

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF JAMES GREGORY YOUNGER,

APPELLANT.

APPELLATE CASE NO. 2021-000537

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State of South Carolina)
)
County of Sumter) The Court of Common Pleas
) Third Judicial Circuit
) 2018-CP-43-01388

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
JAMES GREGORY YOUNGER,)
)
 Defendant.)
)
_____)

Sumter, South Carolina
March 30, 2021

B E F O R E:

The Honorable George McFaddin

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CIRCUIT COURT REPORTER

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1 THE COURT: All right, gentlemen, I think we're all
2 here now. I will ask you each to sort of make a
3 introductory comment about why we're here, what motions are
4 before me so that I can make a list of them, although, I
5 have, I have read what you've submitted but I ask you to do
6 that to help me keep my housekeeping in order here today.
7 So, Mr. Falk?

8 MR. FALK: Yes, Your Honor, Mr. Bogle and I have
9 tried several of these cases over the years and we usually
10 have not had this type of motion in limine in advance of
11 the trial date. But I thought this case, the facts in this
12 case were particular. So I may have additional motions to
13 file, you know, double file a the date of the trial.

14 THE COURT: That's ---

15 MR. FALK: But I just want the court to consider
16 this one because your decision, obviously, really effects
17 how to prepare for this case.

18 THE COURT: Yes, sir.

19 MR. FALK: So let me give you a little bit of the
20 chronology. I might not have the dates all perfect.

21 But, I mean, a probable cause order was filed in this
22 court. And Dr. Gehle was appointed by the court to provide
23 these, an evaluation. She provided an evaluation and then
24 the State sought a second evaluation. Somewhere along this
25 process Dr. Gehle became aware, I believe, through the

1 Attorney General's Office that Mr. Younger has pending
2 charges in North Carolina. So these are sexual assault
3 cases in North Carolina which I think the incidences are
4 like 2005. So this was this was conduct before the trial
5 that he got committed on ---

6 THE COURT: Right.

7 MR. FALK: --- from the trial here so this is old
8 conduct. And in providing this information they provided
9 Dr. Gehle I think it's 16 GB of information on two
10 different portable hard drives. Dr. Gehle looked at this
11 information and she did not change her opinion. Dr.
12 Gottfried at MUSC spent the bulk of her opinions really
13 devoted to these charges.

14 It is my belief that the court that the jury cannot
15 hear about these pending charges and still give my client a
16 fair trial. And I think one of the issues that I raised
17 was the fact that from my client to rebut, I mean, if Dr.
18 Gottfried is going to take the stand and if she is gonna
19 testify about what some of the North Carolina victims said,
20 my client is really not in a position to rebut that
21 testimony without waiving his right to not testify in North
22 Carolina. I mean, that's where the jeopardy comes in. I
23 know that Mr. Bogle, when responded to my motion, I mean,
24 he correctly said, he cited - I'm not sure what it was
25 Canupp or what case it was - it said that there's no Fifth

1 Amendment Right in a sexual violent predator case. In that
2 case it came up in the context of the respondent, in that
3 case, wanted the court to charge the jury the typical you
4 can't hold against him the charge.

5 THE COURT: Yes, sir.

6 MR. FALK: And the appeal, he's not entitled to
7 sexual offender, um, the respondent is not entitled to that
8 charge. That's not the Fifth Amendment Right I'm concerned
9 about. I'm concerned about how he can't, again, with the
10 amount of time - I think is 67 pages of her report which is
11 almost half of her report, Dr. Gottfried's report talks
12 about these North Carolina charges. And my client is not
13 going to be able to talk about that, give his side of the
14 story without having waived his right.

15 And it's also my belief that or it's my contention
16 that you've got to do a weigh or the trial court's gotta do
17 weigh, every time, a 403 weighing, about weighing the
18 probative value versus risk of unfair prejudice. And there
19 are cases in South Carolina where they can talk about
20 sometimes, sometimes similar type of testimony can come in.
21 But I believe Dr. Gehle testified why she sort of minimized
22 the information from North Carolina in reaching her opinion
23 And she -- I'm not going to speak for her, but, I mean,
24 there's some reason that she felt that it was not as
25 relevant for her not to look to it.

1 So then when we're talking about the probative value
2 versus prejudice the fact that this is not maybe
3 necessarily or maybe there's a different of opinions in the
4 psychiatric/ psychological community about whether or not
5 this evidence should even be discussed. That sort of
6 pushes the scales up a little bit towards my clients Fifth
7 Amendment Right.

8 So I think -- and honestly, judge, and, you know,
9 you're not gonna want to hear this but if this was a good
10 case in North Carolina I don't know why they waited 15 or
11 15 years for indictment. I mean, this really makes no
12 sense because if he was convicted in this trial he's gonna
13 have to go to the sexual violent predator treatment
14 program, he's gonna have to get released and then go to
15 North Carolina. I mean, clearly North Carolina has a much
16 greater interest in resolving that issue first before we do
17 this trial. I mean, North Carolina has got, there are
18 alleged victims up in North Carolina. They're not going to
19 get their day in court. So that's why I believe that maybe
20 this North Carolina case isn't as good, otherwise, they
21 would've brought it already. And what's gonna happen is my
22 client is gonna be painted with this. But the case --
23 maybe North Carolina doesn't even think that they can bring
24 it in the first place. But if my -- if the jury hears this
25 my guy is gone and I don't think it's fair.

1 THE COURT: Yes, sir.

2 MR. FALK: You know, I think -- and also I believe
3 -- and then I raise this other issue about hearsay
4 testimony but that might be more appropriate for the day of
5 the trial. Because I think that they're going to have to
6 rely extensively on hearsay testimony from these victims
7 and saying why they think something occurred. And there's
8 a difference in a -- there's a difference in the relying on
9 allegations that were made in a case in which a person was
10 convicted. And maybe you can let that hearsay testimony in
11 coming, you know, the witness said he did this to me and he
12 did that to me. But this is the case where it hasn't been
13 adjudicated yet. So, you know, there hasn't been that kind
14 of check on the reliability.

15 And it's my opinion as to the decision in Bilton and
16 in Bilton, and I can provide you the cite. I think I gave
17 you the cite. I mean, it does address, you know, the
18 ability of experts under Rule 703 to rely -- well, I mean,
19 they can rely on whatever they want but it's what they
20 testified to before the jury, what the jury hears.

21 THE COURT: Yes, sir.

22 MR. FALK: And, you know, again, I think we have
23 to focus on that there is a relevancy issue maybe for the
24 experts. I think this is relevant. I think the experts
25 are relevant, you know. Most of the experts say, well it

1 really all kinda of fits together. But that's not the
2 relevancy that I need you to focus on. You need to focus
3 on South Carolina rules of evidence and balancing, you
4 know, relevancy in the case because they're going to say
5 everything is relevant.

6 THE COURT: Okay.

7 MR. FALK: That's my ---

8 THE COURT: I understand. Mr. Bogle, is there
9 anything you wish to say?

10 MR. BOGLE: Thank you, Your Honor. May it please,
11 The Court? For the record my name is James Bogle. I'm
12 assisted by Chris Runyan here of our office who will be
13 second chair on the case when we go to trial.

14 Your Honor, if I can kind of cover where we stand on
15 this thing. Like Mr. Falk said, the background was an
16 order of an evaluation was issued. Dr. Gehle was appointed
17 from the Department of Mental Health to evaluate the
18 respondent. He came back and determined that he did not
19 meet the definition of a sexually violent predator.

20 Now, to look at the total history they've been a
21 number of charges in North Carolina in different counties
22 over the past that had been dismissed. The North Carolina
23 Attorney General's Office brought charges on two of those
24 victims and indicted them. There are three indictments
25 pending in Guilford County, North Carolina and, one in

1 Randolph County. And what happened was that information
2 then came to us so we sent it back to Dr. Gehle to see if
3 the new information would change her opinion. So she had
4 these indictments regarding the two victims and, of course,
5 she also had a lot of police reports and incident reports
6 regarding other victims where no charges were brought or
7 where charges were brought and then got dropped, ah, but
8 still the same.

9 And so Dr. Gehle issued an opinion including still
10 that he was not a sexually violent predator, did not meet
11 the definition. The statute allows the State to get a
12 second opinion. We did at MUSC. And Dr. Emily Gottfried
13 offered that and she concluded that he did meet the
14 criteria.

15 Now, as far as the Fifth Amendment goes we have to
16 step back and look at the overall nature of this case.
17 This is a civil case. It is not a criminal case. The
18 elements we have to prove beyond a reasonable doubt are
19 number one; that Mr. Younger had been convicted of a
20 sexually violent crime, convicted of, and he has here in
21 Sumter County of CSC in the third-degree.

22 The next thing is does he have a mental abnormality or
23 a personality disorder that make him likely to commit these
24 kind of offenses in the future, unless, he's securely
25 confined for a long term control and treatment? So those

1 are the elements. It's been held by many cases. The
2 Matthews case cited in our materials. The Lefkowitz case
3 also cited in Canupp, constitutional challenges that this
4 is like a criminal case having been failed. In Canupp, Mr.
5 Canupp wanted a jury charge that he did not have the right,
6 that he did not have to take the stand and could not be
7 used against him. The trial judge declined to do that.
8 The court upheld that saying it's not a criminal case. And
9 frankly, Your Honor, in these cases I don't know what Mr.
10 Falk's plans are going to be trial date. In my experience
11 over 12 years, a lot of times the defendants don't testify.
12 Some do.

13 Now, the next thing is the issue of waiver. When Dr.
14 Gehle got the information from North Carolina she met with
15 the respondent again and informed him of the pending
16 charges and they had a lengthy discussion. And,
17 apparently, he talked about the underlying facts to Dr.
18 Gehle, both about the Guilford County indictments and the
19 Randolph County indictments. When Dr. Gottfried then
20 talked to him he would not talk to her about the Guilford
21 County charges. He did talk to her about the Randolph
22 County charges. So knowing that he's indicted, he did talk
23 about the underlying details, you know, was it consent; was
24 it really a crime; that kind of thing to Dr. Gehle. So I
25 would suggest by doing that regarding both sets of

1 indictments in both Randolph and Guilford County he is
2 waving any Fifth Amendment Rights he might have.

3 The next question is the 403, probative versus
4 prejudicial value. In these types of cases, judge, the
5 evaluator, they're looking for a pattern of behavior. Is
6 there some kind of pattern behavior that goes on and on and
7 on? And that's what Mr. Younger has. And to look at the
8 underlying details of both the convicted crime here in
9 Sumter County as well as the underlying details of the
10 charged crimes and some of the uncharged crimes in North
11 Carolina is all relevant to show whether or not there's a
12 pattern. And to do that you go to the cases that I cited
13 in my materials and I have copies for Your Honor if you
14 need them. The Ettel case, the Corley case and the White
15 case, to me ---

16 THE COURT: Mr. ---

17 MR. BOGLE: --- the most interesting case of those
18 three is White ---

19 THE COURT: Mr. Bogle?

20 MR. BOGLE: Yes, sir.

21 THE COURT: The court reporter is telling me and
22 I'm must agree I'm having trouble hearing both of you
23 really with the mask on.

24 MR. BOGLE: All right. Take them off if it's all
25 right with the court?

1 THE COURT: If you don't mind please.

2 MR. BOGLE: Yes, sir.

3 COURT REPORTER: Thank you.

4 MR. FALK: You don't want me to have to repeat my
5 story, do you?

6 COURT REPORTER: No.

7 MR. BOGLE: I didn't know what the rules were,
8 judge. In some counties when you're talking you take them
9 off. Okay. In the White case -- now, Ettel was a case
10 involving prior non-sexual crimes. It didn't result in a
11 conviction as well as prior sexual offenses. And that was
12 the Court of Appeals in 2008 and I've got a copy if you
13 need it cited in my material. The Corley case dealt with
14 the probative details behind the underlined convictions
15 outweigh any danger or prejudice under Rule 403. Because
16 past criminal history, not just convictions, is directly
17 relevant to proving the elements of whether or not a person
18 is a sexually violent predator. In other words, are they
19 likely to re-offend again. In the Kenneth White case, in
20 2007, the court noted that the word "offense" was not
21 defined in the sexual violent predator act. It also noted
22 the word "crime" "offense" and "criminal offense" are often
23 use interchangeably. And then certainly a conviction
24 occurred without an offense and an offense could have
25 occurred though without a conviction. And since the

1 legislature was silent and not defining "offense" either
2 narrowly or whatever intended to use both convictions and
3 offenses not resulting in convictions is the kind of
4 evidence you have to hear.

5 Now, our law was patterned after the Kansas' Sexually
6 Violent Predator Law. So the Court of Appeals then look to
7 see how Kansas Supreme Court had defined this issue there
8 as far as guidance go. In the case of Kansas called The
9 Matter of Hay the Kansas Supreme Court said very clearly
10 that in determining whether or not a person is a sexually
11 violent predator, prior sexual history is highly probative
12 of the propensity for future sexual violence. So that's
13 what the case is saying about this issue and that goes, it
14 covers the underlying facts that led to these pending
15 indictments. It also covers the underlying facts that led
16 to criminal things that he did with other women and this
17 goes back almost 25 years that didn't result in convictions
18 but resulted in charges. And so that's where both Dr.
19 Gehle covered all of these things and so did Dr. Gottfried,
20 looking at what these women had said he had done to them.
21 There's a pattern of behavior where relationships seem to
22 start out very consensual and then turn really bad with
23 drugs, with strangling, with anal sex, things like that.
24 That's the pattern behavior we seem to be seeing. So
25 regarding the motion to exclude the evidence, I've covered

1 the Fifth Amendment. I talked about the waiver. I've also
2 covered Rule 403, that the probative value highly outweighs
3 the prejudicial value and that's in those three cases I
4 cited. And as Rule 703 says, "when an expert witness is
5 testifying if it's of the type of information reasonably
6 relied upon by other experts they can go into it even
7 though part of the might not be admissible, strictly
8 admissible, at the trial so we have that as well.

9 There was also raised an issue of hearsay and, again
10 in all of these cases if the doctors, both of them, are
11 testifying about information from police reports about
12 prior incidents that did not result in convictions but
13 showing a pattern, the question it's not being offered for
14 the truth of the matter asserted, it's being offered to
15 show a pattern and a medical diagnosis. Because that's
16 what you're having, you're having psychological diagnoses.
17 And the exception to the hearsay Rule at 803 Subsection 4,
18 is regarding the purpose of medical diagnoses. And here
19 you have psychological diagnoses to see whether or not
20 there is a sufficient pattern of behavior to justify a
21 finding that he's likely to do this in the future.

22 That's kind of an overall response to what the motion
23 is, Your Honor. If there isn't anything I haven't -- there
24 are some issues raised by the Static-99R and the Static-
25 2002R, we may get into those later. If you don't mind

1 judge let me give you an idea what those are. They're
2 called actuarial assessments. Think of a situation where
3 you're applying for life insurance and the company sends
4 you to get a physical and the doctor knows certain things
5 about your health like you might smoke, you might not
6 exercise, you might be a diabetic. Now, these things don't
7 mean you're gonna die but they increase the likelihood you
8 might die sooner. And so the insurance company is going to
9 adjust your premiums accordingly. Static-99R and the
10 Static-2002R collect prior information about the guy, give
11 him a score, and that score is instrumental in predicting
12 whether or not he will sexually re-offend. So those are
13 two assessments that both doctors did, both Dr. Gehle and
14 Dr. Gottfried of Mr. Younger. We'll get into more detail
15 about this later on. I just wanted to give you an idea of
16 what they were.

17 THE COURT: Okay.

18 MR. FALK: I just -- can I just respond to

19 THE COURT: Yes, sir.

20 MR. FALK: First of all, I'm not saying this is a
21 criminal -- I'm not -- I'm not saying we're playing by the
22 criminal rules but what I am saying is that there is two
23 recent decisions by the Court of Appeals and the South
24 Carolina Supreme Court recognizing that this is a detention
25 hearing that an extreme liberty interest of my client is at

1 stake and they have recognized that they have due process
2 rights under the Fourteenth Amendment.

3 So just -- for example in, in the Bilton case I tried
4 that case and, I mean, I was trying to make an argument in
5 that case that, you know, my client is unable - it's a
6 confusing case. It was a case in where a PBG test that was
7 taken and the expert who testified didn't really, wasn't
8 there, and so it was kind of a bootstrapping that another
9 expert's report through her testimony. And I -- and in
10 that case I was complaining that well, my client, the guy
11 who took the test is not here. He's got a Sixth Amendment
12 Right to confront his witness. And the court in Bilton
13 said, Mr. Falk you're wrong. He doesn't. He doesn't have
14 the Sixth Amendment Right but he does have a Fourteenth
15 Amendment Right sort of to be treated fairly by the hearsay
16 testimony coming in through the expert. So, I mean, you've
17 got to look at that. You have to look at Chapman which is
18 the case where they extended the right to counsel meaning
19 that he has a statutory right to counsel. However, in
20 Chapman the court went on to say that it's meaningless to
21 give somebody a right to counsel without having the right
22 to effective counsel. So that in the Chapman case is the
23 one that really sort of opening up maybe another floodgate
24 of possible PCR type actions on SVP cases. I want the
25 court to draw attention, those are two cases where there's

1 been a recognition they do have Fourteenth Amendment
2 Rights. Also, I kinda of wanted to address some cases
3 that Mr. Bogle was relying on. The Ettel case, I
4 acknowledge that in Ettel the court held that, the court
5 did a 403, 402 kind of analysis in Ettel. But -- but in
6 this case we're talking about, I mean, the reason why the
7 balancing is different in this case is because it's because
8 they're going to have to talk about, he's going to put his
9 Fifth Amendment Right in jeopardy in the trials of North
10 Carolina. So when you're weighing it you can't necessarily
11 take Ettel for the proposition that, you know, with every
12 set of certain circumstances it's relevant. It's kinda
13 like saying that, you know, last time Alabama played
14 Clemson they beat them so the next time the play them,
15 they're going to beat them. You're going to have to play
16 the game and there will be different facts each time. So,
17 I mean, you can't take decisions when they make sort of
18 under the facts in this case, we decided this. You can
19 take it as some type of mandate where they come forward.
20 And the White case which I'm not sure if Mr. Bogle has the
21 right to cite. I found a cite for White and it was
22 actually White vs. State 375 S.C. 1. That's a South
23 Carolina Court of Appeals case from 2007. And it talks
24 about the same set that Mr. Bogle was talking about.
25 However, in White, the White case arose at a probable cause

1 hearing. And the, you know, they were trying to bring the
2 information about his criminal record at the probable cause
3 hearing and the court in White said, yeah, that's relevant
4 at the probable cause hearing. But that's just like in a
5 criminal preliminary hearing, yeah, but, you know, judge in
6 making his determination on probable cause at a preliminary
7 hearing can rely on hearsay testimony from the reporting
8 officer, but that doesn't mean that testimony comes into
9 the trial. I mean, you can't really say White is a
10 comparison because they were talking about a preliminary
11 hearing and not at trial.

12 And then Corley, Corley was a case talking about
13 whether or not the indictments could come in. But the
14 indictments that they were talking about in Corley where
15 the indictments that were the predicate for his sexually
16 violent predator case. And so, you know, when the court in
17 Corley is saying, yeah, the indictments are relevant. He's
18 not saying the indictments in this future North Carolina
19 case are relevant.

20 So, I mean, I just wanted the court to carefully look
21 at those cases and if I'm wrong on White, I'm wrong but
22 like I said that's my opinion.

23 THE COURT: I can promise you both everything that
24 you have filed and everything you've given me related to
25 the case I will read. I mean, I'll tell you now and your

1 client there won't be a ruling today, not today. I don't
2 -- I don't -- I like to rule when I can but I don't like
3 fast food rulings and you shouldn't either. That being
4 said are we ready to go forward folks?

5 MR. FALK: I'd like to call Dr. Gehle to the
6 stand.

7 THE COURT: Okay.

8 THE BAILIFF: Raise your right hand. State your
9 name?

10 MS. GEHLE: Marie Gehle.

11 THE BAILIFF: Do you solemnly swear or affirm your
12 testimony to the court shall be the truth, the whole truth,
13 and nothing but the truth so help you God?

14 MS. GEHLE: I do.

15 THE COURT: Dr. Gehle, unless you stridently object
16 I'll need to hear you without the mask.

17 MS. GEHLE: I'm vaccinated so I'm fine.

18 THE COURT: Okay. So am I.

19 THE BAILIFF: State your name for the record and
20 spell your last name please?

21 MS. GEHLE: It's Marie Gehle, G-e-h-l-e.

22 DR. MARIE GEHLE, first being
23 duly sworn, testified as follows:

24 **Direct Examination by Mr. Falk:**

25 Q. Dr. Gehle, so you did an evaluation of Mr. Younger?

1 A. Yes.

2 Q. And you're the court appointed expert?

3 A. Yes.

4 Q. And you did a preliminary or you did the initial
5 evaluation? You did an evaluation, right? And then you
6 filed an amended one, is what I'm getting to?

7 A. Yes. Yes.

8 Q. And so in the initial -- well, in the first evaluation
9 you reached the conclusion that he was not - I don't want
10 to lead you - what was your conclusion in the first
11 evaluation?

12 A. I mean, the ultimate conclusion was that he didn't
13 meet criteria as a sexually violent predator.

14 Q. Okay.

15 MR. FALK: Your Honor, I don't want -- I'm not
16 trying to litigate the case here so I'm not gonna go real
17 in-depth there. I'm just trying to move along.

18 THE COURT: Yes, sir.

19 Q. And then you got some more information from the
20 Attorney General's Office, is that correct?

21 A. Yes.

22 Q. And you know how that information got to you?

23 A. Well, I received, I don't know exactly how it was
24 informed, but I know that I got two, I think, thumb drives,
25 USB drives in the mail in a padded envelope with a piece of

1 paper from the Attorney General's Office that had a
2 password on it.

3 Q. Do you have a feeling on how, how soon after you
4 publish your first opinion it was until you got this new
5 group of information?

6 A. Okay, um, ---

7 Q. The two thumb drives, the two thumb drives?

8 A. Okay. I think that I outlined that because it's all
9 been a blur. I think that happened right before, yes -- so
10 I -- I issued my first opinion in, I believe, March of
11 2019, yeah, March 11, 2019. And then in March of 2020 it
12 was right at the beginning of the pandemic I got the thumb
13 drives. And then it took a while to go through all of that
14 information and I met with Mr. Younger again and issued an
15 amended report on June 2, 2020.

16 Q. So it was almost a year later, is that correct?

17 A. It was more than a year later.

18 Q. Okay. All right. And so are you familiar with
19 discovery in a criminal case?

20 A. I mean, not ---

21 Q. I mean, was it a lot of raw information? What was on
22 the thumb drives? Just describe in general terms. All
23 right. I'll ask ---

24 A. No! No! No! It's fine. It's fine. There was just
25 so much information on those thumb drives. It starts on

1 Page 2 of my report and it goes all the way to it goes -
2 just listing out the sources - goes from Page 2 to Page 18
3 of the report. So, um, I had to list things out in a way
4 that I can find them again if I ever needed to refer to it
5 because everything was just, there were several folders
6 that, then it had sometimes hundreds, sometimes thousands
7 of documents or pictures or things like that in it and it
8 was, it was just a ton of information to get through. I
9 believe it was copies of his hard drive. It was copies of
10 interviews of, um, of individuals that the North Carolina
11 investigators interviewed. So some of it was victims.
12 Some of it was family members. Some of it was victims
13 family members. It was just a lot. There were also a
14 PowerPoint presentation that they put together. They put
15 together some summaries of the cases. Things like that.
16 And then I also got the new indictments in the two cases
17 that doctor or Mr. Bogle talked about.

18 Q. The PowerPoint presentation prepared for your behalf?
19 I mean did they want -- did you get the impression they
20 made that for you to look at, specifically, or do you think
21 they were going to use it sometime down the road?

22 MR. BOGLE: Objection. It calls for speculation.

23 MR. FALK: I'll let it go ---

24 A. I believe it was actually for the prosecutors ---

25 MR. FALK: Hold on ---

1 THE COURT: Wait! Mr. Falk, do you want to respond
2 to that?

3 MR. FALK: Your Honor, I withdraw ---

4 THE COURT: Okay, sir. Proceed, ma'am?

5 A. I don't have that power presentation with me but I
6 think that it said who it was for on the front page of
7 somebody does have it to look at.

8 Q. Did you go through all of that information?

9 A. Yes, several times.

10 Q. How long did it take?

11 A. It took months. I mean, it took a long time. It was
12 a lot of work.

13 Q. So realistically if you're going to sit down today and
14 do nothing else, 40 hours a week, how many weeks would it
15 take you thoroughly analyze it?

16 A. (Whereupon, the witness laughs)

17 Q. Three weeks? Four weeks?

18 A. Probably.

19 Q. Four? A month?

20 A. I mean, it was at the beginning of the pandemic. We
21 started working from home so, you know, things were odd at
22 that time but we also couldn't do evaluations at the
23 beginning of the pandemic, um, couldn't interview people.
24 So I finished up the work that I could and then I worked on
25 nothing but this and it took several months to ---

1 Q. Thank you.

2 A. --- to finish the report.

3 Q. Okay. So you looked at all of it, right?

4 A. Yes.

5 Q. Okay. And then you issued a second report?

6 A. Yes.

7 Q. Did it change your opinion?

8 A. No.

9 Q. And really the difference between the first opinion
10 and the second opinion was all this information, right? I
11 mean, was there other new stuff coming in or was it just
12 that information that was on the hard drives?

13 A. So some of the stuff that was on the hard drives, in
14 fact, the stuff that was brought in the charges was stuff
15 that I already knew about in the initial evaluation. I
16 just didn't have the extensive amount of information that
17 they provided in those cases. But I knew that some
18 pictures existed. I knew that these things existed. But
19 we had requested that stuff but we didn't get it for the
20 first evaluation.

21 Q. Okay. But that was the stuff that was on the hard
22 drive?

23 A. It was more detailed than what we are initially given
24 but there wasn't much that was brand-new. There was not
25 much that was brand-new information, um, because it was, it

1 was talked about in the earlier records that we had. We
2 just didn't have like the copies of his hard drive so we
3 didn't have, you know, the raw evidence that they were
4 saying existed ---

5 Q. Did you ---

6 A. --- until then.

7 Q. Did you have the police reports?

8 A. Not for everything, no.

9 Q. And -- and you issued a second opinion and what was
10 your second opinion?

11 A. That he doesn't meet criteria.

12 Q. I've got to ask why, what weight in reaching your
13 opinion did all this information from North Carolina play?

14 A. Well, I mean, there are allegations, a lot of it is
15 allegations. Some of them, two victims I guess, were they
16 had enough information that they brought charges. They
17 brought charges after we issued our first opinion. But in
18 general terms, I look at convictions as fact. So I
19 consider those in diagnoses. I look at admissions from the
20 respondent as fact. So those would be considered a
21 diagnoses. Charges and allegations are, I don't look at as
22 fact so they're not considered in diagnoses in general
23 terms.

24 Q. I'm sorry, could you repeat that?

25 A. The whole thing?

1 Q. No! No! No! What is considered in general terms?
2 What did you say is it?

3 A. Allegations and charges.

4 Q. Okay. Why is that?

5 A. Because they're, they're not proven to be facts.
6 They've not been stood the test of time in court. I mean,
7 other things, other facts can come out. I'm not a judge.
8 I'm not a jury. I don't get to decide whether these things
9 are true or not.

10 Q. And you're -- you're testifying that you are South
11 Carolina Department of Mental Health, you are one of the
12 chief evaluators or psychologists, is that correct?

13 A. Yes.

14 Q. And so that is your practice is that you do not look
15 at allegations, is that correct?

16 A. They're not considered in diagnosing, yes.

17 Q. In diagnosing?

18 A. Yes.

19 Q. Okay. Do you consider them for something else?

20 A. Well, so charges are considered in risk assessment per
21 the rules of the Static-99R. For the Static-2002R charges
22 are not really considered it's convictions. So I use
23 charges the way that I'm advised to in the scoring manuals
24 for those instruments.

25 Q. So does that change your score on the Static?

1 A. No, it didn't. It was, just the way that, that the
2 scoring rules work it didn't change the score because they
3 were, um, they were behaviors that happened before he was,
4 um, he was convicted of his last sexual offense.

5 Q. So you think it was consistent with the scoring rules
6 not to use those?

7 A. Oh, it was consistent with the scoring rules, yes.

8 Q. Okay. And then it's also consistent -- so, basically,
9 when we have sexually violent predator case you have to
10 make diagnoses that there's a mental illness and you have
11 to make a diagnosis that there is a risk to re-offend, does
12 that simplify?

13 A. Yes.

14 Q. And so what you're saying is that you're not gonna use
15 these allegations as far as trying to reach a diagnosis?

16 A. Right.

17 Q. And ---

18 A. In -- in certain circumstances they will be used. If
19 I sit down with the respondent and they say they did that
20 stuff then I take that as fact that what happened is true.

21 Q. Because, then, it's not really the allegations, you're
22 really taking it as admission?

23 A. Right.

24 Q. Is there some type of manual or something that tells
25 you whether or not you should be considering allegations

1 when you're reaching a diagnosis? I mean, is there a play
2 book? Is there a Best Practices Manual or something of
3 that ---

4 A. Yeah, there's actually a is called "Best Practices" in
5 sexually violent predator evaluations. I don't have a copy
6 with me right now but it's by Mary Alice Conroy and Philip
7 Witt.

8 Q. It's a little 5 x 9 book about that thick?

9 A. Yeah.

10 Q. I tell you how I know because I have that book also.
11 So that's consistent -- so your approach is consistent with
12 that?

13 A. Well, they talk about people can use different
14 approaches. I don't have it in front of me so I don't want
15 to quote it exactly. I know that this is how I've always
16 done these evaluations, one I've practiced.

17 Q. How many, do you think, you've done, pre-commitment
18 evaluations?

19 A. I have -- I've done maybe 175, 200. It's approaching
20 200 evaluations, I believe. It might be more than that
21 actually but....

22 Q. And any time when you've had allegations and the
23 client hasn't admitted to them you didn't factor that in as
24 far as reaching a diagnosis?

25 A. Correct.

1 Q. And you said that it could impact the recidivism
2 measures, the static?

3 A. Charges can.

4 Q. Charges can?

5 A. Yes.

6 Q. But why did this not affect your Static-99 score?

7 A. It's complicated. So it's because those charges were,
8 I believe, like pseudo recidivism - I have to look back and
9 see exactly. So the charges brought the new ones from
10 North Carolina. They occurred prior to his most recent
11 sexual offense charge and conviction and so they're
12 considered pseudo-recidivism on the Static-99 and they're
13 not really considered on the 2002R. Because they look at
14 what is the most recent behavior. And if you have
15 historical offenses which these are so he's been convicted
16 of something more recent and then these came out, um, he
17 was not charged back then and re-offended so it changes the
18 way that it's calculated in the actuarial.

19 Q. Pseudo-recidivism, what -- is that, is that your term
20 of art or is that a ---

21 A. No! No! No! That's a term that is used in the scoring
22 manuals. Pseudo-recidivism is when it appears that
23 somebody re-offended because now he has new charges but
24 they're based on old conduct. He didn't get out of prison
25 and re-offend.

1 MR. FALK: One moment, Your Honor.

2 THE COURT: Yes, sir.

3 MR. FALK: Your Honor, I have no question, no
4 further questions.

5 THE COURT: All right. Ma'am, let me ask you one
6 just to clarify my notes here.

7 **Cross-Examination by The Court:**

8 Q. Pseudo-recidivism, you said that's based on old
9 conduct that happened before the recent conviction, would
10 that be correct?

11 A. Yes. Yeah. It appears that he's re-offended because
12 he has new charges but they're based on prior conduct,
13 historical stuff.

14 Q. Okay.

15 A. So it appears he re-offended but he didn't.

16 Q. All right, ma'am. I just wanted to make sure I
17 understood that.

18 A. Yes.

19 THE COURT: All right, Mr. Bogle?

20 MR. BOGLE: Thank you, Your Honor. May it please,
21 The Court?

22 THE COURT: Yes, sir.

23 **Cross-Examination by Mr. Bogle:**

24 Q. So Dr. Gehle, as I, to summarize, you got the case ---

25 MR. BOGLE: And just before we go any further, Your

1 Honor, to make this hearing go further I think we can both
2 stipulate --

3 MR. FALK: We can.

4 MR. BOGLE: --- as to the expertise of our
5 respective witnesses being ---

6 THE COURT: Oh!

7 MR. BOGLE: --- qualified psychologist in the
8 sexually violent predator field, is that fair enough?

9 MR. FALK: Absolutely, yeah.

10 THE COURT: Sounds good to me, sir.

11 MR. BOGLE: All right.

12 THE COURT: Yes, sir.

13 Q. Now, the short answer is you got the case, you got
14 whatever records that we had at the time, interview the
15 guy, did a score of Static-99R and a 2002R on him and these
16 are documents used to predict the risk to re-offend
17 sexually, right?

18 A. To estimate the recidivism risk, yes.

19 Q. And then you issued a report concluding that he did
20 not fit the criteria?

21 A. Yes.

22 Q. Because you could not, while he scored high enough on
23 both of those statics to be likely to re-offend, you could
24 not find a mental abnormality or a personality disorder, is
25 that basically what happened?

1 A. Okay. I don't know that I characterized his scores to
2 make him likely.

3 Q. Well, above average? I'm sorry, above average, he was
4 above average risk?

5 A. Yes. Which is a category from the scoring.

6 Q. Right! Right! That's on, that's on the form.

7 A. Okay.

8 Q. But you could not find a mental abnormality which is a
9 pre-requisite or a personality disorder, correct?

10 A. Correct.

11 Q. Okay. And then the new information came from North
12 Carolina and it was sent back to you to take a re-look at
13 all of this and to see if it makes a difference in your
14 report?

15 A. Yes.

16 Q. And you evaluated all of the new information which I
17 understand took a lot of time because it was a lot of it.
18 Because, basically, the new information consisted of not
19 just the arrest warrants and the indictments from 2019, but
20 also other reports from other women either made to the
21 Department of Corrections or the law enforcement
22 authorities in North Carolina about bad things he had done
23 to them, that's basically what it was, wasn't it?

24 A. Yes.

25 Q. Okay. And because none of those others stuff had

1 resulted in convictions, some have been charged and got
2 dismissed by various district attorneys around North
3 Carolina, but there were no convictions on the other stuff,
4 right?

5 A. He did have a conviction in North Carolina.

6 Q. Yeah, there was a groping conviction where ---

7 A. Yes.

8 Q. --- he caught a girl ---

9 A. Yes.

10 Q. --- at a concert or something like that. That's a
11 sexual conviction and scored correctly on your ---

12 A. Yes.

13 Q. --- static? Okay. And so then you issued an amended
14 report which still you could not find existence of a mental
15 abnormality, a paraphilic disorder, as we call it, correct?

16 A. Correct.

17 Q. And you couldn't find a personality disorder on the
18 guy?

19 A. Correct.

20 Q. Static scores didn't change, he was still above
21 average risk to re-offend on both the 99R and 2002R,
22 correct?

23 A. Yes.

24 Q. Okay. I noticed -- do you have your status scores in
25 front of you?

1 A. Yes.

2 Q. May I walk up there -- okay. I noticed on your
3 Static-99R for Item Number 2, if a person has ever lived
4 with a lover for at least two years, if the answer is yes
5 they get zero points; if the answer is no they get a point.

6 A. Yes.

7 Q. And then you add these points up to determine how many
8 points there are and whether or not that makes him likely
9 to re or whether or not that makes him either average risk,
10 above average risk and so forth, right?

11 A. Correct.

12 Q. Okay. And in this case you gave him zero points
13 because his mother confirmed to you that he had lived with
14 a lover for two years but he could not confirm that. He
15 was kind of vague on that, wasn't he?

16 A. I don't know that he was necessarily vague it was just
17 that -- so it requires two years of continuous ---

18 Q. Mmm, hmm.

19 A. --- living together. You can have a weekend here or
20 there away ---

21 Q. Yeah.

22 A. --- or, you know, there's certain circumstances that
23 we're looking at, um, and there's, there's rules about
24 that. And so by his account it was close. I talked to his
25 mother and she confirmed it so I gave him a zero.

1 Q. Okay. And then on Dr. Gottfried's report, which I
2 think you've also seen, she gave him a one because there
3 was no confirmation from him that he lived with a lover for
4 at least two years, is that right?

5 A. I don't know what ---

6 Q. Okay.

7 A. --- what she did.

8 Q. Well, on your Static-99 total down at the bottom you
9 gave him a total 4, and in parentheses it says or a 5 if
10 didn't live with lover. So that was kind of an iffy issue
11 it looks like in totaling this document, is that right?

12 A. Yeah. When you score this, I mean, we're making notes
13 on it, um, to, you know, we have to figure some things out.
14 This is what we think it is. It could be this way or it
15 could be that way. And so that the interview with his mom
16 was one of the last things that we did so that stuck on my
17 copy, I don't know if it came through in your copy, but
18 it's in red, and it was, it was like the last information
19 that I added.

20 Q. Okay. Where it says confirmed by his mother?

21 A. Yeah. I don't know if you see it like I -- you might
22 not have a color copy of it but....

23 Q. Yeah, I've got -- all of that came up on this.

24 MR. BOGLE: Your Honor, for the purpose of this
25 hearing can I introduce into evidence her scoring sheet,

1 the Static-99 tally sheet? I feel you'd be, easier for the
2 judge to understand what we're talking about if he had it -
3 --

4 THE COURT: It would help me, yes.

5 MR. FALK: Okay. I guess as an exhibit, yeah.

6 THE COURT: Yes, sir, as an exhibit. That's fine.

7 MR. BOGLE: And the same thing with the Static-
8 2002R. This is, I think -- do you want to number them
9 separately or the same?

10 COURT REPORTER: We can do them separately?

11 MR. BOGLE: Okay.

12 (Whereupon, the Static-99R Report by Dr. Gehle has been
13 marked and entered into evidence as Plaintiff's Exhibit No.
14 1)

15 (Whereupon, the Static-2002R Report by Dr. Gehle has been
16 marked and entered into evidence as Plaintiff's Exhibit No.
17 2)

18 MR. FALK: Your Honor, just don't take that as a
19 waiver that I think it's appropriate at the trial.

20 THE COURT: Oh, I understand that.

21 MR. FALK: It's limited just to this hearing.

22 THE COURT: Yes, sir, to this hearing. Yes, sir.

23 MR. BOGLE: Judge, let me have it back for just a
24 second.

25 THE COURT: Yes, sir.

1 Q. Just one thing I forgot to do, Dr. Gehle, I'm trying
2 not to get too close but we've all been vaccinated, is this
3 a good copy of your 99, your 99R?

4 A. Yeah, I mean, it's not in color like I have it but ---

5 Q. All right. So that's it?

6 A. --- it's fine.

7 Q. And is this a copy of 2002R, it's Page 1 and that's
8 Page 2?

9 A. Yep.

10 Q. Okay. In a case like this isn't one of the jobs that
11 an evaluator has to do is look for a pattern of behavior?

12 A. Looking for diagnoses, yes.

13 Q. Okay. Well, I'm talking about a pattern of behavior
14 that shows if a person is doing the same thing over and
15 over again even though there might not be conviction?

16 A. Well, again, when things are just allegations ---

17 Q. Mmm, hmm.

18 A. --- it's, it's less clear as to whether those things
19 actually happened.

20 Q. Okay. But what you had was, and I don't have the
21 exact report, but 15 or 20 women who have made allegations
22 against him some of which included choking, some of which
23 included being drugged or thought they were drugged because
24 they said they woke up naked and didn't remember how they
25 got there and none of these resulted in convictions, but

1 you had all these allegations, correct?

2 A. Yes.

3 Q. And then the time he was convicted up here in Sumter
4 County the criminal sexual conduct in the third-degree
5 involved elements of illicit drug use or some kind of
6 doping of the victim, did it not?

7 A. I don't believe so.

8 Q. Okay. What about choking?

9 A. I believe that's what happened but I don't know if it
10 was, you know, explicitly clear.

11 Q. Wouldn't it -- if it did, though, wouldn't that fit
12 the pattern of behavior you're getting from all these
13 allegations even though they didn't result in convictions?

14 A. It would be similar.

15 Q. Okay.

16 MR. BOGLE: One moment, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BOGLE: Thank you, Your Honor. Nothing
19 further.

20 THE COURT: Mr. Falk?

21 MR. FALK: I have one new topic I want to raise if
22 the court would give me some latitude?

23 THE COURT: Yes, sir.

24 **Redirect Examination by Mr. Falk:**

25 Q. Before you started in speaking with Mr. Younger, did

1 you read him his Miranda rights?

2 A. No.

3 Q. Did you tell what would happen if didn't test-- if he
4 didn't cooperate with the interview?

5 A. Um, I read him -- or he would've been read a
6 notification form. That doesn't address what would happen
7 because it's kind of unclear. For my purposes I would just
8 proceed with the evaluation, write my report, submit my
9 report without the benefit of, of their side of the story.

10 Q. You know, the Miranda "can and will be used against
11 you at a court of law" I mean, was that statement made?

12 A. No.

13 Q. How about "you have the right to have an attorney
14 present?"

15 A. No.

16 Q. Your Honor -- the pattern of behavior that Mr. Bogle
17 was alluding to the, the choking, and, you know, some of
18 the rough sex, is that illegal conduct? It's only illegal
19 if it's not consensual, is that correct?

20 A. Correct.

21 Q. So, I mean, the fact that two people engage in some
22 adventurous sex that involves tying up, bondage or anything
23 else, that's not a paraphilia, that's not a crime unless
24 it's not consensual, is that correct?

25 A. That would be my understanding, yes.

1 Q. So when Mr. Bogle was talking about this pattern
2 behavior happening over and over and over again that
3 pattern, there was nothing wrong with that pattern, unless
4 it was non-consensual?

5 A. Yes.

6 Q. I mean, people can take drugs and then want to go have
7 sex, is that correct?

8 A. Yes.

9 Q. And as they took drugs it's only, you know, I think
10 Mr. Bogle is trying to allude to the fact that he drugged
11 these people and I don't know if these people had any
12 drugs. But if people wanted to get high and have sex
13 that's, that part of a pattern of behavior but that's not,
14 as long as is not consensual, that's not a problem, is that
15 correct?

16 A. If it doesn't interfere with their life and it's
17 happening in a consenting situation then it's not a
18 problem.

19 Q. So the only issue here is with all of this you've got
20 to know whether or not the person was consenting? With all
21 the North Carolina stuff, it would be relevant if they, if
22 you knew that they were non-consenting, is that correct?

23 A. Yeah, if I knew, if I knew that for a fact.

24 Q. And that's the thing you can't tell, right? This is a
25 -- these are almost like date rape cases?

1 A. I mean ---

2 Q. It can be construed as that? If someone could defend
3 him in North Carolina, a sort of a date rape theory, that
4 you had a little sex? Yeah, it was consensual sex. And
5 somebody had, you know, second thoughts the next day.

6 A. I'm not a defense attorney. I'm not a prosecutor. I
7 testify in sexually violent predator cases. I don't
8 testify in criminal cases.

9 Q. Okay.

10 A. And I -- so I don't know what his potential defenses
11 could be. I know that he was charged with the sex offense
12 and he did something through his lawyer and the charges
13 were dismissed. So I don't know that he wouldn't be able
14 to do that again.

15 Q. Mmm, hmm.

16 A. When I met with him he had not been given these new
17 indictments. He didn't know that these charges had been
18 brought. So I know he didn't have a chance to defend
19 himself of those.

20 MR. FALK: No further questions.

21 THE COURT: Mr. Bogle?

22 MR. BOGLE: Just a follow-up, Your Honor.

23 THE COURT: Yes, sir.

24 **Re-cross Examination by Mr. Bogle:**

25 Q. When you met with Mr. Younger the second time, this is

1 after getting all of the North Carolina information, you
2 informed about the nature of the pending, of these new
3 arrest warrants and new indictments, correct?

4 A. About the -- I had informed him there were new charges
5 brought ---

6 Q. It's on Page 18 of your report where you gave him the
7 details of the North Carolina arrest warrants and
8 indictments. I'm paraphrasing but it says, "you informed
9 him of what had had happened, what was out there."

10 A. Where's this at?

11 Q. Page -- I have Page 18.

12 A. Yeah. So I want to be really careful because the way
13 that I remember it was, we told him and I conducted this
14 interview in conjunction with Rachel Carter, another
15 psychologist. But we met with him online through a
16 telecall (ph) app. I informed him that they were new
17 charges and then he agreed to answer questions. And we
18 questioned him about a certain crime, that was one of the
19 underlying natures of those new charges, and after we
20 talked about it I think Rachel told him that, that that was
21 one of the charges and he was upset. He said I wish ---

22 Q. Well, let's not, let's not talk about what Rachel said
23 unless she's here.

24 A. I was -- I was there. I was ---

25 Q. No! No! No!

1 A. Okay.

2 Q. What she said is ---

3 A. I'm sorry.

4 Q. Let's -- here's what I'm getting to, on Page 18 of
5 your report it says, "we provided details contained in the
6 warrants and indictments to Mr. Younger at his request."
7 So that's the new indictments and the new warrants. It
8 says, it says in plain language, "you provided details
9 contained in the warrants and the indictments to Mr.
10 Younger at his request", correct?

11 A. Yes.

12 Q. That's what it says. And later he talked to you about
13 the underlining details in those two cases ---

14 A. That's the part where you're mistaken it wasn't later.

15 Q. Well, at some point in time, he did?

16 A. Yes. And what I was saying was that when, when we
17 questioned him about one set of, you know, allegations he
18 talked about them and then he was informed that they were
19 part of one of the new indictments and he was upset about
20 that and he said I wish you would've told me that
21 beforehand.

22 Q. Okay.

23 MR. BOGLE: Nothing further, judge.

24 THE COURT: Mr. Falk?

25 **Redirect Examination by Mr. Falk:**

1 Q. And the second time you didn't read him Miranda, you
2 didn't give him any type of Miranda type ---

3 A. No.

4 Q. --- instructions prior to the second interview either?

5 A. No.

6 MR. FALK: No further questions.

7 THE COURT: Mr. Bogle?

8 MR. BOGLE: Nothing further, judge.

9 THE COURT: Thank you, ma'am. Thank you.

10 MR. BOGLE: No objection to her being released if
11 she wants to drive back.

12 THE COURT: Mr. Falk, do you have any objection?

13 MR. FALK: May I speak with her for a moment?

14 THE COURT: Yes, sir.

15 MR. FALK: Your Honor, I think Dr. Gehle is going
16 to stay with us.

17 THE COURT: Sir?

18 MR. FALK: Dr. Gehle is going to stay.

19 THE COURT: Okay. Mr. Falk?

20 MR. FALK: Oh, I'm sorry, Your Honor. We have no
21 further court case and no further witnesses.

22 THE COURT: Okay. All right. Mr. Bogle?

23 MR. BOGLE: Thank you, Your Honor. May it please,
24 The Court? The State would call, like to call Dr. Emily
25 Gottfried.

1 THE BAILIFF: State your name?

2 DR. GOTTFRIED: Dr. Emily Gottfried.

3 THE BAILIFF: Do you solemnly swear or affirm your
4 testimony to the court shall be the truth, the whole truth,
5 and nothing but the truth so help you God?

6 DR. GOTTFRIED: Yes.

7 THE COURT: Thank you, ma'am. State your name and
8 spell your last name please?

9 DR. GOTTFRIED: Certainly. Dr. Emily Gottfried, G-o-t-
10 t-f-r-i-e-d.

11 THE COURT: Proceed, sir.

12 MR. BOGLE: Thank you. May it please, The Court?
13 Again we'd like to also, for the purpose of this hearing,
14 stipulate that she is an expert witness in the field of
15 forensic clinical psychology and as applied to the sexually
16 violent predator act as well.

