, in fact, the very first time we have
10 tried one of these cases since that law has changed, right?

11 A. Yes, that is my understanding.

12 Q. Okay. And DMH is taking the position that they
13 are going to follow Washington case law rather than any case
14 law, statute, regulation, administrative regulation
15 promulgated here in South Carolina, so this is just DMH's
16 opinion as to what that needs to be?

17 A. No. As I testified to earlier, this is not just a
18 DMH opinion, this is based on case law that the courts have
19 decided in Washington. Again, that is the only other state
20 that uses that specific language about what more probably
21 than not means. They say explicitly that it is more than 50
22 percent.

23 But we don't just have to rely on that one state.
24 There are other states, approximately four others outside of
25 South Carolina that have what is called a quantitative

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1 threshold. They define it as more likely than not. So it
2 is a little bit of a different wordage, but essentially
3 means the same thing. And the courts in those states have
4 said that as well. And so more likely than not also means
5 more than 50 percent. So when South Carolina changed to
6 more probably than not, it was consistent with these other
7 jurisdictions and how they define and how they quantify
8 "likely".

9 Q. That is not binding on a jury in South Carolina?
10 I mean, we are not bound by Washington State case law, are
11 we?

12 A. Well, that is right. So it is not like the United
13 States Supreme Court where certain decisions could be
14 binding on all states. So, that is certainly true.
15 However, again, you have got to -- and this is actually what
16 (inaudible) have told me, you have always got to make your
17 decision based on the best available information. Maybe not
18 always what is perfect, but what is best. And after a
19 thorough review of methods that other psychologists are
20 doing around the country to answer this question, and a
21 thorough review of how other states have answered what this
22 sort of definition of "likely" means, it is very clear,
23 there is not a lot of disagreement in those areas about what
24 this means, and it is that his risk would need to be more
25 than 50 percent.

CROSS EXAMINATION OF DR. CHRISTOPHER GILLEN BY MS. SHAW

1 Q. Okay. And how many states have sexually violent
2 predator or sexually violent person laws?

3 A. How many total states?

4 Q. Yes.

5 A. I don't remember the exact number, but it is in
6 the twenties.

7 Q. So that is five out of twenty or more?

8 A. Yes, and that is correct. So it is the minority
9 of states that define likely in this manner.

10 Q. And there's nothing in the State of South Carolina
11 that would require a jury or a Court to define it in that
12 manner, is there?

13 A. So, again, what the trier of fact or jury's job is
14 to do is to answer whether they feel was a few things, one,
15 whether Mr. Wilder has a predisposing mental condition that
16 then predisposes him to commit acts of sexual violence to
17 such a degree that he is more probably than not.

18 And, again, what this more probably than not
19 means, I think the evidence that we have available is that
20 it is more than 50 percent.

21 Q. Okay. But only 20 percent of all of the states
22 that have these kind of laws actually interpret the law in
23 that way?

24 A. That is an incorrect interpretation. So --

25 Q. Are you saying that five out of twenty or more is

CROSS EXAMINATION OF DR. CHRISTOPHER GILLEN BY MS. SHAW

1 not 20 percent?

2 A. I probably misspoke earlier then if it is not
3 being clear. I will try and clarify. So there is, you
4 know, it was twenty some states across the country that have
5 the sexually violent predator law. Some states don't even
6 have this law on the books.

7 Out of those 20 states, there are five, six now
8 including South Carolina, five that provide a specific
9 quantitative definition of what "likely" means. So those
10 are going to be states Washington, Wisconsin, Missouri,
11 Iowa, Wisconsin. Those are the five states that set a very
12 specific bar of what "likely" means. Whether that is more
13 probably than not or more likely than not, they are defining
14 it with a quantitative threshold that means more than 50.

15 The other states, they don't use more likely than
16 not, or more probably than not in their definition. South
17 Carolina is a great example of this. Before the law
18 changed, likely meant something very different. It was, is
19 the person a menace to the health and safety of others.

20 Q. But doesn't that remain in the statute?

21 A. That clause does but, again, now the new law is
22 saying that, is the person more probably than not to commit
23 sexual violent offenses to a degree as to be a menace to the
24 health and safety of others.

25 So, again, the key is, is the person more probably

REDIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 than not to commit sexually violent offenses. And states
2 where that language is being used, they have said that what
3 that means is that person's risk is more than 50 percent.

4 So, again, it is a small number of states that
5 define it that way. But the ones that do define it that way
6 are consistent with what it means.

7 Q. Can you place any case law that would confirm
8 that?

9 A. So there is Drucks (phonetic) in Washington. That
10 is the only state that looks at more probably than not. The
11 explicitly state in the Drucks (phonetic) decision that it
12 means more than 50 percent.

13 Q. Okay. So that is only one case, one state, on the
14 west coast, which is not even in the fourth circuit, which
15 is where South Carolina lies; correct?

16 A. Well, so that is as an example, yes.

17 MS. SHAW: Thank you, I have nothing further.

18 THE COURT: Any redirect?

19 MS. THOMPSON: Brief.

20 REDIRECT EXAMINATION

21 BY MS. THOMPSON

22 Q. On May 16th our state changed their law; is that
23 correct?

24 A. Yes, that is when the Governor signed the changes
25 into law.

REDIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 Q. Today is June the 27th of the same year; is that
2 correct?

3 A. Yes.

4 Q. So, it has been about six weeks since the law
5 changed?

6 A. Yes, it's been just over a month.

7 Q. Okay. And the big change was the language that
8 said that a person is predisposed to engage in acts of
9 sexual violence, and more probably than not will engage in
10 acts of sexual violence to such a degree; that was the big
11 change; is that correct?

12 A. Yes, that was the big change in terms of what
13 likely means.

14 Q. And y'all were not looking at that prior to May
15 16th?

16 A. That is correct, that was not a question that was
17 being asked for us to look at, and that wasn't the question
18 that we were answering. But since May 16th, again, the
19 Legislature in South Carolina, and the Governor, they signed
20 this change into law. And they, they, they are saying that
21 this now means more probably than not, that there's now a
22 set bar, a set threshold as to what likely means. That
23 didn't exist before, but now it does.

24 And so, again, it requires an appropriate tool to
25 be able to answer this specific question, or get this

REDIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN BY MR. THOMPSON

1 specific job done. The tools that I use and the methods I
2 use are able to answer that sort of question.

3 Q. Okay. But in the six weeks since the change in
4 law, I believe that the Attorney General asked this
5 question, this is the first case that you know of that it
6 has come up?