17 MR. FALK: I stipulate.

18 THE COURT: He stipulates. Yes, sir?

19 MR. BOGLE: Thank you, Your Honor.

20 Dr. Emily Gottfried, first being
21 duly sworn, testified as follows:

22 **Direct Examination by Mr. Bogle:**

23 Q. Dr. Gottfried, just to move quickly, you are called
24 upon to go, in essentially, to get a second opinion in this
25 case, is that right?

1 A. Correct.

2 Q. Okay. And our office contacted with MUSC which pays
3 you a salary to do this, is that right?

4 A. Yes.

5 Q. Okay. And, in so doing, you received information from
6 our office about Mr. Younger?

7 A. That's correct.

8 Q. And that included information that we got from North
9 Carolina about Mr. Younger, correct?

10 A. Yes.

11 Q. As well as information that Department of Corrections
12 had gotten where women who actually written the Department
13 of Corrections about Mr. Younger?

14 A. Yes.

15 Q. Okay. Now, is the type information you got, the kind
16 of stuff that is typically and reasonably relied upon by
17 experts in your field?

18 A. Yes.

19 Q. And you interviewed Mr. Younger on how many occasions?
20 It was four ---

21 A. He did testing on one day and then I saw him again and
22 then I did the interview on a third day.

23 Q. Okay. And is your ultimate opinion about whether or
24 not he fits the criteria to be a sexually violent predator
25 based upon the information you reviewed, the testing and

1 examine of him, and, of course, your interview with him, is
2 that correct?

3 A. That is correct.

4 Q. Okay. Now, in cases like this he has a sexually
5 violent conviction in Sumter County, is that right?

6 A. Yes.

7 Q. And that's criminal sexual conduct in the third-
8 degree?

9 A. Correct.

10 Q. Back in about 2014? Okay.

11 A. Correct.

12 Q. The additional information you received, could you
13 basically get the court a brief idea of what additional
14 information you received - and you got copies of the
15 pending indictments, right?

16 A. Yes.

17 Q. The three in Guilford County; and, one in Randolph
18 County?

19 A. Yes.

20 Q. All right. Now, for the Guilford County indictments
21 had that charge already been brought once in the past?

22 A. I believe - let me make sure that I have the correct
23 one for Guilford County - he had been charge with I believe
24 second-degree rape in 2005 ---

25 Q. Okay.

1 A. --- for the same victim ---

2 Q. Had that charge ---

3 A. --- that had been indicted.

4 Q. And that charge got dismissed around 2007?

5 A. At some point he got dismissed, yes.

6 Q. And then the North Carolina Attorney General's Office,
7 not the individual district attorneys, indicted him in
8 2019?

9 A. Yes.

10 Q. Okay.

11 A. That's my understanding.

12 Q. Okay. Now, this talk about pseudo-recidivism we heard
13 earlier, could you comment on that? Explain to that and
14 how that relates your evaluation of a guy like Mr. Younger?

15 A. Sure. I mean, I think Dr. Gehle did a good job of
16 explaining what it is you really think of pseudo-recidivism
17 when you're scoring the Static-99R. And so frequently it's
18 maybe a high-profile case in the media where someone gets
19 arrested and then it a lot of more victims will come
20 forward. And so you don't count those as re-offending
21 because he wasn't charged or convicted with the sexual
22 offense to kind of warn him that he wasn't supposed to do
23 that. In Mr. Younger's case he did have prior, a prior
24 arrest in 2005. But it doesn't matter because in this case
25 for the Static-99 purposes you only look at the charge in

1 2005 that was ultimately dismissed.

2 Q. Okay. So charges regard, the sexual charge regards to
3 the date of charge you consider for the scoring purposes?

4 A. That's correct.

5 Q. All right.

6 A. Charges, acquittals, dismissals, findings of not
7 guilty, all of this count as charges but not convictions on
8 the Static-99R.

9 Q. Now, for the purpose of this hearing is this a copy of
10 your Static-99R scoring sheet?

11 A. Yes.

12 Q. Okay. Now, you re-scored Mr. Younger in 2021 on the
13 Static-2002R, correct?

14 A. Correct.

15 Q. Because you found a mistake you made and you corrected
16 it?

17 A. I made an error and I corrected the scoring.

18 Q. Okay. Is this a copy of the 2002R as corrected by
19 you?

20 A. Yes. Will you flip the page so I can see?

21 Q. Yeah.

22 A. Yes.

23 MR. BOGLE: Okay. For the purpose of this hearing,
24 Your Honor, so you'll know what we're talking about, I'd
25 like to introduce these two into evidence.

1 THE COURT: And limited to this hearing.

2 MR. FALK: That's fine, Your Honor, only for the
3 purpose of this.

4 THE COURT: Yes, sir.

5 (Whereupon, the Static-99R Report by Dr. Gottfried has been
6 marked and entered into evidence as Plaintiff's Exhibit No.
7 3)

8 (Whereupon, the Static-2002R Report by Dr. Gottfried has
9 been marked and entered into evidence as Plaintiff's
10 Exhibit No. 4)

11 Q. Now, on what's Exhibit Number 3, you're scoring on the
12 99R, the Static-99R, I noticed that one of the questions
13 is, "Ever lived with a lover for at least two years?" And
14 you put, "No." And he gets a point for that.

15 A. Correct.

16 Q. Okay. Does that, basically, the only difference
17 between your report and Dr. Gehle's report?

18 A. I believe so. I had an opportunity to look at her
19 scoring sheet and it looks like we were consistent on all
20 of the other items of the Static-99R.

21 Q. Okay. And on the 2002R, when you re-scored yours
22 after noting that you, she changed it, you now have,
23 basically, identical 2002R scores?

24 A. Yes. Once I corrected the error from my scoring in
25 2020 we scored it the exact same way.

1 Q. Okay. And the purpose of these things is to help you
2 to determine , is it -- what is, what are the Static-99R
3 and the Static-2002R, how do they way into your assessment
4 of whether or not a person is a sexually violent predator?

5 A. Well, it's -- they are both one data point in my
6 comprehensive evaluation where I administer several test
7 and look at the static risk factors which is what those
8 instruments are measuring and then I also look at dynamic
9 risk factors and other things that contribute to sexual
10 violence risk.

11 Q. Okay. And in both of these incidences, he's the, um,
12 what's the classification? The scores he got on the
13 Static-99R and the 2002R placing him in what category of
14 risk, above average?

15 A. For the nominal risk levels on the static instruments
16 it puts him in the above average risk category.

17 Q. So he is an above average risk to commit another
18 sexual crime?

19 A. Um ---

20 Q. Based on just that?

21 A. I wouldn't phrase it that way. So compared to large
22 studies of people who had detected re-offenses that were
23 sexual in nature, when you look at the characteristics
24 between them ---

25 Q. Mmm, hmm.

1 A. --- those people who re-offended were in the above
2 average ---

3 Q. Okay.

4 A. --- groups. So it doesn't tell you anything about an
5 individual's risk. It's just comparing them to groups of
6 people.

7 Q. All right. Let me rephrase that. I apologize. And
8 so, basically, looking at large groups of people who have
9 the same things about them and they were likely to commit a
10 sexual offense again so that then you look at whether or
11 not measures his likelihood, correct?

12 A. Yes. Your comparing those risk factors. And so of
13 those people who had the same score looks at the percentage
14 of them that had detected re-offenses.

15 Q. Okay. Just like if I went to a doctor and had a
16 physical for my life insurance and he found that I was a
17 diabetic and I smoked and didn't exercise, he's not saying
18 I'm gonna die, but he saying those factors make it likely I
19 might not live as long and the insurance company might
20 charge me a higher premium, is that a safe analogy?

21 A. Yeah. That's correct. So you're, basically, looking
22 at factors that have been shown in research to be
23 associated with an early death in looking at how many, for
24 example, you had and that's kind of how they figure out
25 premiums and things like that.

1 Q. Okay. Now, in the North Carolina charges we have the
2 pending indictments, okay?

3 A. Yes.

4 Q. And on one of those pending indictments the, um, let's
5 see, on the three indictments in Guilford County, Mr.
6 Younger declined to talk to you about those when you told
7 him about them, right?

8 A. That's correct.

9 Q. Okay. And you had read in Dr. Gehle's report where he
10 had talked to her about them?

11 A. Yes.

12 Q. And then regarding the one Randolph County indictment
13 in North Carolina, in that case, he did talk to you about
14 it?

15 A. Correct.

16 Q. And as he had talked to Dr. Gehle?

17 A. Yes.

18 Q. Because you read her report as well?

19 A. That's right.

20 Q. Okay. Now, the other cases, the many women who wrote
21 letters or brought charges or talked to police or what have
22 you, what are you looking for when you see all of these
23 reports? And can you give us a guesstimate as to how many
24 there were? Going back how many years?

25 A. Yeah. So I was counting through them conservatively

1 including the victim in the Sumter County case that he was
2 convicted of criminal sexual conduct in the third, and then
3 the 2005 dismissed case that came back in 2019, and then
4 the other 2019 victim, if you include all of those at least
5 eighteen women reported that he either drugged them, raped
6 them, strangled them, um, took videos or photos of them
7 when they were unconscious.

8 Q. And would a lot of these encounters start out as
9 consensual?

10 A. There were many of reported victims who said that they
11 had been dating Mr. Younger and engaging in consensual
12 sexual activity with him and then it would progress to
13 either he strangled them or choked them at one point in the
14 relationship and maybe they continued their relationship or
15 they didn't. But many of them out of those eighteen were
16 people that he was dating at the time.

17 Q. Now, none of these ever resulted in convictions,
18 correct?

19 A. Only the one in Sumter ---

20 Q. In Sumter?

21 A. Yes.

22 Q. Okay. Is it important to look at the charges that did
23 not result in convictions or accounts of conduct with Mr.
24 Younger that did not result in even a criminal charge?

25 A. Yes.

1 Q. Why is that?

2 A. So the best predictor of future behavior is past
3 behavior. And so I'm not looking at them in a sense of
4 whether or not he committed them are not. The nature of
5 the act is asking me, in my expert opinion, does this
6 person have a mental abnormality or personality disorder
7 that makes them likely to re-offend. In the best case
8 scenario the respondent, when they are undergoing an
9 evaluation with me, they'll tell me about their arousal
10 pattern and they'll be forthcoming. But you can understand
11 why people in this situation would have a lot of motivation
12 to not be forthcoming. So that's why you have to use a lot
13 of different means and ways to assess it. And so when
14 someone is not forthcoming collateral information is really
15 important. And so this was looking for a pattern of
16 behavior that might substantiate a diagnosis. And so I'm
17 looking at similarities between these alleged victim
18 reports over a course of 25 years and seemed kind of how
19 striking similar they are.

20 Q. Okay. Is this something that is typically and
21 reasonably relied upon by other experts in your field in
22 this type of area, SVP area?

23 A. Yes. It's standard to look at both charges and
24 convictions and even things that didn't result in a charge
25 or a conviction.

1 Q. There was a reference during Dr. Gehle's testimony to
2 a book or something called "Best Practices in SVP
3 Evaluations", are you familiar with that?

4 A. Yes, I have it.

5 Q. Does it say anything about looking or and not looking
6 at allegations that didn't result in criminal charges or
7 allegations that resulted in dismissals of criminal
8 charges?

9 A. Unfortunately, I can't testify to that without looking
10 at the book. It's been a little while.

11 Q. Okay.

12 A. But based on my training and the ATSA guidelines and
13 all of the resources that I use it is standard and that's
14 how I was trained. You're looking at them in kind of a
15 dynamic fashion. I'm not necessarily - yes, this
16 definitely happened or no it definitely didn't - but kind
17 of looking at patterns of behavior to help you establish a
18 diagnosis because you would never make a diagnosis just on
19 one behavior.

20 Q. Okay. Now, you mentioned the word the acronym, ATSA,
21 a minute ago, what does that stand for?

22 A. That's the Association for the Treatment of Sexual
23 Abusers.

24 Q. Are you a member of that?

25 A. I am.

1 Q. Okay. Now, in this case, you were able to diagnose --
2 were you able diagnose Mr. Younger with a mental
3 abnormality?

4 A. Yes.

5 Q. And what was that mental abnormality?

6 A. Other specified paraphilic disorder specified to
7 paraphilic or course of paraphilic disorder.

8 Q. Is there another word for that called biastophilia?

9 A. Yes. They're several names, raptophilia,
10 biastophilia.

11 Q. Okay. Did you also diagnose him with a personality
12 disorder?

13 A. Yes, two personality disorders.

14 Q. And what were they?

15 A. It's my opinion that he met diagnostic criteria for
16 narcissistic personality disorder as well as other
17 specified personality disorder with anti-social personality
18 disorder features.

19 Q. Okay. Okay. So you found mental abnormality and the
20 personality disorder?

21 A. Yes.

22 Q. And the likelihood to re-offend based on the static
23 scores and your comprehensive evaluation of all the
24 information, right?

25 A. Yes.

1 Q. And, in so doing, you recommended in your report that
2 he be civilly committed, is that right?

3 A. It was my opinion that he met the statutory definition
4 for being a sexually violent predator.

5 Q. In other words, convicted of a sexual violent crime
6 here in Sumter?

7 A. Yes.

8 Q. Likely to commit a sexually violent crimes unless he's
9 confined for long-term control and secure treatment?

10 A. Correct.

11 Q. Okay.

12 MR. BOGLE: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 Q. So in making a diagnosis you use the allegations that
15 did not result in convictions, is that correct?

16 A. Correct. That was one data point that I looked at.

17 Q. Okay.

18 MR. BOGLE: Thank you, Your Honor.

19 THE COURT: Mr. Falk?

20 MR. FALK: Thank you, Your Honor.

21 **Cross-Examination by Mr. Falk:**

22 Q. Just to clarify a couple of things, so you said there
23 were eighteen people that was your guess?

24 A. Yeah. Conservatively the ones who reported either
25 being choked or thought they had been drugged or, um, or

1 rapped.

2 Q. Okay.

3 A. So there were other people who may be made other
4 reports ---

5 Q. But ---

6 A. --- that didn't reach that level but conservatively it
7 was eighteen.

8 Q. Was it your understanding that these were all people
9 that knew the client, that knew Mr. Younger beforehand, is
10 that correct? They were not strangers?

11 A. There may have been one that he had met just before
12 that but most of them were people that he knew either in
13 class or new socially or dated.

14 Q. Okay. So primarily they were people that he knew?

15 A. Many of them were, yes.

16 Q. And there was nothing illegal about taking drugs
17 before you have sex, is there?

18 A. There is nothing, I mean, I guess if you got caught
19 with it in your possession it would be illegal but ---

20 Q. No. But, I mean, there would be nothing wrong with
21 somebody providing somebody else drugs before they have
22 sex, is that correct?

23 A. If it is ---

24 Q. Has far as ---

25 A. --- consensual.

1 Q. Yeah. I mean, that's my point. It's the consent
2 which it makes all of these things, right? Because
3 certainly they could share drugs and have consensual sex,
4 is that correct?

5 A. Yes. But I think you're kinda of getting into a gray
6 area and that some people will coerce someone into sexual
7 activity by giving them drugs or try to lower their
8 inhibitions to do things that they ---

9 Q. You said that ---

10 A. --- ordinary wouldn't have done.

11 Q. You said that the people were raped. But the only
12 thing that you know is that - you don't even know that
13 really - I mean, you're making an assumption there was a
14 sexual intercourse but you don't know if it was not
15 consensual other than their statement, right?

16 A. Yes. I am basing that on their letters and police
17 reports and statements given to the police.

18 Q. And their police reports are based on their
19 statements, right?

20 A. Correct.

21 Q. So all that would still be, the issue would be whether
22 or not there was consent, is that correct?

23 A. Yes. But if somebody is unconscious they wouldn't be
24 able to consent.

25 Q. Fair enough. But I'm trying to make the comparison as

1 if eighteen, 12-year-old girls came out and said they had
2 sex with him, it really wouldn't matter if there was
3 consent, that is wrong off the bat?

4 A. Correct. A 12-year-old girl wouldn't be able to give
5 a consent.

6 Q. Right. And -- but in the same token, if Mr. Younger
7 had sex with eighteen strangers that he just met on the
8 street corner, you would make an assumption there that that
9 was not consensual, would you not?

10 A. Not necessarily. That would go more in to like
11 dynamic risk factor looking at sexual preoccupation and
12 things like that. But not necessarily unless there was a
13 report from those eighteen women who said it was not
14 consensual.

15 Q. But my point is you have to rely on your assumption
16 that they are telling the truth that that they did not
17 consent to the conduct?

18 A. Yes. So I think for any case where I'm looking at
19 charges and convictions and allegations so I'm kinda of
20 relying on that they were telling the truth, I guess.

21 Q. In my introduction I said that there were 67 pages of
22 your -- your report was like 125 pages, isn't that right?

23 A. Unfortunately, yes, it was.

24 Q. Do you think it's fair to say close to half of it
25 really was your discussion of the information that you

1 found in the North Carolina cases?

2 A. My estimate was 54 pages when I looked at it.

3 Q. Okay. Would you admit that that's a significant
4 portion?

5 A. Yes. There was a significant amount of data that was
6 provided in this case.

7 Q. Would you have reached the same conclusion had you not
8 had that information from North Carolina?

9 A. I mean, it's -- I think it's difficult to un-ring that
10 bell so I knew about the 2005 one. In this, the case in
11 Sumter, I think two of the victims had wanted to testify or
12 testified in camera so I had that information. So it's
13 difficult to tell. There definitely was a pattern from
14 prior allegations but were known about. But I think with
15 that additional information that really developed this
16 really striking pattern of similarities.

17 Q. You say right now to a degree of reasonable certainty
18 that you would have reached the same conclusion without
19 that information?

20 A. Like I said it's difficult because I have that
21 information now. I'd have to kinda think about so we had
22 the woman in 2005, um, and then one of the CP's who
23 testified in camera for this case, and then this case, I'm
24 not sure. I'd have to look at the data together to look at
25 the pattern but I do think that there would be something

1 there.

2 Q. You talked about just another data point.

3 A. That's correct.

4 Q. You've -- this is more, the North Carolina stuff,
5 there was more than just another data point, is that fair
6 to say?

7 A. They were data points. Obviously, convictions weigh a
8 lot more than allegations or things that have just been
9 heard by a grand jury. So I weigh data points differently,
10 but I consider all data points in my evaluation.

11 Q. And you would agree that he doesn't -- you could not
12 diagnose him with anti-social personality disorder, is that
13 correct?

14 A. Yes. So Mr. Younger met diagnosis criteria for every
15 one of the criteria for anti-social personality disorder,
16 but a prerequisite of the disorder is at least some
17 evidence of COMT disorder present before the age of 15 and
18 there was no data to suggest that. So, typically, in that
19 case because personality disorders, the way that they
20 develop, sometimes like leader adolescents submerging into
21 adulthood is when you would see the symptoms more often.
22 So you don't always have the evidence of COMT disorder.
23 But it was really clear that he really demonstrated anti-
24 sociality.

25 Q. And being narcissistic that has -- what's the -- I'm

1 not gonna ask -- I'll withdraw the question.

2 MR. FALK: May I have a moment, Your Honor?

3 THE COURT: Yes, sir.

4 MR. FALK: I have no further questions.

5 THE COURT: Mr. Bogle?

6 **Redirect Examination by Mr. Bogle:**

7 Q. Two things to clarify. One, just, you referred to
8 static factors and dynamic factors. Static factors are
9 things about Mr. Younger they just earned his past and
10 haven't changed?

11 A. There are things that cannot change.

12 Q. Cannot change except for his age?

13 A. Right. Well, there are things you can't treat. So I
14 cannot treat Mr. Younger and make him younger. And I can
15 give them treatments so he never would have a male victim
16 for example, but he didn't have one, but if you had a male
17 victim I could treat him so he never had another one, but I
18 can never remove that from his past.

19 Q. Okay.

20 A. So there's static unchanging ---

21 Q. So like he's had a conviction that's a static factor,
22 it's not gonna go away?

23 A. Correct.

24 Q. Now, you also mentioned dynamic risk factors, are
25 these the changeable treatable factors a person might have?

1 A. Yes. They might be difficult to treat but they are
2 targetable in treatment. Things like paraphilic arousal,
3 substance use, things that you could give treatment and
4 theoretically they could change.

5 Q. Okay. And both of these classes of factors, both
6 static and dynamic, are things you consider in measuring a
7 person's risk to re-offend, is that correct?

8 A. Yes. I'm looking at the whole kind of literature
9 based on very supported meaningful risk factors.

10 Q. And can a consensual sexual relationship which begins
11 consensual turn not consensual?

12 A. Of course.

13 Q. Thank you.

14 MR. BOGLE: Nothing further.

15 THE COURT: Mr. Falk?

16 MR. FALK: Nothing further, Your Honor.

17 THE COURT: You may step down.

18 MR. FALK: Oh, Your Honor, I just ---

19 THE COURT: Sure.

20 MR. FALK: I think I know the answer but I just
21 want to make the record.

22 **Re-cross Examination by Mr. Falk:**

23 Q. You didn't give him any type of Miranda warnings
24 before you questioned him, did you?

25 A. I'm not a law enforcement officer so he went through

1 our, maybe, six or seven page consent form informing him
2 that nothing he told me was going to be confidential or
3 secret. A report would go to the Attorney General's
4 Office. He had the right to not participate, to terminated
5 any time. And he reviewed that on each of the three dates
6 when I saw him. But I didn't give him like a law
7 enforcement Miranda warning or anything like that.

8 Q. Okay. So you said he had the right not to
9 participate?

10 A. Yes.

11 Q. And what would've happened had he not participated?

12 A. So that's not up to me. So if somebody says that they
13 don't want to participate we don't force people to do
14 anything. People have to consent. They have to
15 participate or agree to participate. When somebody says
16 that they're not going to participate I let the Attorney
17 General's Office know and then wait to see what happens
18 with that case.

19 Q. Did you know he was held in contempt when he didn't
20 want to participate with one of your ---

21 MR. BOGLE: Objection, Your Honor, as to the
22 relevance as to what we're doing here today.

23 MR. FALK: Oh, I think it's absolutely relevant.
24 He's talking -- Mr. Bogle's raised his question of waiver
25 and that is not a voluntary waiver because ---

1 THE COURT: I'm gonna allow it, Mr. Bogle.

2 MR. BOGLE: All right.

3 THE COURT: It's just this stuff here today in this
4 hearing. I'm gonna allow it. Go ahead, sir.

5 Q. Were you aware that he was held in contempt for not
6 participating in one of your testing protocols?

7 A. No. It was my understanding that he was in compelled
8 to participate in it. So I waited to see what the Attorney
9 General's Office wanted me to do before proceeding in the
10 evaluation.

11 Q. They didn't advise you that it was a court order that
12 said he didn't have to?

13 A. Yes. I know that it was court ordered that he didn't
14 have to but I don't know anything about being held in
15 contempt.

16 Q. Did you know that the State asked to hold him in
17 contempt?

18 A. I know that I wrote an affidavit explaining why a PPG
19 would be useful in this case. But once I submit that then
20 I just wait to hear the outcome.

21 MR. FALK: Nothing further.

22 THE COURT: Mr. Bogle?

23 MR. BOGLE: Nothing further, Your Honor.

24 THE COURT: You may step down, ma'am.

25 DR. GOTTFRIED: Thank you.

1 THE COURT: Oh, I got one questions.

2 **Direct Examination by The Court:**

3 Q. Approximately how many evaluations like these have you
4 done?

5 A. For the Sexual Violent Predator Act I've done 33
6 total. And then in my work as the director of our sexual
7 behaviors clinic and lab at MUSC, I do a lot of sexual
8 behavior evaluations but about 33 pursuant to SVP Act.

9 Q. Okay.

10 **Re-cross Examination by Mr. Falk:**

11 Q. Are those all pre-commitment or was some of those
12 annual reviews?

13 A. Some of those were annual reviews.

14 Q. Do you have an estimate of how many were pre-
15 commitment?

16 A. Probably, I don't have it listed, but I probably can
17 tell by initials, um, I'm gonna say about 20 were ---

18 Q. Thank you.

19 A. --- were the pre-commitment.

20 MR. FALK: Nothing else, Your Honor. Thank you.

21 THE COURT: Sure. Okay. You may step down,
22 ma'am.

23 DR. GOTTFRIED: Thank you.

24 THE COURT: Mr. Bogle?

25 MR. BOGLE: Nothing further as far as witnesses,

1 Your Honor.

2 THE COURT: Okay. Gentlemen, if you have any
3 final comments I simply ask that you know that I took very
4 good notes on the front end. But that's not to say that
5 you can't talk to me further about this. Mr. Falk?

6 MR. FALK: Your Honor, I want you to remember one
7 thing of what Dr. Gottfried said, "I can't un-ring that
8 bell". This is a medical professional who should be able
9 to make those kinds of distinctions and she could not un-
10 ring the bell of reading all the stuff of North Carolina. A
11 medical professional who should be trained how to filter
12 this can't un-ring the bell, I don't know how my, how my
13 client is going to get a fair trial.

14 THE COURT: Yes, sir. Mr. Bogle?

15 MR. BOGLE: In response, Your Honor, first off as
16 far as housekeeping matter, would you like copies of any of
17 the cases that are cited in our materials?

18 THE COURT: Well, I was going to ask you for that
19 or I'd have Mr. Bollock, a very good law clerk, do that.

20 MR. BOGLE: Well ---

21 THE COURT: What would you prefer, Mr. Bollock?

22 MR. BOGLE: When we're done I'll pass up copies of
23 all the cases I've cited.

24 THE COURT: It saves me time. It does.

25 MR. BOGLE: Okay. The only other thing is I think

1 when she was talking about "un-ringing that bell" she was
2 referring to un-ringing the bell about all the North
3 Carolina information she had gotten not just the ones that
4 resulted in two indictments. But the motion before the
5 court, the focus for the motion before the court filed by
6 Mr. Falk is, focus narrowly on the indicted charges and Dr.
7 Gottfried testified about them and does that somehow harm
8 Mr. Younger?

9 Now, we've covered that by way of the Fifth
10 Amendment and the civil nature of the case. The waiver,
11 the fact that he talked to Dr. Gehle about all these
12 charges. And we've talked about Rule 403 and hearsay.
13 We've kinda expanded our presentation into not just
14 indicted charges but all the women that said bad things or
15 talked about criminal activity by Mr. Younger whether or
16 not it resulted in criminal charges or not, because the
17 case in which I'll hand up to you, allow that sort of
18 material. I guess our question is right now -- also, this
19 hearing kind of involved more into a question of the weight
20 of the testimony. I think so many of the things you heard
21 today from Dr. Gehle and Dr. Gottfried will have to be
22 decided by the jury as far as weight ---

23 THE COURT: Yes, sir.

24 MR. BOGLE: --- not admissibility.

25 THE COURT: Yes, sir.

1 MR. BOGLE: It's kind of -- we kinda of ventured
2 into that area here. The State is asking you to deny the
3 motion. Allow the case to go forward as is and we'll see
4 what happens on April 19th.

5 THE COURT: Okay.

6 MR. FALK: Your Honor, I have some collateral
7 issues. If it is your decision to allow all the North
8 Carolina information then my client is requesting a
9 continuance so that he can evaluate all of this
10 information. I have not been able to provide it to him
11 because of restrictions at the detention center. I would
12 want an order from this court advising him that I can give
13 him un-redacted copy of everything that the two experts
14 looked at. Otherwise, he's been unable to prepare for the
15 trial. He's unable to help assist me. So if -- I'm just
16 saying if your decision is that I'm, you know, I'm making a
17 motion for a continuance ---

18 THE COURT: Yes, sir.

19 MR. FALK: --- and I'm making a motion for
20 discovery ---

21 THE COURT: Yes, sir.

22 MR. FALK: And then, as far as, sort of filed-- I
23 prepared some notes for this and what I would like to do is
24 just dress it up and I'll, sort of like a post-trial brief,
25 it's about three pages, I can just email it to you.

1 THE COURT: That's fine. Mr. Bogle, you,
2 certainly, entitled to do the same if you want to, sir.

3 MR. BOGLE: Why don't I just prepare a proposed
4 order. It'll summarize the findings of the court.

5 THE COURT: If y'all both want to send me proposed
6 orders that's fine.

7 MR. BOGLE: How about that?

8 THE COURT: That's fine. Just to keep it balanced.

9 MR. FALK: I think it's gonna be a Form 4, just
10 saying, no, it's not coming in.

11 MR. BOGLE: Your Honor, here's copies of the cases
12 that we cited in our material.

13 (Whereupon, the attorneys talks amongst themselves)

14 THE COURT: Mr. Bogle, did you want to reply to his
15 continuance motion, sir?

16 MR. BOGLE: I think we're set the day we're set. I
17 think, I think Your Honor has enough information, enough
18 information to make a decision. I was putting together
19 these cases. I heard him talk about a continuance for more
20 discovery. Discovery has been done. Everything we got
21 from North Carolina has been given to them. I'm not sure
22 what to give for discovery.

23 MR. FALK: I got it recently. It is a bunch of
24 stuff and he's not been able to see it.

25 THE COURT: I understand.

1 MR. BOGLE: Wait a minute, now. He got it some
2 months ago and then Mr. Younger wanted to look at the stuff
3 so we had to go through a big deal with the detention
4 center's attorney about setting up a room and a computer
5 for Mr. Younger to look at these things with certain
6 stipulations. There's a court order in the file about all
7 of this.

8 THE COURT: Okay.

9 MR. BOGLE: With certain stipulations that certain
10 pictures he would not be able to see. We didn't want him
11 to reliving his sexual exploits at the computer room at the
12 jail. So as far as looking at stuff our understanding is
13 that all happened some months ago for Mr. Younger and Mr.
14 Falk.

15 THE COURT: It did not, Mr. Falk?

16 MR. FALK: Well, I mean, he hasn't been able to
17 look at everything. What they provided him has been
18 redacted from what I sent them. And there is still
19 additional information -- well, if you're gonna do this
20 whole North Carolina thing there's a lot of North Carolina
21 stuff that he does not have.

22 THE COURT: Okay. All right. I'll take that under
23 advisement, then.

24 MR. BOGLE: We're hearing this for the first time
25 now. I mean, judge, I ---

1 THE COURT: I understand.

2 MR. BOGLE: Let me pass up ---

3 THE COURT: Yes, sir. Now, gentlemen, let me tell
4 you, both of you and I mean this with all sincerely,
5 sincerity y'all may not have any idea of how pleasurable it
6 is to work in a hearing or a trial with two very good
7 lawyers who don't cat scratch at each other the whole time
8 and take cheap shots at each other and don't litter the
9 courtroom with needless endless repetitive questions. I
10 appreciate that very much.

11 MR. FALK: Thank you, Your Honor.

12 MR. BOGLE: Thank you, Your Honor.

13 THE COURT: It makes my job a lot easier. A lot
14 easier. Mr. Younger, I've got this with me now and I'll
15 make a decision soon.

16 MR. BOGLE: What deadline do you want for
17 submitting proposed orders? I mean, a brief of our case is
18 our return.

19 THE COURT: Pretty much, yes, sir.

20 MR. BOGLE: And I'll submit a proposed order if
21 you'd like it as well. When do you want it by?

22 MR. FALK: All I want to do is hand you,
23 basically, what I said about his case ---

24 THE COURT: You can ---

25 MR. FALK: --- two pages and I'll hand or I'll

1 send it ---

2 THE COURT: You can do me a proposed order Mr.
3 Bogle and you can do me what you want to do and I can take
4 it from there. I know y'all are busy too.

5 MR. BOGLE: Give me a deadline.

6 THE COURT: This thing is set for trial, what,
7 April 19th?

8 MR. BOGLE: Nineteenth.

9 THE COURT: What's comfortable for you?

10 MR. BOGLE: Say Monday? By Monday?

11 THE COURT: Oh, my God, yes. Don't ask too much
12 time, sir. All right, y'all, thank you very much.

13 MR. BOGLE: Thank you, Your Honor.

14 (CONCLUSION OF THE HEARING ON MARCH 30, 2021)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Sumter County, South Carolina, on the 30th day of March, 2021.

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

Lisa S. Carter

Lisa Carter
Circuit Court Reporter

July 22, 2021

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of Sumter)	2018-CP-43-188
)	
In the Matter of the Care)	
and Treatment of James)	
Gregory Younger,)	

TRANSCRIPT OF RECORD

April 19 & 20, 2021
Sumter, South Carolina

BEFORE:

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE; and a jury.

APPEARANCES:

JAMES BOYLE, ASSISTANT ATTORNEY GENERAL
CHRIS RUNYAN, ASSISTANT ATTORNEY GENERAL
Attorneys for the State

JAMES FALK, ESQ.
Attorney for James Gregory Younger

KAREN AMBROZIAK
Official Court Reporter

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1 (Whereupon, the jury left the courtroom at 3:21 p.m.)

2 THE COURT: All right. Gentlemen, anything we need
3 to take up now?

4 MR. BOGLE: Your Honor, it's 3:30. Do you want to
5 knock off some of the -- I've got three motions in limine,
6 possibly four. Do you want to knock them off? It
7 wouldn't take more than half an hour to an hour.

8 THE COURT: Does that suit you?

9 MR. FALK: Yes, Your Honor. And I think I need to
10 renew my motions that I've already made.

11 THE COURT: Yes, sir.

12 MR. FALK: In order to keep the record.

13 THE COURT: Yes, sir, we can do that.

14 MR. BOGLE: Do you want to do it here or upstairs?

15 THE COURT: Well, she'd have to move. That might
16 take a few minutes. Let's just do it here. Y'all come --
17 at least, get in front of me.

18 MR. BOGLE: Thank you, Your Honor. Are you ready?

19 THE COURT: Yes, sir.

20 MR. BOGLE: The State has a first motion in limine
21 that was filed with the Court. Basically, what we're
22 saying is, as Your Honor knows, we're seeking the civil
23 commitment of Mr. Younger. And should the jury find he is
24 a sexually violent predator, he will be confined for long
25 term control, care and treatment at a facility operated by

1 or under the supervision of the Department of Mental
2 Health.

3 Our first motion in limine deals -- we're asking the
4 Court to not allow any reference to treatment or the type
5 of treatment he might receive if he's committed. If he is
6 committed, the treatment will be decided then. No one
7 knows what it will be until he gets there.

8 And, also, it will confuse the jury to go into the
9 types of treatment because the burden on the State is to
10 show beyond a reasonable doubt that Mr. Younger suffers
11 from a mental abnormality or a personality disorder that
12 makes him likely to commit sexually violent crimes in the
13 future.

14 We'd also ask the Court to prohibit any reference to
15 the location of the place as being a prison, about him
16 being punished or committed for life or an indeterminate
17 time. So, really, it's a factual medical issue for the
18 jury to decide. It's not an intent to punish.

19 So our first motion in limine is not about treatment,
20 Your Honor, it's really about the location, where he would
21 go, that there be no reference to it being a prison, at a
22 prison, behind the wall, at Broad River or punish or long
23 term or commitment for life or something like that.

24 THE COURT: Okay. That's your motion?

25 MR. BOGLE: Yes, sir.

1 THE COURT: Mr. Falk.

2 MR. FALK: Yes, sir, Your Honor. My position is as
3 far as the location, I think the jury needs to know that
4 this is going to be a secure location, that he's not just
5 going some place he can walk in and out of, because
6 that -- so I think -- you know, I'm not going to talk
7 about the old death row or something like that, but it's
8 clearly -- he's going to be at a secure facility, that
9 he's not going to be able to come and go at his pleasure.
10 To the extent I have a witness that knows anything about
11 that, I think I should be able to talk about that.

12 THE COURT: Mr. Bogle, any concerns about it simply
13 being deferred to as a secure facility?

14 MR. BOGLE: No concern about that, Your Honor. Just
15 past cases, I've had the word prison used, I've had for
16 life, indeterminate sentence, things like that.

17 MR. FALK: Well, wait a minute, indeterminate
18 sentence I think is fair.

19 MR. BOGLE: Well, it's not a sentence.

20 MR. FALK: Well, not sentence. An indeterminate
21 period of time I think is fair if there's a witness who
22 can testify to that.

23 MR. BOGLE: Well, there's really no length of time.
24 It's until such time as the mental abnormality or
25 personality disorder changes to the extent that he's safe

1 to be at large. That could be, in my experience, in as
2 short as two years or as long as much longer. It just
3 depends on the person.

4 THE COURT: All right. I'm going to allow -- we've
5 agreed upon secure location language. I'll allow the
6 phrase indeterminate period of time because we don't know.
7 Like Mr. Bogle said, it could be two years or longer. We
8 don't know.

9 What's the next motion, sir?

10 MR. BOGLE: The second motion was what I talked about
11 a minute ago, and I apologize. It's about prohibiting any
12 details about the type of treatment he might receive.
13 Again, the burden of proof is that we show he has the
14 mental abnormality or the personality disorder that he
15 cannot control and makes him likely to reoffend in the
16 future in a sexually violent manner.

17 That's the only thing we have to prove. We don't
18 have to prove the type of treatment, what he'll get. And,
19 frankly, I don't think any of the witnesses here either
20 for the State or the defense really know exactly what
21 treatment line he'll be in. And you won't know until he
22 gets there anyway.

23 THE COURT: Yes, sir.

24 Mr. Falk.

25 MR. FALK: Your Honor, one, I think Dr. Gail will

1 have some ability to testify to treatment in general; and
2 two, I think it's inherent in the definition of
3 44-48-30(1)(b), suffers from a mental abnormality or
4 personality disorder that makes it likely to engage in
5 acts of sexual violence if not committed in a secure
6 facility for long term care and treatment.

7 See, you could go in there and think that yeah, he's
8 got something and maybe he needs some treatment. But
9 whether or not the treatment needs to be in a long-term
10 care facility, I mean, I think there's a possibility that
11 a juror may find that he could -- everybody would be
12 comfortable if he got outpatient treatment. So the fact
13 that the treatment has got to be conducted in a secure
14 facility is what I think the issue is.

15 MR. BOGLE: We have no problem, Your Honor, with us
16 arguing inpatient versus outpatient, no problem with that.
17 But the type of treatment he might get if he goes in we
18 think is outside the jury's prerogative -- area and, also,
19 something we don't have to prove. It wouldn't aid the
20 jury in deciding the elements we have to prove.

21 Now, no problem arguing about does he have to be in a
22 secure place for treatment or can he get it outpatient.
23 No problem with that.

24 MR. FALK: Well, just --

25 THE COURT: I'm going to allow some to go in from

1 these experts. I think they have a right to give
2 something of an opinion about what he might receive. But
3 both of you are good lawyers and you're going to follow up
4 by saying you can't guarantee that's what he's going to
5 receive, right?

6 MR. FALK: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. FALK: I guess the point, I would want to have an
9 opportunity to go explore whether or not -- okay. Never
10 mind, I'm okay with that.

11 THE COURT: All right.

12 Next, Mr. Bogle.

13 MR. BOGLE: The third motion has to do with time. As
14 Your Honor knows, under this law, once the Court finds
15 probable cause and orders an evaluation, the person has to
16 remain confined somewhere until their case is over. In a
17 perfect world, we'd do it while they were still finishing
18 their prison sentences. This has not been a perfect world
19 for, at least, the last year and two or three months. So
20 because of that, Mr. Younger has been confined in the
21 Sumter County Detention Center.

22 Our third motion in limine is to prohibit any
23 reference to the amount of time he's been confined pending
24 final disposition of this proceeding. We can't help it.
25 It's not our fault. It's not Mr. Falk's fault. It's just

1 two things combined, the length of the evaluations had to
2 be done for both sides and, of course, the pandemic, which
3 canceled -- I think this case was set for jury trial two
4 or three times and those all got canceled.

5 THE COURT: Mr. Falk.

6 MR. FALK: Your Honor, granted, it's nobody's fault,
7 but I think the issue is that the jury has to decide
8 whether or not today, this minute, he qualifies as a
9 sexually violent predator.

10 To the point that he may be a different person for
11 the amount of time he's been confined at SCDC and then
12 here, so I think it's relevant. I mean, I'm not going to
13 make any kind of big point, but I think it's relevant for
14 the jury to know how long he's been outside of society. I
15 mean, really, he could have gotten two more years on his
16 SCDC sentence.

17 THE COURT: Any reply, Mr. Bogle?

18 MR. BOGLE: My concern is that the jury might hold it
19 against the State that he's had to sit in the jail since
20 2019.

21 THE COURT: I'm going to grant your motion, Mr.
22 Bogle. We don't get into that even in General Sessions
23 cases.

24 What's number four, Mr. Bogle?

25 MR. BOGLE: Do you plan to call Rachel Carter?

1 MR. FALK: No.

2 MR. BOGLE: Okay. Number four has been withdrawn.
3 We were objecting to the calling of Dr. Rachel Carter. If
4 he's not going to call her, we'll withdraw the motion.

5 THE COURT: Those are your motions, Mr. Bogle?

6 MR. BOGLE: That was my last pretrial motion, Your
7 Honor.

8 THE COURT: Mr. Falk, any motions?

9 MR. FALK: Your Honor, on Dr. Carter, she's new at
10 DMH and she believes it would be helpful if she could be a
11 spectator at the trial. We talked about that, I just want
12 to make sure that's still going to be okay. Because I
13 know we're limiting the amount of people in the courtroom.

14 MR. BOGLE: We've always sequestered witnesses except
15 for the experts.

16 THE COURT: Right.

17 MR. BOGLE: So all the fact witnesses will be
18 sequestered and be brought in one at a time. The experts
19 can stay in the courtroom the entire time and, certainly,
20 Dr. Carter.

21 THE COURT: Mr. Falk, do you want to renew your prior
22 motions?

23 MR. FALK: Yes, Your Honor. As far as the
24 continuance, my client is still going to assert that in
25 spite of possibly everybody's best efforts, he has not had

1 an opportunity -- sufficient opportunity to look at all of
2 the electronic -- we'll call it the electronic discovery,
3 because the information was on two thumb drives, which the
4 experts in this case have had a chance to look at,
5 therefore, we would ask for that motion, to renew our
6 continuance motion on that basis.

7 THE COURT: I remember the very good arguments both
8 of you put forth last week whenever we met, I can't
9 remember now, but with respect to you, Mr. Younger, I'll
10 deny the continuance.

11 MR. FALK: I did file a motion and I believe you
12 responded to it, a motion to dismiss because of some
13 procedural irregularities that may have happened at the
14 proceeding leading up to the probable cause hearing.

15 MR. BOGLE: There was an order filed denying that.
16 Is that what you mean?

17 MR. FALK: Yeah, the motion to dismiss.

18 THE COURT: Did I issue that ruling?

19 MR. BOGLE: Yes, Your Honor.

20 THE COURT: I had so many last week or whenever we
21 met, it's hard to remember those.

22 MR. BOGLE: You issued an order denying the motion to
23 dismiss petition and was filed on April 13th. You signed
24 three of them the same day and that was one of them. It
25 had to do with alleged irregularities and information in

1 the MDT, which was considered by the Court earlier, and
2 also in the petition.

3 THE COURT: Okay.

4 MR. BOGLE: And you denied that by order filed
5 April 13th.

6 THE COURT: You're right.

7 Anything further about that, Mr. Falk, you want to
8 say?

9 MR. FALK: I'm just making my record.

10 THE COURT: Sure. I respectfully deny it again, sir.

11 MR. FALK: And then the last, of course, is the -- my
12 motion regarding the indictments -- the North Carolina
13 indictments and the information that can come in regarding
14 that.

15 THE COURT: I well remember that motion. I'll stand
16 by my prior rulings with respect to you, sir.

17 MR. FALK: Yes, Your Honor. I talked to Mr. Bogle
18 about this, and I apologize to the Court for not having an
19 opportunity to put this in a motion, but -- and I've done
20 a bunch of these cases. I've never gotten upset about it.
21 I was thinking about it the other day.

22 At some point, they're probably going to say that
23 Mr. Younger did not have treatment while at SCDC. If they
24 stop it at that, I think that is acceptable, but anything
25 more, saying that he didn't want to go to treatment, he

1 refused to go, that's going to be hearsay testimony
2 without somebody coming in here to testify that he refused
3 treatment or didn't want treatment. I mean, I can live
4 with he hasn't had treatment. Because I don't want the
5 jury to draw some kind of inference that he doesn't think
6 he needs treatment.

7 THE COURT: Yes, sir.

8 Mr. Bogle, somebody going to testify?

9 MR. BOGLE: I think in both reports, it was
10 documented from the Department of Corrections records that
11 he did not get sex offender treatment. The further
12 information we have from our expert was that it would have
13 required him to move to another prison and he didn't want
14 to do that.

15 So he made an inquiry about it, it would have
16 required moving him to Broad River or another prison where
17 it's taught, didn't want to do that, so it didn't happen.
18 The bottom line is he didn't get sex offender treatment.

19 As far as the why, the why is not being offered as
20 the truth of the matter asserted, so it's not hearsay.
21 It's just being offered. So the circumstances surrounding
22 the not getting sex offender treatment, which made it
23 important to the doctor in forming her opinion as to
24 whether or not he's a sexually violent predator, we can
25 deal with that when we get to, it might be the better

1 time.

2 THE COURT: Yes, I was going to say let's get -- when
3 we get to that, let's just proffer that testimony and deal
4 with that then.

5 MR. FALK: Okay, because my client would disagree
6 that he refused treatment.

7 THE COURT: Yes, sir. Yes, sir. I'd feel better if
8 we had proffered testimony about that.

9 MR. FALK: One thing -- and, again, I apologize,
10 Mr. Bogle has heard this before out of me. I don't think
11 it's fair to let the jury know that he's subject to an
12 annual review every year because the jury could conclude
13 that he's only going to be away for a year.

14 THE COURT: Mr. Bogle.

15 MR. BOGLE: Correct me if I'm wrong, Jim, annual
16 reviews were part of my testimony when I first started
17 doing this. I stopped referring to annual reviews some
18 time ago.

19 Sometimes it comes out during testimony, like, if one
20 of the doctors is testifying about her expertise. Say Dr.
21 Gail says I've done 250 precommitment and 55 annual
22 reviews. Dr. Gail might be saying the same thing. So in
23 their qualification as an expert, they may mention the
24 fact as far as the type of evaluations they've done.

25 Under the SVP Act, it's included both precommitment

1 and annual reviews. I don't usually go into my testimony
2 about the fact that they'll get an annual review and what
3 the burden of proof is then. That's down the road. I
4 used to, but I stopped that a while back.

5 MR. FALK: Maybe we can just leave it at reviews.

6 THE COURT: We can, just call it reviews.

7 MR. FALK: My witness -- it's going to be --

8 Dr. Gottfried would be the one. She's had more annual
9 review evaluations.

10 THE COURT: Anything else, sir?

11 MR. FALK: Beg your pardon?

12 THE COURT: Anything else?

13 MR. FALK: No, I don't believe so, Your Honor.

14 THE COURT: All right, folks --

15 MR. BOGLE: In the morning, we'll start with --

16 MR. FALK: Oh, I'm sorry, Your Honor.

17 THE COURT: Go ahead. I can hear you better around
18 here.

19 MR. FALK: May I have a moment?

20 THE COURT: Yes, sir.

21 MR. BOGLE: Let's talk about these when you finish
22 with court stuff.

23 THE COURT: Are we done now then or not?

24 MR. FALK: Just as long as he can continue accessing
25 that information that's on the thumb drives.

1 MR. BOGLE: Your Honor, we have here Kathy Ward. She
2 is the general counsel for the sheriff's department,
3 including the detention center. Mr. Wallace, back there,
4 Greg Wallace, he's the IT person who was involved in
5 allowing access for Mr. Younger to look at these things
6 pursuant to your order and a previous consent order done
7 by Judge Curtis. So, really, whether it can still happen
8 as the trial goes on, it's up to them. It's their jail.
9 If you have any questions of them, they're here right now
10 to address that.

11 THE COURT: Does he still --

12 MR. BOGLE: There's certain times of day, I think,
13 they allow that.

14 THE COURT: Can y'all help me with that?

15 MS. WARD: Thank you, Your Honor, good afternoon.
16 The problem with having Mr. Younger review the electronic
17 discovery after five o'clock -- right now, the times are
18 set at where he's been able to, for the most part,
19 schedule any day that he wants to, seven days a week,
20 although the rules generally only allow five days a week.

21 THE COURT: Right.

22 MS. WARD: The problem when five o'clock gets there
23 is they run up on mealtimes and then they're running up on
24 shift change; and by then, it's eight o'clock or so in the
25 evening, 8:00 to 8:30 before the detention center can

1 accommodate him staff-wise to put him in a room where he
2 can review the discovery.

3 They did accommodate him Friday night after the
4 issues that went on, but it was not particularly easy for
5 the staff to do. If he gets back before 5:00, there's
6 probably not an issue. I'll see what the detention center
7 can do to accommodate him, but it's difficult to do after
8 five o'clock.

9 THE COURT: All right. As burdensome as it might be,
10 Ms. Ward, I would ask you to please accommodate as much as
11 you can, especially tonight, tomorrow night and Wednesday
12 night. By then, we should be through with this trial.

13 MS. WARD: If I could ask Your Honor to, at least,
14 let me tell the detention center staff that once nine
15 o'clock gets here that they need to go ahead and get him
16 back in his pod or cell or his cubicle wherever he's
17 housed.

18 THE COURT: Yes.

19 MS. WARD: I think nine o'clock is the limit they
20 gave him Friday night.

21 THE COURT: I can understand that. You've got to
22 still run your facility, I understand that. But we're in
23 the short rows now, so maybe --

24 THE DEFENDANT: May I speak?

25 (Pause.)

1 THE COURT: Yes, sir.

2 MR. FALK: Some of this I don't know the factual
3 basis about, but my client is reporting that he's only had
4 access to the -- that they have taken information off the
5 thumb drives and put it onto the computer and that he
6 believes that the consent order gave him access to the
7 thumb drives and the computer, so he feels that he's not
8 getting access to all of the information.

9 THE COURT: Y'all are quickly getting past my pay
10 grade.

11 MS. WARD: Your Honor, Mr. Wallace is the IT
12 specialist and he can explain the technical reasons for
13 moving the materials from the thumb drive to the laptop.
14 The laptop only contains Mr. Younger's personal profile,
15 which contains all of the electronic discovery that was
16 provided by the Attorney General's Office to Mr. Falk.
17 Mr. Falk, in turn, provided initially a hard drive and
18 then more recently when Your Honor got involved, the two
19 thumb drives.

20 Mr. Wallace, per Your Honor's clarification and Judge
21 Curtis' earlier order, had to go through the thumb drives
22 and remove a number of inappropriate images that the Court
23 had previously ordered that he was not to be allowed to
24 view at the detention center. When he redacted all of
25 those, then he moved the unredacted materials onto the

1 laptop available for Mr. Younger's viewing.

2 He is here and can testify, Your Honor, that the only
3 thing he didn't put on that laptop for Mr. Younger's
4 viewing were the items that were specifically prohibited
5 by Judge Curtis' order and by Your Honor's more recent
6 ruling.

7 MR. BOGLE: And there was also an issue yesterday
8 where, at least, a good two or three hours got killed.
9 Mr. Younger changed the password on the laptop and when
10 they came to him to make this stuff available, he wouldn't
11 give them the password.

12 So how long did that take, till 4:30?

13 MS. WARD: I think Mr. Wallace went down there around
14 noon on Friday to load all the materials onto the
15 laptop -- or he had already loaded them -- can I ask
16 Mr. Wallace just to come up and explain it?

17 THE COURT: Sure.

18 MS. WARD: Greg Wallace is the IT specialist at the
19 detention center.

20 THE COURT: Place him under oath.

21 GREG WALLACE - IN CAMERA, after being
22 duly sworn, testified as follows:

23 THE COURT: All right. Proceed.

24 DIRECT EXAMINATION:

25

1 BY MR. BOGLE:

2 Q Mr. Wallace, you're the IT person at the detention
3 center; is that correct?

4 A Yes, sir.

5 Q Would you relate to the Court -- you've heard
6 Ms. Ward summarize the steps you had to take when these
7 thumb drives arrived sent by his attorney within the last
8 week or so, week or two?

9 A Yes, sir.

10 Q And that required you to remove a lot of images that
11 the prior court order said could not be viewed, correct?

12 A Correct.

13 Q And what happened starting about noon yesterday?

14 A I completed my review about 12:30ish. I got back to
15 the facility and I went down -- I went to start loading in
16 my office the redacted copy of the material. I tried to
17 log in using the password that I had received from the
18 attorney originally back in January. It did not work. I
19 tried several times, it did not work.

20 Q This was Friday, right?

21 A This was Friday, yes, sir.

22 Q This past Friday?

23 A The 16th. I went down to echo pod, which Mr. Younger
24 is housed in, and in front of Lieutenant Sweat, the shift
25 leader, I asked him, Would you provide me with the

1 password? And he refused several times and very
2 vehemently. I told him I could not move forward loading
3 the redacted information unless you provide me with the
4 password.

5 Now, I have the technology and skills to do that, but
6 I wanted to know what the password was. He wouldn't
7 provide it. That was about noon. And I think it got to
8 about four or five o'clock when Major Ray came into my
9 office and informed me that she had the password and she
10 gave me the password after a discussion with Mr. Younger.

11 At that point, I was given instructions to go ahead
12 and complete the load, change the password. I did so. I
13 went back down to echo pod to make sure Mr. Younger
14 remembered what the original password was. He confirmed
15 that he did and then I left.

16 Q And it's 4:30 or five o'clock now before that --

17 A Yes, sir.

18 Q -- got solved?

19 MR. BOGLE: So my point is, this four or five hours
20 got killed, not on us and not on the detention center.

21 MR. FALK: I think maybe if I could put my client on,
22 this is an in-camera hearing, and let him explain --

23 Let me ask one question.

24 THE COURT: Sure.

25 CROSS-EXAMINATION:

1 BY MR. FALK:

2 Q When you looked at everything that you thought was
3 inappropriate, none of it was child pornography; is that
4 correct? It was all adults?

5 A Pornography and children, no. I did redact photos of
6 children. Because the order said was all pictures.

7 Q Okay.

8 A So I redacted all pictures, whether they were
9 pornography or like family pictures. And there were a few
10 of children.

11 THE COURT: Do you want to say something?

12 MR. FALK: Just to finish his argument, I mean, my
13 client -- and I guess we're going to have to make -- I
14 guess we're going to have to proffer that in order to save
15 the record as far as what he was not able to look at.

16 THE COURT: Yes, sir.

17 MR. FALK: That the State's witnesses were able to
18 look at. I would like to call my client from sitting
19 there or whatever --

20 THE COURT: Sure.

21 MR. FALK: -- and maybe he can explain what his
22 concerns were.

23 THE COURT: Raise your right hand, Mr. Younger.

24 JAMES YOUNGER, after being duly sworn,
25 testified as follows:

1 THE COURT: Now, you understand this is not your
2 trial. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Proceed, Mr. Falk.

5 DIRECT EXAMINATION:

6 BY MR. FALK:

7 Q Mr. Younger, you have heard some testimony about what
8 made it sound like you were not being cooperative. What
9 was your concern about the password?

10 A I did not have -- the equipment was not mine, so I
11 didn't have a problem giving out the password. My problem
12 was I didn't want the information -- and I explained it to
13 Mr. Wallace. I didn't want the information taken from the
14 thumb drives and downloaded onto the laptop for previous
15 reasons.

16 They said that my information is the only thing
17 that's on that laptop. That's not true, sir. There's
18 information from a federal case for Mr. Darryl Hemphill
19 that is on that laptop. All of his information is
20 readable and it shouldn't be there. And I'm scared my
21 information is going to be left on there, as well. There
22 are images of women in bikinis and seminude clothing. I
23 mean, all this stuff is on that laptop for viewing.

24 Q Those are not your pictures?

25 A Correct, those are not my pictures. They were on the

1 laptop before I had anything to do with it. Mr. Wallace
2 has taken it upon himself to make multiple copies of my
3 files that he got from Mr. Falk on January the 8th or 9th,
4 I believe it was a Friday.

5 He took that information required for the passport,
6 then he made multiple copies onto that laptop. I don't
7 know why he did that because Judge Curtis' order does not
8 say that he can make copies and disseminate those files
9 into wherever he wants.

10 By his own self-report, he told me he made multiple
11 copies and he also made a copy and put it on the server in
12 a secure location. That came straight from his mouth,
13 sir.

14 And I'm afraid that my information is going to be
15 left on there when I leave the detention center. Whether
16 it be to a long-term healthcare facility or if I go to
17 North Carolina, wherever it may be, I am afraid, sir, that
18 my information will be left on that computer for the next
19 man to view, and I don't want that.

20 So when he came to me Friday and asked me for the
21 pass code, I said, Look, I don't have a problem giving you
22 the pass code. It's your equipment, it's your material,
23 you can do what you want to do with it. But here's what I
24 don't want, Mr. Wallace, I don't want you to download the
25 information from those thumb drives onto that laptop.

1 And according to Judge Curtis' order, and I pulled it
2 out and showed it to him, I said, It says plainly here you
3 are to provide the laptop and the thumb drives for me to
4 view. After the viewing, you are to come and pick those
5 items back up. That's exactly what her court order says,
6 sir. And that's all I was asking for. I wasn't trying to
7 be hard to get long with or difficult in not giving the
8 password, but there is information on that computer I
9 should not have access to.

10 THE COURT: Okay.

11 THE DEFENDANT: And I have proof of that, sir, if you
12 need it.

13 THE COURT: So your motion, Mr. Falk, is what? Bring
14 me back to where I need to be.

15 MR. FALK: Yeah, I mean, my client -- well, I'm going
16 to make the motion that my client should have access to
17 view all the images which are not -- I don't think there
18 are any images on there that are contraband in and of
19 themselves per se, such as child pornography.

20 All the other images the experts saw, he should be
21 able to look at it in order to prepare his case. He would
22 like to have all copies of what's on the laptop to be
23 removed and for him to look at the information directly
24 from the thumb drive.

25 THE COURT: These copies that may have been made, I

1 don't know whether they were made or not, what happens to
2 them when this is all over? Why do we need copies at the
3 jail anyway?

4 MR. WALLACE: Your Honor, when the original version
5 of the hard drive, the pass port drive was shipped in --
6 you don't work with the original copy. You keep the
7 original copy as it is. You make a copy as a working
8 copy. And that's what I had, I had a working copy to work
9 from.

10 From the working copy, as I was going through, if I
11 had to redact a file, I would copy that file out and mark
12 it redacted. The files are set as they are -- or were
13 back in January when I did the original drive and then
14 they are set on my external drive as they are from this
15 review pending outcome of this and instructions from my
16 attorney. Once I'm given instructions on what to do with
17 this information, I will follow through with that
18 instructions.

19 THE COURT: Okay. All right. Like at the end of
20 this trial?

21 MR. WALLACE: Yes, sir.

22 THE COURT: Remind me to address it then what to do
23 with these copies.

24 MR. FALK: Yes, Your Honor. And so as far as him
25 looking at the stuff that's been redacted, your order is?

1 THE COURT: Whatever my prior order was on this.

2 MR. BOGLE: Your prior order said that whatever he
3 looks at and subject to Judge Curtis' consent order from
4 January, which took out images, nude or otherwise.

5 THE COURT: That's right. Because I didn't want to
6 do behind her order and change her order.

7 MR. BOGLE: Correct.

8 THE COURT: So there we are, right?

9 MR. FALK: Yeah, but the problem with the consent
10 order -- and I know it's a consent order.

11 THE COURT: Yes.

12 MR. FALK: Obviously, I was consenting when I didn't
13 know what was available and I didn't know the extent. And
14 if you agree that he should not look at anything that
15 Judge Curtis said, that's fine, because that would be the
16 issue that I can raise on appeal.

17 THE COURT: Yes, sir.

18 MR. FALK: Because I don't want it to be construed
19 that I consented to this. Now, we have this whole new era
20 of ineffective SVP PCR.

21 THE COURT: I didn't want to tinker with or deal with
22 her consent order or change because it was, number one, a
23 consent order. Number two, I didn't want to go behind
24 another judge's order to modify it. So that's why. There
25 we are. See you in the morning.

1 MR. BOGLE: Thank you, Your Honor. You're both very
2 nice, all three of you. I appreciate it.

3 (There was an overnight recess).

4 THE COURT: Any objections to the preliminary charge?

5 MR. BOGLE: No.

6 THE COURT: Mr. Falk, anything?

7 MR. FALK: There's one thing. It may be especially
8 important in this situation. A lot of times they say
9 we're not supposed to contact the jury, so if we ignore
10 them in the hallway, we're not being rude.

11 THE COURT: Oh, yeah. I've got a little thing there.

12 MR. FALK: I didn't see that in there.

13 THE COURT: It won't be in there. It's in my other
14 thing about breaks and so forth.

15 MR. FALK: Okay.

16 THE COURT: All right. Are we ready to bring the
17 jury in?

18 MR. FALK: Yes.

19 MR. BOGLE: Yes, Your Honor.

20 (Whereupon, the jury entered the courtroom at 9:45
21 a.m.)

22 THE CLERK: Ladies and gentlemen of the jury, please
23 stand and raise your right hand to be sworn.

24 You shall well and truly try and true deliverance
25 make, between the State of South Carolina, and the

1 defendant at bar, whom you shall have in charge, and a
2 true verdict give, according to the law and the evidence,
3 so help you God.

4 THE COURT: Any comments or matters from the lawyers
5 before I speak with them about the initial charge?

6 MR. BOGLE: Nothing from the State, Your Honor.

7 MR. FALK: Nothing from the Respondent.

8 THE COURT: Do either of you object to my coming to
9 the floor to speak to them? I like to do that.

10 MR. BOGLE: No, Your Honor.

11 MR. FALK: Not at all.

12 THE COURT: Members of the jury, I prefer to be on
13 your level when I speak to you now and later. I'll pull
14 back some from you. What I'm going to read to you now is
15 what we call a preliminary charge or instructions in this
16 matter.

17 As you know, the case we're about to try is the case
18 In the Matter of and Care and Treatment of James Gregory
19 Younger. What I say now is meant to serve as an
20 instruction to the trial in this case.

21 My remarks are not a charge on the law in this case
22 now. I will instruct you on the law to apply to this case
23 at the end of the trial before you retire to decide this
24 case.

25 Before the trial begins, I want to explain the

1 procedure that we will follow so you can better understand
2 what is happening. You have been selected as fair and
3 impartial jurors whose purpose is to find and determine
4 the facts.

5 You are the sole judge of the facts. If at any time
6 I make any comment regarding the facts, you must disregard
7 what I say. You are to determine the facts from the
8 testimony you hear and any other evidence that is
9 presented.

10 You should not be influenced by any opinions or
11 statements you may have heard outside this courtroom. It
12 is especially important that you perform your duty of
13 determining the facts diligently and conscientiously
14 because ordinarily there's no way to correct an erroneous
15 determination of the facts by the jury.

16 When you comply with your oath to impartially
17 determine the facts of this case, you will have fulfilled
18 your duty as jurors and no one will have the right to
19 criticize your verdict.

20 On the other hand and with equal emphasis, the same
21 law that makes you the judges of the facts makes me the
22 judge of the law. The law as I give it to you is the only
23 law you may consider. You must accept and follow it even
24 though you might not like it or disagree with it.

25 I cannot tell you what the facts are and you cannot

1 disagree with me about what the law is or should be. Your
2 job is to take the law as I give it to you and apply it to
3 the facts as you find them from the testimony of the
4 witnesses and any other evidence that is presented. After
5 doing that, you will render your verdict, a true and just
6 verdict under the solemn oath that you just took as
7 jurors.

8 Until I advise you to begin your deliberations, you
9 must not discuss this case with anyone, including your
10 fellow jurors, friends, family members or anyone else
11 involved in this case or not involved in this case. This
12 includes discussions face-to-face and those by telephone,
13 e-mail, texts, blogs or any other method of communication.

14 You may not use a computer, cell phone or other
15 electronic device with communication capabilities at any
16 time while in the courtroom or during deliberations. You
17 may not at any time use these devices to get or send
18 information about this case. This includes information
19 about a party, an attorney or a court officer, news
20 accounts about this case, messages about the case,
21 research on any topic raised, any topics you think may
22 helpful in deciding this case or any testimony presented
23 by a witness.

24 During the trial, do not read, listen to or watch any
25 news reports, if any, about this case. This includes

1 anything that may be in the newspapers or on the internet,
2 radio or television. You must not consider anything you
3 may have read or heard about this case outside the
4 courtroom whether before or during this trial.

5 After the case is submitted to you, you must discuss
6 it only in the jury room with your fellow jurors.

7 The attorneys and parties in this case have been
8 advised that they're not to talk to you at all, so if you
9 see them during this case in the hallway or in other
10 places and they don't say hello, it's because they don't
11 want to have any conversations with you. They're not
12 being unfriendly. They're just following the instructions
13 here.

14 It's important that you keep an open mind and not
15 decide any issue in this case until all of the evidence
16 has been presented, the parties have made their closing
17 arguments and I have instructed you on the law in this
18 case.

19 In just a moment, the attorney for the plaintiff or
20 the State will make what is called an opening statement.
21 The attorney will explain to you the issues in this case
22 or, at least, what the attorney thinks the issues are in
23 this case.

24 The attorney for the defendant will also make an
25 opening statement. What the lawyers tell you during their

1 opening statements is not evidence in this case. It is
2 only their contention as to what the issues are.

3 The evidence in this case will be presented to you by
4 the testimony of sworn witnesses from the witness stand
5 and/or by exhibits that may be introduced into evidence.

6 From time to time during the trial, you may hear one
7 of the lawyers say something like Judge, we have a matter
8 to discuss with you, matter of law or we may need to take
9 a break. Sometimes I might even stop things to talk to
10 the lawyers. I will excuse you from the courtroom when
11 that happens because I must keep my conversation with the
12 attorneys about anything else away from you.

13 You are the judge of the facts and sometimes when I
14 am discussing matters of law with the attorneys, it may be
15 necessary for me to make some comment as to the facts in
16 connection with my ruling, whether or not a certain rule
17 applies.

18 I am not supposed to tell you what I think the facts
19 are, so I'll excuse you in those circumstances in the
20 courtroom while those discussions take place so that you
21 will not be influenced by anything that I might say or do
22 in connection with the facts.

23 In determining what the true facts are in this case,
24 you must decide whether or not the testimony of the
25 witnesses is believable. It will be my responsibility to

1 rule as a matter of law as to whether certain testimony is
2 admissible at all or not. But once the testimony is
3 admitted, whether or not you believe it is solely for you
4 to determine.

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

12 You have a right to consider anything that is in the
13 record that will help you evaluate the testimony of the
14 witnesses. That means that it is your duty to pay close
15 attention to these witnesses, to observe those witnesses,
16 to listen to the witnesses and to pay close attention to
17 the lawyers and to the Court.

18 Don't let your thoughts wander, pay attention to the
19 testimony so that at the end of the trial, you will be
20 able to determine what the true facts are, to apply the
21 law to the facts and render a true and just verdict.

22 It is your added duty to whoever is appointed the
23 foreperson and I'm not doing that yet, to preside in the
24 jury room and be the jury spokesperson here in the court.

25 Mr. Falk, Mr. Bogle, any exceptions to what I said,

1 sir?

2 MR. BOGLE: Not from the State, Your Honor.

3 MR. FALK: No, Your Honor.

4 THE COURT: Now, to the jurors, I tell you that what
5 you will see here today is nothing like the trash you see
6 on television, movies and shows about lawyers and
7 courtrooms, totally different.

8 As far as the atmosphere here, I like to use what I
9 call causal formal, something of an oxymoron, but to a
10 degree, sort of laid back, if you will. We will take
11 breaks approximately every hour to hour-and-a-half. I try
12 to take those breaks when it is best in terms of witnesses
13 on the stand. However, if any one of you needs to stop,
14 merely raise your right hand or your left hand. You don't
15 have to tell me anything and we'll take a break. That's
16 all I have to tell you folks.

17 So Mr. Bogle.

18 MR. BOGLE: Thank you, Your Honor, may it please the
19 Court.

20 OPENING STATEMENT:

21 MR. BOGLE: Ladies and gentlemen, my name is Jim
22 Bogle. I introduced myself yesterday. I'm with the
23 Attorney General's Office. Let me give you an idea what
24 we're doing here.

25 Now, when you got your jury summons to be here and

1 you told your friends hey, I might be on jury duty, you
2 were probably thinking it might be a car wreck or medical
3 malpractice case or something like that. Well, this is
4 not going to be that.

5 South Carolina passed a special law in 1998. Here's
6 kind of what some of that law says. It says, the General
7 Assembly finds that a mentally abnormal and extremely
8 dangerous group of sexually violent predators exist who
9 require involuntary civil commitment in a secure facility
10 for long-term control, care and treatment.

11 They went on to say that because the existing civil
12 commitment process is inadequate to address the special
13 needs of sexually violent predators and the risks they
14 present, the General Assembly determined that a separate
15 civil commitment process, which is today, is necessary.
16 So that's what this case is.

17 The burden is going to be on the State to prove
18 several things. Number one, has Mr. Younger over here,
19 has he been convicted of what's called a sexually violent
20 crime. There's no dispute about that. He has here in
21 Sumter County, criminal sexual conduct in the third degree
22 back in, I think it was 2014.

23 The next thing is, does he have a mental abnormality
24 or a personality disorder that will make him likely to
25 commit these types of crimes again unless he is confined

1 in a secure facility for what they call long-term control,
2 care and treatment. So because of that, he had to be
3 evaluated. And the law sets up a system for witnesses who
4 are psychologists or psychiatrists to evaluate these
5 people.

6 What happened here was a court order was issued some
7 time back to have him evaluated. And the Department of
8 Mental Health who does these sorts of things, they
9 conducted an evaluation and concluded that he did not fit
10 these tests. He did not need to be civilly committed.

11 The Attorney General's Office, as allowed by the law,
12 got a second opinion from MUSC, Dr. Emily Gottfried.
13 She's sitting in the back row over there. Her conclusion
14 based on the analysis she did was that he did fit the
15 criteria.

16 He had the right kind of condition. He had a mental
17 abnormality, he had a personality disorder and could not
18 control those things sufficiently if left out in the open
19 and, therefore, needed to be civilly committed. So you
20 will hear from her.

21 Now, those are the things we have to prove. Bear in
22 mind, we have to prove those not by what they call clear
23 and convincing evidence, what might be the case if this
24 were an auto wreck case, but we have to prove it beyond a
25 reasonable doubt.

1 In other words, you've got to be firmly convinced
2 when you've heard the State's case that Mr. Younger is a
3 sexually violent predator to render a verdict committing
4 him. It's a stronger verdict and it should be because
5 this affects his liberty.

6 The Judge will explain to you in his closing charge
7 to you, his instructions to you exactly what the
8 definition is of beyond a reasonable doubt. So listen to
9 him when he gets to that.

10 Now, because of the nature of the case and because
11 the doctors, both Dr. Gail from the Department of Mental
12 Health, who said don't commit him, and Dr. Gottfried from
13 MUSC, said yeah, he does, they have to explain to you how
14 they reached their diagnosis or lack of diagnosis, which
15 means they may have to go through the individual facts of
16 the case.

17 The reason I'm mentioning this now is because of the
18 nature of this case, you may have listen to some rather
19 unpleasant things that were done by Mr. Younger on his
20 victims. So just be ready for that. It's not like a
21 wreck case or a medical malpractice case.

22 Now, normally, a person can't give an opinion, a
23 witness can't testify about an opinion. Normally,
24 witnesses testify about facts, things they see, things
25 they saw, things they heard.

1 I saw the light turn red, I heard the gun go off,
2 things like that. They can't give opinions. But under
3 our law, if a person has sufficient training and
4 qualifications in a particular scientific field, they can
5 be declared by the judge to be an expert witness and they
6 can give an opinion. And that's what this case is, an
7 opinion as to whether or not, based on the testing, the
8 analysis and the facts behind Mr. Younger, does he needs
9 to be civilly committed. So you will hear the judge
10 qualify these two people, Dr. Gail from mental health and
11 Dr. Gottfried from MUSC as expert witnesses.

12 At the same time -- like the judge said, you're the
13 believers and the finders of facts. So any witness that
14 testifies, no matter what their qualification, you have to
15 decide how much to believe and what to believe.

16 You can believe everything a witness says, you can
17 believe nothing, or somewhere in between. This is totally
18 up to you. Your job is to listen to the testimony and
19 decide what the facts are in this case. We believe the
20 facts will prove beyond a reasonable doubt that James
21 Gregory Younger has been convicted of a sexually violent
22 crime, he has a mental abnormality and a personality
23 disorder and lacks sufficient control over those things so
24 he is likely to commit similar crimes if not confined for
25 what's called long-term control, care and treatment.

1 Thank you.

2 THE COURT: Mr. Falk.

3 OPENING STATEMENT:

4 MR. FALK: May it please the Court. First of all, I
5 want to apologize and I'm embarrassed that my phone went
6 off. I apologize to Mr. Bogle and apologize to the Court.
7 Anyway, hopefully, won't happen again. It's on air plane
8 mode.

9 THE COURT: Mr. Falk, I'd rather hear a phone ring
10 than a gunshot.

11 MR. FALK: I would, too.

12 I really have more to talk to y'all about at the end
13 of this trial. I've just got a couple of things I want
14 you to think about while you're here. These are the
15 things that -- this is how the case is defined.

16 First of all, your mission today -- or this week is
17 to determine whether today, in 2021, Mr. Younger is a
18 sexually violent predator. Now, the thing is you're going
19 to hear mostly information that happened in 2014, all
20 stuff happened really prior to June 2014. And so, you
21 know, he might have been a different person before he went
22 to prison. And you have to consider whether or not he
23 changed while he was in prison or whether or not he's
24 still the same person today that he was in June of 2014.
25 That's important to remember because all this stuff that

1 Mr. Bogle alluded to, all the bad things, the allegations
2 and stuff, that all happened in the past, nothing that
3 happened recently. And, certainly, what you need to focus
4 on is who he is today.

5 The other thing you have to focus on is the fact that
6 what we're talking about here is whether or not there's
7 evidence of a mental health problem and not whether or not
8 there's evidence of a criminal history and -- because this
9 is a mental health case.

10 The State has to prove that he has a memory deficit
11 of some type or a personality disorder of some kind which
12 makes it likely that he's going to commit a sexually
13 violent offense in the future.

14 I'm trying to give you kind of an analogy. And let's
15 say somebody picks somebody else's pocket, takes
16 somebody's wallet, okay. Now, the decision -- that guy's
17 or woman's decision to be the pick pocket, it could be
18 motivated by the fact that he's starving and needs some
19 foods and he was just hoping that he was going to find a
20 couple bucks in the guy's wallet and then he's going to be
21 able to go eat. I mean, that's still criminal, but that's
22 a motivation for it, and that's criminal conduct.

23 Or he could be maybe a little bit more evil and he
24 said I know this guy has got credit cards in his wallet.
25 I'm going to take the credit cards and I'm going to sell

1 them on the dark web to a bunch of Russian mafia people
2 and make a lot of money. That's criminal, but that's not
3 a mental health thing. We understand what was motivating
4 him there. What we're talking about is whether or not
5 there is a mental health motivation.

6 I mean, I guess you all are familiar with the consent
7 of kleptomania, people who really enjoy stealing for the
8 sake of stealing. That's kind of what you have to be
9 thinking about here, is whether or not the motivation was
10 a criminal motivation to do something or whether the
11 motivation was because of some kind of mental health
12 deficit that caused him to do it. That's going to be
13 important because there's no question you're going to hear
14 some bad stuff. And you might want to punish him for the
15 bad stuff that you've heard. He's done his sentence.
16 He's done his time. And there's no point and there's no
17 reason. You're really not supposed to focus on whether or
18 not he needs additional punishment.

19 Another thing you need to consider is that this is a
20 case where I expect we're going to have two people who are
21 going to testify as experts and I certainly anticipate the
22 Court is going to allow them both to testify as experts.
23 Now, if this were like a medical malpractice case, the
24 issue is going to be about whether or not the doctor
25 erred, did something wrong.

1 One expert is going to say that he did err and the
2 other expert said that he didn't err. You know, a lot of
3 times, there could be some question in your mind and you
4 just -- in those kind of cases, you have to decide which
5 expert made more sense.

6 But I'm telling you this because in those kind of
7 cases, the burden of proof is by the preponderance of the
8 evidence or clear and convincing evidence. This is beyond
9 a reasonable doubt. So you're going to have testimony
10 from two people, who I assume are going to be qualified to
11 testify as experts.

12 You're going to hear their credentials. And then
13 you're going to have to make a judgment. And you may
14 believe -- you may think one expert might be a little bit
15 better than the other expert, but in your mind, a little
16 bit better than the other expert is not beyond a
17 reasonable doubt.

18 You have to -- so even though it's going to maybe
19 feel like a medical malpractice case where you've just got
20 to decide which expert told a better story, that's not
21 what you have here.

22 You know, at the end of the day, this is an extremely
23 important decision. This trial is probably going to go
24 relatively quickly and it's going to have a huge impact on
25 my client's liberty and have an impact where he eats,

1 where he sleeps, what kind of -- if he's free to move
2 around. And I need you to focus. I need you to pay
3 attention in this case. Keep some of these things I've
4 told you in mind while you listen to the evidence.

5 And, again, we want to know who he is today, not who
6 he was in June of 2014. We want to know whether or not
7 this motivation is a mental health motivation or just
8 criminal conduct. What you want to consider when you're
9 listening to these experts is, is one expert so much
10 better than the other that it's beyond a reasonable doubt
11 better.

12 Thank you for your attention.

13 THE COURT: Mr. Bogle.

14 MR. BOGLE: Thank you, Your Honor. May it please the
15 Court. The State would call Dr. Emily Gottfried.

16 THE CLERK: State your name.

17 THE WITNESS: Emily Gottfried.

18 EMILY GOTTFRIED, after being duly
19 sworn, testified as follows:

20 THE CLERK: Come around, watch yourself coming up the
21 ramp. State your name for the record and spell your last
22 name, please.

23 THE WITNESS: Dr. Emily Gottfried, G-O-T-T-F-R-I-E-D.

24 MR. BOGLE: Thank you, Your Honor.

25 THE COURT: Yes, sir.

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DIRECT EXAMINATION:

BY MR. BOGLE:

Q Dr. Gottfried, how are you currently employed?

A Currently, I am the director of the sexual behaviors clinic and lab at the Medical University of South Carolina. I'm also an assistant professor of psychiatry and behavioral sciences at MUSC.

Q All right. What professional degrees do you hold?

A I have a Bachelor's Degree in psychology from San Diego State University. I have a Masters degree in psychology from Columbia University. And then I obtained my Masters Degree and PhD in clinical psychology from Florida State University.

Q All right. What states are you licensed to practice psychology in?

A I'm a licensed psychologist in the states of Georgia and South Carolina.

Q What is -- when we talk about the word clinical psychology, which you mentioned a minute ago, what do we mean? What are we saying?

A So clinical psychology is a specialty or a branch of psychology that really focuses on the assessment, diagnosis, treatment and research of mental disorders and illnesses.

Q There's also something called forensic psychology.

1 When I use the word forensic in front of psychology, what
2 am I talking about?

3 A Well, forensic typically means the interaction or the
4 marriage of science and the law. So for forensic
5 psychology, that's kind of assisting the criminal justice
6 system or the court with a psycho-legal issue.

7 So what that means is a psychology topic or thing
8 that relates to the legal system. So that might be
9 something like helping a court decide how risky someone
10 is, if they understand the charges against them or not
11 because of a mental illness and things like that.

12 Q Does your work have you doing -- as a forensic
13 psychologist, does your work have you doing forensic
14 psychological evaluations of people?

15 A Yes.

16 Q Generally speaking, broadly speaking, what types of
17 evaluations have you done?

18 A I do a wide range of criminal and civil forensic
19 cases. So in the sexual behaviors clinic and lab, we do a
20 lot of risk assessments. We might do those on a pretrial
21 basis, so before somebody goes to court. I have a
22 contract with the United States federal probation, so I do
23 their risk assessments and their treatment evaluations and
24 then give some treatment and oversee some treatment groups
25 for people who have been convicted of federal sex

1 offenses. I do assessments for the licensing board. If
2 somebody who is licensed, like a massage therapist or a
3 physician has some kind of sexual boundary issue, I do
4 risk assessments for them. I do violent risk assessments
5 and I evaluate police officers. And then I do some things
6 in criminal court to see if people are competent to
7 understand the proceedings against them.

8 Q Okay. Let's move to the law we're here about today,
9 the sexual violent predator act of South Carolina. Have
10 you conducted evaluations under than Mr. Younger under
11 that law, as well?

12 A Yes.

13 Q Have you been qualified as an expert witness to
14 testify about all these types of evaluations, including
15 this law, in the courts of South Carolina and Georgia?

16 A Yes.

17 Q About how many times have you been qualified as an
18 expert witness just for all types of evaluations?

19 A About 28 or 29 times.

20 Q All right. Now, what about the sexual violent
21 predator act cases, about how many times have you been
22 qualified as an expert to testify about those kind of
23 cases, such as Mr. Youngers?

24 A About eight times.

25 Q Okay. What professionals memberships do you have?

1 A I'm a clinical member of the Association for the
2 Treatment of Sexual Abusers. That's our national
3 organization for professionals who do this kind of work
4 with people with sexual behavior problems. I'm also on
5 the executive committee of the local chapter of ATSA, or
6 the Association for the Treatment of Sexual Abusers, here
7 in South Carolina.

8 I'm a member and on the executive committee of the
9 American Psychology and Law Society. I serve on the board
10 of American Psychological Association, Society of Clinical
11 Psychology Assessment boards, so really things having to
12 do with both sexual behavior and assessment in addition to
13 a couple other organizations that I'm a member of.

14 Q Now, a minute ago, you talked about how many times
15 you've been qualified as an expert prior to today in
16 sexually violent predator cases. Aside from that, though,
17 approximately how many evaluations have you done under the
18 sexually violent predator law issue, total number?

19 A The Attorney General's Office has referred, I
20 believe, 34 or 35 cases to our lab at MUSC when I was the
21 director.

22 Q Okay. Are you also published and in research?

23 A Yes, I do a lot of research.

24 Q Okay.

25 MR. BOGLE: At this time, Your Honor, I'd like

1 testify Dr. Emily Gottfried recognized by the Court as an
2 expert witness in the fields of forensic and clinical
3 psychology.

4 THE COURT: Mr. Falk, any voir dire?

5 MR. FALK: May I just have a few questions?

6 THE COURT: Yes, sir.

7 VOIR DIRE:

8 BY MR. FALK:

9 Q Dr. Gottfried, how many -- this is a precommitment
10 evaluation, is it not?

11 A Yes, it is.

12 Q How many of these have you done?

13 A I have been referred 20 precommitment evaluation
14 cases.

15 Q Twenty-three?

16 A Twenty.

17 Q Twenty?

18 A Yes.

19 Q And you've only -- and you've testified how many
20 times in one of these cases?

21 A I believe eight or nine times.

22 Q And that's always testifying for the State; is that
23 correct?

24 A There was one annual review where I went to the
25 police department -- mental health because it was in

1 Charleston, but, typically, because I'm the independent
2 expert and the Department of Mental Health does the
3 initial that I would only be called to testify if my
4 opinion was different.

5 MR. FALK: No questions, Your Honor. We will accept
6 her as an expert.

7 THE COURT: All right. She is so admitted as an
8 expert as requested by Mr. Bogle.

9 MR. BOGLE: Thank you, Your Honor.

10 BY MR. BOGLE:

11 Q Dr. Gottfried, what type of evaluations did you
12 conduct in this case involving Mr. Younger?

13 A I conducted a precommitment evaluation of
14 Mr. Younger.

15 Q Can you please tell the jury what your protocol is,
16 your steps in conducting such an evaluation?

17 A Yes. Once your office sends my clinic and lab a
18 referral, you, typically, send a large number of files, so
19 I review all of the information that I have in the case.
20 I look to see if there's information that either prior
21 evaluators had access to that I don't have or something
22 that I think is missing.

23 So once I'm satisfied that I have all of the
24 underlying details and information about the case -- I
25 also get prison records, jail records, and things like

1 that -- then I schedule three days of evaluation for the
2 examinee.

3 So they will come in and do some psychological
4 testing on the computer and then undergo a clinical
5 interview, specifically, five to seven hours where I get a
6 full history on them and assess their sexual behavior
7 functioning and assess the presence of any potential
8 mental health symptoms that they've experienced. And then
9 I write up my report and submit it to your office.

10 Q Okay. Now, are you paid to conduct your evaluations?
11 Does MUSC have a contract with our office to conduct these
12 evaluations?

13 A Yes. MUSC has a contract with the South Carolina
14 Attorney General's Office.

15 Q How are you paid to conduct the evaluations?

16 A Well, I get a salary, so the money that comes from
17 the contract that we have with your office goes towards my
18 salary, but I don't get, like, that money separately.

19 Q We don't write you a check in other words?

20 A Correct.

21 Q Does the amount of money that's paid under this
22 contract to have these second opinions, if you will,
23 evaluations done, is it dependent on what the conclusion
24 might be, that the guy is or is not a predator?

25 A I'm sorry, you're asking does the amount you pay

1 differ?

2 Q Well, does it matter -- the amount we pay, does it
3 matter what your opinion is going to be in the long run?

4 A No, it's a flat rate on the contract, so regardless
5 of the opinion.

6 Q And you have in some cases found people not to be
7 predators?

8 A Yes.

9 Q Okay. Doctor, again, as part of this evaluation, you
10 mentioned this before, did you meet with and interview
11 James Gregory Younger?

12 A Yes.

13 Q And that was at MUSC's office down in Charleston?

14 A Correct.

15 Q Is the person you talked to present in the courtroom
16 today?

17 A Yes.

18 Q For the record, would you identify him?

19 A Yes. He's sitting next to Attorney Falk.

20 MR. BOGLE: I'd like the record to reflect that she's
21 identified Mr. Younger.

22 THE COURT: Yes, sir.

23 BY MR. BOGLE:

24 Q Now, on how many occasions did you meet with
25 Mr. Younger?

1 A He came in on one day and completed a battery of
2 tests. He came in on another day to do some tests. He
3 didn't end up doing the tests, but I had a conversation
4 with him on that day. And then on the third day, I
5 conducted the clinical interview. So I had three contacts
6 on three days with him.

7 Q Are you satisfied that you had enough time one-on-one
8 with Mr. Younger to get the information you wanted to
9 complete your evaluation?

10 A I had enough time, yes.

11 Q Okay. Now, in addition to meeting and interviewing
12 him and the testing you mentioned a minute ago, did you
13 also receive information, documentary information to aid
14 you in your evaluation of Mr. Younger?

15 A Yes.

16 Q Would you briefly summarize what type of stuff you
17 got?

18 A Yes. I got a lot of information in this case. So I
19 got police reports and documents from police agencies, at
20 various law enforcement agencies in North Carolina. I got
21 them from Sumter Police Department, North Carolina State
22 Bureau of Investigation. So those were all police
23 reports.

24 I also got photos, images, videos from those
25 investigations. I had South Carolina Department of

1 Corrections records from when Mr. Younger was
2 incarcerated, various court documents from courts in North
3 Carolina and then general sessions court here in Sumter,
4 letters that victims wrote to the prison or wrote to
5 people associated with the sexual violent predator case.

6 I had hospital records for some of the reported
7 victims. I had the Sumter Detention Center records from
8 when Mr. Younger was there, and prior evaluation reports
9 on him.

10 Q Okay. So you mentioned included the records from the
11 Sumter Detention Center?

12 A Yes.

13 Q Okay. Now, is this the type of information that is
14 typically and reasonably relied upon by experts in your
15 field?

16 A Yes. You want to get as much information as you can.

17 Q Did you consider and rely upon this information in
18 addition to interviewing Mr. Younger and whatever testing
19 was done in your office in Charleston in reaching a final
20 conclusion or opinion about this matter?

21 A Yes.

22 Q Can you explain to the jury how a person's past
23 sexual offense behavior relates to their future sexual
24 offense behavior?

25 A Yes. Put most simply, the best predictor of future

1 behavior is past behavior. So you want to look at actions
2 occurring in the past to help you predict things that may
3 occur in the future.

4 Q And in these interviews with him, was he informed
5 about what you were doing?

6 A Yes. We have a pretty long, maybe six-or-seven-page
7 consent form that goes over every potential test or thing
8 that we would do with him. And then each time the
9 examinee comes back to our clinic and lab, they look back
10 over the consent form and sign a rereading of it. So he
11 did sign a consent form and was informed.

12 Q And this was done by him each time he came in?

13 A Correct.

14 Q Did he have -- as part of your review of the
15 Department of Corrections records, did Mr. Younger have
16 sex offender treatment while he was in prison?

17 A No.

18 Q Did that fact -- does that factor into your
19 conclusions about this case?

20 A It's a data point.

21 Q Okay. A data point?

22 A Yeah. So it's one piece of information that I look
23 at. Not having treatment, depending on the reason, could
24 suggest that the person doesn't have insight into their
25 need for treatment. So in my opinion, it's better when

1 they got treatment so you can kind of assess how
2 successful that treatment was.

3 Q Now, Doctor, when you're looking at the criminal
4 records in this case, are you looking at convictions?

5 A Yes.

6 Q Are you also looking at cases where there were
7 charges brought, but no convictions?

8 A Yes.

9 Q Are you also looking at where conduct happened that
10 was illegal, but even no charges were brought or no
11 conviction?

12 A Yes.

13 Q Why is it important to look at all the other stuff,
14 the non-charge or the non-conviction stuff in addition to
15 the actual convicted stuff? Why is it important to go
16 into those areas, as well for this type of evaluation?

17 A Well, as I mentioned, it's really important to get as
18 much information as you can. You don't want to just rely
19 on the person's self-report because they have, frankly,
20 good reasons for not being that forthcoming with the
21 honest truth.

22 So in this type of evaluation, I was asked does
23 Mr. Younger have a mental abnormality or personality
24 disorder related to his sexual behavior. So I want to
25 look at all reports about him. And you might give

1 different weight to them, but they're all pieces of data
2 or pieces of information to consider.

3 You want to look at charges or convictions that were
4 not sexual because a history of violent offending is
5 predictive of reoffending and if a reoffense were to
6 occur, you can kind of predict how violent or severe it
7 might be. And also like best practices manual, so the
8 books written about how to do these kinds of evaluations
9 indicate that you just want to look at their history of
10 sexual behavior functioning that was illegal whether it
11 was discovered or charged or not.

12 Q Okay. Well, starting at the top, then, I think I'm
13 around page 30 of your report. So criminal history,
14 charges and convictions, is it also important even to look
15 at stuff that's not sexually related or sexual in nature?

16 A Yes.

17 Q Why is that?

18 A So as I mentioned for the violent offenses, that's
19 one reason that you want to look at things that are not
20 sexual, but you also are looking for certain diagnoses,
21 how the person is able to follow the rules and function in
22 society. So you're looking to see patterns of behavior
23 that might later be supportive of symptoms of a mental
24 illness.

25 Q Okay. Well, looking at the general criminal behavior

1 of Mr. Younger, starting around page 30 of your report, in
2 1988 or so, what did you find? Would you just list them,
3 please?

4 A Yes. In 1988, he was charged with assault on a
5 female and that was dismissed in 1989. In 1988, he was
6 charged with larceny, but the outcome or disposition of
7 that case, meaning whether he was found guilty or not
8 guilty, wasn't listed.

9 In 1989, he was charged with assault and battery, and
10 that was dismissed in 1990.

11 In 1990, he was charged with assault on a female. He
12 was found guilty and sentenced to two years of probation.
13 Also, in 1990, he was charged with trespassing and that
14 was dismissed in 1991.

15 Q Going back to the assault on a female charge, the
16 victim in that was T.B.?

17 A Yes.

18 Q Known by initials T.B.?

19 A Correct.

20 Q What underlying details of that particular crime did
21 you find significant to your evaluation?

22 A The victim in that case was a woman who reportedly
23 dated Mr. Younger when she was 16 to 23 years old. She
24 reported that he was physically abusive to her --

25 MR. FALK: Objection, Your Honor, hearsay and

1 relevance.

2 MR. BOGLE: Under the case law, Your Honor, prior
3 convictions, the underlying details -- and this is the
4 case we argued before you back on the 30th. The Nettle
5 case, the Corley case, the White case allow her to go into
6 the underlying details if they're part and parcel of the
7 basis for her opinion.

8 THE COURT: Yes, sir.

9 MR. BOGLE: It's not being offered for the truth of
10 the matter asserted, but it's the basis for her expert
11 opinion.

12 THE COURT: Yes, sir.

13 MR. FALK: Well, I assume that they're offered for
14 the truth because she's basing her opinion based on what
15 she believes to be the truth. But, also, she's parroting
16 what the victim said.

17 THE COURT: Okay.

18 MR. FALK: I mean, if she were going to summarize the
19 claims, but she said the victim. She's parroting the
20 victim. That's clearly hearsay.

21 THE COURT: Mr. Bogle, anything else?

22 MR. BOGLE: Well, again, it's not offered for the
23 truth of the matter asserted, offered for the truth of the
24 fact that these things happened. We want the underlying
25 facts that was part of her opinion.

1 THE COURT: Over your objection, Mr. Falk, I'll allow
2 it.

3 Proceed, sir.

4 MR. FALK: Thank you, Your Honor.

5 BY MR. BOGLE:

6 Q Please continue. What were the underlying details
7 behind this assault?

8 A So police reports indicate that this woman had
9 reported he had assaulted her on nine occasions and that
10 he had choked her one time and had rough sex with her.

11 Q Okay. And then after that, you said 1998 was a
12 trespass?

13 A Yes.

14 Q And what happened after that?

15 A And then, also, in 1990, he was charged with a
16 probation violation, which he was found guilty of and
17 terminated from probation.

18 Q Are probation violations significant in this type of
19 analysis?

20 A Yes.

21 Q Why is that?

22 A Well, probation violations suggest a failure,
23 inability to follow the rules. We know that failure on
24 supervision like probation or conditional release is a
25 risk factor for sexual reoffenses. And, also, that kind

1 of goes into when we're scoring some of the risk measures
2 that we use to look at risk in these kinds of cases.
3 Whether or not they had failed on supervision in the past
4 is something that you look at.

5 Q Okay. So after that, what do we have?

6 A In 1991, he was charged with injury to personal
7 property, which was dismissed. In 1991, again, he was
8 charged with assault and battery. He pled guilty to that
9 charge in 1991 and was sentenced to 90 days in jail and
10 three years of probation. Also, in 1991, he was charged
11 with first degree arson. He pled guilty to malicious
12 damage and sentenced to one year in jail and five years of
13 probation.