7 A. Yes, that is the first case in South Carolina.

8 Q. So the issue of whether or not it is 50 percent
9 has not been determined by the State of South Carolina?

10 A. That's right. So a court in South Carolina has
11 not issued an opinion as to whether that is what it means.
12 But as I testified to earlier, every state felt that using
13 language like that quantifies that it means more than 50
14 percent.

15 So, again, there is no members that would buck
16 that trend. It is consistent with how they interpret that
17 sort of language.

18 Q. Well, let's just do away with Washington, okay.

19 A. Okay.

20 Q. The plain language of the act, how would you
21 interpret it, just in plain language?

22 A. Plain language, the way I see it, it means that
23 the outcome, in this case sexual offending, is it more true
24 -- it is more likely to be true than not true. In other
25 words, is this person's risk of committing a crime more

likely to be true, or is it more likely to not be true.
Right on 50. Is he above, is he below. That is what it
means.

22 MR. THOMPSON: I discussed with Mr. Wilder
23 him testifying. I told him that in my opinion it is in
24 his best interest that he don't testify. I think we
25 are sitting on the fence with the weight of his

RIGHTS GIVEN TO CHRISTOPHER T. WILDER BY THE COURT

1 testimony. I think his testimony could help him, but I
2 think it could hurt him based on my dealings with him.
3 But he tells me that he doesn't plan to testify based
4 on that.

5 THE COURT: Okay.

6 MR. THOMPSON: But just ask him.

7 THE COURT: Is that correct, Mr. Wilder?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, so noted.

10 Mr. Thompson, do you anticipate calling any
11 other witnesses?

12 MR. THOMPSON: No, sir, we are going to rest.
13 Do you want me to rest now?

14 THE COURT: Okay. Well, I'll let you rest
15 when we resume with the jury.

16 MR. THOMPSON: One other thing.

17 THE COURT: Yes, sir.

18 MR. THOMPSON: To keep the jury from coming
19 in and out. When I rest, I will need to make a
20 directed verdict motion again, renew my motion. And I
21 don't want to send them back out, so do you want me to
22 go ahead and do that now?

23 THE COURT: You can just tell me you have
24 renewed your motion.

25 MR. THOMPSON: Okay.

RIGHTS GIVEN TO CHRISTOPHER T. WILDER BY THE COURT

1 THE COURT: Under the same arguments that you
2 made before.

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Without getting into any details,
5 because I, again, I think this is a jury question based
6 on what I have heard. But I'll note that for the
7 record so that your record is protected.

8 MR. THOMPSON: Judge, I do not disagree with
9 you, I think you are correct. But when I went to law
10 school, I was told if you didn't do a directed verdict
11 motion you couldn't appeal your case.

12 THE COURT: Yes, you have to protect your
13 record, that is correct.

14 MS. SHAW: Your Honor, just for the record,
15 the State's response would be the same as it was
16 earlier, that this is a factual question. Just to make
17 it complete.

18 THE COURT: Yes, ma'am. So noted.

19 MS. SHAW: Thank you, Your Honor.

20 THE COURT: All right. Let's get our jury.
21 The defense has produced testimony, so the State would
22 close and the Defense would close and the State can
23 reply. They would get last argument. But the State
24 goes first. The defense goes. And then the State gets
25 reply, okay.

CLOSING ARGUMENTS BY THE STATE

1 (The jury enters the courtroom.)

2 THE COURT: Madam Forelady, ladies and
3 gentlemen of the jury, we are ready to proceed. I hope
4 that everyone had a good lunch.

5 Mr. Thompson.

6 MR. THOMPSON: We would rest, Your Honor.

7 THE COURT: All right. Any reply?

8 MS. SHAW: No, Your Honor. The State is
9 ready to close.

10 THE COURT: Okay.

11 MR. THOMPSON: We would renew our motions
12 from earlier.

13 THE COURT: Yes, sir. So noted for the
14 record. Same ruling from the Court. Okay.

15 MS. SHAW: Thank you, Your Honor. May it
16 please the Court. Mr. Thompson.

17 CLOSING ARGUMENT BY THE STATE

18 MS. SHAW: Ladies and gentlemen, we are down
19 to the end. I will not take up much more of your time.
20 But before I really get into my closing, I want to
21 thank you all. I noticed that you all have been paying
22 very close attention. It has been a relatively short
23 trial, so I am not going to go back through all of the
24 facts that you heard. And I really appreciate that,
25 because it is very important. The outcome, whatever

CLOSING ARGUMENTS BY THE STATE

1 way you come down, has very significant consequences
2 for both Mr. Wilder, as well as the community. So I
3 really do appreciate that, and thank you for it.

4 So this case ultimately is going to come down
5 to a numbers game. You have heard from two experts.
6 They agree on many things. They don't agree on certain
7 other things. And the question that you are really
8 going to have to think very carefully about is whether
9 you agree with an almost strictly actuarial and
10 statistics based approach to assessing this, or whether
11 you prefer a more global approach and assessing the
12 individual as a whole rather than strictly relying on
13 numbers. That is what you are ultimately going to be
14 called upon to decide.

15 So my burden of proof in this case is very
16 high. It is the beyond a reasonable doubt standard.
17 And there is a reason for that, because we applying
18 criminal standard in a simple case, and as I related to
19 you before, we are not here to punish Mr. Wilder any
20 further than he has been. We are here seeking
21 treatment, long term, for him to help him with his
22 mental abnormality and/or personality disorder.

23 You have heard he has at least one, if not
24 two, personality disorders. And so it comes down to
25 whether you think, and you are firmly convinced, that

CLOSING ARGUMENTS BY THE STATE

1 based on those personality disorders, as well as the
2 qualifying conviction, if you believe he's likely --
3 more likely than not to reoffend. That is it.

4 So before I go on to where our two experts,
5 who are both well qualified, but one thing you probably
6 noted from my cross examination of Dr. Gillen is, one
7 expert focuses her career almost exclusively on sexual
8 offenders, their assessment, their treatment, and
9 researching the risk. She has a variety of
10 publications. And that is her focus.

11 But Dr. Gillen is focused on, only since
12 2019, is doing primarily periodic review reports, which
13 ask a different question than pre-commitment
14 evaluation. And only done 22 pre-commitment
15 evaluations, and that has only been since 2019. Before
16 that, with his training and his background and my cross
17 examination of him, you heard that he focused primarily
18 on youth either with antisocial or psychopathic
19 tendencies and their treatment and assessment and
20 transfer. So he focuses his professional interest in a
21 completely different area. But he continues to do
22 that. He is a prolific writer and he is well respected
23 in his field, but this is not his primary bailiwick.
24 Never has been. It is only what he has been doing for
25 a job since 2019.