14 In 1991, he was charged with assault with a deadly
15 weapon with intent to inflict serious injury. He was
16 found guilty of that in 1992 and sentenced to six years in
17 prison and five years of probation. In that case, police
18 reports indicated he broke a man's jaw. In my evaluation
19 with Mr. Younger, he said that that was self-defense as
20 the details of that case.

21 In 1992, he was found guilty of a traffic offense.
22 In 1996, he was charged with simple assault, which was
23 dismissed.

24 In 2005, he was charged with second degree rape.
25 That was dismissed in 2007.

1 Q Was this a North Carolina charge?

2 A Yes, all of these are North Carolina charges.

3 Q Okay. So the Archdale Police in North Carolina, was
4 that the second degree rape charge in 2005?

5 A Yes.

6 Q And did that charge get dismissed?

7 A It got dismissed in 2007.

8 Q And what's happened since then?

9 A In July of 2019, he --

10 MR. FALK: Objection, Your Honor. I'm just
11 preserving my objection.

12 THE COURT: Yes, sir.

13 MR. BOGLE: May we approach?

14 THE COURT: Yes, sir.

15 (There was a bench conference in the presence of the
16 jury but out of the hearing of the jury.)

17 THE COURT: Thank you. Objection overruled,
18 Mr. Falk.

19 BY MR. BOGLE:

20 Q You said a minute ago he was arrested in '05 for
21 second degree rape in North Carolina --

22 A Yes.

23 Q -- by the Archdale Police Department, it got
24 dismissed in '07. And what has since happened in 2019?

25 A In July of 2019, he was charged with second degree

1 forcible rape and second degree forcible rape of a
2 physically helpless victim for the victim from the 2005
3 arrest.

4 Q Okay. And then what happened after that? I think
5 the next one is 2008?

6 A In 2008, he was charged with assault on a female. He
7 pled guilty and was sentenced to one year of probation.
8 In 2008, he was arrested for driving while impaired. He
9 was found guilty in 2010 and sentenced to a maximum of 60
10 days in jail, community service and one year of probation.
11 In 2008, he was charged with a driver's license violation,
12 but the outcome of that was unknown.

13 In 2009, he was charged with possession of drug
14 paraphernalia, was found guilty of that in 2010 and
15 sentenced to community punishment. In 2009, he was
16 charged with computer trespass. He was found guilty of
17 that in 2010 and sentenced to 20 days in jail.

18 In 2012, here in Sumter, he was charged with second
19 degree assault and battery and third degree criminal
20 sexual conduct. In 2000 --

21 Q That happened here in Sumter?

22 A Yes.

23 Q Okay.

24 A And then in 2014, he was found guilty of third degree
25 criminal sexual conduct and sentenced to ten years in

1 prison. And then in July of 2019, in addition --

2 MR. FALK: Objection, Your Honor.

3 THE COURT: Same grounds?

4 MR. FALK: Same grounds. And this is the grounds in
5 our motion in limine.

6 THE COURT: Yes, sir, respectfully overruled.

7 Proceed, sir.

8 BY MR. BOGLE:

9 Q You say in July of 2019 what happened?

10 A In July of 2019, in addition to those two charges
11 that I mentioned from the 2005 victim, he was indicted on
12 first degree kidnapping, second degree forcible rape and
13 second degree forcible rape of a physically helpless
14 victim for alleged events that occurred back in 2007.

15 Q Okay. Now, let's jump ahead a little bit. Awaiting
16 this trial, where has Mr. Younger been living?

17 A He is currently in the Sumter Detention Center.

18 Q Okay. Is it important for you to look at infractions
19 or things like, rule violations that happened at the
20 Sumter county Detention Center?

21 A Yes.

22 Q Why is that?

23 A For several reasons. So I want to see what his
24 current behavior is like, if he is able to follow the
25 rules of the institution where he is currently. I'm also

1 looking for patterns of behavior that might go along with
2 a potential diagnosis. And yeah, kind of looking for
3 patterns of behavior and see what his current functioning
4 is like.

5 Q Did you make an initial inquiry about -- with the
6 staff at the Sumter County Detention Center about an issue
7 of fighting?

8 A I believe your office requested records from the
9 detention center for me.

10 Q Okay. What did you find?

11 A In regards to fighting or overall?

12 Q Was there any issue of fighting? Had he said he'd
13 been in fights?

14 A Yes. Mr. Younger said that he had been in, I
15 believe, two or three physical altercations at the
16 detention center. When I reviewed the records, initially,
17 there was no incident reports at all. Then I reached back
18 out to your office and that's when I was given the
19 incident reports rather than just the medical records and
20 there were several verbal altercations, like inmates
21 yelling at each other, but no physical altercations that I
22 could see in the records.

23 Q Okay. Now, of the incident reports involving
24 Mr. Younger while at the Sumter County Detention Center,
25 which ones did you find significant regarding your opinion

1 or forming an opinion about him?

2 A Well, there were a lot of incident reports or notes
3 on him almost on a daily basis. It appeared that he put
4 in sick calls or requested -- sick calls meaning like
5 requesting to see a medical provider nearly every day, 50
6 or more times.

7 He filed complaints that his civil rights were being
8 violated, that he wasn't given certain items that he
9 thought he should have. He was frequently found with
10 extra items in his cell that he wasn't allowed, such as
11 extra mattresses, extra clothing, extra laundry bags,
12 extra blankets, a couple different times found, I think
13 one time with ten Bibles in his cell and once 16 Bibles
14 and extra towels. So lots of extra things or items that
15 he wasn't allowed to have.

16 In his cell, they found a rope made of plastic that
17 was tied in a knot and that was confiscated from him and
18 then he proceeded to take it back off the officer's desk
19 after it had been confiscated. There were multiple
20 incident reports of him being disrespectful to officers,
21 refusing to obey officers' orders or commands, and then
22 threats against other inmates and verbal altercations or
23 verbally fighting with each other. His cellmates have
24 requested to be moved from his cell due to him trying to
25 start conflict with him.

1 Q And, again, none of this was sexual, I take it?

2 A Correct.

3 Q Why is it important to look at it in this type of
4 evaluation?

5 A Well, what I thought was notable from the records is
6 that it really demonstrated a pattern of him currently not
7 following the rules. It suggested to me that he may think
8 that the rules don't apply to him and that he is entitled
9 to special treatment that is not given to other inmates.

10 Q Now, regarding crimes that were sexual in nature --
11 and I'm sure I'm addressing the conviction you mentioned a
12 minute ago that happened here in Sumter County. In that
13 particular case or the other ones, as well, where there's
14 been charges brought, do you also review the law
15 enforcement records regarding the offense?

16 A Yes.

17 Q Are these records part of the information you told
18 the jury about a few minutes ago that you looked it?

19 A Yes.

20 Q Are these the types of records typically relied upon
21 by experts in your field forming opinions in cases of this
22 nature?

23 A Yes.

24 Q Is it necessary, again, to look at the underlying
25 details behind the conviction, actually what happened to

1 the victim?

2 A Yes.

3 Q Okay. Now, I'd like to approach you and show you --
4 Dr. Gottfried, I've handed you a copy of a sentencing
5 sheet and an indictment from Sumter County. Have you seen
6 these documents before?

7 A Yes.

8 Q Okay. Could you identify them, please? What are
9 they?

10 A One is the indictment for two charges. Count one was
11 criminal sexual conduct in the third degree and count two
12 was assault and battery in the second degree.

13 Q Okay. And then we have -- is that from Sumter
14 County?

15 A Yes.

16 Q And then the first sheet of paper, is that the
17 sentencing sheet when he was convicted?

18 A Yes, this is the sentencing sheet for the criminal
19 sexual conduct.

20 Q Does it show a date of conviction?

21 A Would that be the date of sentencing?

22 Q Yes.

23 A Yes. That is June 11th, 2014.

24 Q And of the two crimes on the indictment you mentioned
25 a minute ago, which one or ones was he convicted of and

1 sentenced for?

2 A Convicted of count one criminal sexual conduct in the
3 third degree.

4 Q And what was the sentence that he got from the court?

5 A Ten years.

6 Q Okay.

7 MR. BOGLE: Your Honor, I'd like to introduce into
8 evidence as State's Exhibit 1 a certified copy from the
9 Clerk's Office of the sentencing sheet and indictment.

10 THE COURT: Mr. Falk?

11 MR. FALK: May we approach on the matter?

12 THE COURT: Yes, sir.

13 (There was a bench conference in the presence of the
14 jury but out of the hearing of the jury.)

15 MR. BOGLE: We've blacked out the name of the victim
16 per request, so we move to introduce this into evidence.

17 THE COURT: Okay.

18 MR. FALK: No objection.

19 THE COURT: Yes, sir.

20 (WHEREUPON, State's Exhibit No. 1 was marked for
21 identification and received into evidence.)

22 BY MR. BOGLE:

23 Q Dr. Gottfried, what was underlying details involving
24 this conviction -- according to the police reports you
25 looked at, could you describe to the jury what the

1 underlying details are?

2 A Yes. From my review of the police reports and
3 documents from detailing this case, the victim dated
4 Mr. Younger from May of 2012 to September of 2012. And in
5 September of 2012, they were having consensual sex and she
6 looked over and noticed that his phone was propped up and
7 asked him if he was recording her -- or them having sex.
8 After a conversation, he said that he would delete that
9 video.

10 They then began having sex again and he instructed
11 her to turn over onto her stomach and he became more
12 aggressive at that time. He put his hand over her mouth
13 and put his other arm around her throat. She was trying
14 to breathe and she passed out. When she came to, she was
15 disoriented. She had trouble walking and was in severe
16 pain from her rectal area.

17 Mr. Younger told her that his penis had slipped one
18 time into her anus. She was bleeding from her anus and
19 she took a photo of the bruises and skin discoloration on
20 her anus and buttocks. She went and got medical
21 treatment.

22 In looking at the trial transcripts and the records
23 from the case here in Sumter when he went to court, there
24 was medical testimony that the amount of bruising that she
25 had suffered wasn't consistent with a one-time slip, but

1 showed massive trauma consistent with prolonged force.

2 Q And you mentioned also there was choking -- or
3 strangling or choking involved?

4 A Yes. She was strangled or choked until she was
5 unconscious.

6 Q Now, a few moments ago, you testified about an
7 assault on a female back in 1990. He was found guilty,
8 the victim, T.B. And you said that also involved choking?

9 A Yes.

10 Q Okay. Now, Doctor, like we talked about a minute
11 ago, is it important in this type of evaluation to look at
12 other charges having been brought, even though they have
13 not yet resulted in a conviction?

14 A Yes.

15 Q What are you looking for here? Why look at all these
16 other things?

17 A So we're looking for patterns of behavior. In order
18 to diagnose somebody with a mental disorder, mental
19 abnormality or personality disorder, it can't just be from
20 a one-time thing. You're looking at a pattern of
21 behavior. You're looking for patterns to establish their
22 sexual arousal pattern.

23 So you're looking at differences or similarities
24 between reports and you're looking at a history of illegal
25 sexual activity whether it was charged or not charged. So

1 you're taking all of that into consideration in order to
2 answer the referral question, which is does he have a
3 mental abnormality or personality disorder.

4 Q Okay. So on that line, the next thing I'd like to
5 ask you about -- we're going back to 2005. You testified
6 earlier about a 2005 arrest by the police in North
7 Carolina?

8 A Yes.

9 Q Charged with second degree rape, which later got
10 dismiss and later got reindicted in 2019?

11 A Yes.

12 Q What underlying -- did you have access to the records
13 in that case, the underlying records in that case?

14 A Yes, I had the police reports from this case.

15 Q Are these the kinds of things that are typically
16 relied upon by experts in your field in these types of
17 cases?

18 A Yes.

19 Q What information did you find significant about the
20 underlying details of this North Carolina charge? He
21 hadn't been convicted yet, right?

22 A Correct.

23 Q What underlying details about this North Carolina
24 charge did you find significant?

25 A So police reports indicated that in 2005, the victim

1 was on a date with Mr. Younger at his house. They were
2 watching a movie and drinking wine. She woke up the next
3 morning and didn't have her clothes on and didn't remember
4 the events of the night. Called a family member, who
5 picked her up and took her to the hospital.

6 Q Is this the victim in the report referred to by the
7 initials L.M.R.?

8 A Yes.

9 Q Okay. Go ahead.

10 A At the hospital, it was discovered that she had a
11 vaginal tear that extended into her rectum. And the urine
12 sample indicated the presence of Ambien, which is a
13 sedative sometimes prescribed for insomnia. She didn't
14 have a prescription for this and said she did not take it.
15 Mr. Younger was interviewed by police and the police
16 reports indicate that he said that they had consensual
17 oral, anal and vaginal sex. He denied putting anything in
18 her drink.

19 In 2005, he was arrested and charged with second
20 degree rape, but then in 2007, the charge was dismissed
21 after Mr. Younger's attorney showed the district attorney
22 naked pictures of the victim that were taken on the night
23 of the reported assault. And although the victim stated
24 that she had no recollection of any of these pictures
25 being taken of her, due to the district attorney's opinion

1 in the case that from the pictures it looked like she was
2 a willing participate and was consenting, so, therefore,
3 those charges were dismissed.

4 During an unrelated investigation, investigators from
5 the North Carolina State Bureau of Investigations
6 interviewed two physicians to talk about the effects of
7 Ambien and they -- according to reports, Ambien causes
8 possible loss of memory and someone could be awake and
9 behaving, but not remember anything the next day.

10 They said it was like a blackout with no recall. And
11 that drinking alcohol while taking Ambien could really
12 bolster or increase the effects. So in July of 2019, he
13 was reindicted on two charges involving this victim.

14 Q Now, in these types of cases, is it your job to
15 investigate the crime?

16 A No, no.

17 Q Is it your job to try and contact the victim, the
18 alleged victim and talk to her?

19 A Well, there could be some ethical considerations or
20 concerns in that case. This is a person who is a victim
21 and asking them to talk to you about it again after
22 they've already talked to police could revictimize them.

23 Q Okay.

24 A And it was investigated. I had all the police
25 reports. I'm not an investigator, so it's not my job to

1 be a detective.

2 Q Did Mr. Younger respond to your inquiries about the
3 facts of this particular charge?

4 A Yes, we talked about it during the evaluation.

5 Q Okay. And he said -- what did he say about it?

6 A He said that the sex was consensual with this victim
7 and that he didn't know what Ambien was.

8 Q Okay. Now, we've talked earlier. When I argued to
9 the jury, I mentioned that in a previous evaluation done
10 by the Department of Mental Health by Dr. Marie Gail. I
11 think Dr. Carter also assisted her on that. Is this
12 something you have reviewed and something you've seen?

13 A Yes.

14 Q Did he talk to Dr. Gail about this particular charge?

15 A Yes.

16 Q So that's in her report?

17 A Yes.

18 Q Okay. Now, there's another charge of assault on a
19 female in 2008, March of 2008, could you tell us what that
20 was?

21 A Yes. According to police reports, a victim was at a
22 concert at a coliseum in Greensboro, North Carolina. She
23 was walking to the restroom and a male subject walked past
24 her in the opposite direction and said, Nice shoes. When
25 she looked down at her shoes, he reached across her body

1 and cupped her left breast --

2 MR. FALK: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (There was a bench conference in the presence of the
5 jury but out of the hearing of the jury.)

6 MR. BOGLE: Could we have a moment of law with Your
7 Honor, please?

8 THE COURT: Yes, sir.

9 Members of the jury, this is one of those times that
10 I need to speak to these lawyers outside. Just give us a
11 few minutes, please.

12 (His Honor and the attorneys left the courtroom.)

13 THE BAILIFF: Come to order and remain seated.

14 THE COURT: All right. Mr. Falk, I understand your
15 objection was withdrawn, correct?

16 MR. FALK: Correct, sir.

17 THE COURT: All right. Proceed, Mr. Bogle.

18 BY MR. BOGLE:

19 Q Dr. Gottfried, I think we were talking about an
20 incident that happened in 2008 at a concert in North
21 Carolina or somewhere -- not here, not in Sumter, but
22 outside of Sumter?

23 A Correct.

24 Q Could you please continue with what you found out
25 about that?

1 A Yes. So a woman was at a concert, she said someone
2 cupped her breast. And then when she said hey, the male
3 subject put his head down and started walking away. There
4 were security guards there and Mr. Younger was arrested
5 and charged and convicted of assault on a female.

6 Q And he got sentenced to probation?

7 A One year of probation.

8 Q But it was assault on a female?

9 A Correct.

10 Q Now, we're turning now to July of 2019. You
11 mentioned these a minute ago, would you go into more
12 detail about the North Carolina charges brought in July of
13 2019?

14 A Yes. So he was indicted or charged with seven new
15 charges in 2019. Two of those were for the 2005 rape
16 charge in North Carolina that had been dismissed in 2007,
17 but the other four were for a victim in 2007.

18 Q Okay. And what were the charges brought -- the 2007
19 would be the date of the incident; is that correct?

20 A Yes, April 19th, I believe, 2007.

21 Q What are the 2019 charges against him brought in
22 North Carolina? Would you list them, please, what the
23 charges were?

24 A Yes. So for the ones related to 2007, he was charged
25 with first degree kidnapping, second degree forcible

1 rape -- oh, I'm sorry, it's three. And second degree
2 forcible rape for a physically helpless victim. So those
3 were the three related to 2007 victim.

4 Q And this was a victim known as K.L.W.?

5 A Correct.

6 Q Does she have another set of initial depending on --
7 got married or something?

8 A K.W.P.

9 Q Okay. Did you have access to police records in this?

10 A Yes.

11 Q Is this the type of thing typically and reasonably
12 relied upon by experts in your field for these types of
13 evaluations?

14 A Yes.

15 Q What did you find out that was significant about
16 these records? What happened? And this is the K.L.W.

17 A This was a woman who was also at a concert at the
18 Greensboro Coliseum. According to police reports, she was
19 reported missing by her friend and she also went to police
20 after she was brought back.

21 So police reports indicated that she was standing at
22 a beer vendor line inside the coliseum and met an
23 unidentified man, and she left the coliseum with this man
24 and he drove her to his house. She subsequently woke up
25 without any clothes on lying in a bed on her stomach with

1 a male subject on top of her back hitting her in the head.

2 Eventually, the male subject brought her back to the
3 coliseum. And she went to the hospital where her labia
4 was red, her vagina labia, or the lips of her vagina was
5 red and she had some small tears in her vagina. She had
6 some tenderness and swelling to her head. She complained
7 of being nauseous and she actually threw up in the CT
8 scanner, when they take a CAT scan of the head. She threw
9 up in that.

10 She wasn't able to describe the male subject,
11 couldn't describe his residence or his vehicle. She told
12 police that she didn't want to pursue the matter in any
13 way. She told the police that he had kept her panties and
14 her driver's license and then subsequently the driver's
15 license was mailed back to her. So the case wasn't
16 pursued at that time. The police reports indicate they
17 had no description of the subject and nothing to go off
18 of. So nothing happened in 2007.

19 In 2010, during an unrelated investigation, the North
20 Carolina State Bureau of Investigation had a search
21 warrant for Mr. Younger's computer and look at videos and
22 images that were on the computer and they found numerous
23 digital images of woman, who some -- many appeared to be
24 participating in the sexual activity, posing for the
25 camera, but there were some that appeared to be under the

1 influence or asleep when photographed, and some of the
2 images of this victim from 2007 was featured. She
3 appeared to be unconscious and wearing only a T-shirt,
4 naked from the waist down and apparently located in the
5 cargo area or the like the trunk space of a vehicle.

6 Q So she appeared in images to be unconscious like in
7 the trunk of a car?

8 A In the cargo space, yes. Other images depicted this
9 woman naked and asleep in a location where the State
10 Bureau of Investigation noted was Mr. Younger's house.
11 And so in 2019, he was indicted on these charges
12 concerning this 2007 victim.

13 Q Okay. So when you say at some point in time she
14 wakes up later naked in bed with the guy, was there any
15 allegation or suggestion to you of some drugging of her by
16 Mr. Younger?

17 A It's possible. It wasn't clear from the --

18 MR. FALK: Your Honor, she's speculating.

19 BY MR. BOGLE:

20 Q Based on the police reports that you reviewed, was
21 there an out -- was an allegation made that she was
22 drugged?

23 A I believe so. I believe in the hospital records, it
24 noted that she was really nauseous and had thought that
25 she hadn't drank enough to be that nauseous and threw up

1 in the CT scanner.

2 THE COURT: Overruled, sir.

3 BY MR. BOGLE:

4 Q Okay. When you interviewed Mr. Younger about this
5 charge, the July of 2019 charge involving K.L.W. or
6 K.W.P., she goes by both initials, did he talk to you
7 about that?

8 A He told me that he respectfully declined to discuss
9 them without an attorney present because it was an active
10 case.

11 Q And you reviewed -- Dr. Gail from the Department of
12 Mental Health, you reviewed her prior report of
13 Mr. Younger, did you not?

14 A Yes.

15 Q When she interviewed him about this, did he talk to
16 her about it?

17 A He talked to her much more than he talked to me about
18 it.

19 Q Okay. Now, since the time of L.M.R., the one we
20 talked about a minute ago, the charge in 2005 and later
21 reindicted in 2019?

22 A Yes.

23 Q Has North Carolina been investigating Mr. Younger
24 trying to find out what's going on?

25 A Since 2005, he's been intermittently investigated by

1 multiple law enforcement agencies in North Carolina.

2 Q Did they set up a hotline for people to call in about
3 Mr. Younger if they knew anything about him?

4 A Yes, they set up a hotline and requested people to
5 call and provide any information they had about him.

6 Q Now, regarding the ones that did --

7 MR. FALK: Your Honor, objection.

8 MR. BOGLE: Let me -- I'm going to do a little
9 foundation first.

10 THE COURT: Go ahead and do that before you ask her.

11 MR. BOGLE: Yes.

12 THE COURT: And then Mr. Falk, I'll hear from you.
13 Proceed.

14 BY MR. BOGLE:

15 Q As far as you could tell -- now, did you have access
16 to the North Carolina records about any calls or letters
17 or things sent in regard to this hotline?

18 A Yes.

19 Q Okay. And, of course, you did not -- were not able
20 to talk to these individual women, were you?

21 A I did not talk to them.

22 Q You could not investigate it?

23 A Correct.

24 Q In some cases or many of the cases, criminal charges
25 were not brought, right?

1 A Correct.

2 Q Now, at the same time, were you looking for a pattern
3 of behavior?

4 A Yes. You want to look at all reported history of
5 illegal sexual conduct, whether it's charged or otherwise,
6 to establish a pattern when you're looking at potential
7 diagnosis.

8 Q And is the records you looked at involving some 18
9 different incidents --

10 MR. FALK: Your Honor, objection.

11 Q -- were these the types of things typically relied
12 upon by experts in your field?

13 I'm sorry?

14 THE COURT: You objected, sir?

15 MR. FALK: Yes, Your Honor. We need to discuss this,
16 approach on a point of law.

17 THE COURT: All right. I'm going to ask at this time
18 that the jury be removed from the courtroom, taken to the
19 jury room. Remember what I asked you to do -- or not do.
20 Do not discuss this case among yourselves or with anyone
21 else, please. Thank you.

22 (Whereupon, the jury left the courtroom at 11:03
23 a.m.)

24 THE COURT: Yes, sir.

25 MR. FALK: Your Honor, without knowing what the

1 hotline question was or what was used to solicit the
2 responses, anything that she -- first, anything that she
3 says is going to be highly speculative. We do not know
4 if -- if the hotline said, have any of you been assaulted
5 by James Younger, have any of you been strangled by this
6 man, something like that. If the hotline request suggests
7 the answer, the credibility of the responses has to be in
8 question.

9 I mean, obviously, if this were a criminal case --
10 this is a tip with no reliability to it at all. It
11 clearly wouldn't be in admissible in a criminal case. I
12 mean, Mr. Bogle already slipped in that there were 18
13 response to this hotline. This is way too speculative.
14 And, again, we're balancing probative value versus
15 prejudice. My client has an unfair prejudice,
16 Mr. Younger. These are cases that have not been brought.
17 We don't know how valid they are.

18 Because it's my understanding that the expert says
19 everything is valid, everything -- she looks at
20 everything. And I can appreciate that and that's a
21 relevancy standard for the expert. But this Court has a
22 different relevancy standard under 403.

23 THE COURT: Yes, sir.

24 Mr. Bogle.

25 MR. BOGLE: Thank you, Your Honor. May it please the

1 Court. A lot of this came up in the March 30 hearing and
2 the most relevant case is the matter of the care and
3 treatment of Kenneth White and decided by the Court of
4 Appeals in 2007 where they -- the issue was prior offenses
5 that did not result in convictions, could they be used or
6 examined by the expert and testified about in court.

7 The Court of Appeals noted that offense and
8 conviction were used interchangeably a lot, and that our
9 legislature when it passed this law did not impose any
10 limit or was silent on whether or not the word offense
11 also included a conviction. And, therefore, they
12 conclude -- our legislature include both offenses that
13 didn't result in convictions and offenses that did.

14 And for guidance, they looked at the Kansas Supreme
15 Court because our law was patterned after Kansas' law.
16 And the Kansas Supreme Court in the case called Matter of
17 Hague in 1998 said in determining whether or not a person
18 is a sexually violent predator, prior sexual history is
19 highly probative.

20 What we have here, Your Honor, is there are a number
21 of calls made to the hotline or letters written, women
22 complaining about forced sex or being drugged or being
23 choked.

24 Remember she's looking for a pattern here. She's
25 already identified that pattern, at least, twice, once in

1 2008 and once in the Sumter conviction, as well. So she's
2 looking for a pattern. In each one of them, she's going
3 to say what the report was that he did and what he said
4 about it when she asked him about it.

5 So these, again, are the type of documents typically
6 relied upon by the experts in this field and I think
7 that's why they're relevant.

8 THE COURT: Yes, sir.

9 MR. FALK: Your Honor, I think White is not a good
10 precedent in this case. There's a difference between what
11 she is going to -- maybe she thinks it's relevant, but
12 it's whether or not that can be testified to in this
13 court.

14 White was a probable cause hearing. And I equate a
15 probable cause hearing kind of to a preliminary hearing in
16 a criminal case, you know, is there enough for this to
17 move forward. And as you know, in a preliminary hearing,
18 you know, they rely on hearsay evidence and everything
19 else.

20 THE COURT: Yes, sir.

21 MR. FALK: But that still doesn't mean that testimony
22 comes into court. And, you know, this is --

23 THE COURT: All right. Here's my ruling. A lot of
24 what has come in, I ruled upon earlier about these
25 unconvicted or these charges in North Carolina. That was

1 a big part of our meeting last week.

2 Now, we're moving from cases not even touched by law
3 enforcement in terms of an investigation or arrest or
4 questioning to simply people calling in on a telephone
5 line. Don't know what the question was, like Mr. Falk
6 said. And I'm going to draw the line on this one,
7 Mr. Bogle.

8 MR. BOGLE: Well, at the same time, Your Honor, if I
9 may add, the rule -- and it's in our memo of law submitted
10 to the Court. The rule regarding testimony by experts,
11 they can rely on data not necessarily admissible in
12 evidence as long as it's part of the basis for their
13 opinion.

14 THE COURT: Yes, sir.

15 MR. BOGLE: That's in rule -- is it 702 or 703 --

16 MR. FALK: 703.

17 MR. BOGLE: -- Rules of Evidence. That's what we
18 have here. And she'll readily admit that she didn't talk
19 to these people, didn't investigate it, it wasn't her job,
20 but she did talk to him about it. His responses, I think,
21 are significant.

22 MR. FALK: 703 doesn't trump 403. You have to agree
23 to both.

24 THE COURT: With all due respect to you, Mr. Bogle,
25 with great respect, I'm going to deny and sustain his

1 objection on these hotline calls here.

2 MR. BOGLE: Okay.

3 MR. FALK: Your Honor, we would ask for you to
4 instruct the jury to not consider anything about the
5 hotline testimony.

6 THE COURT: I'm sure it's relevant to her, but I'm
7 trying to balance this out as best I can here.

8 MR. BOGLE: Would you like us to make a proffer
9 outside the presence of the jury to see exactly what we're
10 talking about.

11 MR. FALK: That's fine.

12 MR. BOGLE: Before you make your ruling.

13 MR. FALK: If he wants to make a record --

14 THE COURT: Sure, I wouldn't keep you from doing
15 that, Mr. Bogle.

16 Before we do that, can we take a break?

17 MR. BOGLE: Sure.

18 THE COURT: Doctor, you are a live witness. You can
19 certainly leave the witness stand, go to the restroom,
20 walk around, but out of absolute high level of abundance
21 of caution, don't discuss anything with anybody. And,
22 obviously, you know you can't talk to your lawyer -- or
23 Mr. Bogle.

24 THE WITNESS: Thank you.

25 THE COURT: About 15 minutes break.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: All right, sir.

3 MR. BOGLE: Your Honor, may it please the Court. In
4 response to your ruling, I'd like to make a proffer about
5 these cases reported to the hotline. At the same time,
6 Your Honor, and I noticed this over the break, the list of
7 cases includes the woman convicted here in Sumter.
8 Because she's -- again, Dr. Gottfried is looking for a
9 pattern.

10 So it includes the woman here in Sumter. It also
11 includes another case where a police report was filed.
12 I'll get to that in a minute. And ask you -- if you stick
13 with your existing ruling, I'm going to ask you for a
14 change of ruling regarding the one where a police report
15 was shown. And I'll explain why when I get to that.

16 THE COURT: All right.

17 BY MR. BOGLE:

18 Q Dr. Gottfried, in response to the North Carolina
19 hotline, you said, at least, 18 woman reported drugging,
20 strangling or anal rape?

21 A Well, that's not all in response to the hotline. So
22 I said, conservatively, over the course of 25 years, 18 to
23 19 conservatively --

24 Q Okay.

25 A -- women have reported either to police or to the

1 hotline.

2 Q So starting with the list you have, 1987, victim
3 D.M.?

4 A Yes.

5 Q What do you have on that? Read it.

6 A I have that this was a woman that Mr. Younger dated
7 when they were in high school. She reported that he
8 drugged and raped her.

9 When I talked to Mr. Younger about the story in my
10 evaluation, he denied that that had occurred.

11 Q Okay. In 1988 to 1999, victim T.B.?

12 A Yes, that is the woman that he was convicted of
13 assault on a female.

14 Q Okay. So we already talked about her?

15 A Yes.

16 Q And the choking?

17 A Yes.

18 Q Okay. And in 1998, J.B.?

19 A Yes, so in the course of the investigation in 2005 by
20 the Archdale Police Department, police officers spoke with
21 J.D., who was engaged to Mr. Younger in 1998, and she said
22 that during sex, he would choke, slap her, pull her hair,
23 tie her up, hold her down, try to photograph and tape her
24 during sex.

25 During my evaluation, Mr. Younger said he had no clue

1 why she would report that he choked her and that they had
2 had a great relationship.

3 Q Okay. And then 1999 to 2002, M.J.?

4 A That was a woman who dated him from 1999 to 2002 and
5 she reported that he choked her during sex and she almost
6 passed out.

7 During my evaluation, Mr. Younger denied this
8 occurred.

9 Q And you've already testified about L.M.R., that's
10 the 2005 charge that was dismissed in 2007 and indicted in
11 2019?

12 A Yes.

13 Q We've already got that. The next one is 2005, T.G.?

14 A Yes. That came about because T.G.'s roommate
15 reported to -- on campus, so she was interviewed by
16 officers on a college campus. And she reported that her
17 roommate had been assaulted by Mr. Younger. And then
18 officers interviewed the roommate, who was T.G., who said
19 that she went on a date with Mr. Younger and had two
20 glasses of wine, but couldn't remember anything from that
21 night. Mr. Younger told her that he slipped her a Valium
22 at the Sushi restaurant and had sex with her.

23 During my evaluation with Mr. Younger, he said that
24 they had consensual sex and that the part about Valium was
25 a lie.

1 Q Okay. And in 2005, the victim, C.P.?

2 A She dated Mr. Younger from January 2005 to
3 April 2005. He drugged her wine several times and he had
4 anal sex with her without her consent after she told him
5 that she didn't want to have anal sex with him.

6 During my evaluation regarding the report that he had
7 anal sex with her after she told she did not want to have
8 anal sex, Mr. Younger said, quote, I don't recall any anal
9 sex.

10 Q And then in 2005, K.G.M.?

11 A This was reported at the college Mr. Younger went to.
12 This was one of his classmates. And she reported that
13 Mr. Younger sexually assaulted her several times. Even
14 though she was crying and repeatedly pleading with him to
15 stop, that he covered her mouth, grabbed her throat, put
16 her face in the pillow, which made it hard for her to
17 breathe.

18 During my evaluation, Mr. Younger said that that
19 never happened, but that he was aware of the allegation as
20 campus security had pulled him out of class after she had
21 reported it.

22 Q And then we've already talk about K.L.W. or K.L.P.,
23 the 2019 indictment?

24 A Yes.

25 Q For a 2007 incident?

1 A Yes.

2 Q Then we have 2008, T.S.?

3 A Yes. She went out with Mr. Younger and some friends.
4 She didn't remember anything and felt like she couldn't
5 move her body. The next day, he called to tell her that
6 he was sorry that he had stuck his hand down her pants and
7 should not have done that, but she didn't have a
8 recollection of that happening.

9 Q In 2008, N.G.N. is the initial?

10 A In 2008, they dated for approximately two months and
11 during those two months, he choked her and the next day
12 apologized for choking her. He drugged her wine and took
13 videos of her when she was incoherent and didn't remember
14 every sexual encounter. She said there was a video of her
15 throwing up.

16 And during my evaluation with Mr. Younger, he said
17 that that wasn't true, that he took a couple pictures of
18 her passed out on the floor naked, but nothing else was
19 true about that.

20 Q In 2009, S.F.G.?

21 A Yes, that was reported to police, as well. That was
22 the Burlington Police Department. This woman said that
23 she drank wine and had no memory after drinking the wine
24 with Mr. Younger; that he drugged her and took pictures of
25 her and then he threatened to kill her if she told anyone

1 and said that he would put those pictures on the internet.
2 And she ended up getting an order of protection from him.
3 And we have those records and the transcript of that
4 hearing of her getting the order of protection.

5 Q Okay. So, basically -- let me pause right now. Of
6 these conservatively 18 or 19 cases, some of these are the
7 pending indictments?

8 A Yes.

9 Q One of them is the Sumter conviction?

10 A Yes.

11 Q And so far, some of them are also cases reported to
12 the police, not just a hotline phone call?

13 A Correct.

14 Q Okay. The next one you have is 2009, C.P.?

15 A Yes, that was a woman who dated Mr. Younger. She
16 said that he choked her, at least, five times and that he
17 said that he knows CPR if something were to happen. That
18 he anally and vaginally raped her.

19 When I discussed this with Younger during my
20 evaluation, he denied all of those allegations.

21 Q Was that a hotline call or a police report?

22 A That was when officers were investigating -- this is
23 from Burlington Police Department. So when they were
24 investigating the previous one of S.F.G., they also
25 interviewed his girlfriend, C.P.

1 Q C.P., so that was a police investigation?

2 A Yes.

3 Q And you had access to the police reports?

4 A Correct.

5 Q The next one on this list is 2009, T.M.C., victim
6 T.M.C.?

7 A This was reported to the hotline. So it was reported
8 in 2009. It's unknown the date this actually happened.
9 She said that they were dating for approximately three
10 months and that he strangled her until she almost passed
11 out. That he told her that he went to nursing school and
12 knew how much a person could handle.

13 When I talked to him about it during my evaluation,
14 he said he didn't recall any strangling.

15 Q In 2011, victim L.M.T.?

16 A Yes, this is from Greensboro Police Department
17 reports. Reportedly, they dated for approximately three
18 months and Mr. Younger told her that he gave her Ativan,
19 which is benzodiazepine, so that she would unlock her
20 phone so he could look at her phone, and had sex with her.
21 He told her that he had put something in her wine. First
22 saying that it was something that he got from his brother,
23 then he said he got it from his brother-in-law. He
24 initially said it was Ativan, then he said it was Xanax.
25 Then he said that he lied and it was actually Ativan.

1 During my evaluation, Mr. Younger said that they had
2 a consensual relationship and that he never drugged or
3 raped her.

4 Q The next one is reported in 2011, unknown date, the
5 victim R.S., also known as R.S.D.?

6 A Yes, this is a woman who called the hotline --

7 Q Okay.

8 A -- and reported that she met Mr. Younger through a
9 friend. And he showed up at her house and raped her
10 vaginally and anally and held her down and forced her head
11 into a pillow and she had a hard time breathing. She had
12 bruises. But she told the hotline people that she didn't
13 report the assault for her own protection and the
14 protection of her daughter because he knew where she lived
15 and she was really scared.

16 Q And the next one is 2012, K.B. That's the conviction
17 here in Sumter County?

18 A Yes.

19 Q And then in 2013, G.F.S. What's the situation there?

20 A Yeah, that's from Winston-Salem Police Department
21 records. So that was reported to police. This is when
22 Mr. Younger was out on bond for his 2012 arrest. This
23 victim was a friend of his girlfriend who woke up to him
24 performing oral sex on her and penetrating her vagina with
25 his fingers. And he told her that he was getting back at

1 his girlfriend for cheating on him.

2 During my evaluation, he said that that was a
3 consensual encounter.

4 Q And, finally, 2005 --

5 A '15.

6 Q Reported in 2015, yes.

7 A Yes, that was a hotline. And this woman said that
8 Mr. Younger had drugged and raped her.

9 During my evaluation, Mr. Younger denied this. He
10 said that they didn't have sex, but they had slept in the
11 same bed.

12 MR. BOGLE: Okay. Now, Judge, that's the questions.
13 It puts the case in a different light. Originally, I was
14 asking her to summarize conservatively how, at least, 19
15 women had reported.

16 Now, it turns out on closer examination, some of
17 these were hotline cases. I still think that Your Honor
18 should let these in under the White case, the Kenneth
19 White case, and the fact that charges that don't even
20 result, if it's illegal conduct that doesn't even result
21 in a conviction or a charge would still be relevant.

22 At the same time, though, if Your Honor chooses to
23 stick with your ruling, we do have cases and she's already
24 testified about cases where she reviewed police reports.
25 So on this list, we have a police report on the 1998 case

1 involving J.B.

2 We have a police report on S.F.G. in 2009, also, on
3 C.P. in 2009, on L.M.T. in 2011 and on G.F.S. in 2013.
4 And G.F.S. is even more important because he did this
5 conduct while out on bail for the Sumter charge.

6 I guess what I'm asking you is number one, change
7 your ruling. Number two, if you're going to stick with
8 your ruling, I'll omit asking about a hotline, but ask her
9 about cases where she reviewed police reports. Police
10 reports is something you've already allowed in evidence
11 from the 2019 indictments and the other charges, as well.

12 THE COURT: Mr. Falk?

13 MR. FALK: The one about T.B., I think she
14 reported -- I think she testified that she was looking at
15 a police report. However, when I'm looking at her report
16 on page -- starting on page 30, this misdemeanor assault
17 on a female, there's no mention of a police report.
18 There's mention of a handwritten document dated
19 12/12/2005. Then you read down further in the paragraph,
20 there was hearsay testimony that a C.R. said that T.B.
21 said that this happened. So I don't know how many of
22 these were relying on police reports and how many times
23 she is relying on testimony that's double hearsay.

24 THE COURT: All right.

25 MR. FALK: And still, Your Honor, if these were --

1 with maybe the exception of 2011, this is conduct that
2 allegedly occurred long before he went to trial here.
3 And, you know, if these were serious cases, I don't know
4 why North Carolina hasn't brought them.

5 THE COURT: I don't either. But as I listened to the
6 proffer today, I am going to change -- I'm going to modify
7 my ruling on that as follows: Any of these hotline
8 episodes that have no law enforcement contact or
9 involvement stay out, but the others with law enforcement
10 involvement or contact or investigations will remain in or
11 can be coming in to remain consistent with my prior ruling
12 of the other day. But if it's just what I call a cold
13 call hotline call, it can't come in.

14 MR. BOGLE: Thank you, Your Honor.

15 THE COURT: All right.

16 MR. BOGLE: I'll modify my questions when they come
17 in.

18 THE WITNESS: Can I ask a question about that to make
19 sure I don't violate that?

20 THE COURT: Talk to Mr. Bogle first.

21 THE WITNESS: Thank you.

22 THE COURT: Do you mind?

23 MR. FALK: Not at all.

24 (Pause.)

25 THE WITNESS: So when you say the law enforcement,

1 the ones who called the hotline and then the North
2 Carolina investigation, a report of that interview, is
3 that --

4 MR. FALK: Your Honor, that was tainted by the
5 hotline because we don't know -- as I understand, I think
6 it was a news report that went out there. So anything
7 that's tainted by the hotline is bad.

8 THE COURT: My ruling is if it came in via hotline
9 and law enforcement became involved, got involved, issued
10 a report, talked to somebody, I'll allow that in. A
11 non-law enforcement related hotline call does not come in.

12 MR. BOGLE: If it's just a hotline call and a summary
13 of whatever was on the hotline, it's not in?

14 THE COURT: Right.

15 MR. BOGLE: But if the cops went out and talked to
16 her after getting the hotline call or even after not
17 getting a hotline call, that's in?

18 THE COURT: That's in.

19 MR. BOGLE: Got it.

20 THE WITNESS: Yes. I think that's everything on the
21 list then because they went and interviewed each --

22 MR. BOGLE: Well, let me back up then, were there
23 some hotline cases where the person called the hotline and
24 they just gave you a what-she-said, or did the police look
25 into every single hotline call?

1 THE WITNESS: That, I don't know. There were some in
2 my report that didn't seem like that big of a deal, but I
3 didn't list them on this. But the ones that I did list,
4 the police went and interviewed them. That's where I got
5 the information from.

6 MR. BOGLE: So these 19 cases, some of which we've
7 already talked about, like the indicted ones and the
8 Sumter one, were cases that even if they called the
9 hotline, the police went out and talked to them and got a
10 report.

11 THE WITNESS: Yes. And I just wanted to double check
12 because I wrote that in my report.

13 THE COURT: Any what I call purely cold calls to the
14 hotline coming in.

15 THE WITNESS: Okay.

16 MR. BOGLE: Police looked into it, wrote a report on
17 it, that's identified.

18 MR. FALK: Can we make a record? I'm going to stand
19 up every time I hear the initials or can you make a ruling
20 to preserve my objection to this testimony going forward?

21 THE COURT: All right. Let me see how to craft this
22 now.

23 MR. BOGLE: We would stipulate that Mr. Falk has a
24 continuing objection to each of these 19 people.

25 THE COURT: Yes, sir. Yes, sir, clearly does.

1 MR. BOGLE: And whichever ones of the 19 that she
2 talked about where there was police involvement.

3 THE COURT: Yes, sir.

4 MR. FALK: And my grounds would be that it is more
5 prejudicial than probative.

6 THE COURT: Yes, sir.

7 MR. FALK: And under 403 should not be admitted, even
8 though it is possibly evidence that could be admitted
9 under 703.

10 THE COURT: Yes, sir.

11 Mr. Bogle, because we're fast approaching a time
12 where we might need to break for nourishment.

13 MR. BOGLE: I think I'll be done by 1:00.

14 THE COURT: Okay.

15 MR. BOGLE: Is that okay?

16 THE COURT: How many witnesses did you plan to call
17 total?

18 MR. BOGLE: I have one witness.

19 THE COURT: Just one, okay. All right.

20 MR. BOGLE: If not, we'll be at a stopping point at
21 1:00.

22 MR. FALK: Your Honor, in light of your ruling, no
23 mention of the hotline comes in, if you could still
24 instruct the jurors to disregard any remark regarding the
25 hotline.

1 THE COURT: Mr. Bogle?

2 MR. BOGLE: That's fine. I'll ask the questions
3 differently.

4 MR. FALK: I mean, they heard hotline.

5 MR. BOGLE: I know.

6 THE COURT: I will tell them before they come in to
7 disregard any testimony regarding hotline or mention of
8 hotline, is that acceptable?

9 MR. BOGLE: Yes, sir.

10 THE COURT: Mr. Falk, is that acceptable?

11 MR. FALK: I'm sorry, my client was talking to me.

12 THE COURT: That's all right. I was going to tell
13 them to disregard any testimony regarding the hotline
14 mentioned. That's what I wrote down.

15 (Whereupon, the jury entered the courtroom at 11:50
16 a.m.)

17 THE BAILIFF: The jury is all seated, Your Honor.

18 THE COURT: Mr. Bogle.

19 MR. BOGLE: Thank you, Your Honor. May it please the
20 Court.

21 BY MR. BOGLE:

22 Q Dr. Gottfried, in the course of your investigation,
23 did the State of North Carolina -- did the law enforcement
24 authorities in North Carolina, the State do an
25 investigation or whatever there might be up there, did

1 they notify you of contact and reports that they wrote up
2 regarding incidents involving Mr. Younger and some women?

3 A They didn't notify me, but I had all of their
4 documents that were sent to me from your office.

5 Q Okay. So by notify you, I mean, you had documents
6 from North Carolina law enforcement authorities about
7 alleged illegal conduct between Mr. Younger and some
8 women?

9 A Correct.

10 Q I'd like ask you about the ones that just involve
11 specific North Carolina police reports. They interviewed
12 and talked with the person and the report was supplied to
13 you?

14 A Yes.

15 Q So starting at the top, who's the first one?

16 A So, the State Bureau of Investigation report
17 indicated that Mr. Younger's high school girlfriend
18 reported that he had drugged and raped her.

19 Q Is that the victim D.M.?

20 A Yes.

21 Q Okay.

22 A During my evaluation with Mr. Younger, he denied that
23 that had occurred.

24 Q Okay. Next, we have victim T.B. We've already
25 talked about her and that was a conviction, was it not?

1 A That was an assault on a female conviction.

2 Q Okay. Then we have -- what's the next one where you
3 have police reports where they interviewed the women and
4 you had to go over it as part of your report?

5 A Archdale Police Department in North Carolina
6 interviewed a woman with the initials J.B., who reported
7 that she was engaged to Mr. Younger in 1998 and that
8 during sex, he would choke her, slap her, pull her hair,
9 tie her up, hold her down, he tried to photograph and tape
10 her during sex.

11 During my evaluation with Mr. Younger, he said that
12 he had, quote, no clue why she would report that he had
13 choked her and that they had a great relationship.

14 Q Okay. Just continue with the list you have.

15 A A woman with the initials M.J. reported to police
16 that she dated Mr. Younger from 1999 to 2002 and that he
17 choked her during sex and that she almost passed out.

18 During my evaluation, Mr. Younger denied that this
19 occurred.

20 Q And the next one is L.M.R. We've already talked
21 about where the charges was brought, dismissed and then
22 indicted, correct?

23 A Yes, that's from 2005.

24 Q Okay. What's next?

25 A Also, in 2005, police interviewed a woman with the

1 initials T.G. on her college campus and she reported that
2 her -- that she had gone on a date with Mr. Younger and
3 had had two glasses of wine, but then couldn't remember
4 anything from that night the next day. He allegedly told
5 her that he had slipped her Valium, which is a sedative,
6 at a sushi restaurant and had sex with her.

7 In my evaluation with Mr. Younger, he said that they
8 had consensual sex and that the part about Valium was a
9 lie.

10 Police spoke to a woman with the initials C.P., who
11 reported dating Mr. Younger from January 2005 to
12 April 2005. That he had drugged her wine several times,
13 he had anal sex without her consent and that she had told
14 him before that she didn't want to have anal sex.

15 During my evaluation when I asked him about that
16 report about having anal sex with her after she said she
17 didn't want to, he said that he didn't recall any anal
18 sex.

19 The North Carolina State Bureau of Investigation
20 interviewed a woman with the initials K.G.M., who reported
21 that in 2005, she was a college classmate of Mr. Younger's
22 and that he sexually assaulted her even though she was
23 crying and, like, repeatedly pleading with him to stop;
24 that he covered her mouth, grabbed her throat, put her
25 face in the pillow, which made it heard for her to scream

1 and also made it hard for her to breathe.

2 During my evaluation of Mr. Younger, he said that
3 that had never happened, but that he was aware of the
4 allegation as campus security had pulled him out of class
5 after she reported it.

6 Q The next one, I think, is K.L.W., which you've
7 already talked about earlier?

8 A Yes, that's the 2007 coliseum woman, cargo of the car
9 that he was charged for in 2019.

10 Q Okay.

11 A The next one is 2008, a woman with the initials T.S.
12 was interviewed by North Carolina State Bureau of
13 Investigation. She reported that she went out with
14 Mr. Younger and some friends. And that after that, she
15 didn't remember anything and she felt like she couldn't
16 move her body. And that Mr. Younger called her the next
17 day and apologized to her for sticking his hand down her
18 pants, but she had no recollection of that.

19 A woman that Mr. Younger dated for approximately two
20 months was interviewed by North Carolina State Bureau of
21 Investigation, who said that in 2008 while they were
22 dating, he choked her and then he apologized for choking
23 her the next day.

24 Q Was this the one with the initials N.G.N.?

25 A This is N.G.N. That he had drugged her wine and took

1 videos of her when she was coherent and that she didn't
2 remember every sexual encounter with him and that she had
3 seen a video of herself throwing up that she didn't
4 remember.

5 During my evaluation, Mr. Younger said that that was
6 not true; that he took a couple of pictures of her when
7 she was passed out on the floor naked, but, otherwise,
8 none of those allegations were true.

9 According to a police report from the Burlington
10 Police Department in North Carolina, a woman with the
11 initials S.F.G. in 2009 had wine with Mr. Younger and then
12 didn't have any memory after that. She thought that she
13 had been drugged and that he took pictures of her; that he
14 threatened to kill her if she told anyone and he threatened
15 that would put those pictures that he took of her on the
16 internet. She ended up getting an order of protection
17 against him or, like, a restraining order that was granted
18 by the court.

19 During my evaluation, Mr. Younger denied all of those
20 allegations.

21 Q Did you have occasion to see any documents relating
22 to that order of protection?

23 A I received the transcript from the hearing in
24 which -- I'm not even sure what the process is for getting
25 a restraining order, but there was a hearing where

1 Mr. Younger was defending himself, maybe because he didn't
2 want this order of protection.

3 Q Okay.

4 A But it was heard by a judge and the judge granted the
5 order of protection to this victim.

6 Q Okay. And the next one?

7 A 2009, this was a girl that Mr. Younger was dating.
8 She was interviewed, also, by the Burlington Police
9 Department when the previous victim made that report. She
10 told police that he had choked her, at least, five times
11 and that he said that he knows CPR so if something had
12 happened to her, he would be able to resuscitate her.

13 Q Does that victim go by the initials C.P.?

14 A C.P.

15 Q Okay.

16 A That he had anally and vaginally raped her. Mr.
17 Younger denied that any of that had occurred.

18 It was reported to the State Bureau of Investigation
19 in 2009, although it's unknown when this happened, but a
20 woman with the initials T.M.C. was interviewed by police
21 and she said that they dated for approximately three
22 months and that he strangled her until she almost passed
23 out; that he told her that he had gone to nursing school
24 and that he knew how much a person could handle.

25 During my evaluation of Mr. Younger, he said that he

1 didn't recall any strangling.

2 In 2011, a woman with the initials L.M.T. was
3 interviewed by the Greensboro Police Department in North
4 Carolina and they had dated -- she had dated Mr. Younger
5 for approximately three months; and Mr. Younger told her
6 that he had given her Ativan, which is a benzodiazepine or
7 a sedative, so that she would unlock her phone, I guess,
8 so he could look in her phone, and he had sex with her.
9 He told her that he had put something in her wine, first
10 saying that it was Ativan, then saying it was Xanax, which
11 is also a benzodiazepine, and then saying that he lied and
12 it was actually Ativan.

13 In my evaluation of Mr. Younger, he said that they
14 had a consensual relationship and that he never drugged
15 her or raped her.

16 It was reported to the State Bureau of Investigation
17 in 2011, but it's unknown when this one occurred, but a
18 woman with the initials R.S. or R.S.D. had met him through
19 a friend. Then he showed up at her house and raped her
20 vaginally and anally and held her down.

21 He forced her head into a pillow. She had a hard
22 time breathing. She had bruising on the back of her neck
23 and on her thighs and wrists from where he was holding her
24 down. She told investigators that she didn't report this
25 assault because she was worried about her safety and the

1 safety of her daughter because he knew where she lived.

2 The next one is 2012, and that is the victim here in
3 South Carolina that he was convicted of 2014.

4 Q That's victim K.D. where he was convicted here of
5 criminal sexual conduct in the third degree?

6 A Correct.

7 Q You've already talk about her?

8 A Yes.

9 Q And the next one?

10 A And then while Mr. Younger was out on bond after he
11 had been arrested here, while he was out on bond, he went
12 back to North Carolina. And in 2013, a woman with the
13 initials G.F.S. reported to the Winston-Salem Police
14 Department that she was a friend of his girlfriend; she
15 was sleeping over at her girlfriend's house, which was his
16 girlfriend, and she woke up to him performing oral sex on
17 her and penetrating her vagina with his fingers. And that
18 he said he was getting back at his girlfriend for cheating
19 on him.

20 During my evaluation of Mr. Younger, he said that
21 that was consensual.

22 And then, finally, it was reported in 2015, but,
23 again, it wasn't clear when this actually happened, but
24 the State Bureau of Investigation investigators
25 interviewed a woman with the initials C.A.F., who reported

1 that Mr. Younger drugged and raped her.

2 During my evaluation, Mr. Younger denied that
3 occurred. He said that they didn't have sex, but they had
4 slept in the same bed.

5 Q Okay. So that's about, by my count, 19 separate
6 people, including some -- the ones you've already talked
7 about?

8 A Correct.

9 Q Okay. You've indicated as you described each one
10 that you asked Mr. Younger about it and what his response
11 was?

12 A Yes.

13 Q Are you seeing a pattern here?

14 A Yes.

15 Q What type of pattern are you seeing?

16 A So the pattern seemed that Mr. Younger had a
17 girlfriend or a consenting willing sexual partner and then
18 at some point a few months into their relationship, he
19 engaged in nonconsensual sex with her by either drugging
20 her or strangling her or choking her and then performing
21 sex acts that, perhaps, that woman hadn't consented to,
22 although there's indication he had partners who were
23 consenting and having anal sex with him and things like
24 that. So a really striking pattern of having willing
25 consenting sex partners that he was raping and drugging

1 and/or strangling.

2 Q In some of these cases, would he give the women his
3 correct name or date of birth?

4 A The police reports indicated that multiple of the
5 women said he gave them a false name, he gave them the
6 wrong date of birth. He told them he was a different
7 height than he was. He frequently gave information that
8 wasn't true about himself.

9 Q Okay. Now, as part of your evaluation, do you also
10 look at prior evaluations of Mr. Younger?

11 A Yes.

12 Q Would that include the one done by Dr. Gail with the
13 Department of Mental Health pursuant to the original
14 beginning of this case?

15 A Yes.

16 Q Okay. Is that her role, to evaluate the guy?

17 A Yes, she was designated by the Department of Mental
18 Health to conduct the initial evaluation.

19 Q Did she diagnose him with a mental abnormality or a
20 personality disorder?

21 A She did not.

22 Q Okay. Now, as part of your investigation or your
23 analysis of Mr. Younger, were there assessments performed
24 of him or scoring done of him on certain types of
25 assessments?

1 A Yes, I gave him a battery of psychological
2 assessments.

3 Q Could you relate to the jury the ones that you found
4 most significant or relate most to the ultimate diagnosis
5 that you found?

6 A Yes. So I gave him kind of a long battery because I
7 wanted to assess the full range of mental health symptoms
8 because that's the referral question, does he have a
9 mental abnormality or personality disorder. And so, there
10 were some that he took on a computer and some that I rated
11 based on my interview of him and review of collateral
12 information.

13 I learned things from all of them, some more
14 significant than others. He was self-reporting that he
15 had some substance use, problems with alcohol and that
16 came up on the measures, but that was, you know, something
17 they already knew.

18 So talking about the ones that were probably the most
19 significant is, I scored him on the Hare Psychopathy
20 Checklist revised, second edition. So this is looking at
21 characteristics that are associated with somebody being a
22 psychopath, right.

23 So if you're familiar with that term, these are
24 people who -- we use the word glib. So that is someone
25 has the gift of gab, like a used car salesman, if you can

1 imagine what that's like. So somebody who says a lot of
2 words, but actually doesn't mean something.

3 So they can be like kind of charming, but it's
4 superficial. They lack empathy. They usually lie a lot.
5 They might have a parasitic lifestyle, which means they
6 rely on other people for money. They might borrow a lot
7 of money from people and not pay them back.
8 Irresponsibility, maybe not keeping jobs or failing to pay
9 child support, impulsivity, getting arrested, charged
10 with, not necessarily convicted of multiple different
11 types of crimes.

12 All of those things are personality characteristics
13 related to psychopathy. So I scored him on a measure of
14 psychopathy, which is looking at people who are
15 psychopaths.

16 All of these measures, you know, in order to identify
17 someone as meeting that condition, they have a cut score.
18 And that is where you say, okay, if he scored over the
19 score, that means he's a psychopath. And Mr. Younger's
20 score was one point below that cut score, which means that
21 he wouldn't necessarily be classified as a psychopath, but
22 he has a lot of characteristics that are associated with
23 that personality condition. That was one of them.

24 Q Okay. That's one, okay. So the Hare Psychopathy
25 test was one of the ones you found significant in your

1 ultimate conclusions about Mr. Younger?

2 A Yes.

3 Q What else?

4 A I scored him on the Static 99-R. And what this is,
5 is it is what's called an actuarial risk assessment
6 measure for sexual offending. And what that means --

7 Q Whoa, whoa, whoa. You're using words I don't --
8 okay. Actuarial assessment, basically, could you give the
9 jury a common example of what this assesses that they
10 might run into in their everyday lives?

11 A Yes. So -- before I say that, so this is based on
12 studies, lots of studies of people who have been convicted
13 of sex offenses and then following them for a five or ten
14 year period to see if they reoffended.

15 So a good example that I like to use is when you are
16 applying for life insurance. So a life insurance company
17 doesn't know exactly when you're going to die, but they're
18 going to send you for a physical, they're going to want to
19 know what your health conditions are, what your heart is
20 like, do you have a dangerous job, do you race
21 motorcycles, do you climb mountains, do you smoke, things
22 like that.

23 So those are risk factors for an early death. And if
24 you have a bunch of these risk factors, then they're not
25 saying necessarily that you're going to die early, but

1 your premium might be higher because you have a lot of
2 those risk factors that look like you are at risk for
3 that.

4 So this is a measure similar to that where it's
5 looking at known risk factors and seeing how closely the
6 person you're scoring on that measure resembles people who
7 went on to sexually reoffend.

8 Q Okay. Based on that, what type of score did you --
9 you called it the Static 99-R?

10 A Correct.

11 Q That's the name of it?

12 A Yes.

13 Q And what score did he get on that?

14 A His score was five, which places him in the above
15 average risk category for being charged with or convicted
16 of a sexual offense. So people who have a score of five
17 in the samples where they develop -- so they studied a lot
18 of people, about 15.2 percent of those people went on to
19 reoffend.

20 So when you look at -- when you consider error and
21 things like that, the range of reoffending was
22 13.8 percent to 16.6 percent that. That means out of 100
23 sex offenders with the same risk score, between 14 and 17
24 would be charged with or convicted of a new sex offense
25 after five years in the community.

1 His score of five on this measure was higher than
2 88.7 percent of the people in the development and
3 normative sample of that measure. So what that means is
4 out of 100 sex offenders, 85 would have a lower score than
5 Mr. Younger, seven would have the same score as him and
6 eight would have a higher score if you round the numbers.

7 And then on average, people who have a score of five
8 on the Static 99-R have a sexual reoffense rate that is
9 about 2.7 times the rate of offenders who kind of score in
10 the average middle range on that test.

11 Q And when you say people like this are likely to
12 reoffend, are you saying reoffend in any way or reoffend
13 sexually?

14 A This is just looking at sexual offenses.

15 Q Okay.

16 A And these are people in the normative or development
17 sample who got caught reoffending. So an important thing
18 to note is that sex offenses are the least likely type of
19 crime to be reported to authorities. Only about
20 30 percent of people actually report when they've been
21 sexually assaulted. So that development sample was based
22 on people who were caught, that their offenses were
23 reported.

24 Q Another thing I saw in your report was called the
25 Static 2002-R. Now, is this the same type of risk

1 measurement like the Static 99-R was?

2 A Yeah, it's, essentially, the same idea. The 2002
3 versus the 99 is looking at some -- they're called
4 theoretically meaningful, so some factors that are soon to
5 be like the cause of reoffending. For example, having
6 deviant sexual interest or persistence of sexual
7 offending.

8 Q Why use both of them? Why not just stop with the
9 Static 99-R?

10 A Research suggests that when you administer them
11 together, it improves the validity of each test, so the
12 accuracy of both tests. The literature is not very clear
13 on how you should combine them.

14 It doesn't seem as simple as just reporting the two
15 scores side by side and what to do if there's a marked
16 difference between the scores. But in this case, there
17 really wasn't. It was in the same category. So combining
18 them improves your prediction.

19 Q In doing -- in scoring him on the Static 2002-R and
20 checking over that score with the materials, did you find
21 you had to make a correction to it?

22 A Yes. When I initially submitted my report, I had
23 scored him as a six on the Static 2002-R, but when I was
24 going back over things and looking to see where I had some
25 of the collateral discovery, I realized I had made an

1 error and his score was actually five.

2 Q So he went down one?

3 A Yeah. So he had a five on the Static 99-R and a five
4 on the Static 2002-R.

5 Q And what are the percentages or numbers of his chance
6 of reoffending with a score of five on the Static 2002-R?

7 A With his score of five, which was also an above
8 average risk category, out of 100 sex offenders with the
9 same score, between 12 and 16 of them in the overall
10 sample were charged with or convicted of a new sex offense
11 over five years.

12 So his score on the Static 2002-R was higher than 78
13 percent of sexual offenders in these routine samples. So
14 what that means is out of 100 sexual offenders, 71 would
15 have a lower score, 14 would have the same score, 15 would
16 have a higher score. And his score was about 1.9 times
17 the rate of sexual offenders who were kind of in that
18 middle range, middle of the risk distribution.

19 Q And Dr. Gail's report on behalf of the Department of
20 Mental Health, did she also score him on the Static 99 and
21 the Static 2002-R?

22 A Yes.

23 Q Did she get the same scores that you now have?

24 A No. She got a four on the Static 99, whereas my
25 score was a five, and we both got a five on the Static

1 2002-R.

2 Q Okay. Were there any other assessments or testing
3 that you did of Mr. Younger that fit into or reinforced or
4 helped you make a diagnosis of him?

5 A Yes. So we're really looking at risk factors. So,
6 okay, does this person have a disorder, but, also, does
7 that disorder make him risky. So risk factors are really,
8 really important to assess.

9 So not only do I use the Static 99 and the Static
10 2002, but I also use the sexual violence risk 20, version
11 two, which is looking at -- so instead of scoring numbers
12 like you do on the static instrument, this is using your
13 professional judgment.

14 So it is a guide to structure your professional
15 judgment based on what has been shown in very large
16 research studies of risk factors associated with sexually
17 reoffending. It's a good predictor of future sexual
18 violence and studies suggest it's, at least, as accurate,
19 if not more accurate than the Static 99 and the
20 Static 2002.

21 And so from this risk assessment instrument, it
22 helped me kind of structure my analysis of this case that
23 Mr. Younger had a number of risk factors, a stable pattern
24 of sexual arousal to nonconsent based on the previous
25 charges and all of these numerous allegations that have a

1 strikingly similar pattern to them.

2 He has substance use problems or, at least, had them
3 in the past, relationship problems, multiple trades of
4 psychopathy or psychopathic personality. He is chronic
5 sex offending, so if you look at the allegations from the
6 high school girlfriend all the way up to when he was out
7 on bond in 2013, that's 25 or 26 years of people recording
8 these behaviors. There's physical harm in the sexual
9 offending. So his victims had bruises, drugged,
10 strangulated -- strangled is the word.

11 There is evidence that he really had a serious
12 failure to accept responsibility for his sexual acts. Not
13 only did he deny the allegation, which we have no proof of
14 those allegations, but ones that he was found guilty of
15 wasn't willing to talk about the underlying circumstances
16 of that offense either in 2012. He has --

17 Q That would be the Sumter conviction?

18 A Yes. He has attitudes that support sexual offending,
19 such as hostility towards women. He's had a lot of
20 psychological coercion or threats in his sex offending, so
21 threats, intimidation.

22 He's got a negative attitude towards supervision, so
23 he violated probation. He has some narcissistic traits or
24 narcissism, that makes him reject supervision. He has a
25 lack of realistic future plans and he has a negative

1 attitude towards treatment in that he doesn't believe that
2 he needs sex offender treatment and hadn't received it in
3 the past.

4 Q So let's go back to that. Your review of the
5 Department of Corrections records, did it indicate whether
6 or not he had gotten sex offender treatment while in
7 prison?

8 A He did not get it while in prison.

9 Q And does he think he needs it?

10 A He does not think that he needs it because he says he
11 did not commit any of the alleged or convicted offenses
12 against him.

13 Q Now, the risk factors you listed a minute ago, you
14 were going through a list of them, are those what we call
15 dynamic risk factors?

16 A Yeah, many of them are. These are factors in general
17 that are found in very, very large studies of thousands of
18 people who are convicted of sex offenses and looking to
19 see who reoffended and looking at things that made them
20 similar.

21 So a lot of them had violated probation before. A
22 lot of them had antisocial acts, which means they didn't
23 really follow the rules that well, or had what we call
24 deviant sexual interest. So we're looking at -- from the
25 research studies, these are what really meaningful,

1 important risk factors are.

2 Q And that part of that not following the rules, does
3 that go back to the beginning of your testimony when you
4 talked about problems at the detention center here in
5 Sumter?

6 A Yes, that's the most recent evidence I think we have
7 of him not following the rules.

8 Q Now, we have dynamic factors, risk factors and static
9 risk factors. What's the difference?

10 A So the static risk factors are the ones that are
11 looked at on the Static 99. And those are things that you
12 can't change with treatment. So I can treat you so you
13 never again have a male victim, but if you have a male
14 victim, you're going to get a point for that because it's
15 not changeable.

16 Same with age. I can try to treat you all day long,
17 but I'm not going to be able to make you any younger. So
18 that is something that's unchangeable. You're going to
19 get older, but you have no control or treatment cannot be
20 targeted for things like that. So that's what static
21 factors are.

22 The dynamic ones are things that could be changed in
23 treatment. They might be really difficult to treat, like
24 substance use disorders or certain types of sexual
25 arousal, but they can be targeted in treatment and that's

1 what makes them dynamic or changeable.

2 Q Now, Doctor, let me ask you about your diagnosis.
3 Were you able, based upon your analysis of the records,
4 the assessments and testing done of Mr. Younger, and the
5 interview with Mr. Younger, were you able to diagnose him
6 with any personality disorders?

7 A Yes.

8 Q Would you tell us what those are? I'm beginning on
9 page 117 of your report.

10 A Yes. So the first diagnosis discussed in my report
11 is narcissistic personality disorder. And so, people who
12 meet criteria for personality disorder have trouble in
13 their relationships, dealing with other people, problems
14 sometimes regulating their mood and things like that.

15 So for narcissistic personality disorder, these are
16 people who are very entitled, have a very, very high sense
17 of their own self-worth or importance. They feel like
18 they're special and unique, that they deserve special
19 treatment. They have trouble in relationships with other
20 people. They need a lot of attention and they lack
21 empathy for other people.

22 So, specifically, for Mr. Younger, he met full
23 diagnostic criteria, which means he had enough of the
24 symptoms to say that he has this disorder, is that he has
25 this grandiose sense of self-importance. And what that

1 means is like this big, big sense that he's very, very
2 important.

3 He believes that he's special and unique. He has
4 this sense of entitlement, that he deserves things that
5 aren't afforded to other people. He exploits other people
6 and he's arrogant and he lacks empathy.

7 And these are evidenced by how he, like, relates to
8 other people and gets along with other people. You can
9 think about the repeated request at the detention center
10 for special treatment, the entitlement he demonstrated
11 during his sexual offending and taking advantage of other
12 people to indulge or satisfy his own desires. So that was
13 the first diagnosis, narcissistic personality disorder.

14 Q What else did you diagnose him with?

15 A I, also, thought that he had a lot of traits of
16 antisocial personality disorder. So if you are unfamiliar
17 with antisocial personality disorder, this doesn't mean
18 that you don't like hanging out with people. It means
19 that you kind of do things against society, so you're
20 anti-society. That means that you have a hard time
21 following the rules and regulations. That might be
22 evidenced by getting -- being arrested a lot. You know,
23 just feeling like those rules don't apply to you.

24 They kind of ignore right from wrong. They ignore
25 the feelings of other people. They might treat other

1 people badly or manipulate them. They might be
2 indifferent to the feelings of other people. Sometimes
3 they show no guilt or remorse for their behavior.

4 So for Mr. Younger, he demonstrates like this failure
5 to conform to the rules of society, as indicated by
6 multiple arrests, convictions and detention center
7 incident reports. He is deceitful, as indicated by
8 pathological lying, including the use of aliases or fake
9 names, giving people fake names.

10 He has some impulsivity in his behavior. He has
11 irritability and aggressiveness, as indicated by
12 convictions -- at least, one conviction for assault. He
13 reported multiple fights when he was prison, sometimes
14 with a knife, and aggressiveness in sexual behavior. He
15 has a lot of irresponsibility.

16 He didn't always pay his child support payments. It
17 was reported that romantic partners would lend him money
18 and he didn't always pay them back. He has a lack of
19 remorse for previous offenses.

20 So I diagnosed with other specified personality
21 disorder with antisocial traits. And the reason for
22 that --

23 Q Let's stop for a second. For a true diagnosis of
24 antisocial personality disorder by itself, you have to
25 have bad conduct before age 15?

1 A Yes. So a prerequisite to make the diagnosis is that
2 prior to the age of 15, there was, at least, some evidence
3 of conduct disorder. And what that disorder might be is
4 running away from home overnight, cruelty to animals,
5 setting fire, you know, being arrested, things like that
6 prior to the age of 15.

7 Q That didn't exist here?

8 A So I didn't have evidence of it. Mr. Younger
9 reported that he was suspended from school for fighting,
10 he didn't recall if that happened before or after age 15.
11 He didn't recall if he had a juvenile record or not and I
12 didn't have access to any juvenile records. So it's
13 unknown.

14 There was no evidence that I had, so that's why I
15 didn't give him the full diagnosis. But just because he
16 didn't have conduct disorder or just because I didn't give
17 him the full antisocial personality disorder doesn't mean
18 that he's not antisocial.

19 So if you went to the doctor for depression and you
20 had, say, four out of the five required symptoms for major
21 depressive disorder, you only had four, your doctor might
22 not diagnose you with depression, but that doesn't mean
23 you don't need treatment for depression. So kind of
24 thinking about it like that. But it was my opinion he
25 actually met every of the potential symptoms for

1 antisocial personality disorder, that he is strongly
2 antisocial, that really characterizes him, but because of
3 that missing conduct disorder evidence, I gave him the
4 other specific personality disorder with antisocial
5 features.

6 Q Okay. This book I'm holding, The Diagnostic and
7 Statistical Manual, edition five, is this the guidebook
8 for diagnoses that psychologists go by?

9 A Yes.

10 Q Such as a case of this nature?

11 A That's the manual that we use published by the
12 American Psychiatric Association. And that is what
13 psychologists and psychiatrists use to diagnose mental
14 disorders.

15 Q And other specified personality disorder is listed in
16 here as a separate criteria; is that right?

17 A Correct.

18 Q Now, in addition to that, what else did you diagnose
19 him with?

20 A Well, I noted that he had a lot of features of
21 psychopathy, as I mentioned. So psychopathy is not in
22 that book that he just showed, but it is a personality
23 condition. Sometimes people say it's the same thing as
24 antisocial personality disorder, but it isn't. They are
25 different and they are clinical construct that psychopathy

1 is recognized, it's just not in the diagnosis book.

2 So as I mentioned, when I scored him on that
3 psychopathy checklist, he scored one point below the
4 clinical cut off, so I wouldn't say that he is
5 psychopathic, but he has a number of traits that are
6 related to psychopathy.

7 Q What about mental abnormalities, what we call
8 paraphilic disorders. When I say the word paraphilic,
9 what does that mean?

10 A So people with paraphilic disorders are sexually
11 aroused by stimuli that are other things than a consenting
12 adult. So there are a million different stimuli in the
13 world. People could develop sexual arousal to this table,
14 to a person with a certain disability, to children.

15 So an example of a paraphilic disorder is pedophilic
16 disorder, which is sexual arousal to young children.
17 That's just an example that's not relevant in this case,
18 but an example of that might -- another one might be like
19 voyeurism, where you're sexually aroused, you have this
20 persistent sexual arousal to watching someone undress or
21 have sex when they don't know that you're watching them.
22 So these are abnormal sexual interests.

23 Q So did you diagnose him with a mental abnormality?

24 A Yes.

25 Q What was that?

1 A So it is my opinion that Mr. Younger has paraphilic
2 coercive disorder. So that is another specified
3 paraphilic disorder in the manual that Attorney Bogle
4 showed.

5 Q The same book, the DSM or Diagnostic Statistical
6 Manual, on page 707 --

7 If I may approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. BOGLE:

10 Q It says other specified mental disorder due to
11 another mental condition. Is that it?

12 A No.

13 Q Okay. I got the wrong page?

14 A Yes.

15 Q Is it in here?

16 A Yes.

17 Q Somewhere?

18 A It is in the paraphilic disorders chapter, page 700
19 something.

20 Q Okay. Let's see if we can get it. Oh, I'm sorry,
21 page 705, other specified paraphilic disorder?

22 A That's correct.

23 Q What does that mean? And did you -- well, did you
24 diagnose him with other specified paraphilic disorder and
25 then some type of disorder to go with that?

1 A Yes. So you specify it and the specifier is
2 paraphilic coercive disorder.

3 Q Okay, what does that mean? What are the criteria for
4 that and how does he meet it?

5 A So paraphilic coercive disorder is characterized by
6 really persistent urges, fantasies or behaviors that
7 involve coercive sexual acts towards non-consenting
8 people. So it reflects an underlying deviant sexual
9 arousal to forced sex and is conceived of the sexualizing
10 of power, control and dominance over non-consenting
11 people.

12 So how Mr. Younger specifically meets paraphilic
13 coercive disorder is that, per records, it's been alleged
14 that he's raped multiple women across a 25-year period.
15 So that's not enough. You have to demonstrate that they
16 have -- so that's persistent, but, also, that they have
17 these urges, fantasies or behaviors. It isn't just that
18 you raped somebody that you would get this diagnosis.
19 It's that you were sexually aroused by the non-consensual
20 or coercive nature to it.

21 So more data to support that was that many of Mr.
22 Younger's victims were romantic partners who had engaged
23 in consensual sexual activity with him in the past. And
24 despite this willingness to have sex with him, he went on
25 to strangle, drug, anally rape, vaginally rape them. This

1 suggests sexual arousal to exerting power and control over
2 them. Because they were consenting partners and then he
3 did this to them suggest that he was aroused by it or
4 there was something sexy about it to him that he liked
5 about it.

6 If you look at the patterns between all of these
7 women who spoke to police, they're really strikingly
8 similar, with dating him for a little while and then him
9 going on to drugging or strangling them and then having
10 sex with them while they were incapacitated and not able
11 to consent.

12 Q And that type of conduct included, at least, two of
13 the cases, the 2008 case where he was convicted of assault
14 on a female, and the 2014 conviction here in Sumter
15 County, correct?

16 A 2008 case?

17 Q 2008, where he was convicted of an assault on a
18 female, victim T.B. that involved choking. It was about
19 that time, somewhere around there. But also the most
20 recent 2014 conviction here in Sumter?

21 A Yes, the one you're referring to was -- I believe was
22 in the 90s. The 2008 one was the cupping of the breast.

23 Q Okay, in the 90s, I apologize. But the same thing,
24 choking happened back then and it happened more recently
25 here in Sumter County in the 2012 crime that resulted in

1 the 2014 conviction for criminal sexual conduct in the
2 third degree, correct?

3 A Yes. And you're seeing this kind of pattern over
4 about a 25, 26-year period.

5 Q Now, when you diagnose him with other specified
6 paraphilic disorder qualified as paraphilic coercive
7 disorder, is another word for that that we sometimes see
8 in this line of word biastophilia?

9 A Yes. It has a few names, if you're thinking about
10 Greek or Latin, raptophilia, biastophilia. Yes.

11 Q Okay. Can you talk a minute about the interplay. Is
12 there an interplay that exists -- I'm sorry, back up for a
13 second. Did you also diagnose him with any disorders
14 relating to alcohol or cannabis use, marijuana?

15 A Yes. He also met diagnostic criteria for having an
16 alcohol use disorder and a cannabis use disorder that were
17 in sustained remission.

18 (Cell phone goes off.)

19 MR. BOGLE: Just a moment.

20 UNIDENTIFIED WOMAN: Sorry. My bad. I'm trying to
21 cut the speaker off.

22 Sorry, Your Honor.

23 THE WITNESS: So alcohol use disorder, cannabis use
24 disorder that were in sustained remission, which means he
25 hasn't exhibited symptoms associated with these substance

1 abuse disorders in, at least, one year, but longer for
2 him.

3 Q Well, he's in a place where he can't get --
4 hopefully, he can't get access to either one of them,
5 right?

6 A Right, that's also true.

7 Q Now, you've talked about the diagnoses, the mental
8 abnormality and the personality disorders. You've also
9 talked about the risk factors and the scores he made with
10 these assessments. What's the interplay between this
11 history and what you're finding as it projects out in the
12 future?

13 A So I think it's really important to consider the
14 effect the diagnoses that he has have on one another. So
15 on its own, these personality disorders could make him
16 risky. So he has personality disorders that are related
17 to conning and manipulating other people, having a lack of
18 remorse and empathy, exploiting other people and being
19 really entitled to take whatever he wants.

20 He also has this sexual arousal to coercion and force
21 and threats and power over another person, so it's my
22 opinion that Mr. Younger sought to satisfy this sexual
23 arousal that he had to coercion and due to his personality
24 features, he felt entitled to get these sexual needs met
25 with no care, consideration of the needs, desires or

1 safety of his victims.

2 So he has the arousal to coercion and then his
3 personality is such that he feels entitled to kind of get
4 those needs met however he can or however he sees fit.

5 Q Now, in Dr. Gail's report, Department of Mental
6 Health, did she also find a number of risk factors, these
7 so-called dynamic or changeable risk factors with
8 Mr. Younger?

9 A Yes, she listed a couple of them.

10 Q What are his plans as he told you if he's released by
11 the jury?

12 A He didn't really give me a plan. He said he didn't
13 know; that he really didn't have any plans until he
14 figured out what North Carolina was going to do about
15 these enough indictments. I really tried to nail him down
16 on that because I want to know what his plan is. So I
17 said, you know, if you were released tomorrow, where would
18 you go. He said that when he had been in prison, he had
19 planned to go to a jump start transitional home in
20 Greenville. I'm not sure if he knew or not if he was
21 still able to go there, but he wanted to go to a
22 transitional house and then try to get a place of his own
23 maybe in Charlotte, North Carolina. And those were the
24 plans that I could elicit from him.

25 Q Do these sound like realistic plans based on his

1 history and your diagnosis?

2 A It's difficult to tell. I mean, I think that if he
3 was at a transitional home -- I think it would depend on
4 where he was. I think it's difficult to tell if it's
5 realistic. I would like to see more structure and
6 stability and awareness that he needs treatment and things
7 like that, more of a solid plan --

8 Q Okay.

9 A -- than kind of saying I don't know.

10 Q So his plan, though, for release, did it include any
11 reference to sex offender treatment?

12 A No. He does not think he needs it.

13 Q Now, based on your review of the sentencing sheet,
14 the criminal records and your research in this case, is he
15 facing any kind of probation or supervision by the South
16 Carolina probation authorities if he's released?

17 A No. Once he gets out, he's no longer under
18 supervision, so he won't be on probation or parole.

19 Q Okay. Now, Doctor, do you have an opinion -- based
20 upon your interviews, the assessments you've done, the
21 testing that was done, all the records that you reviewed,
22 do you have an opinion to a reasonable degree of
23 psychological certainty as to whether Mr. Younger suffers
24 from a mental abnormality or a personality disorder?

25 A Yes.

1 Q The ones you listed a minute ago, the narcissistic
2 personality disorder, the other specified personality
3 disorder with antisocial features and the other specified
4 paraphilic disorder with coercive sexual --

5 A Yeah, paraphilic coercive disorder and then, also,
6 the traits of psychopathy.

7 Q Do you also have an opinion, again, to a degree of
8 psychological certainty as to whether or not these
9 diagnoses affect his emotional or volitional capacity so
10 that he is predisposed to commit future sexually violent
11 offenses?

12 A Yes. So, especially the paraphilic coercive disorder
13 affects his capacity so that he is predisposed to commit
14 future sexually violent acts. If he were to engage in
15 these non-consensual sexual behaviors, that would result
16 in having a new victim, which would constitute a new
17 criminal behavior.

18 Q Do you also have an opinion, again, to a reasonable
19 degree of psychological certainty, as to whether
20 Mr. Younger has the propensity to be dangerous and commit
21 future sexually violent offenses?

22 A Yes, I do believe that he has the propensity to be
23 dangerous.

24 Q Do you also have an opinion, again, to a reasonable
25 degree of psychological certainty as to whether

1 Mr. Younger's propensity to commit future sexually violent
2 offenses is of such a degree that it poses a menace to the
3 health and safety of others?

4 A Yes, it is my opinion that his propensity to be
5 dangerous and to commit future sexually violent offenses
6 is to such a degree that it poses a menace to the health
7 and safety of others. As I mentioned, he has this number
8 of risk factors, including these diagnoses and the
9 interplay between the personality characteristics that he
10 has and his sexual arousal. I think that they
11 significantly increase his risk for future sexual
12 violation.

13 Q Do you also have an opinion, again, to a reasonable
14 degree of psychological certainty, do these diagnoses and
15 the things we've talked about up to right now, do they
16 make Mr. Younger likely to engage in sexually violent
17 offenses unless he's confined in a secure facility for
18 long-term control, care and treatment?

19 A Yes. He's engaged in sexual behavior consistent with
20 his sexual arousal of his diagnoses. He's shown serious
21 impairment in his ability to control his behavior. For
22 example, got out on bond for criminal sexual conduct
23 charge and then allegedly assaulted someone else.

24 So for his safety and the safety of everyone, the
25 treatment should be conducted in a secure location until

1 treated, until he receives the treatment where he can keep
2 himself safe.

3 Q Is outpatient treatment the right mode for this guy?

4 A I'm going to say no. In these cases, it's, you know,
5 does he have this mental abnormality or personality
6 disorder? No one asked me about outpatient treatment, so
7 I usually say I didn't consider that. But I would say in
8 this case, outpatient is not going to get him the
9 treatment in the secure setting that he needs to be safe.

10 Q And, again, do you have an opinion, again, to a
11 reasonable degree of psychological certainty, does Mr.
12 Younger meet the legal criteria to be found by this jury
13 to be a sexually violent predator?

14 A Yes. I mean, he is a sexual predator. He's been
15 convicted of a sexually violent offense. He has both a
16 mental abnormality and a personality disorder that makes
17 him likely to engage in sexual violence if he doesn't get
18 treatment.

19 Q And by treatment, you mean confined for treatment?

20 A Yes.

21 MR. BOGLE: Okay. Thank you, Doctor. Please answer
22 any questions the Court may have or counsel may have.

23 THE COURT: I don't have any now, but I think
24 Mr. Falk, Mr. Bogle, you would agree it's time to break
25 for lunch?

1 I'm going to ask the jury to return at two o'clock,
2 14:00 hours. Two o'clock in your jury room. I ask you
3 again, please, do not discuss this case among yourselves
4 or any other person through any means whatsoever, directly
5 or indirectly. And we will see you at two o'clock. Thank
6 you.

7 (Whereupon, the jury left the courtroom at 12:37
8 p.m.)

9 THE COURT: You are still a live witness. You know
10 the deal, no conversation with your attorneys. And I will
11 go so far as to say don't eat together so you don't raise
12 any questions, okay.

13 THE WITNESS: Okay.

14 THE COURT: All right. Gentlemen, two o'clock.

15 MR. BOGLE: Two o'clock. Thank you, Your Honor.

16 MR. FALK: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Gentlemen, are we ready for the jury?

20 (There was no response.)

21 THE COURT: Are we ready for the jury?

22 MR. BOGLE: Yes, sir.

23 THE COURT: Okay.

24 (Whereupon, the jury entered the courtroom at 2:02
25 p.m.)

1 THE BAILIFF: The jurors are all seated, Your Honor.

2 THE COURT: All right. Thank you, sir.

3 To the jury, let me tell you something here, please.

4 Earlier in testimony with this witness, you may have heard

5 the phrase or the word hotline. You are to give that no

6 weight and you are not to consider it in any

7 deliberations.

8 Anything further, Mr. Falk, in that regard, sir?

9 MR. FALK: No, Your Honor. Thank you.

10 THE COURT: Mr. Falk, this is your witness.

11 CROSS-EXAMINATION:

12 BY MR. FALK:

13 Q How was lunch, Dr. Gottfried?

14 A Very good. Thank you.

15 Q So you are compensated for being here today; is that
16 correct? Or your employer is compensated for you being
17 here today?

18 A That is correct.

19 Q And you indirectly benefit from that compensation?

20 A All of the contracts that we have in the sexual
21 behaviors clinic and lab, those are used to go towards my
22 salary, but I don't get like a check from the Attorney
23 General's Office that's paid to me.

24 Q Do you know how much was paid to MUSC to conduct this
25 evaluation?

1 A Yes. So for this evaluation, it's \$5,200 and that
2 includes the record review, the administration and
3 interpretation of the testing, the clinical interview, the
4 writing of the report and one day of testimony.

5 Q Okay. How many precommitment evaluations have you
6 done?

7 A Under the South Carolina Sexually Violent Predator
8 Act, I have been referred 20 precommitment evaluations.

9 Q How many of those are completed?

10 A Seventeen.

11 Q Okay. I don't have access to all of that. I know
12 that at one point in these proceedings, I got a record of
13 the amount of cases that you were -- that were referred to
14 you and at that time -- this was before you had finished
15 your opinion in Mr. Younger's case. And at that time, I
16 believe there were eight precommitment cases and of those
17 eight cases, there were only two cases in which you said
18 the person did not meet the criteria; is that right?

19 A I don't know when you got that list. Attorney Bogle
20 had given me a list previously that wasn't -- it didn't
21 include all the cases that they had referred to me. I
22 have gotten more over the last year than I got maybe the
23 year before. It kind of varies. So I don't know when
24 you're talking about, but right now, 20 were referred to
25 us and an opinion has been issued in 17 for precommitment.

1 Q And of those 17 opinions, how many of those did you
2 disagree with the court-appointed expert's opinion?

3 A So in ten of the 20, or 17 that have opinions, ten
4 times I said yes, the person met the criteria for being a
5 sexually violent predator, which means I disagreed with
6 the DMH evaluator and seven times I said no, they did not
7 meet the criteria.

8 Q You're saying how many times did you agree?

9 A Seven times I agreed, ten times I disagreed.

10 Q Ten times?

11 A Yes.

12 Q Isn't that -- but that's -- because I'm looking at a
13 list and I can name, at least, 11 cases in which you
14 disagreed with the State?

15 A For precommitment?

16 Q For precommitment.

17 A I believe that the list that I put together is the
18 most up to date. I'm happy to share it with you if you
19 want to compare them.

20 MR. FALK: Your Honor, may I approach?

21 THE COURT: Yes, sir.

22 THE WITNESS: So pre means precommitment, annual or
23 annual reviews. Yes, I opined they were SVP, no, they
24 weren't and these are the ones that I just said.

25 Q So whether or not it's 11 cases or ten cases, you

1 still disagreed with the court-appointed administrator
2 more frequently than you agreed; is that fair to say?

3 A Yes. On the precommitment, I disagreed with them ten
4 times and agreed with them seven times.

5 Q And disagreement is like this case right here,
6 correct?

7 A Correct.

8 Q Okay. Now, those cases that you've gotten, that's
9 not really a sort of a random sampling of precommitment
10 cases, is it?

11 A Random sampling in terms of --

12 Q Well, it wouldn't be the same as if you were an
13 employee of the South Carolina Department of Mental Health
14 and you had done 17 cases?

15 A That's absolutely correct.

16 Q Because I'm sure there are some cases where the
17 person -- some obvious cases; is that correct?

18 A I would think so. The ones that I get have usually
19 multiple issues, maybe more testing is needed. I don't
20 get the ones where I think -- you know, you get them and
21 you're immediately like this person definitely does not
22 meet the criteria. I think DMH gets those.

23 Q But DMH gets the obvious ones when -- I mean,
24 obviously, if DMH says he meets criteria, you don't see
25 that case?

1 A I have never been referred a case from the Attorney
2 General's Office where DMH said the person met for being a
3 sexually violent predator and they sent it to me.

4 Q So the only time you see a case is when the Attorney
5 General's Office is dissatisfied with the opinion of the
6 court-appointed expert?

7 A The only time I get a case is when the Department of
8 Mental Health said the person didn't meet criteria.
9 Certainly, I don't get all of the cases when they said the
10 person wasn't, so I don't really have a basis of judgment
11 of what kind of triggers that for them. But I don't
12 imagine a scenario where I would get a case where they
13 said yes, the person was a predator and then the Attorney
14 General's Office sent it to me for a second opinion.

15 Q Right. So, again, the reason they get a second
16 opinion is because the Department of Mental Health has
17 already said they did not think he met the criteria for
18 one reason or another?

19 A That's right, but, also, what I'm saying is I don't
20 know about the reason for all the cases they don't send to
21 me. Because I can't imagine that these are the only cases
22 that the Department of Mental Health says no on.

23 Q A fair question, fair response, but you haven't --
24 you obviously don't get any cases where the Department of
25 Mental Health says yes, he needs to be there?

1 A Correct.

2 Q So you are getting mostly cases that there is some
3 dispute between two experts; is that correct?

4 A If my opinion is that they do meet, then we have
5 differing opinions, but there are cases that I have the
6 same opinion that they do.

7 Q Okay. You spent a lot of -- part of your testimony,
8 you were talking about infractions. He said --
9 infractions he had while he was at the detention center;
10 is that correct?

11 A Yes. Disciplinary reports, incident reports, medical
12 requests, the records that I got from the detention
13 center.

14 Q You also got a record from when you got the petition
15 that showed that he had no disciplinary infractions
16 whatsoever for the time when he was at South Carolina
17 Department of Corrections?

18 A That's correct. There were no records indicating
19 that he had any disciplinaries. When I asked him in the
20 clinical interview, he said none that he had been
21 convicted of. He self-reported some problems that he had
22 at the prison, but, perhaps, wasn't caught or didn't get
23 convicted of them.

24 Q But he has no disciplinary infractions from the
25 Department of Corrections?

1 A That's correct, none in the records.

2 Q Why did you not address that during your testimony?

3 A I wasn't asked. It's in my report in a couple of
4 places, I think. But Attorney Bogle didn't ask me about
5 prison disciplinaries.

6 Q But you were concerned about some of the disciplinary
7 issues while he was in the Sumter Detention Center, Sumter
8 Lee Detention Center?

9 A Not necessarily concerned, but took note of them.
10 They were a piece of data or a piece of information that I
11 considered.

12 Q You made aware that for a significant period of time
13 while he was in the detention center he was suffering
14 from, I guess, a broken tooth and he was in sort of
15 extreme tooth pain?

16 A I did review records indicating that he was
17 requesting to see a dentist.

18 Q Because you had said he made several requests and you
19 made a note of that during your testimony that he made
20 several requests. And it sounded to me while sitting over
21 here that you put that as a negative fact.

22 A Well, it wasn't just the dentist. It was a variety
23 of back pain, wanting a multivitamin, wanting labs drawn,
24 wanting to see the nurse practitioner, wanting to see the
25 nurse practitioner's boss, wanting -- like, it was more

1 than just the dentist. So it was notable that the nurse
2 practitioner said that he put in a sick call every day or
3 every other day.

4 Q Okay. But have you had -- have you ever needed a
5 root canal?

6 A Yes.

7 Q Pretty painful?

8 A It was long time ago and I remember thinking it was
9 going to be a lot worse than it was.

10 Q Not the root canal, the pain prior going to the oral
11 surgeon?

12 A I'd have to speculate. That was a very long time
13 ago. I appreciate that would be something that would
14 cause somebody pain.

15 Q And then you had concerns that he was worried about
16 his diet?

17 A From -- it's in my report. I don't think I testified
18 to that, but he had concerns. He wanted a kosher diet,
19 but then had concerns about certain food items that he
20 wasn't able to eat because of tooth pain. And then I
21 believe the detention center saying we don't make the
22 kosher meals here so we have no control what goes on the
23 tray. There were some dietary concerns. That was, I
24 think, a restrictive period of time in those records,
25 not -- the dietary stuff wasn't every day.

1 Q He was requesting a vitamin, but somehow you drew a
2 negative conclusion from that?

3 A I wouldn't say that I drew a negative conclusion from
4 that. It was noted in the records that it was medically
5 unnecessary and that he -- I don't want to say it because
6 it's not a direct quote, but the medical staff thought
7 that he was maybe looking for reasons of things to make a
8 request about and -- harass them is probably too harsh of
9 a term. But it was what was listed in the records.

10 Q And there was some concern that he had some
11 contraband in his cell?

12 A Yes.

13 Q So we're considering the Bible contraband?

14 A Well, I think anything in the detention center is
15 considered contraband if it exceeds the number that
16 somebody is allowed to have. So for a mattress, to my
17 understanding, they're only allowed to have one mattress,
18 but there were multiple times where he had several
19 mattresses.

20 I do not know the number of Bibles that somebody is
21 allowed to have in the detention center, but it was noted
22 that during cell searches it was discovered that he had
23 ten, 16 and that was in the incident reports.

24 Q So there was testimony that he was suffering from
25 some back pain. That was one of the medical request?

1 A Yes.

2 Q And he somehow got an extra mattress so that he would
3 be able to get some sleep. If that were the case, I mean,
4 that's not -- how is that disruptive to the detention
5 center? I mean, he's just really taking care of -- trying
6 to mitigate the pain that he was suffering?

7 A Yeah, that's a good question. The way it was
8 reported in the incident reports is that he had several
9 mattresses; that he had been told he wasn't allowed to
10 have them.

11 I believe that he asked medical personnel if they
12 would write a request for him to have an extra mattress or
13 some kind of accommodations and they had said that his
14 medical needs didn't warrant that. So, again, it's not
15 the Bible, it's not the mattress, it's that he was told,
16 he was written up for having extra items and then
17 continued to have extra items.