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1 So you have those two experts with vastly
2 different backgrounds. But, so let's go to where they
3 agreed. And certain agreement, they both diagnosed a
4 highly risk relevant personality disorder, antisocial
5 personality disorder. There is no disagreements on
6 that. Number two, they both agree that he has multiple
7 dynamic risk factors. Dr. Gillen specifically said 12
8 out of 17. That is a lot. And they both agree that
9 those dynamic risk factors are present today, and they
10 were present at the time of his most recent criminal
11 conviction, which I will remind you was 2014. And it
12 was his criminal sexual conduct first degree
13 conviction.

14 So his most recent, most major connection is
15 the sexually violent offense. And you will also note
16 that there was no disagreement that he kept doing these
17 types of behaviors in the controlled environment of a
18 prison. He couldn't control himself. He didn't. One
19 way or another, he continued the behavior from before.
20 So, we have that.

21 We also have both agreeing that his static
22 risk factors, things that you heard cannot change about
23 his offense history are high. They are both average.
24 Both of them, Dr. Gottfried assigned a score of five on
25 the Static-99 and a score of five on the 2002R. Dr.

CLOSING ARGUMENTS BY THE STATE

1 Gillen assigned a score of four. And there was a
2 little bit of discrepancy, but that is well within
3 professional norms. They both agreed to that.

4 And the other thing about that is that the
5 above average risk, which there is no disagreement, it
6 is based on his comparison to other sex offenders. And
7 specifically, other sex offenders who have been
8 detected for repeat offenses. And as you heard Dr.
9 Gottfried say, only about 30 percent of offenses are
10 actually reported.

11 So we have an individual who is above average
12 risk compared to his criminal peer group. Not
13 according to general population. This is not a man who
14 is like other normal men in the general population. He
15 is a sex offender of a particular type and his risk is
16 greater than the average. So we don't have any
17 disagreement about that.

18 We also both have an agreement that Mr.
19 Wilder's criminal propensities, in combination with his
20 static and dynamic risk factors, as well as him
21 impulsivity, and the alcohol use disorder, makes him
22 very risky. But Dr. Gillen said, no, based on
23 statistical analysis. Whereas, Dr. Gottfried did
24 additional testing which verified the underlying
25 question. Remember Dr. Gillen said he didn't need to

CLOSING ARGUMENTS BY THE STATE

1 do the blood test because he had the information.
2 Well, that blood test is going to give you more
3 information, even if it is redundant, and even if all
4 it does is support the other information you already
5 have.

6 So we also both have an agreement that
7 alcohol exacerbates the underlying personality
8 pathology. It lowers his inhibitions. And if Mr.
9 Wilder were to go back out into the community and start
10 drinking again, his risk would significantly increase.
11 That is a fact. So we have that agreement.

12 So then we asked the questions, does he have
13 a qualifying conviction? Yes, he does. Do we have a
14 personality disorder? Yes, we do. And at the end of
15 the day, you have to tell this Court whether you think
16 it's more likely than not that he will reoffend.

17 So, where is the difference in the two
18 experts' evaluations? DMH, as you heard Dr. Gillen
19 say, has significant concerns about this man. He has
20 got a variety of active risk factors. His risk itself
21 is high, but it doesn't reach that 50 percent threshold
22 that DMH would have you believe is the right way to do
23 this. Not every sexually violent predator has over 50
24 percent likelihood based on strictly actuarial
25 assessments to reoffend, they don't. It is that

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1 simple.

2 It does not mean that they are less likely
3 than not to reoffend. If anything, it requires further
4 inquiry and more in-depth analysis, especially when
5 those numbers are not quite what another state might
6 want. DMH is essentially asking you to enforce an
7 interpretation of the law from another state which is
8 in a minority of states that have an SVP law. You
9 don't have to do that. This is South Carolina, we have
10 our own laws. This is the first time this law has ever
11 been interpreted by a jury. And it is up to you to use
12 your judgment on whether you think an actuarial
13 approach is appropriate, or a global approach is.

14 So, one of those things that we know about
15 actuarial approaches is that they are imperfect. Dr.
16 Gillen used the weather man example. And that is
17 right, statistical model can predict things, they can
18 suggest things, but they are not always right.

19 A friend of mine and I were recently talking
20 and she had recently had some genetic testing done for
21 potential for breast cancer. It is very common and it
22 is easily done. She had no risk factors. She had no
23 genetic predisposition. But she had breast cancer
24 anyway.

25 Actuarial tables, the statistics, are not

CLOSING ARGUMENTS BY THE STATE

1 always right. And it is your judgment that is going to
2 control. So contrastingly, Dr. Gottfried did take a
3 global approach, she did the interview, she had all of
4 the same documentary information that Dr. Gillen did,
5 but she also had information that he did not. She did
6 the MMPI. She did the SASSI. She did the PAI. She
7 did the MIDSA. These are all scored measures which
8 produced clinically significant results regarding Mr.
9 Wilder. And she took those into account.

10 They also give you additional support for the
11 underlying personality pathology. But, in addition to
12 that which confirms what both experts have diagnosed,
13 she did PCLR, psychopathy checklist. Dr. Gillen didn't
14 do that. He didn't assess for that. He didn't even
15 look for it. And what did she find? He meets criteria
16 for psychopathic personality disorder. That, in
17 addition to the antisocial personality disorder, is
18 what is driving the behavior.

19 Mr. Wilder, he doesn't care who he hurts. He
20 has no remorse. He doesn't care what he has to do.
21 When he wants something, he is going to go and do it.
22 And he don't care about the consequences. Based on his
23 criminal history, you know that consequences for this
24 man have absolutely no relevance. He just doesn't
25 care. And he is going to hurt whoever he needs to to

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1 get what he wants. And that is part of the
2 psychopathic traits.

3 So, it is directly relevant to the overall
4 risk. And I would submit to you that, even though it
5 cannot be taken into account on the actuarial measures,
6 it directly impacts his overall risk, significantly
7 increasing it. So you heard both of them testify that
8 most people with antisocial personality disorder do not
9 sexually offend. That is correct. But the ones that
10 do have inherently more risk than those who don't. And
11 they are more likely than those who do not to reoffend
12 in that manner.

13 So, what do you have? You have an individual
14 with antisocial and psychopathic personality disorder
15 who has incurred a total of at least 72, if not 74,
16 disciplinary charges. At least two of those were
17 sexual charges, either in open public or directed at a
18 specific individual. Six other ones were sexual
19 charges related to masturbating where other individuals
20 could see him. Inappropriate sexual behavior in
21 prison. This suggests he cannot or will not control
22 his behaviors, even in that highly controlled
23 environment where he is going to suffer significant
24 sanctions if he is caught. He doesn't care.