18 Q Did you get a sense that personnel at the detention
19 center found Mr. Younger to be a problem? I mean, was
20 there a personality problem?

21 A It's my speculation that the personnel at the
22 detention center found him to be a problem.

23 MR. FALK: May I approach witness again?

24 THE COURT: Yes, sir.

25

1 BY MR. FALK:

2 Q This is the sentencing sheet?

3 A Yes.

4 Q Can you look over that line of the sentencing sheet
5 right there?

6 A The one -- I'm sorry.

7 Q Where there was a check mark?

8 A As indicted or the nonviolent?

9 Q The nonviolent.

10 A So there is an "x" in the box for nonviolent.

11 Q Okay. So do you -- so the South Carolina Penal Code
12 apparently rates the charge for which he was convicted as
13 a nonviolent offense. Is that your understanding?

14 A I don't have a good understanding of the Penal Code.
15 I'm not an attorney, so I kind of take it at face value
16 when I'm referred a case that this is a qualifying
17 sexually violent offense, so I don't know. I see the
18 check mark, but I don't know anything about how they grade
19 them or rate them.

20 Q But you are a forensic expert, right?

21 A I'm a forensic psychologist.

22 Q So forensic means that your field of expertise sort
23 of relates to psychology and the law, does it not?

24 A Correct.

25 Q But there's no doubt that that was checked as a

1 nonviolent offense; is that correct?

2 A There is an "x" in the box next to nonviolent.

3 Q Because there's another box that says violent, is it
4 not?

5 A Yes.

6 Q There's a box that says most serious?

7 A Yes.

8 Q And a box that says serious?

9 A Yes.

10 Q None of those were checked; is that correct?

11 A Correct.

12 Q A lot of your testimony seemed to focus on the way
13 you evaluated his results on the Hare PCLR; is that fair?

14 A I mean, I testified for a while about a lot of
15 things. I don't think I testified a lot about the PCLR.
16 I testified about several of the tests and their results.

17 Q One of the tests that you talked about was the PCLR?

18 A Yes.

19 Q There were other tests that you did that you didn't
20 talk about. But we talked about the PCLR; is that
21 correct?

22 A Yes.

23 Q Can you give me some kind of better understanding of
24 a particular question on the PCLR? I mean, what is the
25 test?

1 A So there isn't a particular question per se. So
2 there is an interview guide that goes along with the PCLR
3 that is a clinical-structured interview. It kind of says,
4 you know, asks the person did you get suspended from
5 school, things like that.

6 So what I've done is -- the clinical interview that I
7 give for sexual behavior evaluations, I incorporate some
8 of those questions. Because the PCLR doesn't -- aside
9 from promiscuous sexual behavior, it doesn't talk about
10 unusual or abnormal sexual interests. So I kind of
11 combine them.

12 So you gather a lot of information. And you cannot
13 score a psychopathy checklist revised unless you have
14 collateral information, which means you can't just go off
15 this person's self-report. You can't say have you ever
16 been charged with a crime and then take them at their
17 word. You actually have to have their criminal history
18 report because you're looking at different types of
19 crime -- or charges.

20 So once you've gathered all that information and gone
21 through all of the collateral information, as a clinical
22 forensic psychologist with training in the PCLR, then I
23 score it, which is, basically, a sheet that has the 20
24 items. So it might say promiscuous sexual behaviors, and
25 then there is a manual that goes along with it that

1 explains what each item is and you rate them on a series
2 of 20 items.

3 Q But when you're rating them, you're either saying --
4 for example, one of the things you talked about at the
5 beginning was glibness; is that correct?

6 A Yes.

7 Q And that's like the first line item on the PCLR; is
8 it not?

9 A It's the first or second. Grandiosity is the first
10 or the second, as well.

11 Q So let's say glibness and let's say grandiosity. The
12 choices there are you either say that trait is present,
13 partially present or not present. Is that accurate?

14 A Correct. You score it a zero, a one or a two. Two
15 means the trait is definitely there, the one means there's
16 some evidence of that and the zero means there is no
17 evidence of that trait.

18 Q So would you agree that there is a bit of
19 subjectivity in the way that it's scored?

20 A I think that all tests have some subjectivity. I was
21 trained by an expert in the PCLR, who conducts research on
22 it. And I worked in his research lab and became what's
23 called research reliable, which means you and experts rate
24 the same case.

25 So these were video interviews of men in the federal

1 prisons and it was several hours long in their interview
2 and then you got all of their records. So independently,
3 when you're going through this training, you're reviewing
4 the case, you're watching the interview and then you're
5 rating them on the PCLR. And you want to make sure that
6 you're research reliable or reliable with the expert who's
7 teaching you within, you know, the standard of error,
8 which is, you know, a couple points.

9 So I think somebody who doesn't have training in it,
10 it could be very subjective, but when you have training
11 and you have a really good understanding about what each
12 of the 20 items -- how you score them; that you're not
13 like what's called double dipping, giving them a point on
14 two items thinking about the same thing. All tests can be
15 subjective, but I think that when you have training and
16 expertise in it that it because much more reliable.

17 Q What does the term inter-rater reliability mean?

18 A That means when you have two qualified raters give
19 the same measure how reliable they are, are they coming up
20 with the same score.

21 Q Are you aware of any studies or tests that have been
22 done that consider the inter-rater reliability of the Hare
23 PCLR?

24 A Oh, yeah. I mean, the PCLR has been around for a
25 long time. It's very widely studied. There are a number

1 of studies looking at things between raters, looking at
2 things about like level of experience, expertise in
3 psychopathy, whether or not they had like standard formal
4 training and, also, who hired them.

5 So there are articles about what's called allegiance
6 bias. So there's a whole field or section of the studies
7 on this PCLR where they're looking to see if somebody was
8 hired by the prosecutor, if they're going to score
9 somebody higher on the PCLR than if you were hired by the
10 defense.

11 Q That term is allegiance bias?

12 A Um --

13 Q You said it, I didn't know what it was.

14 A Yes.

15 Q Okay.

16 A It's something close to adversarial bias. I think
17 it's adversarial bias, but it, basically, means looking at
18 who hired them, whether or not they were retained by the
19 prosecution or retained by the defense. They found that
20 that could have a relationship in the scoring, as well.

21 Q Did that affect your scoring? That's a bad question,
22 but my point is -- I mean, you admit that there's
23 subjectivity?

24 A On every test, yes.

25 Q And there have been some questions about the

1 inter-rater reliability on this test. And you said when
2 you're looking at the inter-rater reliability, you're
3 looking at two qualified experts. One goes one way and
4 one goes the other; is that correct? That was your term,
5 I think.

6 A Not necessarily qualified two, maybe, expert raters,
7 two raters. So they're looking at --

8 Q They're not comparing if I did it versus -- you
9 compared my score to yours? I mean, I have no
10 understanding of it.

11 A Correct. They're comparing to people who have
12 credentials to score it.

13 Q Okay.

14 A So they might not have received training on it.
15 Sometimes it will be in a state where there's two people
16 evaluating the same person and then comparing their scores
17 because, theoretically, they have the same information
18 that they were basing their scores off of.

19 You could do it like that. They can design studies
20 where they pay participants to take it and give them case
21 information. Those are all ways that you can look at the
22 inter-rater reliability.

23 Q You would admit, though, that there is some overlap
24 between some of the criteria that you're looking at for
25 the Hare and the criteria that you would look at if you

1 were trying to make a determination whether or not
2 somebody met the definition of antisocial personality
3 disorder; is that correct?

4 A Well, there is overlap. So a lot more people would
5 meet diagnostic criteria for antisocial personality
6 disorder than they would for psychopathy. Also, there are
7 people that are called successful psychopaths, where they
8 don't commit crimes. You think about somebody like Bernie
9 Madoff. Before he got arrested -- or you think about
10 politicians. There are people who have these
11 characteristics, they're really bold and --

12 MR. FALK: Your Honor, may I stop right here. I
13 mean, I think the witness is trying to compare Bernie
14 Madoff to my client and I think that is --

15 MR. BOGLE: Your Honor, I think she was trying to
16 answer the question by giving examples.

17 THE COURT: I'm going to allow her to answer it,
18 Mr. Falk.

19 Go ahead, ma'am.

20 THE WITNESS: So while there is a facet or a section
21 on the PCLR that's looking at criminal or antisocial
22 behavior, it's also looking at other things like glibness,
23 boldness, things like that that aren't necessarily
24 associated with being antisocial.

25 Q But at the end of the day, he does not meet the cut

1 off for sociopath or psychopath under the PCLR test; is
2 that right?

3 A That's right. On the PCLR, he scored one point
4 below, so that means he has features of psychopathy, but
5 you wouldn't say that he is a psychopath.

6 Q But with that testing, with that scoring system, it
7 doesn't seem to allow for much gray area. It's either on,
8 off or sort of. You know, it's either a one -- a zero, a
9 one or a two; is that correct?

10 A Right. It does have a restricted range, but that's
11 kind of by design. So it's present or absent and then it
12 does have that gray area that you have some evidence, but
13 not like the full criteria of that item.

14 Q Okay. So how much of -- when you're giving somebody
15 a one, how much of it does he have to have for that -- of
16 the criteria for that item does he have to have for you to
17 give him the one?

18 A Yeah, it really spells it out in the manual of what
19 you're considering and it gives you examples, too, of what
20 a two is and what a one is. So you really want to follow
21 that prescribed manual when you're scoring and that's
22 going to make it more reliable, as well. So it really
23 does explain the difference between a two and a one and a
24 zero.

25 Q And then you did some -- you testified about the

1 sexually violent risk. What is that test? SR-20?

2 A That's the SVR-20, the sexual violence risk 20.

3 Q That is somewhat of a new test for you; is it not?

4 A A new test for me --

5 Q For you to use?

6 A I started using it maybe two years ago.

7 Q Okay. And what kind of inter-rated reliability is
8 there on that test?

9 A So this is professional-structured guidelines, so
10 it's not a test in the sense of what we think about tests
11 are. Again, you're rating somebody on a really prescribed
12 manual that's explaining -- this manual, it goes really
13 into depth. So it says, like, here are risk factors for
14 reoffending.

15 Here is all the research that shows why there are
16 risk factors for reoffending. Here are things that you
17 should consider when looking at these items. And this is
18 how you kind of guide your own structured judgment when
19 you're trying to make -- identify risk factors and
20 predictions about risks.

21 Q That sounds like it could be significant subjectivity
22 there is how you score that?

23 A I mean, again, all tests have subjectivity. The
24 studies that have been done with the SVR-20 show that it
25 is -- has good reliability, good validity. It's a strong

1 predictor of future sexual behavior or sexual offenses and
2 that it's, at least, as accurate, and some studies say
3 it's more accurate than using the Static 99.

4 Q Provided it's scored correctly. Would you get a
5 score on it? How does that work?

6 A You don't get a score, no. You are looking at risk
7 factors and looking at them and thinking about them, are
8 they present or absent, are they possible or partial and
9 then are they presently or historically an issue. And
10 it's really a way to structure how you're thinking about
11 this.

12 So rather than just doing it unstructured by saying
13 okay, I think this person has all these dynamic risk
14 factors or all these risk factors, you're really thinking
15 about it in a way that is going through what the studies
16 show. So it isn't just like oh, this person uses drugs
17 and I feel like that's going to make them risky. It's not
18 going on how you feel, it's going on what the research
19 suggests.

20 Q But you would admit that it's not nearly as cut and
21 dry a way to score as -- I'm sorry, the Static 99 or the
22 Static 2002-R?

23 A For the Static 99 or the Static 2002, you give the
24 person a numbered score. On the SVR-20, you're more
25 like -- kind of they're like check boxes. It's a way to

1 guide your thinking.

2 Q The questions are pretty cut and dry on the Static
3 99, are they not? You ask whether or not he's in a
4 particular age group; is that correct?

5 A Yes.

6 Q And he either gets a point, takes a point away,
7 whatever. They ask about how many convictions he's had?

8 A Yes. The static kind of gets very tricky when it
9 comes to looking at things, charges, for instance,
10 convictions. Frequently probation officers are trained on
11 them, but there's some studies showing that people do not
12 score the Static that consistently because the items,
13 while they look on their face to be real easy to score,
14 you have to think about like dates and things like that.
15 There's some research showing that, like, people actually
16 aren't -- that people make mistakes when scoring that,
17 even though on its face, it looks like it's easier to
18 score.

19 Q Well, some are straightforward. Does the person have
20 an offender that is -- a child offender, right? That's a
21 question on that?

22 A Do they have a male victim. Do they have unrelated
23 victims. Do they have stranger victims.

24 Q Right. So those are pretty straightforward
25 questions, right?

1 A Yes, but then it's -- sometimes trying to figure out
2 if a person is a stranger, if they've ever met before. It
3 can get tricky.

4 Q Well, it seems more straightforward than the way you
5 were describing the VSR-20.

6 A SVR-20.

7 Q SVR-20, sorry. But you're saying even on one that
8 has some straightforward questions like stranger victim or
9 male victim, that's still some room for subjectivity; is
10 that correct?

11 A Definitely.

12 Q A couple of times during your testimony, and I think
13 like one of them was in response when we were talking
14 about the Static 99. And, you know, you said, well, if
15 he's a particular age and I could give treatment and that
16 wouldn't affect how old he is; is that right?

17 A Right.

18 Q That was something with your testimony, right?

19 A We were talking about the difference between dynamic
20 and static risk factors. So dynamic are things that can
21 change and static are things that cannot change, like your
22 age. You're obviously going to get older, but you can't
23 treat somebody to make them younger or make them even
24 older.

25 Q Is part of your practice -- do you have a clinical

1 practice?

2 A What do you mean by clinical practice?

3 Q Do you have patients that you treat?

4 A I treat some men who are on federal probation for sex
5 offenses, but, otherwise -- and then I supervisor some
6 treatment groups, but, otherwise, my entire practice is
7 forensics evaluations. And the couple guys that I do
8 treat, I treat them for the courts.

9 Q So just without getting -- and I know you don't have
10 any information about what kind of treatment is available
11 at the sexually violent predator treatment program, but
12 what is -- is it like talk therapy? You say you treat
13 people who are on federal parole or probation?

14 A Yes.

15 Q So what is that treatment? Are you giving them
16 pills, are you giving them injections? Is it talk
17 therapy? What is it?

18 A The treatment that I personally give for men who are
19 on federal probation for sexual offenses, I guess you
20 would call it talk therapy. I'm not a physician, so I
21 don't give medication. I try to do some arousal
22 reconditioning. So if somebody has sexual arousal to
23 children, I try to help them treat that so that children
24 are no longer attractive to them. So we do different
25 kinds of strategies to target that, but it is -- we're

1 talking when we're doing that. I'm not giving them drugs
2 or anything.

3 Q It's like identifying risk factors?

4 A I mean, somewhat. I'm talking about arousal
5 management is -- yes, you can also look at risk factors
6 when you're treating --

7 Q But arousal management, that's not done with pills,
8 right, that's just done with rethinking?

9 A Correct. Yes, it's not done -- no drugs. If
10 somebody needs to be on medication, then they're referred
11 to one of their psychiatrists.

12 Q Just because I brought up the subject and it was
13 brought up before, there is no evidence -- he has no
14 history of any type of offenses against children; is that
15 correct?

16 A No, it doesn't -- I am not of the opinion that he has
17 sexual arousal to children. All of his victims have been
18 adults that we know of. And when I use that as an
19 example, I just feel like it's easier to explain. But
20 that is not this case, it has nothing do with children,
21 his sexual arousal.

22 Q Right. Now, so you have -- it's been your opinion
23 that he has committed a series of rapes; is that correct?

24 A Yes, I think --

25 Q Let's -- I'm not talking about the offense for which

1 he was charged. I'm talking about some other -- you were
2 saying that you believe that those were rapes; is that
3 correct?

4 A Yes. I believe that he had nonconsensual sex with
5 former girlfriends -- or girlfriends or women that were
6 not his girlfriends -- when they either couldn't
7 consent -- when they couldn't consent either because they
8 were unconscious or incapacitated from drugs.

9 Q So you would agree that it's really -- it's a
10 question about -- I mean, there's no question that --
11 we're not really arguing that the sex didn't happen, we're
12 questioning about whether the sex was consensual or not?

13 A On some of the allegations, Mr. Younger said he
14 didn't know the person or he never had sex with the
15 person. So there were some times where he said no sex
16 happened at all; and others where he said we had
17 consensual sex; and other times saying we had a great
18 relationship, I don't know where this is coming from.

19 Q But as far as proof that it was nonconsensual, you
20 have to rely on statements made -- some statements made 11
21 years ago or longer, right? Statements made in 2005,
22 2009, 2010; is that correct?

23 A Just to clarify, are you saying that the statement,
24 like they reported it 11 years after it happened or it
25 happened 11 years ago?

1 Q I'm just saying, you know, these events occurred --
2 most of the events that you talked about when you're using
3 the initials, most of those events occurred in the past?
4 Over five years, some over seven years, some over ten
5 years ago?

6 A To my knowledge, Mr. Younger has not engaged in any
7 of these behaviors while in prison or the detention
8 center, so, yeah, they're all in the past. My review
9 indicated 25 -- over a course of 25 to 26 years, so about
10 1988 to 2013.

11 Q And you are assuming that they're telling the truth,
12 I guess, the alleged victims?

13 A Well, not necessarily assuming that they're telling
14 the truth. What I'm looking at is I'm looking at all of
15 the data or all the reports that were provided to me, so
16 I'm looking for patterns.

17 The best practices book on how to do these
18 evaluations suggest that you look at all illegal sexual
19 behavior, whether it was reported or otherwise, because
20 that is what I've been asked to do. Does this person have
21 a mental abnormality or personality disorder that makes
22 them likely to reoffend sexually.

23 Q But you just said you're looking at patterns, right?

24 A Correct.

25 Q And in order -- one of the characteristics or one of

1 the indicators of that pattern is the testimony of the
2 alleged victim; is that correct?

3 A The report.

4 Q The report?

5 A Yes.

6 Q And the report is based on their testimony, right?

7 A When I hear testimony, I think about what I'm
8 doing --

9 Q I'm sorry, I'm sorry. So years ago, 2006, one of the
10 initial people told the police this happened?

11 A Yes, I was going off of police reports and then North
12 Carolina State Bureau of Investigation investigations.

13 Q But there were no rape kits in those police reports,
14 right?

15 A Not to my knowledge.

16 Q And there was no -- in most of those, there was never
17 any medical testimony, was there? Any medical proof? In
18 the majority of those cases, there was no medical proof,
19 is that accurate?

20 A Medical proof as in -- what would medical proof be?

21 Q Some type of indications that there was nonconsensual
22 took place? You know, a document that said -- a forensic
23 examination?

24 A There were some of them where they said vaginal
25 tears, rectal tears, swelling, things like that.

1 Q But that could still be consistent with consensual
2 sex, could it not?

3 A Yes, theoretically, you could experience a vaginal
4 tear. But also adding to that, in the medical records,
5 these women said they did not have consensual sex.

6 Q Now, when you were looking at the records, one of the
7 people, one of the indictments that you were talking
8 about, were you aware that she was out there contacting
9 people telling them to write in? I think one of yours, I
10 think you talked about...

11 One moment, please.

12 For example, J.B., I think in your report, you
13 indicated that J.B. had spoken to L.M.R.?

14 A I believe -- and let me refer to my report. I
15 believe that police spoke to J.B. in the first place in
16 the course of their investigation of the 2005 victim.

17 I can find it or if you want to refresh my memory
18 of --

19 Q Are you saying that you didn't see any handwritten
20 letters that were in there where somebody was encouraging
21 somebody else to come forward?

22 A I don't recall. I did review a lot of handwritten
23 letters, but the letters that I'm thinking of were letters
24 from reported victims to Department of Corrections, people
25 in charge of Sexually Violent Predator Act. I don't

1 recall seeing a letter, like, from one woman to another
2 woman if that's -- or one victim to another victim if
3 that's what you're saying happened.

4 Q Well, like the girl on the campus, that was actually
5 her roommate that reported that; is that correct?

6 A I believe the one where she alleged that Mr. Younger
7 put Valium in something at the sushi bar, I think that
8 that was initially reported by her roommate.

9 Q Was she at the sushi bar with her?

10 A She was at where they lived and observed what
11 happened at the house.

12 Q So that would be significant speculation, wouldn't
13 it?

14 A Well, then, police interviewed the actual reported
15 victim and she gave her account of events.

16 Q Would that include any proof that she had Valium in
17 her system?

18 A Not that I recall. I think it was her report and her
19 report that Mr. Younger told her that he had put it in her
20 wine or in the -- I think in the wasabi, something like
21 that. When she asked him why, he said something like I
22 thought you were adventurous or I thought you were into
23 trying new things, something to that effect.

24 Q I think you testified one of the victims testified
25 that Mr. Younger choked her several times; is that

1 correct?

2 A I believe several of the reported victims said that.

3 Q So are they reporting that several times on the night
4 that they broke up or over the course of their
5 relationship it happened several times? What was your
6 understanding of that?

7 A I don't know what I'm basing this off of, but it's my
8 understanding that this was over the course of their
9 relationship, that it wasn't like in the same night. It
10 was maybe once a month or one time and then a few months
11 later is in my mind what I think I reviewed.

12 Q So this alleged choking, whether or not it happened,
13 and the alleged victim, they were still dating?

14 A Potentially. It seems there were some where the
15 woman ended the relationship after that happened; and then
16 some where he had an opportunity to revictimize them.

17 Q So you're going back and you're relying on the
18 statements made by the victims, that they are accurate and
19 they did, in fact, happen?

20 A Not necessarily relying on them, but in all cases
21 that I do like this, I consider accusations, charges,
22 convictions. Obviously, things that somebody was
23 convicted of hold more weight.

24 Q We're not talking about convictions. We're talking
25 about these allegations.

1 A Right. Those are still things I consider because in
2 order to make a diagnosis, you have to know information
3 about a longer period of time than on the day of an
4 offense.

5 Q How much of your opinion was based on this uncharged
6 conduct that occurred in North Carolina?

7 A How do you want me to quantify that?

8 Q Well, I want you to tell me that if you never read
9 anything about North Carolina, would you reach the same
10 conclusion?

11 A I think that's difficult to speculate on.

12 Q I mean, it would be difficult for me to speculate,
13 but I'm asking you. I mean, you know everything that you
14 heard and everything that you read. And if you never read
15 anything about North Carolina, what do you think you would
16 have said?

17 A Well, but he did have prior charges in North Carolina
18 that I would have had access to, so I think that there
19 still would have been information to establish a pattern.
20 There were a number of police reports that I still think I
21 would have had access to --

22 Q You were talking about charged conduct --

23 MR. BOGLE: Objection. Allow her to answer the
24 question, please.

25 THE COURT: All right. I'll allow her to answer, Mr.

1 Falk.

2 Proceed, ma'am.

3 THE WITNESS: Trying to remember where I was on that.
4 So I think -- oh, I know. I was asking are you saying if
5 I had only had the police report from here in South
6 Carolina?

7 BY MR. FALK:

8 Q Uh-huh.

9 A Would that have changed my opinion or what is the
10 question?

11 Q All right. He was charged with some offenses in
12 North Carolina; is that correct?

13 A Yes.

14 Q So by that, charge, I mean, formal charges were
15 brought against him. Presumably, he was arrested or given
16 a notice to appear in court. So what I'm talking about
17 are the accusations in North Carolina, which never
18 resulted in any charges?

19 A So just to make sure I understand, so I wouldn't have
20 gotten the police reports?

21 Q Right.

22 A So just -- I don't know. I'd have to look to see
23 from all of the charges that he had -- I think there still
24 is a pattern between those. Clearly, when all of these
25 women reported to police that he had done these things to

1 him, that is a striking pattern, but it's difficult to say
2 if I didn't know about all of those other ones what affect
3 that would have.

4 Q You would certainly acknowledge, though, that he
5 should have the opportunity to have this -- where there's
6 conduct -- where there's accusation and there's no charge
7 or even where there's an accusation and there's been an
8 indictment, he should have the opportunity to go and
9 address those charges and put up a defense and have the
10 jury decide whether or not the accuser was being truthful?

11 A Right. So it's not my job to determine whether or
12 not he would be found guilty of these things. It's my job
13 to collect all of the information and render a diagnosis
14 if there is one.

15 Q But aren't you've kind of finding him guilty because
16 you're assuming -- I can't get away from the fact that it
17 seems to me that you're assuming it happened.

18 A I don't think that I'm necessarily assuming that it
19 happened. I think that it's striking how many people said
20 similar things over a 25-or-26-year period.

21 Let me get my train of thought there.

22 So I'm looking for these patterns. It's not up to me
23 to say like yes, he definitely did this. We know that --
24 we know the reasons for why people do not report sex
25 offenses, so the fact that this many people reported it to

1 police and how similar the behaviors are between them,
2 that to me is a data point that cannot be ignored. But in
3 my mind, I'm not saying anything about guilt or innocence
4 because I'm simply looking at a diagnosis.

5 So the best way to diagnose a paraphilic disorder is
6 if the person is forthcoming and says, for example, I
7 masturbate to fantasies of young children every day, then
8 you have some clear data. But a lot of people undergoing
9 these types of evaluations are not forthcoming, so you
10 have to look at collateral information because that is
11 what they're asking me to do or you're asking me to do,
12 does this person have a diagnosis.

13 Q Let's talk a little bit about your diagnosis. The
14 first one -- one of them was a paraphilic coercive
15 disorder; is that accurate?

16 A Yes, other specified paraphilic disorder, paraphilic
17 coercive disorder.

18 Q And Mr. Bogle showed you the DSM-5?

19 A Yes.

20 Q Is that term coercive paraphilic disorder or
21 paraphilic coercive disorder, is that term in the DSM-5?

22 A It's not. It is quantified -- it falls under the
23 other specified paraphilic disorders. So as I testified
24 to they couldn't possibly list every single potential
25 diagnosis because people can become aroused by literally

1 anything in the environment.

2 Q If you could help me here, what page?

3 A 700s, maybe 705.

4 Q That's what I was thinking, let me see.

5 Yes, it's on page 705. Are you familiar with that
6 heading on that page?

7 May I approach?

8 THE COURT: Sure.

9 THE WITNESS: 705 includes other specified paraphilic
10 disorder and unspecified paraphilic disorder.

11 BY MR. FALK:

12 Q So other specified paraphilic disorder, that's that
13 first one; is that correct?

14 A Correct.

15 Q And that's your basis for your diagnosis for Mr.
16 Younger is that, right?

17 A One of the diagnoses I assigned was other specified
18 paraphilic disorder.

19 Q That paragraph also gives examples?

20 A Yes, it does.

21 Q Of what you would -- that paragraph gives you several
22 examples of different types of conditions that could be
23 considered an other specified paraphilic disorder. Is
24 that an accurate way to say it?

25 A Yes, they list some examples, things like telephone

1 scatologia where you are sexually aroused by making
2 obscene phone calls. What are some of the other ones?
3 Necrophilia, sexual arousal by having sex with corpses or
4 dead bodies. So they list several examples, but,
5 certainly, not every stimuli that could become the object
6 of paraphilic arousal.

7 Q Maybe just seems intuitive to me, but you would think
8 when they were listing other ones, they would list the
9 ones that they would consider the most common, wouldn't
10 you? I mean, if this is going to help you, wouldn't it be
11 helpful to give you the most common examples?

12 A Necrophilia is very uncommon, so I don't think that
13 they listed the most common. And there are whole books
14 devoted to paraphilic disorders and all of the things that
15 can become paraphilic.

16 Q Because the examples they use are actually rather
17 uncommon, would you not agree? Many of them are very
18 uncommon?

19 A Yes, I would say necrophilia is extremely rare.

20 Q Zoophilia?

21 A That's less rare, but...

22 Q Klismaphilia?

23 A Yeah, like I said, literally, anything can become the
24 object of paraphilic arousal.

25 Q Okay.

1 A So they just list a couple, but there are entire
2 books dedicated to what paraphilic arousal, like, what
3 their name is. Like telephone scatologia is obscene phone
4 calls, things like that.

5 Q So what evidence do you have that the primary sexual
6 motivation of Mr. Younger is coercive?

7 A Well, I considered several diagnoses. So if you're
8 familiar with sexual sadism, that's hurting or humiliating
9 someone for a sexual purpose. And there was an element of
10 violence to Mr. Younger's crimes. So I considered several
11 things. I considered sexual arousal to somebody who is
12 unconscious, things like that. It kind of went through
13 the patterns that we see --

14 Q You can finish the question, but that's -- you're
15 answering not the question that I meant to ask. Can I ask
16 my question better then?

17 A Please.

18 Q So in order for it to be coercive paraphilic
19 disorder, doesn't it have to be the primary motivation is
20 not having sex, but coercing the person into having sex.
21 Is that an accurate --

22 A It's sexual arousal to the underlying dominance,
23 power, intimidation, control over someone that you're
24 having sex with. So the act of the nonconsensual
25 dominance over another person.

1 Q So you have to find that. And what did you find
2 specifically that supported that all the times his
3 motivation was the coercion as opposed to just the sex?

4 A And I wouldn't call it the motivation, it's the
5 arousal that I'm looking at. And so I think that there
6 were a number of things that suggested that. Namely, that
7 he -- with his victim here in South Carolina, he was
8 engaging in consensual sex with her and then it turned
9 nonconsensual. She -- the police reports indicate that he
10 experienced erectile dysfunction during their sexual
11 encounter and then that is when the aggressive behavior
12 started. That could suggest that when people have
13 erectile dysfunction, they kind of turn to their, like,
14 go-to fantasy or what's most arousing to them to maintain
15 the erection.

16 So that is a data point suggesting that that's
17 something that he's really aroused to or aroused by. He
18 had partners who were consenting and into having anal sex
19 with him, but he still drugged or strangled consenting
20 partners and then had anal sex with them while they
21 couldn't consent, while they were incapacitated.

22 Theoretically, he could have found partners who
23 wanted to have consensual breath play with them. That's
24 when you cut off someone's air supply for a sexual
25 purpose, erotic asphyxiation, things like that. There are

1 people who enjoy that. So he should have been able to
2 find somebody to enjoyed that. So the fact that he was
3 doing these things against the person's consent or when
4 they were unable to concept, to me, that is what suggests
5 the sexual arousal. So he was already having sex with
6 them. It wasn't about the sex. It was about having sex
7 with them over their wishes, the nonconsent force aspect
8 of it, threatening aspect.

9 Q And the other diagnosis that you used was other
10 specific personality disorder. Is that non-specified?

11 A It's other specified personality disorder with
12 antisocial features or the specifier is antisocial
13 personality disorder sufficient criteria.

14 Q But you would agree that you could not diagnose him
15 as having antisocial personality disorder; is that
16 correct?

17 A Per the diagnostic manual that we use, you need that
18 evidence of conduct disorder prior to the age of 15. He's
19 very antisocial. He meets all the other criteria. People
20 can be antisocial without having conduct disorder. We
21 just don't have information about that. I don't have his
22 juvenile arrest record. He didn't say no, I was never
23 arrested. He said I don't recall if I was arrested as a
24 juvenile. So it's possible that he had conduct disorder.
25 It's also possible that he developed antisocial features

1 once he entered puberty and beyond and he's still
2 antisocial.

3 MR. FALK: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. FALK:

6 Q I'm going to show you page -- that's the page for --
7 that's the antisocial personality disorder page?

8 A That's the first page in the manual, yes.

9 Q All right. And that provides specific diagnostic
10 criteria, does it not?

11 A It does.

12 Q So what is the -- where do you find the specific
13 diagnostic criteria for paraphilic coercive disorder?

14 A Oh, well, I mean, there's books on it. So the
15 criteria that I use has been written by the experts in
16 that area of the field.

17 Q What are the criteria?

18 A So the criteria is -- if I can find it in my report.
19 Persistent urges, fantasies or behavior involving coercive
20 sexual acts towards nonconsensual persons. But let me
21 give you the better definition because it's over a period
22 of six months or longer and those kinds of things.

23 Okay. So for paraphilic coercive disorder or
24 biastophilia, it's over a period of, at least, six months,
25 recurrent sexually arousing fantasies, urges or behaviors

1 involving coercive sexual acts with non-consenting
2 persons, typically, including genital contact.

3 The experience of power, dominance and control are
4 sexually arousing because the sexual behavior is forced
5 upon a person who is deprived of the liberty of consent
6 and would otherwise refuse the sex if given the choice.
7 The individual has acted on these sexual urges or the
8 sexual urges or fantasies caused marked distress or
9 interpersonal difficulty and the disorder is distinguished
10 from sexual sadism in which the physical suffering and/or
11 psychological humiliation of the non-consenting person is
12 the source of sexual arousal.

13 Q It seems to me that that's just somebody who has
14 committed a rape, is it not?

15 A There is a distinction. So there is controversy in
16 the field about some psychologists and psychiatrists who
17 just give that diagnosis to people who rape, and that is
18 not appropriate. So we are looking for sexual arousal.

19 People rape for lots of different reasons,
20 unfortunately. It's not the most common reason that
21 they're sexually aroused by that. So it would be highly
22 inappropriate to diagnose somebody with paraphilic
23 coercive disorder simply because they raped somebody.
24 You're looking for the evidence of the sexual arousal.

25 Q Let me grab my book back. So would you acknowledge

1 that there is some judgment that you have to apply whether
2 or not he meets the criteria for the definition?

3 A I would say that there's judgment that you have to
4 apply to decide if somebody meets diagnostic criteria for
5 pretty much any mental illness.

6 Q And it's possible for two experts to come to two
7 different conclusions, is it not right?

8 A I think experts -- yeah, sometimes they disagree.
9 They might come to different conclusions, yes.

10 Q Let me go back. Were you here when I made my opening
11 statement?

12 A Yes.

13 Q So in my opening statement, I talked about the
14 pickpocket?

15 A Yes.

16 Q And I suggested that some people would take somebody
17 else's wallet because they really need money?

18 A Yes.

19 Q Kind of a rob is a rob kind of thing, stealing to
20 feed the family. And then there's the people who are the
21 criminals who are using the credit cards in order to make
22 lots of money selling the personal information. And
23 that's all criminal conduct, right?

24 A How you described it, it is, yes.

25 Q Right. And so, that's the kind of conduct that is

1 handled by the criminal code, would you not, or the
2 criminal laws?

3 A As opposed to?

4 Q Well, that's what they're for, right? That's why we
5 have laws against robbery, thievery, pickpocketing, et
6 cetera?

7 A Yes, I think if somebody is arrested, it's dealt with
8 by the criminal code.

9 Q So I'm sure it's not the perfect example that I tried
10 to make, one that I thought was easy, but there are some
11 people who enjoy stealing for stealing's sake, right?

12 A Yes.

13 Q Okay. And that's the difference, right? That's the
14 difference between criminal conduct and conduct that's
15 motivated by a mental health issue?

16 A I'm not sure I'm following. So I think if
17 somebody --

18 Q What I'm trying to say is one, the motivation is I
19 really enjoy stealing. I don't care what I get, I might
20 throw the wallet away. I just want to see if I can take
21 it.

22 A And you're saying that's criminal or mental?

23 Q I'm saying that's mental. I'm saying that
24 kleptomania?

25 A Possibly. I'd want to know more about the

1 motivation, but, regardless, that person is still going to
2 be arrested.

3 Q So there's an overlap?

4 A If I'm following correctly, yes.

5 Q I'm just trying to help the jury make the distinction
6 here because he was charged with criminal sexual conduct.
7 He went to jail and he served out his sentence. And so
8 that was the case where you had the criminal penalty
9 imposed on somebody who had criminal conduct?

10 A Yes.

11 Q But here, we're trying to -- you're trying to assert
12 that his motivation is really driven by a mental health
13 issue?

14 A Yes, a mental abnormality in that he has paraphilic
15 arousal to coercion.

16 MR. FALK: Your Honor, I have no more questions at
17 this time.

18 THE COURT: Yes, sir.

19 Mr. Bogle.

20 MR. BOGLE: Yes, Your Honor.

21 REDIRECT EXAMINATION:

22 BY MR. BOGLE:

23 Q When counsel showed you the sentencing sheet in this
24 case and asked you about the block that was checked
25 nonviolent crime?

1 A Yes.

2 Q Looking at that sentence sheet, there's no place for
3 a block to be checked for sexually violent crime, is
4 there?

5 A No.

6 Q And as far as this hearing goes and the sexually
7 violent predator law, which you're testifying about, his
8 criminal sexual conduct in a third degree classified as a
9 sexually violent offense?

10 A Yes.

11 Q And the counsel asked you -- I think he was asking
12 you some questions like what if you hadn't known about the
13 North Carolina stuff. Your job here is to do a
14 comprehensive evaluation about everything you can find out
15 about Mr. Younger, isn't that the case?

16 A Yes. It's a comprehensive review of all the
17 information I receive.

18 Q To begin with, you had information about his South
19 Carolina conviction and some North Carolina convictions?

20 A Correct.

21 Q And then you got more information about a North
22 Carolina investigation, the two sets of indictments we
23 mentioned from the two different counties, you got all
24 that later on?

25 A I think I got it later on. I received all that by

1 the time I actually interviewed him, but it may have come
2 at different phases of when I actually got the
3 information.

4 Q So your job is not to just leave out part of it and
5 say well, what if I hadn't known that, what would I have
6 decided?

7 A Right, that's difficult to know.

8 Q Now, as far as the DSM goes and the other specified
9 paraphilic disorder, it says, does it not, in there
10 including but not limited to and then it lists those seven
11 or eight different things?

12 A Yes, that's what I'm saying. They list a couple of
13 examples, but there are hundreds, hundreds of things that
14 people could become aroused by.

15 Q Well, for example, this book that you loaned us about
16 paraphilias --

17 A Yes.

18 Q -- by Dr. Federa, it includes examples of two or 300,
19 does it not?

20 A Yes. It has tables and charts of every paraphilic
21 disorder that's ever been considered or studied or
22 mentioned and then it has references of where you could
23 find more articles about each of those.

24 Q And the same thing when it comes to other
25 specified social-- antisocial disorder, antisocial

1 personality, in that case, you have to specify what it is?

2 A Right, so --

3 Q You're not limited to one thing?

4 A There is a diagnosis called unspecified personality
5 disorder, but my diagnosis for Mr. Younger was other
6 specified personality disorder with antisocial features.

7 Q And that allows you -- if he hasn't gotten everything
8 to make an antisocial personality disorder diagnosis, that
9 you couldn't get conduct before he was 15, he's got so
10 many of those traits that you can diagnose him with other
11 specified personality disorder common, if you will,
12 antisocial traits?

13 A Yes, I don't think that you can ignore all the
14 symptoms because he is missing one of the prerequisites.
15 Now, it would be improper if I had diagnosed him with
16 antisocial personality disorder because I don't have the
17 evidence of the conduct disorder, but, like, if you wanted
18 treatment for depression and you didn't have every single
19 symptom, you shouldn't get turned away. In my mind, it's
20 kind of a similar thing.

21 Q And, again, we know what he was charged with -- we
22 know what he was charged with and convicted of?

23 A Yes.

24 Q But in all the documents you're looking at, you're
25 looking for a pattern; is that right?

1 A Yes. I mean, I'm being asked if he has a diagnosis
2 that's related to this behavior, so I'm considering all of
3 that information because unless he comes in and tells me
4 this is what I'm aroused by, how else am I going to know?
5 That's how I'm kind of looking at the information.

6 Q And even though some of these cases may not have gone
7 to a trial or conviction or something like that, it's a
8 pattern you're looking for, right?

9 A Correct.

10 Q And that's the way this work is done; is that
11 correct?

12 A That's correct. So paraphilic coercive disorder, you
13 wouldn't consider for somebody who has one rape victim.
14 Typically, it's reserved for somebody who has multiple
15 examples of this.

16 Q Okay. Charges, as well as reports that didn't result
17 in charges, as well as convictions?

18 A Right. All illegal sexual behavior should be
19 considered whether it was charged or otherwise.

20 MR. BOGLE: Thank you, Doctor. Nothing further.

21 THE COURT: Mr. Falk?

22 MR. FALK: Just briefly.

23 RE CROSS-EXAMINATION:

24 BY MR. FALK:

25 Q It only fits the pattern if it happened, is that not

1 correct?

2 A Correct.

3 Q So if the allegations are not true, it doesn't fit
4 the pattern?

5 A Right. If --

6 Q You're really looking at a pattern of allegations,
7 not necessarily a pattern of conduct? Because you don't
8 know if the conduct happened.

9 A I'm looking at a pattern of behavior. So, to me,
10 it's striking that across this 25, 26-year period people
11 are saying markedly similar things happened to them. So
12 I'm looking at a pattern of totality of all of that
13 information and kind of what does that suggest.

14 Q But it's not behavior if it didn't happen. So you're
15 looking at -- you're assuming that the behavior happened?

16 A Right, but not necessarily in a legal sense as we
17 talked about during cross. It's not up to me whether or
18 not he would be convicted of that, I am just using all of
19 this information as data points. And, also, as I
20 mentioned, convictions are -- those are facts, right, if
21 someone is convicted or found guilty of something like
22 what they said happened, it was proven in court that that
23 happened. So you're going to weigh the data separately.
24 But when you have an overwhelming amount of people who say
25 this happened to them 25 years apart, you can't ignore

1 those data either.

2 MR. FALK: No further questions.

3 THE COURT: Mr. Bogle?

4 MR. BOGLE: Nothing further, Your Honor.

5 THE COURT: You may step down, Doctor.

6 Do you wish for her to be excused, sir? Mr. Bogle?

7 MR. BOGLE: Give me a minute, Judge.

8 (Pause.)

9 MR. BOGLE: Your Honor, at this time, the State would
10 rest.

11 THE COURT: All right. I'm going to ask the jury to
12 return to your room for a few minutes. I'll remind you
13 again not to discuss this case among yourselves or with
14 any other persons. And we'll be back to you shortly.

15 (Whereupon, the jury left the courtroom at 3:15 p.m.)

16 THE COURT: Mr. Falk.

17 MR. FALK: Your Honor, at this time, I'd make a
18 motion for a directed verdict. I think that most of the
19 State's case is based on the 19 or so cases that -- we
20 heard the testimony regarding the initials and that all of
21 that evidence -- so the State's expert is relying, I
22 believe, a significant portion of her decision on highly
23 speculative evidence about whether or not this stuff
24 happened.

25 She is saying allegations and she's assuming from

1 that -- because of the allegations, you know, we should
2 assume that it happened, but I think that the State has
3 failed to prove -- this is a case based on only one sexual
4 offense, one qualified sexual offense. And we would ask
5 the Court to direct a verdict in the defendant's favor.

6 THE COURT: Mr. Bogle.

7 MR. BOGLE: Thank you, Your Honor. May it please the
8 Court. Looking at the standard of the directed verdict at
9 this time and the case in the light most favorable to the
10 nonmoving party, I would submit the State has, indeed,
11 submitted proof of the sexually violent condition.

12 We submitted proof of a diagnoses of a mental
13 abnormality and two personality disorders. An expert
14 witness has testified that based on all the data she
15 reviewed, giving appropriate weight to the convicted and
16 non-convicted conduct that there was a likelihood that he
17 cannot control his behavior and is likely to reoffend if
18 not confined to long-term control, care and treatment. We
19 would suggest there's sufficient evidence right now for
20 the case to continue and ask the directed verdict motion
21 be denied.

22 THE COURT: Yes, sir.

23 With all respect to you, Mr. Falk, I'm going to deny
24 the motion. I find it's -- in the proverbial light
25 standard to the nonmoving party that's what I should do

1 and I also agree.

2 Now, do we go further here today, gentlemen, or do we
3 stop?

4 MR. FALK: Your Honor, I talked to Mr. Bogle. This
5 is a witness that might take three questions.

6 THE COURT: Okay.

7 MR. FALK: So we could get one quick witness off the
8 stand.

9 THE COURT: Does that suit you, Mr. Bogle?

10 MR. BOGLE: Well, I got a -- here's my concern,
11 Judge. I understand this is a deputy from --

12 Where are you?

13 -- the detention center. Mr. Falk asked him whether
14 or not there is a hold or detainer on Mr. Younger based on
15 the pending North Carolina indictments. I'm not sure what
16 relevance that has to the jury's job to decide whether or
17 not he's a sexually violent predator based on the elements
18 we have to prove.

19 THE COURT: Mr. Falk?

20 MR. FALK: I think I should be able to put up my
21 defense. I mean, I think I should be able to put up my
22 defense. I mean, I think I should be entitled to put on a
23 defense in this case just like I should be able to put on
24 a defense in a criminal case.

25 My point is that if there is no detainer, I think

1 that says a lot about whether North Carolina thinks these
2 are serious charges. Because if they were serious about
3 it, they could make sure -- if this court were to let him
4 out, he would go.

5 The fact that they haven't issued a detainer I think
6 is relevant to whether or not people in North Carolina
7 think that the charges are serious. And then there's some
8 additional testimony I'll get from Dr. Gail which I think
9 will further support my contention here. And I just think
10 it's relevant and I don't think --

11 MR. BOGLE: Dr. Gail, I can understand, but we're
12 talking -- today is Tuesday. The NCIC and the information
13 put into the NCIC can change daily. And whether or not
14 there's a hold today if you ran an NCIC versus a hold on
15 him Friday, my understanding, generally speaking, is if
16 the jury -- the policy at the jail is if the jury finds
17 he's not a predator, he still has to go back there to
18 check out, if you will.

19 And when he goes back there, they look at the NCIC
20 and finds existence of the North Carolina documents,
21 they're going to call North Carolina and say what do you
22 want to do, regardless of what it says on the NCIC. And
23 North Carolina can then say hold him, we're coming to get
24 him or don't hold him.

25 But I think we're kind of speculating right now what

1 will happen at the end of the trial if the jury finds he's
2 not a predator. It's not surely speculation if it will
3 help the jury in making their decision about the elements
4 I have to prove, it's also the question of -- I fall back
5 on relevancy.

6 MR. FALK: I think Mr. Bogle is speculating as to
7 what would happen there. You could have granted my
8 directed verdict motion and he would be free to walk out
9 the door today.

10 MR. BOGLE: Well, he would go back to the jail to
11 check out and they'd make the call.

12 MR. FALK: He would be free.

13 THE COURT: Why don't we do this --

14 MR. FALK: He would be released from these charges
15 today. He could walk out. He could choose to go back to
16 the jail.

17 MR. BOGLE: No, he has to go back to the jail.

18 MR. FALK: Under the statute, where does it say that?

19 MR. BOGLE: This is detention proceeding, that's not
20 how it works.

21 MR. FALK: That's not the statute.

22 MR. BOGLE: You can talk to Ms. Ward about that.

23 THE COURT: I'm going to let you ask him that
24 question, but if that status changes before this trial is
25 over with, I think it's fair for the jury to find out

1 there is a detainer.

2 MR. FALK: No problem.

3 THE COURT: Okay. All right. If you'll go get the
4 jury, please.

5 THE BAILIFF: Yes, sir.

6 MR. FALK: Your Honor, why don't we do this then,
7 this is only going to be a three-question witness.

8 THE COURT: Yes, sir.

9 MR. FALK: I had originally subpoenaed her for
10 Thursday because I really wanted to do this at the end of
11 my case. If there's any kind of notice, if they want to
12 go call North Carolina right now. But I don't want to put
13 her on right now. I want to put her up on Thursday.

14 THE COURT: That's fine.

15 MR. BOGLE: So the deputy now, then go home, come
16 back Thursday.

17 MR. FALK: No, I'm not putting her up.

18 MR. BOGLE: Oh, you're not?

19 MR. FALK: I'm going to put her on Thursday when she
20 was originally subpoenaed. If we're going to do what the
21 judge suggested.