25 So we have this unique constellation of

CLOSING ARGUMENTS BY THE STATE

1 problems. You cannot solely base your decision on the
2 first. Human behavior in and of itself is inherently
3 part of that. The human mind is one of the most
4 complex things on the planet. And you cannot predict
5 what an individual with these particular problems is
6 going to do just based on those. So please take those
7 into account, consider them. They are important. And
8 they are predictive. But they are not the end all be
9 all.

10 So one other thing I wanted to mention to
11 you, is that DMH is now interpreting our new statute to
12 require 50 percent or more. When Congress was drafting
13 this statute, if that is what they had wanted, they
14 very easily could have put it in there. They are aware
15 of other states' laws. There is a lot of research into
16 it, but they specifically did not. And that is
17 because, it is your call. A single number does not
18 dictate the outcome of these cases.

19 So I ask you, use your good judgment, take
20 the global approach and think about every single piece
21 of information you have received in this trial. And
22 make the right decision. We ask that you come down and
23 find that Mr. Wilder is, in fact, a sexually violent
24 predator, and he is more likely than not to reoffend
25 sexually. And that he should be committed for long

CLOSING ARGUMENT BY THE RESPONDENT

1 term control, care, and treatment at the secure
2 facility in Columbia.

3 Again, I thank you for your attention. Thank
4 you for your time. We could not do this without you.

5 THE COURT: All right. Mr. Thompson.

6 MR. THOMPSON: May it please the Court, Your
7 Honor. Ms. Shaw.

8 MS. SHAW: Yes, sir.

9 CLOSING ARGUMENT BY THE RESPONDENT

10 MR. THOMPSON: Good afternoon, ladies and
11 gentlemen. Are y'all ready for me to go into minute
12 detail of everything that was testified to in the last
13 two days? Well, I'm not going to do that. But I do
14 want to congratulate y'all. As Ms. shaw said, you are
15 the first jury in this state to handle a case under the
16 new law. So you are going to have to make some
17 decisions as to what the statute means.

18 The State has the burden of proving beyond a
19 reasonable doubt that Mr. Wilder is a sexually violent
20 predator. Now, beyond a reasonable doubt, the Judge is
21 going to give you the definition, so if I say something
22 different than what he says, you listen to him instead
23 of me, okay. But for purposes of this argument, I'm
24 going to tell you that reasonable doubt is if you are
25 firmly convinced, and the word is firmly convinced, of

CLOSING ARGUMENT BY THE RESPONDENT

1 the -- that Mr. Wilder is a sexually violent predator,
2 then you are to return a verdict saying he is a
3 sexually violent predator.

4 However, if you are not firmly convinced and
5 you think that there may be a real possibility that
6 he's not, then you are to return a verdict in his
7 favor. Because the burden of proof is on the State,
8 not on us. And he is entitled to the benefit of the
9 doubt on anything.

10 Now, this case does boil down to, basically,
11 the testimony of two doctors. And I agree with Ms.
12 Shaw, the doctors pretty well, same diagnosis pretty
13 much, antisocial personality disorder. One of them had
14 a -- testified, Dr. Gottfried testified to alcohol and
15 drugs. And Dr. Gillen testified to alcohol.

16 Dr. Gottfried also testified to psychopathic
17 personality disorder. But she also testified that that
18 was not a diagnosis under the DSM, which is the bible
19 of the psychiatric field. It covers all of the
20 disorders. I don't think it's something she's made up,
21 I'm not going to say that. But it's obviously not
22 something that is recognized officially by the DSM as a
23 disorder, okay.

24 Dr. Gottfried works -- testified she works
25 for Medical University of South Carolina in a facility.

CLOSING ARGUMENT BY THE RESPONDENT

1 And I forget the name she called it. And she does
2 research. I'm saying that because she did all of these
3 tests, all of these tests. And she said the more data
4 points that you have, the better off you are. That
5 might be true if every test was totally different from
6 the other. But in a lot of cases on these tests, she
7 came up with the same data points as she did on other
8 tests, she just took different routes to get to them
9 each time.

10 And one of the things during the trial they
11 were trying to make a point of was that Dr. Gillen
12 didn't do all of these tests. He told you why he
13 didn't do them, he didn't need to do them. He could
14 get them from what he had.

15 Dr. Gottfried is the director of a research
16 facility, and there is the subjects. People don't just
17 walk in off of the street and say, I'm here for you to
18 check me out. The only people she can get is the
19 people referred to her.

20 Now, on the risk factors, the static risk
21 factors, there was one point difference between Dr.
22 Gottfried and Dr. Gillen. And Dr. Gillen explained why
23 his was one point lower than hers. The disciplinaries
24 in the Department of Corrections for masturbation, he
25 says that the guide for the Static-99 and 2002 sets

CLOSING ARGUMENT BY THE RESPONDENT

1 forth certain standards that has to be met for those to
2 be considered. And he says those standards weren't met
3 and he explained to you why. Therefore, he did not
4 give the one point for that. Dr. Gottfried gave the
5 one point for those instances. There is your
6 difference. So, other than that they are exactly the
7 same on the Static-99.

8 The information that they used for Static-99
9 doesn't change except for age. And it is a large
10 increment. You get a certain age, it goes down. Go
11 several more years, at a certain age it goes down. So,
12 there is -- they are basically the same on that, just
13 an argument over whether or not masturbation is a
14 sexual offense.

15 Here is where we get to the difference,
16 really. And I made a note of this because I wanted to
17 make sure that I tell you the right thing. Dr.
18 Gottfried used -- one of her tools was the SVR-20.
19 Now, she testified that that was a -- took into account
20 all of these risk factors that she had. And speaking
21 of the risk factors, I don't know if she went into
22 everyone of them. Dr. Gillen went into 12 of 17. He
23 considered 12 of 17. I know that she considered a lot
24 too, but I don't think that she gave a specific number.
25 If you remember differently, you go by your number.

CLOSING ARGUMENT BY THE RESPONDENT

1 But they both considered those risk factors,
2 called dynamic risk factors. In other words, they
3 could change. The tool she used, the SVR-20, didn't
4 quantitate them. There was no, no test to say, if you
5 get this, you get these points, blah, blah, blah. It
6 is totally subjective. She looks at it. She says,
7 well, I think this does it, and that is it.

8 Now I asked her -- you know, she did all of
9 these other tests. I said, well, why didn't you use
10 the VRS-SO like Dr. Gillen did. I'm not trained on
11 that one. It is a newer test and I'm not trained on
12 it. Makes perfect sense. You don't do something you
13 don't know how to do. Dr. Gillen testified that that
14 test, the VRS-SO, is a test he used. And he says it
15 took into account those dynamic risk factors. They
16 were down in the -- from the static factors, likelihood
17 of reoffending was in the 20 percent range. He took
18 into account these and he says, you go down, you say
19 this, you get this point. You get this, you get this
20 point. And then you go down.

21 And he said, after doing all of that,
22 considering those 12 risk factors that he identified,
23 he came up with a potential percentage to reoffend of
24 37.4 percent, okay. That means that, basically, I
25 think out of a hundred people, 37.4 of them would

CLOSING ARGUMENT BY THE RESPONDENT

1 reoffend. And, what is my math, 63 percent wouldn't.

2 Well, how do we know whether Mr. Wilder is in
3 the do or the don't? We don't. There's nothing to
4 predict that. We cannot predict the future. Even Dr.
5 Gottfried said, I can't tell you he is going to be the
6 one that is going to reoffend, I can just tell you he's
7 likely to reoffend.

8 Well, our new statute says -- and, again,
9 listen to the Judge instead of me if I say something
10 wrong. A sexually violent predator means a person who
11 has been convicted of a sexually violent offense. Mr.
12 Wilder has been convicted of a sexually violent
13 offense. You don't need to worry about that. It is
14 csc first. And who suffers from a mental abnormality
15 or personality disorder. He suffers from a personality
16 disorder, antisocial personality disorder, that makes
17 the person likely to engage in acts of sexual violence.
18 I am going to go back to that in a minute. Likely to
19 engage in acts of sexual violence if not confined in a
20 secure facility for long term control, care, and
21 treatment.

22 Now, likely, the statute gives a definition
23 for likely to engage in acts of sexual violence. That
24 means that a person is predisposed, okay. Predisposed.
25 Use another word, he has an inclination. But the

CLOSING ARGUMENT BY THE RESPONDENT

1 statute says predisposed. Whatever your definition of
2 predisposed is. Predisposed to engage in acts of
3 sexual violence and more probably than not will engage
4 in acts of sexual violence to such a degree as to
5 impose a menace to the health and safety of others.

6 Now, before I go back into all of that, I
7 want to say something about the masturbation again.
8 This requires -- let's say that Dr. Gottfried is
9 correct, that it is a sexual act. This says, it must
10 be to such a degree to pose a menace to the health and
11 safety of others. Did you hear anything in there about
12 the health or safety of others? Masturbating on the
13 yard, he was masturbating in the shower. It had
14 nothing to do with the health or safety of others.

15 Now, let's go back to the more probably than
16 not. This is where y'all are the first jury to deal
17 with one of these. Dr. Gillen testified that DMH takes
18 the position that more probably than not means it has
19 got to be greater than 50 percent. If I reach in my
20 pocket and pull out a coin and it's got a heads and a
21 tails on it, and if I flip it, I can't come up with
22 more likely than not that it is heads or more likely
23 than not that it is tails, because it is a 50/50 shot
24 either way. There is no 51 to 49, 35, it is going to
25 be 50/50.

CLOSING ARGUMENT BY THE RESPONDENT

1 If I pull out a dice, it has got six sides, I
2 say I'm going to roll a one. More than -- more likely
3 than not, I'm not going to get a one. I have only got
4 a one in six shot to get that. 37.4 percent, taking --
5 and he said that took into account all of those dynamic
6 risk factors too. That is not -- and I'm saying, look
7 at -- listen to the statute. Listen to the Judge tell
8 you. Use plain, common sense as to what those words
9 mean, more probably than not. How can you describe
10 more probably than not as being less than half?

11 And I know the State is saying, well, Dr.
12 Gottfried testified that, you know, based on her
13 experience, all this that and the other, that Mr.
14 Wilder has the factors and he's likely to, likely to
15 reoffend. She said she don't know if he's going to
16 reoffend or not, in her opinion he probably will. Is
17 that more likely than not? I suggest to you it is not.

18 Let me give you one other thing that I want
19 to talk about just briefly, reasonable doubt. Not only
20 comes from the statute, how about a reasonable doubt
21 being the fact that you have got two qualified experts
22 who have testified and told you what their findings
23 are, and their findings are very, very similar, all the
24 way down to the bottom line. But they can't agree on
25 whether or not he may reoffend and whether or not he

CLOSING ARGUMENT BY THE RESPONDENT

1 needs treatment. That is reasonable doubt.

2 That is a situation where, like the coin
3 flip, you can't tell which one is more probably than
4 the other one. Is he probably going to -- more
5 probably than not, likely than not to reoffend, or is
6 he more likely than not to not reoffend. There is
7 reasonable doubt just in and of itself in my opinion,
8 two experts saying different things.

9 I had one other thought that I was going to
10 say and it just, like I say, the train just left the
11 station. I can't recall exactly what it was. It'll
12 hit me. It wasn't terribly important if I can't
13 remember it. But -- oh, I know what it was. I asked
14 antisocial personality disorder, can it be cured? And
15 the answer was no. It cannot be occurred. It can't be
16 cured by a treatment. Why treat it if it can't be
17 cured?

18 Now, ladies and gentlemen, I have got a
19 client over there that has got a record 14 miles long.
20 He has got all kinds of disciplinaries, he has got
21 criminal convictions since he was a juvenile. I'm not
22 going to stand here and try to make him a candidate for
23 sainthood, he's not. But if you look at everything
24 he's got, all of those convictions, all of those
25 disciplinaries, and even if you take the masturbations

REPLY CLOSING ARGUMENT BY THE STATE

1 as a sex offense, out of 70 something he has got seven,
2 or I guess eight with the masturbation. Seven or eight
3 offenses. All of the rest of them are something else.

4 So, does that make him inclined to commit sex
5 offenses? Does he have the propensity to commit sex
6 offenses? I would argue to you in the past, no, he
7 hasn't. He has propensity to commit offenses, but that
8 is not what we are here for today. We are not here to
9 decide whether or not he is a bad guy and we just want
10 to get rid of him. We can't do that. You have got to
11 decide whether or not you think he is a sexually
12 violent predator.

13 Is he going to get out of here and go out on
14 the street and more likely than not commit another
15 sexual crime? And there's nothing in his history to
16 suggest that. And we would ask you to return a verdict
17 in his favor. Thank you.

18 THE COURT: Ms. Shaw, reply?

19 REPLY CLOSING ARGUMENT BY THE STATE

20 MS. SHAW: I'll be very brief. Ladies and
21 gentlemen, this is the last time that you are going to
22 have to listen to me, and then the Judge will charge
23 you and you will be able to go back and begin your
24 deliberations. I'm actually going to quote Mr.
25 Thompson from earlier today, I think. He said -- he

REPLY CLOSING ARGUMENT BY THE STATE

1 asked Dr. Gottfried a question. He said, psychology is
2 not a hard science. And I know that Mr. Thompson has a
3 chemistry degree. And he would be right. Psychology
4 is not a hard science, it is very, very individual
5 focused, and that is what we need to take into account.