22 THE COURT: So we're done for today, right?

23 MR. FALK: Yes.

24 THE COURT: Okay. I'm going to ask the jury to be
25 here at -- not driving in the parking lot, not walking in

1 but be sitting in that box 9:00 o'clock Thursday morning.
2 And we may go longer Thursday just to try to finish this
3 case.

4 MR. BOGLE: I understand.

5 THE COURT: If not, there's a chance it might spill
6 over into Monday.

7 MR. FALK: I can tell you that Dr. Gail's testimony I
8 believe will be shorter than Dr. Gottfried's. The direct
9 will be shorter and the cross, I don't know, maybe long.
10 Mr. Younger probably will testify and he may be on the
11 stand 45 minutes. Anybody else who I call will be pretty
12 quick.

13 THE COURT: I don't mind if we're here for a month.

14 MR. FALK: No, I was just trying to give you a gauge.

15 (Whereupon, there was an off-the-record discussion).

16 (Whereupon, the jury entered the courtroom at 3:25
17 p.m.)

18 THE BAILIFF: Jurors all seat.

19 THE COURT: Members of the jury, we will resume this
20 trial 0900 Thursday morning. We have a lot to do. We
21 need to move as expeditiously as we can on Thursday. I'm
22 asking you to be in the jury room -- I'm asking you to be
23 sitting in that jury box at nine o'clock. That may mean
24 you have to arrive here before 9:00 o'clock.

25 I'm asking the lawyers to do the same thing. Be at

1 your table at nine o'clock.

2 I'm also appointing Ms. Yoder -- who is Ms. Yoder?
3 All right, ma'am, as the foreperson of this jury. And
4 I'll discuss with you your responsibilities on Thursday
5 morning, which might take three minutes.

6 Now, I will ask you one more time and you'll hear
7 this a lot more, do not discuss this case among yourselves
8 or with any other persons directly or indirectly, family
9 members, friends, anybody. If anybody does that you're
10 copying juror misconduct.

11 I don't want to go there. We don't need to do that,
12 so just follow that admonition as you've done thus far. I
13 truly appreciate your patience with the court and with me.
14 I'll see you nine o'clock Thursday morning. Thank you.

15 (Whereupon, the jury left the courtroom at 3:27 p.m.)

16 THE COURT: Anything else before we leave?

17 MR. BOGLE: No, Your Honor.

18 THE COURT: I appreciate your patience. You've been
19 very good with me about starting back since we've done
20 this before. I'll see you Thursday morning. If either of
21 you need me, you have my cell phone number. Don't
22 hesitate to call me.

23 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 19th & 20th days of April, 2021.

July 20, 2021

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF SUMTER)

IN THE MATTER OF THE)
CARE AND TREATMENT OF)
JAMES GREGORY YOUNGER)

TRANSCRIPT OF RECORD
2018-CP-43-01388

April 22, 2021
Sumter, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE;
AND JURY

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

JAMES G. BOGLE, JR., ESQ.
Attorney for the State

JAMES K. FALK, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

DEFENSE:

No.	Description	I.D./EVD.
1	Photo of pottery	144/144
2	Photo of quilts	145/145

1 THE COURT: All right, sir, if you'd
2 bring the jury.

3 (WHEREUPON, the jury was returned to
4 the courtroom at approximately 9:07 a.m., and the
5 following proceedings commenced in open court.)

6 THE COURT: Ms. Yoder, fellow jurors,
7 you have already shown me that you are serious
8 about doing what I asked you to do; you were here
9 at 9:00. We were delayed a few minutes for a
10 procedural matter, and I appreciate your being so.
11 I will tell you that we will order lunch for you
12 today so we can have it here to keep moving as
13 fast as we can on this trial.

14 Ms. Yoder, I told you yesterday that I
15 was appointing you the jury foreperson. Basically
16 your duties are as follows: Number one, act as a
17 liaison, a communicator between the jury and the
18 court. If you have a question or concern, knock
19 on the door, write it down. They'll give you
20 paper. And then it will come time, and we'll take
21 it from there how we address it. I don't suspect
22 any -- I never had any yet in my years doing this,
23 any juror misconduct, you need to report to me.
24 And then, as deliberations begin to, -- if you
25 have any questions, forward those to the bailiff.

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1 Other than that, I am ready,
2 gentlemen. Are we? Mr. Falk?

3 MR. FALK: We're ready, Your Honor.

4 THE COURT: All right, sir. Proceed,
5 sir.

6 MR. FALK: Your Honor, we would like
7 to call Dr. Marie Gehle to the stand.

8 THE COURT: Yes, sir.

9 THE CLERK: Raise your right hand.
10 State your name.

11 THE WITNESS: Marie Gehle.

12 WHEREUPON,

13 **MARIE GEHLE,**

14 having been duly sworn by the clerk, testified
15 as follows:

16 THE CLERK: Thank you much. Step
17 around, watch your step coming up the ramp. State
18 your name for the record and spell your last name
19 please.

20 THE WITNESS: It's Marie Gehle,
21 G-E-H-L-E.

22 **DIRECT EXAMINATION**

23 BY MR. FALK:

24 Q Dr. Gehle, can you tell me, where are
25 you currently employed?

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1 A At the South Carolina Department of
2 Mental Health.

3 Q And what are your academic
4 qualifications that allow you to be employed
5 there, qualify you to be employed there?

6 A I have a Doctorate in clinical
7 psychology and masters in clinical psychology,
8 bachelor's degree in psychology. And I'm a
9 licensed clinical psychologist.

10 Q And how long have you been with the
11 Department of Mental Health?

12 A For about eleven-and-a-half years.

13 Q Has any of your training -- as opposed
14 to clinical work, has any of your training been
15 focused on forensic work?

16 A Yes. I did a predoctoral internship
17 so a year long, like, work internship in forensic
18 psychology in Washington State. One rotation was
19 at their sexually violent predator program, and
20 then the other two rotations were doing forensic
21 evaluations like competency to stand trial and
22 violence risk assessments for the courts.

23 Q Okay. And so, again, clinical
24 psychologists usually have a -- they deal with
25 patients and treatment; is that correct?

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1 A Yes.

2 Q And forensic psychology is forensic,
3 sort of more the interaction with psychology as it
4 relates to the law?

5 A Yes.

6 Q So that when you're -- so you would
7 also be doing competency to stand trial in
8 criminal cases, right? Those things?

9 A I'm trained to do those, and I did
10 those in my predoctoral internship and my
11 post-doctorate fellowship; but since 2009, I have
12 solely done sexually violent predator evaluations.

13 Q And this is what we call a
14 precommitment case, right?

15 A That's correct.

16 Q And how many precommitment evaluations
17 have you done?

18 A I've done a little more than two
19 hundred. I think it's about 208 of those
20 evaluations.

21 Q Has the State ever offered you as an
22 expert to testify in a sexually violent predator
23 precommitment case?

24 A Yes.

25 Q Do you have an idea how many times?

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1 A I believe it's -- it's been probably
2 about 60, 70 times in precommitment cases; but
3 I've also done other types of sexually predator
4 evaluations for in South Carolina and I've
5 testified more than 100 times in all of those
6 types of sexually violent predator proceedings.

7 Q How many times has the State asked you
8 to be their witness?

9 A I don't normally keep the numbers that
10 way. I would say the majority of the time it's
11 for the State.

12 Q Okay. And how many precommitment
13 evaluations did you say, or have I asked you, have
14 you done?

15 A I think it's about 208.

16 Q Okay.

17 MR. FALK: Your Honor, at this time we
18 would offer Dr. Gehle to testify as an expert in
19 the field of forensic psychology and sexually
20 violent predator evaluations.

21 THE COURT: Mr. Bogle, any further
22 voir dire?

23 MR. BOGLE: Just briefly, Your Honor.

24 THE COURT: Yes, sir.

25 V O I R D I R E E X A M I N A T I O N

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1 BY MR. BOGLE:

2 Q Dr. Gehle, looking at your CV, it says
3 your title is chief psychologist at the DMH; is
4 that correct?

5 A Yes.

6 Q And you said you've been there for
7 about 11 years, correct?

8 A Yes.

9 Q Now you're assigned a specific group
10 there?

11 A Excuse me?

12 Q Are you assigned a specific group in
13 DMH?

14 A Yes. I am currently assigned to the
15 forensic evaluation service.

16 Q Okay. Now are you -- as the Chief,
17 are you the director or the boss of the forensic
18 evaluation center?

19 A No.

20 Q How many chief psychologists are there
21 at the forensic evaluation center?

22 A I don't know how many have that title.

23 Q Okay.

24 A But it's a state title.

25 Q Okay.

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1 A Yes.

2 Q Are you familiar with the Association
3 for the Treatment of Sexual Abusers?

4 A Yes.

5 Q Could you tell us what it is?

6 A It's an organization that deals with
7 the treatment of sex offenders.

8 Q Are you a member of that association?

9 A No, I'm not.

10 MR. BOGLE: Your Honor, we have
11 nothing further, and we do not object to her
12 qualification.

13 THE COURT: All right. Based on her
14 experience and trial work and education, I'll
15 accept her. The Court will accept her as an
16 expert offered by Mr. Falk.

17 BY MR. FALK:

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

20 A I was appointed by the court to do an
21 evaluation to determine if Mr. Younger met the
22 criteria of a sexually violent predator.

23 Q So you weren't retained by Mr. Younger
24 in this case; is that correct?

25 A No.

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1 Q You were the court appointed expert,
2 the independent expert in this case; is that
3 correct?

4 A That's correct.

5 Q And that's under the statute. The
6 statute provides that if probable cause is found,
7 they would appoint an independent expert to do the
8 evaluation; is that correct?

9 A Correct.

10 Q Okay. And you completed two reports
11 in this case; is that correct?

12 A Yes.

13 Q A report and an addendum?

14 A Yes.

15 Q Can you just give me the dates of
16 those reports?

17 A The first report was completed March
18 11th, 2019; and then after I received additional
19 information, completed a second report dated June
20 4th, 2020.

21 Q Okay. So let's go back a little bit.
22 What do you do in order to do one of these
23 evaluations? Can you run through kind of what
24 your process is?

25 A Yes. So the first thing is I receive

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1 case materials, so that will include the petition
2 that's filed by the State concerning their
3 evidence that they believe determines that Mr.
4 Younger is a sexually violent predator. I receive
5 an order for an evaluation. The petition will
6 also be accompanied with other records that they
7 send. Those things will be like: Warrants,
8 indictments, incident reports, records from the
9 Department of Corrections, investigative records,
10 things like that. I'll review all those things.
11 I'll schedule an interview and then I'll interview
12 the person. I'll gather additional records that
13 come up during the interview or things that I can
14 find ---

15 Q Let me just interrupt you there. So
16 if you think there's additional information
17 required, is it frequent or is it common for you
18 to ask for additional information if you see
19 something?

20 A I believe that I asked for additional
21 information in every single case.

22 Q Okay.

23 A There's often incident reports that
24 are missing from the file. Maybe there is one
25 page of an indictment but not page 2, so I'll try

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1 to get a very complete record.

2 Q So how long -- so we can maybe
3 describe this as the document review process?

4 A Yes.

5 Q How many hours does it typically take?

6 A That varies from case to case.

7 Q Well, why don't we talk about this
8 case.

9 A This case had extensive records and so
10 it took probably several weeks to go through all
11 the records and write the report.

12 Q So do you -- so do you spend these
13 several weeks in a document review, you do this
14 before the interview?

15 A So some is done before and, you know,
16 a lot of it is done after as I'm writing the
17 report.

18 Q What's the purpose of the stuff that
19 you're doing before the interview?

20 A Preparing for the interview.

21 Q Okay. What are you looking for before
22 the interview to -- what are you looking for from
23 the documents in order to prepare for the
24 interview?

25 A I want to see what type of offender I am

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1 potentially interviewing. So am I going to
2 interview somebody who has charges against
3 children, against adults, are they rapes, violent
4 offenses, are they with strangers, with people
5 that they know. You know, are they with, like,
6 spouses, relatives. That -- that will inform, you
7 know, what the approach will be. And typically
8 the interview consists of many of the same
9 questions, but you'll want to be aware of all that
10 stuff so you can ask specific questions during the
11 interview.

12 Q Okay. Let's talk about this case a
13 moment. Let's talk about the information that you
14 had prior to your report that you published March
15 11th, 2019. Can you kind of go through that?

16 A Yes. So I had extensive records for
17 that evaluation. There were things from the case
18 in South Carolina, his sexually violent offense.
19 That occurred in 2012. There were -- there were
20 records on prior charges in prior convictions that
21 were brought in, forward in North Carolina. There
22 were some investigative records from allegations
23 that occurred in North Carolina. There were, I
24 guess, a lot of records about that sort of stuff.
25 There were some medical records regarding the

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1 victims in North Carolina that were alleged.

2 There was ---

3 Q You were here -- you were in court
4 yesterday, or last week. When was that? I guess
5 Tuesday, right?

6 A Yes.

7 Q And there was some testimony about
8 some accusers and we use their initials?

9 A Yes.

10 Q So you had information prior to your
11 report in March of 2019 about the allegations in
12 North Carolina; is that correct?

13 A That's correct.

14 Q Okay. And at that time do you know if
15 he had been indicted? Had you received -- I mean,
16 if there were indictments issued, that would be
17 the type of information that you'd expect to
18 receive; is that correct? That'd be typical for
19 you to be relying on, right?

20 A Yes. If there -- if he was indicted
21 for things, I would see that on his national
22 criminal history report. And there were
23 allegations in North Carolina, but there were no
24 indictments when I issued my original report in
25 March of 2019.

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1 Q Okay. Then do you know what happened,
2 what happened next? Did you get additional
3 information?

4 A Yes. So I believe that it was ---

5 Q Let me go back, and I'm going to go
6 back in depth as far as what your opinion was.
7 But you issued an opinion in March of 2019. And
8 just generally, at that time were you recommending
9 that he be committed to the sexually violent
10 predator treatment program?

11 A No.

12 Q Okay. We're going to go back in depth
13 into that opinion but. At that time in March of
14 2019, you did not think he needed -- he qualified
15 for commitment in the program?

16 A That's correct.

17 Q Do you have a feel for how many people
18 in that program you actually -- do you feel how
19 many people are actually in the sexually violent
20 predator treatment program?

21 A Yeah, it's -- it's around like maybe
22 225, 200. It's between 200 and 225 roughly.

23 Q Do you think that you did the
24 precommitment evaluation on over half of them?

25 A No. I have issued an opinion

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1 recommending commitment for around, I think it's
2 78 people. Almost all of those went into the
3 program, but not everybody, so it's not half, no.

4 Q Okay. But you've got a good feel for
5 the people who are in that program; is that
6 correct?

7 A I would say so.

8 Q You have a good feel for the criminal
9 histories and the medical diagnoses for the people
10 who are typically in that program; is that
11 correct?

12 MR. BOGLE: Objection, Your Honor. I
13 don't know how this is relevant, how the other
14 offenders who are in the program is relevant to
15 Mr. Younger's case.

16 THE COURT: Mr. Falk.

17 MR. FALK: Your Honor, I -- she has
18 some expertise, and this is obviously a judgment
19 call and I think her familiarity with who else is
20 in the program and how he compares is absolutely
21 relevant.

22 THE COURT: With respect, overruled,
23 sir.

24 BY MR. FALK:

25 Q I'm not sure I remember the question,

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1 but you can answer it.

2 A So I definitely know the criminal
3 histories and the diagnoses of the people that I
4 have recommended for commitment. There have also
5 been people where I had recommend they not be
6 committed or that they didn't meet criteria who
7 are committed so, you know, I probably did the
8 evaluations on roughly, precommitment evaluations
9 on, you know, maybe 80 people in the program. But
10 I also have done annual review evaluations on
11 people who are currently in the program in the
12 earlier years of my career.

13 Q Okay.

14 A I also meet regularly with the
15 psychologists who do the annual reviews, and we
16 discuss those cases. We have a post-doctoral
17 fellowship at our -- at the Department of Mental
18 Health, and so we're training people to do this
19 kind of work and so we have case conferences
20 talking about the cases of people in the program.

21 Q Okay. Everybody who commits -- Mr.
22 Younger was convicted of criminal sexual conduct
23 in the third degree. Is everybody who commits
24 that offense, in your judgment, qualified to be --
25 on that criteria alone, should that person be in

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1 the sexually violent predator treatment program
2 just for committing an offense?

3 A No.

4 Q I have heard an expression that the
5 program is really reserved for the worst of the
6 worst.

7 A That's what the law says, that it's
8 extremely dangerous ---

9 Q Okay.

10 A --- subset of sex offenders.

11 Q So the law is not intended, is your
12 understanding of it, to put everybody who has
13 committed a sexual, sexually violent offense, be
14 put into the sexually violent predator treatment
15 program; is that correct?

16 A That's correct.

17 Q Okay. All right, so in -- let me go
18 back. We're back to March of 2019 and you issued
19 an opinion that you did not think he needed to be
20 in the program. Then what happened? What led to
21 the second opinion?

22 A So then I received additional
23 information from the Attorney General's Office
24 they provided to me, and they asked that I review
25 it and do what I saw needed to be done with that

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1 information.

2 Q How often does the Attorney General's
3 Office provide you additional information after
4 you've issued your original opinion?

5 A It happens on occasion, not that often
6 in overall.

7 Q All right. And so you got more
8 information. Can you kind of in general terms
9 describe what it was?

10 A So the information came in two
11 different times, but what it ended up to be was
12 basically primarily a thumb drive full of 16.5
13 gigabytes of information data. A lot of it was
14 stuff that it had for the original evaluation so I
15 had already looked at a lot of it. There were
16 additional things.

17 Q This all related to North Carolina; is
18 that correct?

19 A It was from North Carolina.

20 Q Yeah. Okay.

21 A Yes. Yes. It was -- it was what
22 appeared to be their investigative file, and then
23 we also received the new indictments that came in.
24 So he was indicted in the summer of 2019 so I got
25 that information in maybe the fall/wintertime 2019

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1 to 2020.

2 Q Okay. I don't have a feel for
3 16-and-a-half gigabytes. How many pages of
4 information you think it was?

5 A We didn't print it.

6 Q A couple of thousand?

7 A I'm sure it would be a lot more than
8 that.

9 Q Okay.

10 A So I detailed a lot of it because
11 there were -- there were multiple files and the
12 files had sub-folders and sub-folders and then
13 some of it was, you know, thousands of pictures so
14 I ended up listing all that so I could locate it
15 again because it was -- it was not the easiest
16 stuff to navigate and find, well, I want to see
17 this picture. I mean, you'd be clicking through
18 like five different things to find a certain
19 picture. So I detailed it pretty extensively and
20 ended up counting all the pictures and certain
21 folders; and just listing that stuff out was, I
22 think, maybe like ---

23 Q Sixteen pages?

24 A It was a lot; I'd have to count. I
25 mean, it was -- it goes to ---

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1 Q I mean, 16 pages of the descriptive
2 index?

3 A Yes.

4 Q Yeah, okay. How much time did it take
5 for you to review all of that?

6 A It's hard to say exactly how much time
7 because, you know, sometimes I'm working on other
8 things; but it probably took, I don't know, weeks,
9 months.

10 Q Okay.

11 A Probably more than a month I'd say
12 just working mostly on that.

13 Q And we're going to maybe get more in
14 depth on this later, but just in general terms,
15 the North Carolina charge, those pending charges
16 and allegations, the conduct occurred when? Prior
17 to 2014?

18 A Oh, yes. So, that the conduct
19 occurred in 2005 and 2007, and it was stuff that
20 was already in the records that I received when I
21 issued my 2019 opinion.

22 Q When you got all this additional
23 information after you issued, published your first
24 report, did it even show any new evidence that had
25 been generated since 2014? I mean, do you recall

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1 seeing any, you know, DNA results, forensic tests,
2 fingerprint, that kind of information? Was any of
3 it current?

4 A I think that there were interviews
5 that were conducted of prior allegations that I --
6 I didn't see necessarily any, like, new evidence
7 that of the type that you're describing.

8 Q Okay. So we're still, it's all -- all
9 of this conduct occurred in the 2005 to 2009 range
10 in North Carolina; is that fair?

11 A Leading to the indictments it was 2005
12 and 2007.

13 Q Okay. Thank you. So then you issued
14 a second report in May of 2020; is that correct?

15 A June of 2020.

16 Q Okay. And the June report, that
17 was -- the purpose of the June report was to amend
18 your initial report to reflect this additional
19 information you received from North Carolina; is
20 that correct?

21 A Yes.

22 Q And, again, we're going to get in more
23 detail a little bit later than this; but still,
24 after the report in June, you still recommended
25 that he not be committed to the sexually violent

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1 predator treatment program; is that correct?

2 A My opinion was that he didn't meet the
3 criteria of a sexually violent predator.

4 Q Okay. And that was in court -- and
5 that was after you considered all of this
6 information from North Carolina?

7 A That's correct.

8 Q Okay. Part of what you get in --
9 from the State, part of the petition, they give
10 you information about institutional infractions;
11 do they not?

12 A Yes.

13 Q Whether he had -- so he was at the
14 South Carolina Department of Corrections for a
15 period of time, and he did not have -- did he have
16 any institutional infractions?

17 A No.

18 Q You have seen lots of petitions in
19 these sexually violent predator treatment cases;
20 is that correct?

21 A Yes.

22 Q How common is that?

23 A I would say that it's not very common.

24 Q So, I mean, that means he had no
25 assaultive conduct, you know. And have you seen

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1 people being written up for infractions that would
2 be something so way less than what would be
3 considered a crime out on the street?

4 A Yes.

5 Q Failure to fall in line or?

6 A Yeah, failure to obey instructions.
7 That is a infraction that you can get in the
8 prison system and in addition to a lot of other
9 things that would not be criminal behavior in the
10 community.

11 Q I don't want to use the term petty,
12 but there certainly are some minor infractions
13 that would still get you written up. Is that your
14 experience?

15 A Yeah, I mean, it ranges the gamut. It
16 can be minor to, you know, serious assaults.

17 Q How does -- so in reaching your
18 opinion in this case, how did the fact that he had
19 no institutional infractions sort of inform your
20 opinion?

21 A Well, it's something to consider in
22 terms of more recent behavior because when we do
23 these evaluations, we're often looking at very
24 historical records and historical conduct; and so
25 the most present information is from the interview

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1 and then you want to also look at, you know, what
2 do you have that's recent. But it can happen that
3 somebody can have lots of mental health problems
4 and mental abnormality or personality disorder and
5 then not have any disciplinary infractions in
6 SCDC, the Department of Corrections.

7 Q Are you concerned when somebody has a
8 lot of them when you're writing these reports?

9 A Yes.

10 Q Did you get -- and you're -- the first
11 report I'm looking at like page 14 out of your
12 first report.

13 A I only have the copy of my amended
14 report which is the integration of the first and
15 the second, so I'm not sure if I'm going to be
16 able to refer to exactly what you're talking
17 about.

18 MR. FALK: Can I approach the witness?

19 THE COURT: Yes, sir.

20 BY MR. FALK:

21 Q I'm going to hand you a copy of.

22 A Thank you.

23 Q On that page you write a couple of
24 paragraphs about letters that were provided to you
25 from Mr. Younger's family. Is that accurate?

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1 A Yes.

2 Q So one of those letters is, for
3 example, from a Tina Reynolds?

4 A Yes.

5 Q And there's maybe one, two, three,
6 four, about eight of those letters in there?

7 A Yes.

8 Q So what is the general tenor of those
9 letters?

10 A It was eight letters that were
11 provided, and the general tenor was -- was
12 positive, that he was a positive person,
13 inspiring, motivating, didn't mistreat people, was
14 generous.

15 Q Good worker? Wasn't there one from a
16 --

17 A Yes.

18 Q Okay.

19 A Yes.

20 Q Having received those letters, did
21 that lead you to any conclusions regarding his
22 acquaintances or friends in the community that he
23 lives in?

24 A Well, it shows that there were eight
25 people who were willing to write, you know,

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1 letters of support for him, so he's able to get
2 along with those people and they apparently had no
3 concerns about him in terms of what they wrote in
4 their letter.

5 Q Now I'm going to go back to the
6 initial, all the testimony of the people that we
7 heard yesterday. What weight did you put on that
8 evidence in reaching your opinion in this case?

9 A What weight did I put on what
10 evidence? Sorry.

11 Q Excuse me. So you had -- so now I'm
12 talking about all the information about pending
13 charges and allegations in North Carolina. Those
14 are all the -- those that -- when I say the
15 initials, I mean, because the jury can't remember
16 all the initials that we used for the accusers.

17 A So when I approach these evaluations,
18 the way that I do it is I look at all of the
19 information that I can get. Especially, I mean,
20 it's important because when I interview somebody
21 I'm going to ask them about all that stuff and I
22 want to see what they say because it's surprising;
23 but a lot of people actually admit to conduct
24 that's not been -- that they've not been convicted
25 of. I've been very surprised by that in the

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1 interviews that people are forthright about things
2 that they haven't been convicted of, things that
3 are off the record or, you know, that haven't been
4 verified by the courts. So that's why I look at
5 all those allegations because I want to question
6 in the interview the respondent. But when I boil
7 things down to determine if somebody has a mental
8 abnormality or personality disorder, I look at
9 facts that are verified. So convictions, things
10 that the person has pled guilty that the courts
11 have found him guilty, that they admit to in the
12 interview or admit to in well documented records.
13 And I, I push allegations away when I'm
14 determining what facts are present to make a
15 diagnosis.

16 Q But you confronted him with these
17 accusations; did you not?

18 A Yes.

19 Q And so his responses were he was not
20 admitting to any of that conduct; is that correct?
21 Is that what you had said earlier?

22 A That's correct.

23 Q Let me go back a little bit. Can you
24 sort of describe his demeanor? How well did y'all
25 get along during this interview? Was he real

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1 reserved? Was he open?

2 A He was very talkative. He was -- he
3 gave very long winded, detailed answers that had a
4 lot of extraneous details. I don't think that he
5 was particularly likable, he wasn't charming. He
6 wasn't -- you know, he was polite, but I don't
7 think that he was necessarily friendly overall.

8 Q Was he combative with you, though?

9 A I wouldn't say combative, no.

10 Q So, again, you said that you looked at
11 the -- you confronted him with all these
12 accusations?

13 A Well, I asked him about them, yes.

14 Q Now he was -- wasn't there a charge
15 in -- okay, let me -- so his -- when you were
16 looking at your opinion in this case, you were
17 looking at two real sexual related offenses; is
18 that correct? He had a 2008 assault on a female
19 charge and then a 2014 CSC charge, CSC third
20 charge; is that correct?

21 A Yes, those are his convictions for
22 sexually related offenses, two.

23 Q Dr. Godfrey had sort of talked a
24 little bit at length and was -- one of her
25 concerns was that he didn't seem to have any

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1 future plans. Did y'all have any discussions
2 about what his plans would be if he was released?

3 A Yes.

4 Q Do you recall what they were?

5 A He said that he would -- if he was
6 allowed, he would like to go back to North
7 Carolina where he's from, that he has a support
8 system in North Carolina. He had -- he could get
9 work as a fitness trainer which is what he's done
10 in the past. And if he needed to stay in South
11 Carolina he wanted to enter into the Jump Start
12 program which is a program that helps people
13 released from prison reintegrate, helps them with
14 place to live, helps them with job resources, with
15 treatment, with support.

16 Q And to your knowledge does Jump Start
17 accept people who have got sexual convictions?

18 A Yes.

19 Q That's kind of one of their things;
20 isn't it? I mean, don't they have a -- I mean, so
21 they've got a location where people who are --
22 would be on the sex offender registry can live.
23 Is that your understanding?

24 A Yeah, it's my understanding that, I
25 mean, I -- I've heard from, you know, quite a few

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1 sex offenders I've evaluated that they would be
2 going to Jump Start, that they had been approved
3 to go there. I have been in court in sexual
4 violent predator proceedings when some -- somebody
5 who runs the Jump Start program has testified
6 about the program. And so sex offenders are
7 somebody that they are willing to take into their
8 program.

9 Q Okay. Now Dr. Godfrey had a diagnosis
10 that he had another specified personality disorder
11 antisocial traits. Do you agree with that
12 diagnosis?

13 A No.

14 Q Why is that?

15 A Because that diagnosis, I think what
16 she also testified to was that she thought he had
17 antisocial personality disorder but that she could
18 not determine whether he had conduct disorder, and
19 I ruled out conduct disorder. If you rule that
20 out, then he does not have antisocial personality
21 disorder.

22 Q Whether or not they have a conduct
23 disorder, would it be fair to say that a
24 significant portion of the population at SCDC
25 could be diagnosed as having antisocial

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1 personality disorder?

2 A Yes.

3 Q That's -- so how do you make the
4 comparison when you're using that as your
5 diagnosis, and I know that you've used it in the
6 past. How do you make that comparison to separate
7 somebody who just has kind of a criminal
8 background versus somebody who is a sexually
9 violent predator?

10 A It can be difficult. That antisocial
11 personality disorder has to be tied, it has to be
12 something like predisposing to sexually violent
13 offenses. And if you don't see a well established
14 pattern of that type of behavior, then it's harder
15 to make that link between sexually violent
16 offending and antisocial personality disorder.

17 Q You had also diagnosed him with --
18 excuse me, Dr. Godfrey also diagnosed him as
19 having other specified paraphilic disorder,
20 paraphilic coercive disorder?

21 A Yes.

22 Q I think in the past you and I have
23 disagreed on that type of diagnosis. You've
24 diagnosed people in the past with biastophilia; is
25 that correct?

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1 A Yes.

2 Q And that's generally what she's
3 talking about here; is that correct?

4 A Yes.

5 Q So that is a type of diagnosis that
6 you endorse?

7 A Yes.

8 Q But when you're using that diagnosis,
9 so is everybody who commits a criminal sexual
10 conduct or a rape, everybody who commits one of
11 those offenses does not suffer from biastophilia
12 or coercive paraphilic disorder; is that correct?

13 A That's correct.

14 Q So how do you make this determination?
15 How do you make that distinction? How do you
16 separate from lack of a better term, a rapist from
17 the people who are -- have a mental disease?

18 A Okay. So first off you have to
19 establish is there a six month pattern of this
20 behavior. So that is somewhat easier to do
21 because you can look at dates. But you have to
22 look at what's motivating, what's arousing about
23 the offense, and so you have to go into the
24 details of the offense and see if you can
25 determine what the person was aroused by during

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1 the offense. So when you're looking at something
2 like paraphilic coercive disorder, you want to see
3 arousal to the nonconsensual coercive actions.
4 You want to see that they used coercive actions
5 that they are tuned into the nonconsent of the
6 victim and that that is what they're finding
7 arousing so that you're not just saying that
8 they're aroused by a victim who may have
9 acquiesced for their own safety and that they're
10 aroused because sex is arousing.

11 Q Right.

12 A So it -- it's difficult to tease it
13 apart, but that's the typical approach is you
14 really have to look at the offense dynamics: What
15 did the offender do, how did the victim respond,
16 how did the offender respond to that, and that
17 whole interplay between the victim and the
18 offender.

19 Q And I think she also said that he had
20 a narcissistic personality disorder. Would you
21 agree with that diagnosis?

22 A No.

23 Q And, again, even if he had a
24 narcissistic personality disorder, what's the
25 correlation between that and being a sexually

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1 violent predator?

2 A That is a bigger leap to make, that
3 that disorder predisposes somebody; and so it's
4 not a diagnosis that's typically associated with
5 sexually violent offending. It can be, but it's
6 uncommon.

7 Q So it's not just finding that somebody
8 has a personality disorder of some type,
9 whether -- or a mental disorder personality
10 disorder, it's not just finding that, but you have
11 to find the correlation between that and a
12 predisposition to commit an -- there's got to be a
13 link between what you diag-- the diagnosis and the
14 crimes; is that correct?

15 A Yes.

16 Q Because you can have somebody who gets
17 extremely aroused by stories of bondage or
18 something like that, but never acts on it?

19 A I think one of the -- one of the real
20 direct examples is exhibitionist disorder where
21 somebody is aroused by exposing their genitals to
22 non-consenting people. That can lead to charges
23 of indecent exposure typically, but indecent
24 exposure is not a sexually violent offense. So
25 that disorder could predispose somebody to commit

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1 sex offense but not sexually violent offenses, so
2 it wouldn't be a diagnosis that would -- would
3 qualify somebody as a sexually violent predator.

4 Q Okay. And then when you said
5 predisposed sex offense, the sex offense there
6 would be the indecent exposure?

7 A Right, which is not -- which is not
8 considered a sexually violent offense under the
9 sexually violent predator act.

10 Q Dr. Godfrey sent a portion of her
11 testimony talking about the Hare PCR test.

12 A Yes.

13 Q Have you used that test before?

14 A Yes.

15 Q Why did you not use it in this case?

16 A I didn't believe that it was
17 necessary.

18 THE COURT: What test was that? I
19 couldn't hear her.

20 MR. FALK: H-A-R-E.

21 THE COURT: Okay.

22 MR. FALK: Then there's three more
23 initials, P-C-R.

24 THE COURT: Okay, thank you.

25 BY MR. FALK:

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1 Q Hare is the guy's name, right?

2 A Yeah. Robert Hare is the developer of
3 that test.

4 Q Okay. Now when you're performing the
5 Hare test, are you asking questions?

6 A So what it is, is it's -- it's an
7 interview guide and you're interviewing the person
8 to gather information so that you can rate them on
9 20 different factors. So the interview guide is
10 sort of the test material, but it, it's a
11 guideline so that you can answer the ratings, so
12 you'll have information to rate the person. Then
13 you look through the file, the records, take the
14 information from your interview, and then you rate
15 the person on these 20 factors, 001 or a -2. And
16 then it -- add them up in specific ways. They
17 load up on to four different facets and two
18 different factors, and that's ---

19 Q But this is not ---

20 A --- how you make that determination.

21 Q There's, I think you used an MMPI
22 before. Is that the 506 question test?

23 A 567, yes.

24 Q Okay. And that's where you're
25 actually asking questions, you're taking the

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1 answers, and you're using the answers that he
2 gives to specific questions in order to reach a
3 conclusion?

4 Q So that test is actually 567 true or
5 false tests. You give the test to them. You read
6 them in some instructions. You make sure that
7 they understand it. And then you can leave the
8 room. You don't have to sit there with them.
9 They can do it on their own and then you -- when
10 they're finished, you take it from them. You
11 score it in various specific ways so certain
12 questions load on to different, I guess, like
13 levels and things like that and you look at what
14 the results are. It's a complicated test.

15 Q But the Hare, so the Hare has got 20
16 different factors that you're looking for. One of
17 them was glibness and superficiality, some of
18 those other factors, right?

19 A Yes.

20 Q So were you considering some of those
21 factors when you were doing the interview?

22 A Yes.

23 Q How long did the interview take? I'm
24 going to hand you your report. If you can look at
25 the first interview.

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1 A That's okay. I can't remember off the
2 top of my head.

3 MR. FALK: Your Honor ---

4 BY MR. FALK:

5 Q Dr. Gehle, if I told in your first
6 report you said the interview on November 15th,
7 2018, lasted six hours, does that sound right?

8 A Yes.

9 Q Okay. And so the factors as far as
10 whether they were not present at all, some were
11 present, very present, you'd already con-- had you
12 considered some of those when you were preparing
13 your report here?

14 A I do a very comprehensive clinical
15 interview where you could rate -- you could rate
16 somebody on the PCLR from that interview if you
17 wanted to. So I'm trying to look at a very
18 comprehensive, you know, view of the person, their
19 personality, their mental health problems, their
20 history, and so all that stuff is considered.

21 Q She rated him -- she did the -- she
22 scored it and she gave him a score that was one
23 point below the cutoff for sociopathy. Do you
24 have an idea would yours be similarly high if you
25 rated him?

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1 A I don't know what it would be if I
2 rated him specifically. I'm not sure.

3 Q There's also -- she spent a lot of
4 time talking about the SR20 test or ---

5 A The SVR-20.

6 Q The SVR-20. That's not a test either,
7 is it? That's not, what, true/false questions,
8 right?

9 A That's correct.

10 Q Is it somewhat similar to the Hare?

11 A It's really a way that you can
12 organize information, tell you like domains that
13 you want to be looking at for risk factors.

14 Q Have you -- are you familiar with the
15 test?

16 A I will say vaguely. It's not
17 something that's used very often.

18 Q I'd asked Dr. Godfrey something about
19 enterate or reliability of the Hare test. Have
20 you seen any professional publications or studies
21 regarding the enterate or reliability on
22 conducting the Hare test?

23 A Yes.

24 Q And what have you found, or what's
25 your understanding of those tests?

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1 A It's a difficult test to score. There
2 are, as Dr. Godfrey testified to, there have been
3 in the research they have found that the side that
4 you're hired by influences the scoring of the test
5 so it's called adversarial allegiance. That can
6 influence the test. So if you're hired by the
7 prosecution side of things, your score tends to be
8 higher than if you're hired by the defense side.
9 And the standard error rate for that test is 3
10 points. What they found is that a good portion of
11 people of evaluators, raters, will score twice,
12 will have discrepancies of twice the standard
13 error rate, so about six points.

14 Q But you were hired really by neither
15 side in this case; is that correct?

16 A That's correct.

17 Q Now you also did the Static-99R and
18 the Static-2002R.

19 A That's correct.

20 Q And that test is a little bit more
21 clearcut; isn't it not?

22 A In some ways, yes.

23 Q There's still a bit of subjectivity in
24 scoring; is that correct?

25 A They have very -- they have extensive

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1 rules about how to consider information, and the
2 standard error rate for that test, so the
3 differences that you'll see from examiners is one
4 point.

5 Q Okay, let me go back. So when we're
6 talking about the Hare and the SV20, is there a
7 bit of subjectivity used in scoring that test?

8 A Yes.

9 Q I mean, they're not clearcut as, you
10 know, is it over 60, is it under 60, right?

11 A Correct.

12 Q So the criteria, it calls for
13 professional judgment; is that fair to say?

14 A Yes.

15 Q Is -- what is your understanding of
16 being -- meeting the definition of a sexually
17 violent predator? Do they have to have -- you
18 have to have the diagnosis, right, and you have to
19 have the risk to reoffend; is that correct? You
20 have to have both.

21 A You have to be convicted of a
22 qualifying sexually violent offense. You have to
23 have a mental abnormality or a personality
24 disorder that makes you likely to engage in acts
25 of sexual violence.

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1 Q So it's really kind of -- I know the
2 statute says it's two, but I know you know the
3 Snow case and the opinion on that case they said
4 it's really three 'cause that second one you have
5 to have both the diagnosis and there's got to be a
6 risk.

7 A Yes.

8 Q So somebody who can be a risk to
9 reoffend that doesn't have a diagnosis is not a
10 sexually violent predator; is that correct?

11 A Correct.

12 Q And what would his risk to reoffend
13 be?

14 A So Mr. Younger's risk, sorry, let me
15 find that in my reports. So he scored a 4 on the
16 Static-99R, and that places him in the above
17 average risk category compared to other sex
18 offenders and 11 percent of individuals with that
19 score went on to reoffend within five years. He
20 scored a 5 on the Static-2002R which is, again,
21 above average risk, and he -- 13.8 percent of
22 people with a score of 5 will reoffend within five
23 years.

24 Q The State was talking a lot about that
25 this is an actuarial assessment and that that's a

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1 static is and it's sort of similar to how they
2 rate your chance of having an automobile accident.
3 It's sort of the same type of thing. They're not
4 saying that Mr. Younger would necessarily --
5 there's 11 percent chance he would do it, but he
6 fits into a class of a people that 11 percent
7 chance of doing it, right?

8 A That's right. We're comparing him to
9 groups so it's group data.

10 Q Okay. But how is 11 percent, how do
11 you equate 11 percent to the term likely to
12 reoffend?

13 A I think that that is a subjective
14 opinion because people put -- likely is not well
15 defined. It is defined as to such a degree as the
16 to pose a menace to the health and safety of
17 others. That's how the State of South Carolina
18 has defined likely. That definition does not say
19 more likely than not. it doesn't give us a number
20 to look at. In some states they say more likely
21 than not, so you can be at, you know, anything
22 above 50 percent likelihood would mean that they
23 would meet criteria. so here we have a subjective
24 definition and so it really is up to the evaluator
25 to set that for themselves.

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1 Q Going back to the North Carolina
2 allegations. One of those allegations wasn't new
3 information; some information you already had.
4 But he was charged with something in 2005; is that
5 correct?

6 A That's correct.

7 Q And let me take one more step back.
8 The crimes that he's -- these allegations in North
9 Carolina, the issue is not whether or not sex
10 occurred, but the issue is whether or not it was
11 consensual; is that correct?

12 A I would say you could view it that
13 way.

14 Q Okay.

15 A To some degree, yes.

16 Q And so he certainly hasn't had his
17 chance on, other than the 2005 case, he really
18 hasn't had his chance to tell his side of the
19 story?

20 A Well, in 2005 he was charged with an
21 offense against a woman who he was spending some
22 time with voluntarily. She woke up in the morning
23 after drinking a couple of glasses of wine, and
24 she felt really groggy, she didn't feel right.
25 She went to the hospital and, you know, sought

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1 medical treatment. They filed charges against
2 him. And before he went to trial on that case,
3 his attorney met with the solicitor, from what the
4 records had stated, and they showed the solicitor
5 some pictures that he had provided and then they
6 dismissed the charges. Those, those charges, are
7 with that victim, are part of a new indictment
8 now.

9 Q Okay.

10 A So he's charged with conduct from then
11 that was dismissed, he's charged again.

12 Q And, again, why do you focus on -- did
13 the North Carolina information, did that affect
14 the way you scored the Static? I mean, did you
15 have to re-score the Static, the risk assessment?
16 Did you have to re-score it based on that?

17 A Yes. So the Static, both of them,
18 they -- even though they have the same name,
19 they're actually developed by some of the same
20 research and research group. They look at things
21 very differently. So we're pretty sure that the
22 Static-2002R would be the same based on that
23 information 'cause we had -- we had all the
24 information except the, you know, the new
25 indictments when we scored it in 2019. The

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1 Static-2002R looks at convictions and doesn't
2 consider allegations, doesn't even consider
3 charges that don't result in convictions, so it
4 looks at convictions only so. We didn't have any
5 new convictions. We knew that that wasn't going
6 to change anything. With the two thous-- or
7 sorry, with the Static-99R, we considered, thought
8 maybe it might change that scoring; but looking
9 back, it was conduct that was already known prior
10 to the index offense which was the index offense
11 is the most recent sexual offense that was
12 committed so it would be like an offense date is
13 that what we're looking at and that was the South
14 Carolina charge. So things that were calculated
15 that, would be calculated in that score that
16 occurred prior to that date, had already been
17 calculated. The new indictments didn't change
18 anything because it was prior conduct.

19 Q Okay.

20 A And so it was -- it didn't change the
21 score of either instrument when the evaluation was
22 updated.

23 Q Again, why do you not consider
24 allegations when you're trying to find the pattern
25 of conduct?

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1 A Well, it has been my practice not to
2 consider allegations. To me convictions and
3 verified information is what is necessary. When
4 you have allegations, even when you have charges
5 that don't result in convictions, the person
6 hasn't had the opportunity to defend themselves.
7 It would be relying on police information that is
8 coming from a perspective of trying to prove that
9 somebody committed conduct and so they're written
10 in a way that makes it seem more true than maybe
11 it would be. I know that people get acquitted of
12 crimes. I know that charges get dropped. I know
13 that you can accuse somebody of something but you
14 might not be able to prove it. I believe in that
15 right of innocent until proven guilty. And so
16 when I am looking for a pattern of behavior, I
17 want to look at things that have been verified,
18 that have been proved. And I am not a trier of
19 fact. You guys are trier of facts. The judge is
20 a trier of fact meaning you determine what's true
21 and what's not true and that's not my place. So I
22 look at what the triers of the fact have
23 considered and verified. So what the person has
24 pled guilty to, what he has been found guilty of,
25 that's what I use to establish that pattern.

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1 Q Because -- when you were looking at
2 the police reports regarding the North Carolina
3 allegations, the initial allegations, the ones
4 with the people with the initial, was it mostly
5 the accuser's statements? I mean, was -- were the
6 police reports basically a summarization of the
7 accuser's statements?

8 A Yes.

9 Q It wasn't -- was there much detail,
10 forensic or evidence on supporting any of those
11 charges ---

12 A Not that I recall.

13 Q --- supplied to you?

14 A Not that I recall.

15 Q Okay. As part of your review, you
16 said that you always look at the NCIC; is that
17 correct?

18 A Yes.

19 Q Do you know what a detainer is?

20 A Yes.

21 Q You have information whether or not
22 there's a detainer in this case?

23 A Yes, there is.

24 Q That's the information I sent you
25 yesterday, right?

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1 A Yes.

2 Q Do you know what it means?

3 A So I reviewed that detainer and it --
4 and it was North Carolina. They have filed
5 charges against him. And so they put a detainer
6 on him meaning that if he is not committed as a
7 sexual violent predator, they have a full
8 extradition detainer meaning they will pick him
9 up. They will come and pick him up from here and
10 take him to North Carolina to stand for those
11 charges.

12 Q Okay. Now can you say to a reasonable
13 degree of scientific certainty whether or not
14 Mr. Younger meets the definition of a sexually
15 violent predator?

16 A It's my opinion that he does not meet
17 the definition of a sexually violent predator.

18 Q And with a reasonable degree of
19 scientific certainty, does he have a diagnosis
20 that would qualify him as a sexually violent
21 predator?

22 A No.

23 Q I have no further questions. Thank
24 you.

25 THE COURT: All right. To all of you

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1 here, we've been at this now in this courtroom 59
2 minutes and let us now take the ubiquitous early
3 morning break for approximately 15 minutes. I say
4 approximately because I think where you're going
5 there are only two rooms available. So we'll be
6 back in about 15 minutes.

7 Doctor, you know the rules.

8 THE WITNESS: Yes.

9 THE COURT: Eyewitness can't talk to
10 your lawyers, so forth.

11 THE WITNESS: Yes, sure.

12 THE COURT: Okay.

13 THE WITNESS: Thank you.

14 THE COURT: I'll see you back in 15
15 minutes.

16 (WHEREUPON, the jury was removed from
17 the courtroom at 10:09 a.m. and a recess was taken
18 from the proceedings.)

19 (WHEREUPON, the jury was returned to
20 the courtroom at approximately 10:30 a.m., and the
21 following proceedings commenced in open court.)

22 THE COURT: I'm ready, sir.

23 MR. BOGLE: Thank you, Your Honor.
24 May it please the Court.

25 THE COURT: Yes, sir.

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CROSS-EXAMINATION

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BY MR. FALK:

Q So Dr. Gehle, as a part of these evaluations you look at -- you testified you look at records, correct?

A Correct.

Q You look at things like criminal records, investigation reports, witness statements, police reports, education records, medical records; is that correct?

A Yes.

Q And you testified you try to get the most comprehensive record that you can in order to have the most information; is that right?

A Yes.

Q Okay. And if you don't have something, you typically reach out to either our office or other institutions to get those records; is that right?

A Yes.

Q Now did you review any of the Sumter County detention records?

A I believe that some were sent to me, yes.

Q Okay. There was some talk on direct

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1 from Mr. Falk about letters that you had reviewed
2 from people -- I think eight letters -- that you
3 reviewed?

4 A Yes.

5 Q Is that correct? And he asked you
6 about the, you know, tenor of those letters. Did
7 you also review a group of letters from victims
8 that were sent to the South Carolina Department of
9 Corrections?