6 You can't just plug in numbers into a formula
7 as Dr. Gillen did and come to an answer, it doesn't
8 work that way. In chemistry, in physics, biology even,
9 in a lot of situations, you can do that. But this is a
10 human-focused science. It changes all of the time.
11 These tests develop, they change over time. And none
12 of them are perfect.

13 And so that, that 37 point something percent
14 likelihood to reoffend, that is almost 40 percent.
15 That is high. And so it comes down to your judgment,
16 based on that 40 percent, assuming Dr. Gillen is right
17 based on all of those other factors that are active and
18 present in Mr. Wilder's psychiatric and psychological
19 makeup, you have to decide the likely question. And I
20 would submit to you that all of those issues, in
21 combination with that almost 40 percent likelihood to
22 reoffend, meet the criteria.

23 And my daddy used to say, knowledge is power.
24 That means the more data you have, the better a
25 decision you can make. And I would submit, you have a

JURY CHARGE

1 lot of data in front of you. Please use it all and
2 come to the right decision, whatever you think is the
3 right decision. There it is. Have a great day and
4 thank you.

5 JURY CHARGE

6 THE COURT: Okay. Ladies and gentlemen, we
7 have come to the point in the trial where I instruct
8 you on the law. My instructions will be in three
9 parts. First, the instructions on the general rules
10 that define and control the jury's duties. Secondly,
11 the instructions that state the rules of law that you
12 must apply, what the State must prove to make its case.
13 And lastly, some rules for your deliberation.

14 The general rules begin with your duties as
15 jurors. It is your duty to find the facts from all of
16 the evidence in the case. To those facts you must
17 apply the law as I give it to you. You shall not be
18 concerned with what the law should be, but what it is.
19 And you must not be influenced by any personal likes,
20 or dislikes, opinions, prejudices, or undue sympathy.
21 That means you must decide the case solely on the
22 evidence before you in accordance with the law. The
23 very thing you took an oath promising to do at the
24 beginning of the trial.

25 It is your responsibility, and yours alone,

JURY CHARGE

1 to determine the facts of this case. I would,
2 therefore, charge you that if during the course of this
3 trial or during this charge you have been given or left
4 with the impression or feeling that I have a personal
5 feeling about the facts of this case, or that I favor
6 one side or the other, I would specifically instruct
7 you to disregard that impression.

8 Under our Constitution, I'm not allowed to
9 have an opinion as to facts of this case. You should
10 not be influenced by any objections, or the Court's
11 ruling on it. You and you alone are the judges of the
12 facts.

13 You determine the facts by evaluating and
14 weighing the evidence that you have heard during the
15 trial. What is evidence? Evidence is the sworn
16 testimony from the witnesses and any exhibits that are
17 entered in evidence, along with any stipulations. The
18 statements by the attorneys are not evidence. What
19 they have said in opening statements, in closing
20 arguments, and at other times is intended to help you
21 interpret the evidence, but it is not evidence.

22 There are two types of evidence generally
23 presented during a trial, direct evidence and
24 circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have actual

JURY CHARGE

1 knowledge of a fact, such as an eye witness. It is
2 evidence which immediately establishes the main fact to
3 be proved.

4 Circumstantial evidence is proof of a chain
5 of facts and circumstances indicating the existence of
6 a fact. It is evidence which immediately establishes
7 collateral facts from which the main fact may be
8 inferred. Circumstantial evidence is based on
9 inference and not on personal knowledge or observation.
10 It is proof that does not actually establish the fact
11 in question, but that asserts or describes something
12 else from which you can reasonably infer the truth of
13 the fact, or at least reasonably infer an increase in
14 the probability that the fact is true.

15 For circumstantial evidence to be sufficient
16 to warrant finding of a fact, the circumstances must
17 lead to the fact with reasonable certainty. The facts
18 and circumstances should be considered in light of
19 ordinary experience and common sense. The existence of
20 a fact cannot be based on speculation, surmise, or
21 conjecture. The law makes absolutely no distinction
22 between the weight or value to be given to either
23 direct or circumstantial evidence. Nor is a greater
24 degree of certainty required for circumstantial
25 evidence than direct evidence.

JURY CHARGE

1 In determining the facts, you must consider
2 all of the evidence. In doing this, you must decide
3 which testimony to believe and which testimony to
4 disbelieve. In making that decision, you may take into
5 account a number of factors, including the following:
6 Was the witness able to see or hear or know the things
7 about which the witness testified? How well was the
8 witness able to recall or describe those things? What
9 was the witness' manner while testifying? Is there
10 some reason a witness would want to give testimony that
11 would help or hurt one side or the other? Did the
12 witness have an interest in the outcome of the case, or
13 any bias or prejudice concerning any part or any matter
14 involved in the case? How reasonable was the witness'
15 testimony considered in the light of all of the
16 evidence in the case? Was the witness' testimony
17 contradicted by what the witness had said or done at
18 another time, or by the testimony of other witnesses or
19 by other evidence?

20 These are some of the factors you may
21 consider in deciding whether to believe testimony. In
22 deciding credibility or believability, you may believe
23 as much or as little of a witness' testimony as you
24 think proper. You may believe all, part, or none of a
25 witness' testimony. You may believe the testimony of

JURY CHARGE

1 one witness over the many or the many over the one.
2 However, you do not determine the matter of credibility
3 by simply counting up the number of witnesses that may
4 have testified on behalf of the parties.

5 The rules of evidence ordinarily do not
6 permit witnesses to testify to opinions or conclusions.
7 An exception to this rule exists for witnesses we call
8 expert witnesses. A witness who, by education and
9 experience, has become an expert in some art, science
10 or profession may give an opinion as to the subject the
11 witness claims to be an expert in. And they also give
12 the reasons for the opinion.

13 You should consider any expert opinion by a
14 witness, and like any other evidence, give it the
15 weight you think it deserves. If you decide that an
16 expert witness' opinion is not based on sufficient
17 education and experience, or if you decide the reasons
18 given in support of the opinion are not sound, or that
19 the opinion is outweighed by other evidence, you may
20 disregard the opinion entirely.

21 An expert witness' testimony is to be given
22 no greater weight than that of other witnesses simply
23 because the witness is an expert. And you do not have
24 to accept an expert's opinion, even though it is
25 uncontradicted.

JURY CHARGE

1 The State has brought this case under the
2 sexually violent predator law of South Carolina. The
3 State seeks to civilly commit Christopher Trent Wilder,
4 the Respondent, for long term control, care, and
5 treatment in a secure facility administered by the
6 South Carolina Department of Mental Health. This is
7 not a criminal proceeding seeking incarceration, but
8 rather it is a proceeding seeking civil commitment.

9 The State of South Carolina alleges that the
10 Respondent, Christopher Trent Wilder, is a sexually
11 violent predator under the law. Respondent denies that
12 he is a sexually violent predator. And the burden of
13 proof, therefore, is on the State to prove by evidence
14 sufficient to satisfy each of you beyond a reasonable
15 doubt that Mr. Wilder is a sexually violent predator.

16 If the State is unable to meet that burden of
17 proof as to one or more of the elements of this claim,
18 the respondent is entitled to a finding that he is not
19 a sexually violent predator.

20 Ladies and gentlemen, I want to make sure
21 that you understand that Mr. Wilder is not accused of
22 committing a crime in this proceeding. As you heard
23 from the testimony, he did have previous charges for
24 which he was convicted and sentenced by the Court. The
25 respondent has now completed his sentence for those

JURY CHARGE

1 charges and the State is alleging that Mr. Wilder is a
2 sexually violent predator as defined by the sexually
3 violent predator act.

4 The State has the burden of proof in this
5 case, and must prove its case beyond a reasonable
6 doubt. If you find that the State has not met this
7 burden, respondent will be released to the community.
8 If you find that the State has met its burden of proof
9 and find that the respondent is a sexually violent
10 predator, he will not be released, but rather, will be
11 civilly committed and transferred to a secure treatment
12 facility.

13 The elements which the State must prove
14 beyond a reasonable doubt are; one, that the respondent
15 has been convicted of at least one sexually violent
16 offense. And, two, that the respondent suffers from a
17 mental abnormality or personality disorder that makes
18 him likely to engage in acts of sexual violence if not
19 confined in a secure facility for long term control,
20 care, and treatment. I charge you that criminal sexual
21 conduct first degree is designated as a sexually
22 violent offense pursuant to the laws of the State of
23 South Carolina.

24 In order for you to better understand the
25 elements of the State's cause of action, I am going to

JURY CHARGE

1 define for you some terms that I just used. Mental
2 abnormality means a mental condition affecting a
3 person's emotional or volitional capacity that
4 predisposes the person to commit sexually violent
5 offenses. Likely to engage in acts of sexual violence
6 means that a person is predisposed to engage in acts of
7 sexual violence, and more probably than not will engage
8 in acts of sexual violence to such a degree as to pose
9 a menace to the health and safety of others.

10 Again, I remind you that the burden of proof
11 is on the State to prove to your satisfaction beyond a
12 reasonable doubt that the respondent has been convicted
13 of a sexually violent offense and that he also suffers
14 from a mental abnormality or personality disorder that
15 makes him likely to engage in acts of sexual violence
16 if not confined in a secure facility for long term
17 control, care, and treatment.

18 If the State carries its burden of proof and
19 convinces you beyond a reasonable doubt as to both of
20 the elements of this cause of action, it's entitled to
21 a finding that Mr. Wilder is a sexually violent
22 predator. However, if the State doesn't meet that
23 burden of proof as to one or both of the elements, the
24 respondent is entitled to a finding that he's not a
25 sexually violent predator.

JURY CHARGE

1 What is a reasonable doubt in the law? A
2 reasonable doubt is the kind of doubt that would cause
3 a reasonable person to hesitate to act. Proof beyond a
4 reasonable doubt is proof that leaves you firmly
5 convinced that the respondent is a sexually violent
6 predator. There are very few things in this world that
7 we know with absolute certainty. In sexually violent
8 predator cases, the law does not require proof that
9 overcomes every possible doubt. If, based on your
10 consideration of the evidence you are firmly convinced
11 that the State has met its burden of proof beyond a
12 reasonable doubt then you must make a finding that hte
13 respondent is a sexually violent predator.

14 If, on the other hand, after you have
15 considered the evidence, you think that there is a real
16 possibility that the respondent is not a sexually
17 violent predator, you must give the respondent the
18 benefit of the doubt and find that he is not a sexually
19 violent predator. A reasonable doubt may arise from
20 the evidence, or from the lack of evidence. The
21 respondent is entitled to every reasonable doubt that
22 may arise in the case. If upon any issue of fact
23 essential to a finding that the respondent is a
24 sexually violent predator, you have any reasonable
25 doubt as to how that issue should be resolved, it is

JURY CHARGE

1 your duty to resolve that doubt in favor of the
2 respondent.

3 Suspicion, however strong, is not enough to
4 sustain a finding that the respondent is a sexually
5 violent predator. The evidence presented by the State
6 must be substantial evidence that proves beyond a
7 reasonable doubt that the respondent is a sexually
8 violent predator.

9 Ladies and gentlemen, we are almost to the
10 point where I send you to the jury room to begin your
11 deliberations. This has been a long instruction on the
12 law, but I want to leave you with some final thoughts.
13 You were chosen as jurors in this case because both
14 sides believed that you could be fair and impartial in
15 deciding this case. I instruct you to make use of your
16 life experiences, your good common sense, and your
17 sense of logic and reason in evaluating the evidence in
18 this case. You are not partisans or advocates for
19 either side. You have no friends to reward, nor any
20 enemies to punish. You are the judges of the facts.
21 Your sole interest is to find whether or not the State
22 has proven its case beyond a reasonable doubt.

23 Be courteous with one another. Listen to the
24 views of your fellow jurors. Take the amount of time
25 necessary for you to thoroughly evaluate the evidence

JURY CHARGE

1 in this case. This case is important to both sides.
2 This is their day in court.

3 Now, Madam Forelady, I am going to go over
4 the verdict form with you. It is a one-page verdict
5 form and it has the question in the first sentence, has
6 the petitioner, the State of South Carolina, proved
7 beyond a reasonable doubt that Christopher T. Wilder is
8 a sexually violent predator under the South Carolina
9 sexually violent predator act. That is the question
10 that the jury has to answer.

11 And it gives you two options. We, the jury,
12 unanimously answer the question as follows: Yes,
13 Christopher T. Wilder is a sexually violent predator.
14 Or, no, Christopher T. Wilder is not a sexually violent
15 predator.

16 Place no weight or emphasis on the order that
17 they appear on the verdict form. One just had to go
18 down before the other. Your verdict has to be
19 unanimous. So when the jury answers this question as a
20 unanimous verdict, you will check the appropriate box
21 and sign it above your name and then there is a line
22 for the foreperson and it has your name, and date it.
23 And you will knock on the door and let the bailiff know
24 that you have reached a verdict.

25 So I am going to send you to the jury room

JURY CHARGE

1 now to not begin your deliberations until I send the
2 verdict form and the exhibits back.

3 So, Madam Bailiff, would you take our jury to
4 the jury room?

5 (The jury exits the courtroom.)

6 THE COURT: Okay. Any exceptions from the
7 State?

8 MS. SHAW: Your Honor, I'm having a moment of
9 confusion. Because I'm not sure that I heard you give
10 the new definition of more likely than not to sexually
11 reoffend in the new statute. I just wanted to make
12 sure that that was given and that we got the correct
13 law stated.

14 THE COURT: I quoted section two, likely to
15 engage in acts of sexual violence. Means that the
16 person is predisposed and the acts of sexual violence
17 and will more probably than not engage in the acts of
18 sexual violence to such a degree as to pose a menace to
19 the health and safety of others.

20 MS. SHAW: Okay. Thank you, Your Honor, I
21 just wanted to make sure that that new language was
22 used.

23 THE COURT: Yes, ma'am. Any exceptions?

24 MR. THOMPSON: I have no exceptions, Your
25 Honor, I'll just take the time to remind the Court to

JURY CHARGE

1 pull the alternates out of the jury room.

2 THE COURT: Okay. Bring the alternates.

3 Hold on. Hold on. No exceptions, so we have one --
4 was there one or two exhibits?

5 MS. SHAW: One, State's 1.

6 THE COURT REPORTER: Was it redacted?

7 MS. SHAW: It has not been redacted.

8 THE COURT: Have the attorneys come forward
9 and redact that exhibit. And we will send the exhibit
10 and the verdict form back.

11 (Pause.)

12 THE COURT: And the Court appreciates the
13 very professional manner in which both of you tried the
14 case.

15 MS. SHAW: Thank you, Judge. It is always a
16 pleasure to try things with Mr. Thompson.

17 MR. THOMPSON: No need fighting with each
18 other.

19 THE COURT: You have made this case go very
20 smoothly. And however it turns out, I appreciate the
21 way you deal with each other. It is refreshing to see
22 attorneys have a good relationship and try their cases
23 and do a good job for their client, and is not fight
24 with each other. That is a good thing.

25 MS. SHAW: That is the job. Thank you,

JURY DELIBERATIONS

1 Judge.

2 THE COURT: Okay. My two alternates. You
3 don't have to sit down, you are finished. If you want
4 to hang around -- you don't get to deliberate since all
5 of your brethren made it to the end. But if you want
6 to stay to see how it turns out, you are welcome to.
7 If you need to leave, you are free to go. Thank you
8 for your service. Okay. We will be in recess.

9 (The jury begins deliberations.)

10 THE COURT: I have been informed that we have
11 a verdict. Anything before we bring the jury in?

12 MS. SHAW: No, Your Honor.

13 MR. THOMPSON: No, sir.

14 (The jury enters the courtroom.)

15 THE COURT: Madam Forelady, has the jury
16 reached a verdict?

17 THE FORELADY: Yes, sir.

18 THE COURT: Would you hand that to the
19 bailiff, please ma'am?

20 (The bailiff hands the verdict form to the
21 Judge.)

22 THE COURT: Madam Clerk, would you publish
23 the verdict?

24 THE CLERK: I will. "In the case of
25 2022CP3700388, in the matter of the care and treatment

JURY DELIBERATIONS

1 of Christopher T. Wilder, the State of South Carolina
2 proved beyond a reasonable doubt that Christopher T.
3 Wilder is a sexually violent predator under the South
4 Carolina sexually violent predator act?"

5 "We the jury unanimously answer the question
6 as follows: Yes, Christopher T. Wilder is a sexually
7 violent predator."

8 If this is your verdict and remains your
9 verdict, please indicate by raising your right hand.

10 (Jurors comply.)

11 THE CLERK: Let the record reflect that all
12 jurors have affirmed the verdict.

13 THE COURT: Anything from the State before I
14 dismiss the jury?

15 MS. SHAW: No, Your Honor. Thank you.

16 THE COURT: Anything from the respondent?

17 MR. THOMPSON: Not before you dismiss the
18 jury.

19 THE COURT: Thank you. Ladies and gentlemen,
20 that will conclude your juror service this week. If
21 you have any questions regarding work excuses or
22 compensation, go to the clerk's office downstairs.
23 Thank you and you are now dismissed.

24 (The jury exits the courtroom.)

25 THE COURT: Mr. Thompson.

MOTION BY THE RESPONDENT

1 MR. THOMPSON: We make a motion for a new
2 trial based on our prior motions.

3 MS. SHAW: We would oppose the motion for a
4 new trial based on our prior arguments.

5 THE COURT: Mr. Thompson, your motion is
6 noted for the record. Again, the Court found that it
7 was a jury question. And based on the record. And the
8 verdict is decided by the jury. So I'll deny your
9 motion, but your record is protected.

10 With that, we will close the record. Good
11 luck to you, Mr. Wilder.

12 THE DEFENDANT: Thank you, Your Honor.

13 (The proceedings concluded.)

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CERTIFICATE PAGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF OCONEE:

6

7 I, MONA L. MANLEY, Court Reporter, certify that I was
8 authorized to and did stenographically report the foregoing
9 proceedings and that the transcript is a true and complete record
of my stenographic notes.

10 DATED this 28th day of September, 2023.

11

12

13 *Mona L. Manley* /s/

MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 10th Circuit
(850) 893-6662
mmanley@scccourts.org

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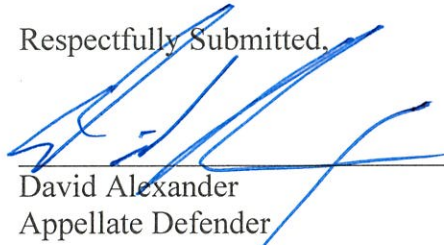
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Apr 03 2024

CERTIFICATE OF COUNSEL FOR APPELLANT

SC Court of Appeals

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
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ATTORNEY FOR APPELLANT

This 3rd day of April, 2024.

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Apr 03 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

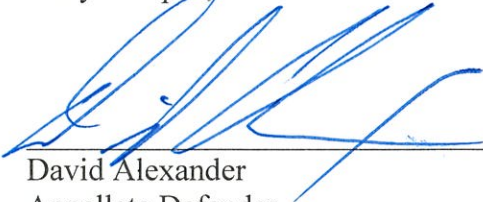
IN THE MATTER OF THE CARE AND
TREATMENT OF CHRISTOPHER T. WILDER,

APPELLANT

APPELLATE CASE NO. 2023-001108

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 3rd day of April, 2024.



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