10 A Yes.

11 Q Okay. What was the tenor of those
12 letters?

13 A They were from people who made
14 allegations against him and they were very
15 negative, yes.

16 Q Now you also do interviews as a part
17 of your evaluation?

18 A Yes, I interview the respondent.

19 Q Right. And you did two in this case,
20 correct?

21 A That's correct.

22 Q And when you interviewed him he was at
23 the Sumter County Detention Center; is that
24 correct?

25 A No. The first interview, I believe

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1 that he was at the Department of Corrections. Let
2 me make sure. And then the second interview he
3 was at the Sumter County Detention Center, yes.

4 Q Okay. So as a part of this evaluation
5 you issued two separate reports. We discussed --
6 you discussed those. One was issued on March
7 11th, 2019, and you received some new information,
8 correct?

9 A Yes. I wouldn't consider I issued two
10 separate reports. So what I did was issued a
11 first report which I thought was the final report,
12 received additional information and updated the
13 evaluation that I did, so it was an amended
14 report. In that report I didn't change anything
15 that I had previously written; but I added the
16 additional information, explained what had been
17 sent, explained how I was handling it. And then
18 where it was appropriate in the report, I indented
19 the section and clarified that this was the new
20 information that I reviewed and how it fit into
21 the overall picture.

22 Q Right. So all the information based
23 -- all the information that you collected for your
24 first report appears in your second report with
25 some additional information?

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1 A It's actually the first report with
2 additional information added in.

3 Q Thank you.

4 MR. BOGLE: May I approach, Your
5 Honor?

6 THE COURT: Yes, sir.

7 BY MR. BOGLE:

8 Q And Dr. Gehle, this is a copy of your
9 amended report, would you say?

10 A It looks like it, yes.

11 Q Okay, sorry. But the date is June
12 4th, 2020?

13 A Yes.

14 Q Okay. Dr. Gehle, as we go through
15 this I just -- I'm only asking this question
16 because I want to make sure we're working from the
17 same document, okay, and that's the amended report
18 from June 4th. So stepping back a little bit,
19 when you do these evaluations you're looking for
20 pattern of behaviors, correct?

21 A Yes.

22 Q Okay. And those are kind of patterns
23 that develop and they're consistent over time with
24 a person; is that fair?

25 A I mean, that I guess would be a

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1 definition of a pattern, yes.

2 Q So you would agree that persons who
3 commit acts that are illegal which will result in
4 significant consequences and they repeatedly
5 engage in those behaviors despite the
6 consequences, that can indicate a preference for
7 that behavior. Would you agree with that?

8 A It can be a pattern, yes.

9 Q And isn't it important in these types
10 of evaluations that you look at person's
11 behaviors?

12 A Yes.

13 Q And you're also looking at when
14 they're charged with a crime how they possibly
15 amend or change or alter their behavior after
16 those charges?

17 A Yeah, to some degree, yes.

18 Q So, I mean, you're looking for things
19 like: Do they change their behavior, did they act
20 like it never happened, question -- you ask
21 questions like that?

22 A Do I ask questions like that?

23 Q Appears so.

24 A Well, we look at the behavior and how
25 like it's documented afterwards.

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1 Q Okay. So do you put any weight on how
2 the person reacts or changes their behavior in,
3 you know, when they're charged or arrested with
4 something? A person usually feels horrible after
5 they're charged or arrested for something. I
6 mean, isn't that true?

7 A I don't know if that's usually. I
8 don't, I don't know that I can agree to that.

9 Q You would expect someone. Would you
10 expect someone to amend their behavior after being
11 arrested?

12 A I don't know that I would expect
13 somebody to amend their behavior. I think it
14 would be good if people were charged with a crime
15 and they amended their behavior.

16 Q So let me ask you if you agree with
17 this statement. Even if someone is charged and
18 arrested and the underlying offense never happens,
19 that arrest happened, that's a fact, correct?

20 A Yes.

21 Q Okay. And so basically you would
22 agree that going through court proceedings should
23 make someone feel horrible and they should amend
24 their behavior; wouldn't you agree with that?

25 A I don't know if I can agree with that.

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1 I mean, it depends on the case. It depends on
2 what the facts are. It depends.

3 Q Do you remember testifying in a case
4 called In the Matter of Michael A. Fulton in
5 December of 2016 in Florence County?

6 A Not particularly, no.

7 MR. BOGLE: May I approach, Your
8 Honor.

9 THE COURT: Yes, sir.

10 BY MR. BOGLE:

11 Q This is a transcript from that case,
12 Doctor, and I've turned to Page 104 and about half
13 way down on Line 18 -- well, we'll start at Line
14 12 with, "I mean." I just want to quote. This is
15 a answer that you gave in this case. "I mean that
16 people can feel horrible to people, and we often
17 will amend our behavior if we are charged. And I
18 want to see, you know, is that the case with him,
19 did he amend his behavior even though he wasn't
20 convicted. Did that change things for him or did
21 he go out and act as if it never happened. Some
22 of those things are very important because an
23 arrest is an effect, it happened. The underlying
24 behavior that offense might not have happened, but
25 the fact that he was arrested and, you know, going

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1 to the court proceedings is factual." You see
2 where it says that?

3 A Yes.

4 Q So you would agree that even if the
5 underlying offense never happened and someone went
6 through court proceedings, they should feel
7 horrible about that and amend their behavior?

8 A Well, the feeling horrible about that,
9 I don't know about -- like, I think that's where
10 I'm not sure.

11 Q Well, ---

12 A It depends on the facts of that case
13 and what happened.

14 Q Okay. Well, we'll move on. So you
15 only consider facts, correct?

16 A I consider a lot of things.

17 Q Right. So you do consider facts and
18 you said on direct that facts are admissions, a
19 guy tells you they did something. That's a fact,
20 right, that you consider?

21 A I take that as something that's
22 verified.

23 Q Verified. And you take convictions as
24 verified, correct?

25 A Yes.

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1 Q And you consider those in your
2 opinion?

3 A Yes.

4 Q You take those as facts. You consider
5 those?

6 A Facts that they're arrested, not --
7 not a fact of the underlying behavior.

8 Q Right. But they were -- that they
9 were arrested, that something was started against
10 them, a court proceeding?

11 A Yes.

12 Q And so you -- I think you testified
13 that you really give no weight, you kind of
14 dismiss any claims or allegations entirely. Is
15 that true?

16 A It's not dismissed entirely depending
17 because it, it's something that I will question
18 them about and it will be given weight if it's
19 something that they talk about having done, if
20 they are verifying that.

21 Q And if they deny it?

22 A If they deny it, then it's given much
23 less weight, little to no weight.

24 Q Little to no weight. Now I guess you
25 testified on direct that you don't consider these

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1 things, kind of give them little weight because
2 they haven't been tested by the, I guess tested by
3 the criminal justice system; is that correct?

4 A Verified, yes.

5 Q Verified, so. Is it your job to
6 investigate criminal offenses?

7 A No.

8 Q Do you reach out to the victims and
9 speak with them, determine ---

10 A No.

11 Q --- their side of the story?

12 A No. It's been my practice that I will
13 talk to victims if they request to talk to me, but
14 I don't seek them out.

15 Q Is it your job to determine guilt?

16 A No.

17 Q It's your job to look for patterns of
18 behavior, correct?

19 A Correct.

20 Q So let's look at some of the verified
21 information that you would use. Let's look at
22 some facts. You would agree that Mr. Younger was
23 arrested for second degree rape in 2005?

24 A In, excuse me?

25 Q You would agree he was arrested for

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1 second degree rape in 2005? Just for reference,
2 page 33-35.

3 A Thank you.

4 Q You're welcome.

5 A Yes.

6 Q So you would agree that based on your
7 review of the records in this particular case, he
8 was accused of drugging the victim, sexually
9 assaulting her vaginally and anally. You would
10 agree with that?

11 A I'm sorry, just give me a second
12 because I want to be very clear that that's what
13 the allegations, that it involved all those
14 activities. I believe that's correct.

15 Q Okay. And those records show that she
16 had Ambien in her system; is that correct?

17 A The police records indicated that her
18 urinalysis was positive for Ambien.

19 Q And she underwent a sexual assault
20 examination the day of or day after the offense,
21 correct?

22 A Yes.

23 Q And there was some evidence that you
24 looked at that said she had rectal tears at 11:00
25 and 7:00; is that correct?

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1 A That's correct.

2 Q It also, the records also reflect that
3 Mr. Younger used alias Greg John Stone ---

4 A Yes.

5 Q --- as a name, and that he lied about
6 his age?

7 A Yes. That's what it said in the
8 records, yes.

9 Q And that he lied about his status as a
10 student at the University of North Carolina
11 Greensboro?

12 A I believe so, yes.

13 Q Now you testified earlier that in 2007
14 the local district attorney, which is what we
15 would call a solicitor in South Carolina, correct?

16 A Yes.

17 Q Okay. So the local district attorney
18 dismissed these charges in 2007, that's correct?

19 A Yes, that's my understanding.

20 Q Okay. Now in, I think you testified,
21 isn't it true, that the North Carolina Attorney
22 General's Office has re-charged Mr. Younger with
23 these offenses. In fact, they've recharged him
24 with second degree forcible rape and second degree
25 forcible rape of a physically helpless victim; is

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1 that correct?

2 A I believe those were the charges, yes.

3 Q Okay. So we've talked about arrest
4 and how it should affect somebody. Did
5 Mr. Younger tell you that he was mentally affected
6 by the arrest? He told you that; didn't he?

7 A That he was mentally affected by the
8 arrest?

9 Q Yeah. I'll -- to save you time I'll
10 refer you to Page 25 in your report.

11 A 25?

12 Q 25. In Educational History, the fifth
13 paragraph. It starts with "according." That last
14 sentence of that paragraph. It says, quote, "He
15 had indicated that he reenrolled in 2005; however,
16 he was accused of rape which reportedly messed him
17 up and made him difficult for him to focus." Is
18 that correct?

19 A Yes.

20 Q So that would be -- that says,
21 suggests he was affected by the arrest, correct?

22 A That's what he said, that it was
23 difficult for him to continue in school.

24 Q Okay. Now just moving a little bit
25 forward, Doctor, in 2008 he was charged and pled

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1 guilty to assault on a female, correct?

2 A Yes.

3 Q And so that's a fact. That's
4 verified, right?

5 A Yes.

6 Q So what we're looking at basically one
7 year, so 2005 the -- I'm sorry, 2007 the charge
8 dismissed. And here in 2008, basically a year
9 after the rape charges were dismissed, he now has
10 a conviction that's sexual in nature; is that
11 correct?

12 A Yes.

13 Q And he went to jail for 75 days for
14 that and he also received 12 months probation; is
15 that correct?

16 A Yes.

17 Q So you would agree that on this
18 particular charge that he pled guilty to, he
19 was -- the records show that while in concert he
20 grabbed the breast of a stranger?

21 A Correct.

22 Q And he admitted this to you; didn't
23 he? He said to you, I quote, "I guess I grabbed
24 her boob."

25 A Yeah. He basically said that he

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1 didn't remember, but that he guessed he did.

2 Q Okay. So you would agree that he was
3 punished for these actions?

4 A Yes.

5 Q Okay. Now I know in your report,
6 Doctor, it says that you say that basically the
7 victim's account and Mr. Younger's account really
8 were pretty much the same. So isn't it -- that's
9 on Page 36 of your report. That's where I am.
10 Isn't it true that he was more concerned about how
11 this act, this offense would affect him, than it
12 was what he did to the victim; is that true?

13 A That's fair.

14 Q That's fair. Because he told her he
15 didn't want to get in trouble, quote.

16 A Yes, I think that he thought that that
17 would interfere with him becoming a nurse.

18 Q So the bottom line here, Doctor, is
19 Mr. Younger was pretty much let off the hook in
20 2005 on a rape charge. And when the local DA
21 dismissed the rape charges, but he really didn't
22 change his behavior, did he, because in two thou--
23 less than a year later in 2008, he's convicted of
24 groping a female at a concert; is that correct?

25 A Yes.

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1 Q All right. I'm moving forward to
2 2012. So after his arrest in 2005 for the rape
3 and the jail time, that probation in 2008 for the
4 sexual assault on a female, he's arrested and
5 charged in Sumter County for criminal sexual
6 conduct in the third degree and assault and
7 battery in the third degree; is that correct?

8 A That's correct.

9 Q And this is his qualifying conviction
10 under the sexually violent predator act, correct?

11 A That's correct.

12 Q So in 2014 a jury of Sumter County
13 citizens found him guilty after a trial of
14 criminal sexual conduct in the third degree?

15 A Yes.

16 Q Okay. So that would be a fact.
17 That's a verified fact to you?

18 A Yes.

19 Q And he was sentenced to ten years in
20 prison; is that correct?

21 A Yes.

22 Q Now your report on Page 55, I just
23 want to quote. You say, "Mr. Younger has been
24 convicted of strangling a woman until she lost
25 consciousness and engaging in nonconsensual sexual

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1 activities with her body while she was
2 unconscious. The victim consented to engaging
3 acts with Mr. Younger; however, she did consent to
4 engage in anal sex. When she regained
5 consciousness it was evidence -- evident that she
6 had been anally penetrated." Is that what your
7 report says?

8 A Yes.

9 Q So basically he choked her till she
10 passed out and anally raped her. That's what
11 happened, correct?

12 A Yes.

13 Q And isn't it true he also used an
14 alias in this case?

15 A Yes.

16 Q And he lied about his age, correct?

17 A Yes.

18 Q And I think you've mentioned this on
19 direct, but I think your report states that Mr.
20 Younger provided a convoluted and overly detailed
21 account of his relationships, specifically with
22 this victim; is that correct?

23 A Yes.

24 Q So talking about aliases, while I'm
25 thinking about aliases, you talked to him about

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1 this in this instance for this conviction,
2 correct?

3 A I believe so.

4 Q Well, and you asked him about it on
5 Page 52, and didn't he tell you that he was new to
6 South Carolina and he didn't want people looking
7 him up?

8 A Yes.

9 Q So is it fair to say he didn't want
10 people looking him up because of his rape charges
11 and assault charges and his convictions?

12 A I think it was, yeah, his criminal
13 history, things that could come up in the news,
14 yes.

15 Q So just going back to the facts --
16 I'll get off that topic. Going back to the facts,
17 in 2019 I think you testified the summer of 2019,
18 the North Carolina Attorney General's Office
19 charged Mr. Younger with seven offenses regarding
20 two women in two different counties; is that
21 correct?

22 A Correct.

23 Q Okay. Now two of those we already
24 talked about. That was for the 2005 victim that
25 he's been reindicted for, correct?

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1 A Yes.

2 Q So the remaining five are for sexual
3 conduct that took place in 2007; is that correct?

4 A Yes.

5 Q Okay. And the victim in this case --
6 well, going back, you would agree that he's been
7 charged with, in 2019, with two counts of second
8 degree forcible rape, two counts of second degree
9 forcible rape with a physically helpless victim,
10 and first degree kidnapping for those events?

11 A Yes, I believe those are the charges.

12 Q Okay. Now with regard to those
13 charges, you -- the reports you reviewed indicate
14 that the victim did not know her attacker; is that
15 correct?

16 A Yes.

17 Q And as part of a separate ongoing
18 investigation into Mr. Younger in 2010, law
19 enforcement was able to tie Mr. Younger to the
20 sexual assault of this victim; is that correct?

21 A Yes.

22 Q And reports in this case indicate that
23 she had been raped, hit on the head, had her face
24 pushed down into a pillow; is that correct?

25 A Yes.

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1 Q And you reviewed a forensic medical
2 examination of that victim that was done on the
3 same day of that, correct? On Page 42 of your
4 report.

5 A Thank you. Yes.

6 Q And that forensic evaluation indicated
7 that she showed tenderness on her head, soreness
8 all over her from struggling, injuries to her face
9 and inside her lips, and redness and small tears
10 in her vaginal region; is that correct?

11 A Yes.

12 Q Now you're also aware -- and I think
13 you testified on direct of these numerous women
14 who have, I think, testified by Dr. Godfrey, about
15 18 women who have alleged sexual conduct by
16 Mr. Younger that have been investigated by
17 authorities and have had police reports or
18 statements taken by the police; is that correct?

19 A I think the 18 includes the things
20 that also resulted in the charges that are ---

21 Q Fair enough.

22 A --- current.

23 Q We'll say numerous women.

24 A Yes.

25 Q Okay. I don't want to get in -- go in

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1 details of all those offenses, but I do want to
2 focus on one of them in detail and I'm going to
3 come back to that but. First, I just want to ask
4 you again. You don't, you don't really give --
5 you give hardly any weight, you don't consider the
6 women's allegations as verified facts; is that
7 correct?

8 A That's correct.

9 Q So despite the fact that these
10 allegations span of approximately 15 to 20 years,
11 correct?

12 A Yes.

13 Q And the fact that these women are all
14 from different places, correct? I think the
15 reports say Guilford County, Randolph, Alamance,
16 Archdale (ph), Burlington, Winston Salem, and
17 Greensboro; is that correct?

18 A Yes.

19 Q Okay. So I want to have you turn to
20 your report to Page 58. In your report you state
21 that these allegations are concerning; don't you?

22 A Yes.

23 Q And you also state that they have
24 compelling evidence; don't you?

25 A Yes, in some cases they do.

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1 Q So did you consider them concerning
2 because they showed -- they help show a pattern of
3 behavior that violated the rights of women by
4 engaging in course Mr. Younger gave in the course
5 of nonconsensual sex?

6 A If they were verified it would be a
7 concerning pattern of behavior.

8 Q Well, you don't say that in your
9 report. You don't say if they were verified. You
10 say his -- the investigation, allegations are
11 concerning. Correct?

12 A Yes, I say that, but I also explain it
13 more than that.

14 Q Okay. You can answer it if you want
15 to.

16 A I did. That's fine.

17 Q Okay. But you would have to agree
18 there were similarities across all the women's
19 claims, correct?

20 A Yes, there were a lot of similarities.

21 Q So some of them there was choking?

22 A Yes.

23 Q There was alleged drugging?

24 A Yes, in some cases. Yes.

25 Q There was alleged of nonconsensual

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1 acts on their bodies, sexual acts while they were
2 unconscious or asleep?

3 A Yes.

4 Q But you state in your report -- let's
5 just focus on, let's move forward and focus on the
6 one victim and I'm going to give their initial so
7 you know which one I'm talking about. GSW or GWS,
8 Page 48. I don't think you use initials. I think
9 you use names, but I'm not going to use the names.
10 Top of Page 48. You would agree that -- well, you
11 reviewed the police report from the Winston-Salem
12 police department that the -- and incident report
13 that the victim gave on May 8, 2015; is that
14 correct?

15 A On May 8, 2015?

16 Q Yeah.

17 A Yes.

18 Q Okay. And you would agree that report
19 states that the victim says she went to bed with
20 her shorts and panties on, and she woke up naked
21 to Mr. Younger performing oral sex on her and
22 digitally penetrating her; is that correct?

23 A Yes.

24 Q And she did not consent to this,
25 correct?

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1 A That's correct.

2 Q All right. Now records reflect that
3 she declined to press charges in this instance; is
4 that correct?

5 A Yes.

6 Q Can you tell us what the date of this
7 sexual offense was?

8 A October 5th, 2013.

9 Q What was Mr. Younger's status on
10 October 5th, 2013?

11 A What do you mean what was his status?

12 Q Was he -- he was out on bond, correct,
13 for the 2015 Sumter charges; wasn't he?

14 A For the 2012 Sumter ---

15 Q Sorry, 2012 charges.

16 A Yes.

17 Q So he was out on bond facing prison
18 time. He was facing two charges in Sumter County
19 for criminal sexual conduct in the third degree
20 and assault and battery of a third degree, and he
21 posted bond, correct?

22 A I think it was assault and battery in
23 the second degree, but yes.

24 Q Okay. So it's a fact that he couldn't
25 even control or -- his behavior while on bond.

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1 While he's facing hard prison time, he's doing the
2 same things that he's been doing for years?

3 A Again, we don't know for a fact that
4 this is true.

5 Q But, Doctor, we know for a fact that
6 this is true because he was convicted in 2012,
7 right? So he was on bond, right?

8 A Yes.

9 Q Okay. And now there's reports that
10 he's engaged in non-consensual sexual acts,
11 correct?

12 A Yes, that did not result in charges.

13 Q Okay. So despite him being arrested
14 and charged in 2005 and despite having been
15 convicted and being punished for groping a
16 stranger's breast in 2008, despite being convicted
17 of choking a woman unconscious and anally raping
18 her in 2018 and all these numerous claims that
19 span 15 to 20 years, really, he's never changed
20 his behavior, has he?

21 A If all of these things happened, then,
22 yes.

23 Q All right, Doctor, I'd like to turn to
24 diagnosis. And just generally, you did not
25 diagnose with Mr. Younger with any mental

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1 abnormality or personality disorder; is that
2 correct?

3 A That's correct.

4 Q Now I'll start with paraphilic
5 disorders. You considered biastophilia, correct?

6 A Yes.

7 Q And there was some discussion with
8 Dr. Godfrey on Tuesday about a paraphilic coercive
9 disorder and some talk today in your direct
10 testimony about the two. Basically, paraphilic
11 coercive disorder and biastophilia are the same
12 thing, correct?

13 A Yes.

14 Q So you agree with Dr. Godfrey that --
15 well, first of all, you agree that the DSM is a
16 authoritative in your field?

17 A Yes.

18 Q And psychologists and psychiatrists
19 use this for diagnoses?

20 A Yes.

21 Q So there was -- you would agree with
22 Dr. Godfrey that biastophilia is not in the DSM-5?

23 A That's correct.

24 Q But you also agree with Dr. Godfrey
25 that's a valid diagnosis?

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1 A Yes.

2 Q Okay. And biastophilia is basically
3 deviant sexual arousal to coercive force sex.
4 Would you agree with that?

5 A With a non-consenting person, yes.

6 Q Non-consenting person. And it's
7 really, I think Dr. Godfrey described it as a
8 sexualizing of dominance, power, and control over
9 non-consenting persons. Would you agree with
10 that?

11 A You know, she gave a definition that I
12 never heard before, but it -- it didn't sound
13 wrong to me.

14 Q Now it's a fact that Mr. Younger was
15 able to find women who consented to have sex with
16 him; isn't that true?

17 A Yes.

18 Q He even, I think the record reflects,
19 he was even able to find women who consent to have
20 anal sex with him; isn't that true?

21 A I believe so, yes.

22 Q But despite this, even though he had
23 willing partners, he still -- there's still
24 evidence that he's choked, drugged, and anally
25 raped women; is that correct?

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1 A One woman.

2 Q So you've talked on direct about tying
3 sexual arousal to, to the offense, to making him a
4 sexually violent predator so. In other words, a
5 rapist can be just a rapist or they can be aroused
6 by the act, correct, and that's what you're
7 looking for, that -- I think you said teasing that
8 out?

9 A Yes. Rapists are usually aroused by
10 the sexual act, but you want to see what aspects
11 of it they are aroused by.

12 Q Right. So you asked Mr. Younger about
13 his sexual arousal in your interview, correct?

14 A Yes.

15 Q Okay. And he denied to you being
16 sexually aroused to coercive non-consensual sex,
17 correct?

18 A That's correct.

19 Q Basically denied any arousal of
20 biastophilia?

21 A Yes.

22 Q Now you state in your report that he
23 was superficially cooperative, he was distrustful,
24 he provided overly detailed responses at times.
25 Is that correct?

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1 A Yes.

2 Q And you know he lied to others about
3 his age, about his height, his student status, and
4 his name; isn't that correct?

5 A Yes.

6 Q So, I mean, isn't it safe to say that
7 he could have lied to you about his sexual
8 arousal?

9 A Sure.

10 Q Now are you familiar with this book?

11 A Yes.

12 Q What is this book?

13 A If it's -- it's a little far away but.
14 And it's one of a series of books that look
15 just -- they all look the same so this is Best
16 Practices in Forensic Mental Health Assessment.
17 It's a series of books, and this is the evaluation
18 of sexually violent predators book.

19 Q Okay. And do you use this book?

20 A Yes.

21 Q This is a copy of Page 84 of that book
22 and specifically dealing with biastophilia. And
23 it's dealing with what happens when somebody
24 doesn't -- is not honest with you, correct? I
25 mean, are you familiar with this section?

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1 A So you said this was what page?

2 Q 24.

3 A 24.

4 Q Yeah. It's under the paraphilia and
5 rape section. Are you familiar with that? Do you
6 have a copy of the book with you?

7 A Yes.

8 Q Okay. So on top of Page 24 it's
9 talking about the Doran 2002 which is --it's a
10 study, correct? Doran two thou---

11 A No. Doran wrote a book.

12 Q Okay.

13 A So it's a book that was written in
14 2002 about sexually violent predator evaluations.
15 That was in the early stages of sexually violent
16 predator laws so it was one of the first books
17 that was written on the subject.

18 Q Yeah. This book is a little outdated,
19 isn't it, because it uses paraphilia NOS
20 non-consent. That's been changed; hasn't it?

21 A Yeah, that changed in 2013 or 2015.

22 Q So now you use other specified
23 paraphilic disorder biastophilia?

24 A Yes.

25 Q Okay. Now it's talking about when

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1 Doran 2002 describes a number of useful indicators
2 of biastophilia under circumstances when the
3 offender does not report sexual deviant arousal.

4 Is that what it says?

5 A Yes.

6 Q So, and Mr. Younger did not report to
7 you sexual, deviant arousal; is that correct?

8 A Correct.

9 Q Okay. So these are indicators that
10 can help you and assist you in determining sexual
11 arousal to these deviant behaviors; is that right?

12 A Yeah, the deviant arousal focus.

13 Q So one of them is ejaculation or clear
14 signs of sexual arousal during events that are
15 clear and non-consensual? Does Mr. Younger fit
16 that?

17 A Probably, yes.

18 Q How about raping when the victim has
19 already been willing to have consensual sex?
20 Would Mr. Younger fit that?

21 A In terms of that 2012 offense, yes.

22 Q How about having concomitant
23 cooperative sexual partners. You're going to have
24 to explain concomitant to me but. Having
25 concomitant cooperative sexual partners but sexual

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1 offending nonetheless. Could you explain that one
2 to me?

3 A Yeah. It just means that you have
4 access in the same time frame to consenting
5 partners, and you choose to commit a sexual
6 assault anyway.

7 Q Would Mr. Younger fit that indicator?

8 A In 2012, I mean, he seemed to have a
9 that pretty active sex life from what he said so
10 if he was telling the truth about that, then, yes,
11 I would agree.

12 Q Now you testified earlier that persons
13 who commit acts that are illegal which would
14 result in significant consequences and they
15 repeatedly engage in those behaviors despite the
16 consequences, that can indicate a preference for
17 that behavior. So based on the record, isn't it
18 fair to say that Mr. Younger has a preference for
19 coercive sex with non-consenting victims?

20 A So we have the evidence of this in one
21 offense and to make that diagnosis requires a
22 pattern of at least six months, and we have one
23 data point for that in particular.

24 Q Well, you have a data point in 2005
25 where he was arrested, correct?

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1 A Yes.

2 Q You have a data point in 2008 where he
3 was convicted?

4 A Yes, but in 2005 we have a data point
5 that he's arrested, but we don't have data point
6 for these, these factors that you just listed.

7 Q But you said in 2005 was a verified
8 fact and you considered it?

9 A No, that he -- it was a verified fact
10 that he was arrested, taken into custody. It does
11 not verify the facts that underlie the arrest.

12 Q But you said the facts were pretty
13 compelling and you had pretty compelling evidence
14 in some of these cases, correct?

15 A In some of them, yes. The charges
16 were dismissed in that case.

17 Q Fair enough. In -- so basically,
18 you're saying he doesn't. In that one case he
19 does have a preference for coercive sex with non-
20 consenting victims, but you're saying overall he
21 doesn't?

22 A I'm not saying that he has a
23 preference in 2012. I'm saying that -- that that
24 2012 offense would provide some evidence of that
25 type of arousal but not establish a pattern of it.

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1 Q So you don't find it striking that
2 over numerous women over a period of 15 to 20
3 years make similar claims about Mr. Younger,
4 claims that he choked them, he drugged them, he
5 anally raped them, and all those behav-- all those
6 things that they accuse him of, those behaviors
7 are the same behaviors that he was charged for
8 here in Sumter, South Carolina, and convicted of,
9 you don't find that significant?

10 A I can't rely on all those things that
11 have not been verified. They were reported to law
12 enforcement so if there was ample evidence they
13 could charge him, they could convict him of those
14 things.

15 Q But you're looking for patterns, not
16 whether somebody is guilty, correct?

17 A I'm looking for verified facts.

18 Q You said earlier your job was to find
19 patterns of behavior.

20 A And base those patterns on verified
21 facts.

22 Q Let's move on to personality disorder.

23 A Yes.

24 Q You considered antisocial personality
25 disorder, correct?

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1 A Yes.

2 Q And in your report you state that
3 based on Mr. Younger's history he may have
4 antisocial personality characteristics; is that
5 correct?

6 A His history suggested some evidence of
7 that, yes.

8 Q In fact, you said he's manipulative,
9 lying, correct?

10 A I said that he has been described as
11 manipulative, controlling, arrogant, and a smooth
12 talker by ---

13 Q And lying?

14 A --- former sexual partners and
15 victims.

16 Q So, basically you just couldn't assign
17 the diagnosis of antisocial personality disorder
18 because this wasn't conduct disorder before the
19 age of 15. You couldn't find any evidence of
20 that?

21 A No, I ruled that out. It was ruled
22 out.

23 Q Because you couldn't find evidence of
24 a conduct disorder, correct?

25 A Well, because I interviewed his mother

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1 and his mother said that he was a normal kid, he
2 followed rules, directions. He didn't get in
3 trouble. He was in control. She could ask him to
4 do something, he would do it. And there was no
5 legal history as a juvenile that was provided that
6 was found. He didn't report those things. There
7 was nothing in the school records to indicate
8 those things, although they didn't send
9 disciplinary reports but. I looked for it,
10 couldn't find it, spoke to his mom; she ruled it
11 out.

12 Q She ruled it out or you ruled it out?

13 A I ruled it out.

14 Q Okay. So the DSM-5, you have a copy
15 with you?

16 A Yes.

17 Q On Page 6-- I believe it's 659. Well,
18 what I'm asking is, in the diagnosis of antisocial
19 personality disorder, the diagnostic criteria is
20 A, B, C and D, correct?

21 A Yes.

22 Q And one of those: (a) is a pervasive
23 pattern of disregard for the violation of rights
24 of others occurring since age 15 as indicated by
25 three or four more of the following, right?

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1 Correct?

2 A Yes.

3 Q How many of these seven listed would
4 you say -- well, I'll just ask you. Does Mr.
5 Younger fail to conform to social norms with
6 respect to lawful behaviors as indicated by
7 repeatedly performing acts that are grounds for
8 arrest?

9 A Probably, yes.

10 Q He has a long criminal history outside
11 of his sexual offending, correct?

12 A I don't know if I classify it as long
13 or not, but I -- I mean, yeah, he has a criminal
14 history outside that, yes.

15 Q Fair to say he has multiple criminal
16 offenses that are nonsexual?

17 A I haven't counted them; but I recall
18 several, yes.

19 Q How about number two: Deceitfulness
20 as indicated by repeated lying, use of aliases,
21 conning others for personal profit or pleasure?
22 Do you think he fit that?

23 A There was evidence of that in those
24 allegations.

25 Q Would you consider him impulsive,

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1 failure to plan ahead?

2 A He didn't seem to be very impulsive.
3 He led a pretty stable lifestyle from what I could
4 determine.

5 Q How about irritability and
6 aggressiveness as indicated by repeated physical
7 fights or assaults?

8 A He does have some history of that
9 aggressiveness. He had been convicted of assault
10 before.

11 Q Would you consider him reckless,
12 having reckless disregard for the safety of
13 himself or others?

14 A Not necessarily.

15 Q Okay. How about consistent
16 irresponsibility by, like, indicated by repeated
17 failures to stay in consistent work behavior or
18 honor financial obligations?

19 A I mean, he seemed to be able to hold a
20 job and, you know, live in a house and, you know,
21 take care of sort of those activities of daily
22 living that would -- that would indicate some
23 responsibility. I know that Dr. Godfrey testified
24 that he did meet that criteria because he failed
25 to honor financial obligations. I don't know that

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1 I found evidence of that specifically.

2 Q You didn't find evidence that he
3 failed to pay child support, things of that
4 nature, failed to pay friends back?

5 A Not that I recall. Maybe the child
6 support, I'm not sure.

7 Q How about lack of remorse as indicated
8 by being indifferent to or rationalizing, having
9 hurt, mistreated, or stolen from others?

10 A There seem to be some evidence of
11 that.

12 Q Okay. So I mean, this is -- we're
13 looking for three or more. At my count we're
14 probably at about four of these. Is Mr. Younger
15 at least 18 years old?

16 A Yes.

17 Q I'm going to skip the next one and go
18 down to the following one. "The occurrence of the
19 antisocial behavior is not exclusively during the
20 course of schizophrenia or bipolar disorder."

21 A Correct.

22 Q So basically he's not schizophrenic or
23 bipolar?

24 A Correct.

25 Q Now the (c) there on the third one

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1 there's -- there has to be evidence of cognitive
2 disorder with onset for age 15 years. And that's
3 where you couldn't find any evidence, correct?

4 A I ruled that out.

5 Q You ruled (c) out.

6 A Yes.

7 Q Yeah. So based on that one thing, I
8 mean, he seems to meet all these other criteria
9 for antisocial personality except that one thing
10 that you ruled out; is that correct?

11 A Yes.

12 Q Okay. Thank you. So Mr. Younger has
13 antisocial features; doesn't he?

14 A He has some behaviors that are
15 suggestive of that. In the interview he didn't
16 come across as overtly, clearly antisocial and
17 that's an important finding as well. He has a
18 history of some of those types of traits.

19 Q Do you look for recent behaviors that
20 would be consistent with antisocial traits?

21 A Sure.

22 Q And you testified earlier that you've
23 reviewed some Sumter County detention records?

24 A I recall receiving some of those, yes.

25 Q Did some of the information that you

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1 received support antisocial personality features?

2 A He seemed to be a little bit
3 difficult. That's what the perception was in the
4 jail, but that could also be for other reasons.

5 Q Now moving on to your risk assessment,
6 as part of this evaluation and all evaluations you
7 do, you evaluate dynamic and static risk factors
8 to determine re-offense, correct?

9 A Yes.

10 Q And you found that Mr. Younger has
11 dynamic risk factors, correct?

12 A Yes.

13 Q Could you just explain one more time
14 what dynamic risk factors are?

15 A Those are changeable risk factors that
16 have been associated and researched to be related
17 with sexually reoffending.

18 Q Now you found that Mr. Younger has a
19 preoccupation with sex?

20 A Yes.

21 Q That's basically because he reported
22 to you a frequent desire for sex; is that correct?

23 A Not -- not just that.

24 Q Not just that. But he did say he had
25 a frequent desire for sex to you?

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1 A Yes, in the past.

2 Q You also say he has lack of
3 emotionally intimate relationship with adults,
4 correct?

5 A Yes.

6 Q And could you explain? I mean, you
7 have in your report that based on infidelity; is
8 that correct?

9 A Yes. That risk factor looks at the
10 quality of relationships that you've had,
11 specifically your romantic relationships, and so
12 infidelity is evidence of problems in that area.

13 Q You also state he has
14 grievance/hostility?

15 A Yes.

16 Q And help me understand, is that
17 because he blames others for things?

18 A Yes.

19 Q So you also scored him on the
20 Static-99R and the Static-2002R, correct?

21 A That's correct.

22 Q And Dr. Godfrey scored him on those
23 assessments as well, correct?

24 A Yes.

25 Q Now overall you report that statics

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1 are the most accurate approach to assess risk of
2 sexual reoffending, correct?

3 A It's the most accurate that we have,
4 yes.

5 Q And you would agree with Dr. Godfrey
6 that in high stakes evaluations like this,
7 research suggests that using both the 2002R and
8 the 2009 together is the best way to kind of help
9 assess the risk?

10 A Yes.

11 Q Now on Static-99R -- I'm sorry,
12 Static-2002R, you agree with Dr. Godfrey's score.
13 You guys scored exactly the same, correct?

14 A She agreed with my score, yes.

15 Q She agreed with your score, okay. And
16 that was a 5, correct?

17 A Correct.

18 Q And 5 places him in the above average
19 risk category?

20 A That's correct.

21 Q So you and Dr. Godfrey both agreed
22 that he's in the above average risk category to
23 reoffend on the Static-2002R?

24 A Yes.

25 Q Okay. Now you scored the Static-99R

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1 as well, correct?

2 A Yes.

3 Q And you got a 4 on that?

4 A Yes.

5 Q And that was one point lower than
6 Dr. Godfrey, correct?

7 A Yes.

8 Q Now a few general questions about
9 isn't the -- isn't the Static-99R an
10 underrepresentation of risk?

11 A There have been research that says
12 that the absolute recidivism rate so the rate that
13 the percentage rate somebody with a score of 4 is
14 11, 11 percent, that that's an overrepresentation.
15 But some people also believe that it is an
16 underrepresentation because sex crimes are often
17 not reported.

18 Q And in fact, the Static-99R only looks
19 at people who are convicted of sex crimes and
20 later go out and have detected sex crimes
21 reoffending, like, they are convicted again of?

22 A It looks at arrests and convictions
23 and then later arrests and convictions.

24 Q Okay. And as you just stated, it's
25 true, you would agree, that sexual crimes are the

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1 most unreported, one of the most unreported crimes
2 that there are?

3 A That's my understanding.

4 Q Now do you have a copy of your scoring
5 sheet?

6 A I believe so.

7 Q I'm sorry, Doctor, do you have it?

8 A Yes, I'm sorry.

9 MR. BOGLE: May I approach, Your
10 Honor.

11 THE COURT: Yes, sir.

12 BY MR. BOGLE:

13 Q Would my copy be consistent with
14 yours?

15 A Yes. Yes.

16 Q So basically this scoring sheet, these
17 are the questions that you have to answer,
18 correct?

19 A Yes.

20 Q Okay. And at the bottom of this
21 scoring sheet it kind of gives you the risk
22 levels; is that correct?

23 A Yes.

24 Q And they start at, like, level 1 which
25 is a very low risk and they go all the way to

RW - M. GEHLE - CROSS

1 level 4 which is the high risk. Now something
2 special about level 4, right? It's subdivided,
3 correct?

4 A Yeah, it's 4(a) and 4(b) .

5 Q 4(a) and 4(b) . So we have 1, 2, 3,
6 4(a) and 4(b) , correct?

7 A That's correct.

8 Q Okay. Now 4(a) is for people who
9 score a 4 or a 5, correct?

10 A Yes.

11 Q And Mr. Younger is in that top range,
12 4(a) , correct?

13 A Yes.

14 Q And that is an above average risk to
15 reoffend?

16 A Yes.

17 Q Now I just need a little clarification
18 because at the bottom, the total score you have a
19 4 and off to the side you say or 5, 4 or 5.

20 A Yes.

21 Q Is it 4 or 5?

22 A It's 4.

23 Q It's 4?

24 A So when you score these things, you
25 know, you're looking at things -- like you might

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1 make a decision or you might hold off on answering
2 that because you need further information, you
3 need clarification on the scoring rules, things
4 like that. So initially it was scored -- the
5 question between my scoring and Dr. Godfrey's was
6 question two, which is, ever lived with a lover.
7 You have to verify that the person lived with a
8 lover for two years. The quality of the
9 relationship doesn't matter; it's the length of
10 time. And so that was not scored until the very
11 end, but we preliminarily added things up before
12 then. Came to a 4 or 5 if -- if we determine that
13 he had not lived with a lover for two years.

14 Q Now part of your interview of
15 Mr. Younger was kind of to assess his
16 relationships, correct ---

17 A Yes.

18 Q --- with women or, you know, with
19 anyone. And I see a question mark here, and it
20 says close. Were you able to determine from your
21 interview with Mr. Younger whether he lived with a
22 lover for more than two years?

23 A He said that he lived with a lover
24 from February of 1997 to sometime in 1999.

25 Q But you aren't able to definitively

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1 answer that question, right?

2 A Well, so that would be close because
3 if it was February of '97, then it could have been
4 January of 1999 or it could be February of 1999 so
5 it is right on the cusp. Or it could even be, you
6 know, later into 1999.

7 Q Isn't he the one that should know
8 that?

9 A Yeah, it would be great if he could
10 give definitive dates when he lived with somebody.
11 It can be difficult when you're looking back that
12 long, I mean.

13 Q And he was, I mean, he was superficial
14 in his answers to you in the interview, correct?

15 A He was superficially cooperative.

16 Q Superficially cooperative. So you
17 took a step further. You called his mother,
18 correct?

19 A Yes.

20 Q And you asked her if he ever lived
21 with a lover for more than two years?

22 A Well, I asked her not that directly
23 but, yes.

24 Q And based on what she told you, you
25 have written on the -- confirm by his mother, and

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1 you scored a 0, correct?

2 A Yes.

3 Q And over on the side here it says,
4 "Conservative equals zero."

5 A Yes, that was prior to that.

6 Q That was prior to that?

7 A Uh-huh.

8 Q So basically you took his mother's
9 information over his information because he
10 couldn't give it to you in calculating your
11 Static-99R; is that correct?

12 A Well, I think that the information
13 that he provided was close.

14 Q Was it two years?

15 A It could have been.

16 Q But could it have not ---

17 A It was right up to two years. If
18 he -- if he's saying 1999, it would be off by a
19 month, you know, if it was the very beginning of
20 1999. So in order to, you know, get more
21 information, I asked him -- his mom, about live-in
22 relationships. She said that they had started
23 living together when his son was born in 1997 and
24 that they lived together for two years.

25 Q So taking all of this together when

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1 you were scoring the Static-99R, you obviously
2 based on the Static's rules, you don't consider
3 the allegations of the women, correct? The
4 scoring rules, these allegations, they don't
5 factor into your scoring of Static-99R, correct?

6 A Allegations?

7 Q Yeah, the allegation?

8 A In order to use allegations in -- I
9 mean, the rules are very explicit as to what can
10 be considered and it has to reach a certain
11 threshold in order for it to be considered on the
12 Static-99R.

13 Q The scorers really don't allow you to
14 use allegations, correct? Or do they?

15 A You definitely use charges and not
16 allegations that don't result in charges.

17 Q Okay.

18 A Basically.

19 Q So taking into account you didn't use
20 allegations that ended up in charges and taking
21 his mother's account of him living with a lover
22 for more than two years and the kind of the
23 inherent underrepresentation of risk of the
24 Static-99R, taking all those things which seem to
25 be in Mr. Younger's favor, he still falls into the

RW - M. GEHLE - CROSS

1 above average risk category; isn't that correct?

2 A Yes.

3 Q Finally, Doctor, I want to talk
4 about -- I think you talked about future plans?

5 A Yes.

6 Q Now if Mr. Younger is released, he's
7 not subject to any community supervision from the
8 South Carolina Department of Probation and Parole
9 and Pardon, correct?

10 A He was, but that time expired while he
11 was in the jail.

12 Q And he indicated to you that his plan
13 is to return to North Carolina upon release,
14 correct, if he can?

15 A That's what he said, yes.

16 Q And if not, he wanted to go to the
17 Jump Start program in Greenville, South Carolina;
18 is that right?

19 A Yes. I think it was -- he was unsure
20 if he would be allowed to leave the state if he
21 was -- when he had that community supervision time
22 still hanging over his head, but it's since
23 expired.

24 Q And you also, I think you said on
25 direct, that he told you he had a support system

RW - M. GEHLE - REDIRECT

1 in North Carolina which included a job as a
2 personal trainer; is that correct?

3 A That's what he said, yes.

4 Q Now I don't think you mentioned on
5 direct -- I want to ask you -- didn't he tell you
6 that this support system included 15 women that
7 wanted Mr. Younger to be his personal trainer?

8 A Yes.

9 Q Okay. So, and some of his victims
10 have come from his association with gyms and
11 personal training; isn't that correct?

12 A I think that's some of the
13 allegations. At least one of the allegations that
14 I can recall involve somebody that he had trained.

15 Q So Mr. Younger's plan is to surround
16 himself with women when he's shown a pattern of
17 sexual offending against women after arrest and
18 punishment. That's his plan?

19 A His plan that he told me was to go
20 back to North Carolina and to be a personal
21 trainer.

22 MR. BOGLE: A moment to confer, Your
23 Honor?

24 THE COURT: Yes, sir.

25 MR. BOGLE: Nothing further.

RW - M. GEHLE - REDIRECT

1 THE COURT: Mr. Falk.

2 MR. FALK: Just a few brief.

3 **REDIRECT EXAMINATION**

4 BY MR. FALK:

5 Q Mr. Younger's plans for the future
6 really have sort of gotten a little bit more
7 concrete; haven't they? In the future he's going
8 to North Carolina ---

9 A If --

10 Q --- because he's going to be
11 extradited to North Carolina to face these
12 charges?

13 A Yes. It's my understanding that if he
14 has a detainer, he's going to North Carolina at
15 some point no matter what. Like, whether he goes,
16 he's released from that sexually violent predator
17 program to North Carolina or whether he is
18 released from these proceedings to North Carolina.

19 Q So his plans to continue being a
20 personal trainer for females would only come true
21 if the North Carolina charges somehow did not come
22 to any types of convictions I would guess here?

23 A Right, if he was not con---

24 MR. BOGLE: Objection, Your Honor. It
25 calls for speculation.

RW - M. GEHLE - REDIRECT

1 THE COURT: I don't think so.

2 Overruled.

3 MR. FALK: I'll move on. That's fine.

4 BY MR. FALK:

5 Q Is it fair to categorize that what
6 you're looking for is a pattern of facts versus a
7 pattern of accusations?

8 A Yes.

9 Q Okay. Because is it fair to
10 characterize Dr. Godfrey's testimony that she was
11 looking for these accusations and based on the
12 accusations she was inferring that they actually
13 happened, because that's the only way you can have
14 a pattern of conduct?

15 A Yeah, she said that she thought they
16 had occurred.

17 Q Okay. And regarding talking to his
18 mother, you didn't just rely on your conversation
19 with his mother to determine that there was no
20 evidence of conduct disorder prior to the age of
21 15; is that correct?

22 A I sought out records to verify or
23 refute that fact. I asked him questions about it.
24 I look at school records, things like that. There
25 was no evidence found of conduct disorder. And

RW - M. GEHLE - REDIRECT

1 then his mom, I talked to her, and I didn't -- I
2 didn't tell her exactly why I was asking her those
3 questions. You know, I tried to be so forthright
4 about that so that she is driven to answer them in
5 one way or another. I mean, I, I really want to
6 know the accurate answers and so I sought that
7 information from her.

8 Q And, you know, I don't know about this
9 two years. His testimony which you relied on, I
10 mean, part of the testimony you relied on was from
11 February 1997 till sometime in 1999?

12 A Yes.

13 Q And you talked to the mother, his
14 mother, and she confirmed that it was -- must have
15 been sometime after February of 1999 in order to
16 get over the two years?

17 A Yes.

18 Q But if it was -- so you're not -- you
19 don't have to rely on his mother's testimony to
20 get you into 1999. So if they broke up on January
21 15th, that's 23 months and 15 days versus 24
22 months. Is that scoring that clearcut that it's
23 got to be 24 months?

24 A I'd have to look at the scoring rules
25 and I don't have them in front of me but, and I

RW - M. GEHLE - REDIRECT

1 don't want to misspeak. But I believe that this
2 is a question where you give the benefit of the
3 doubt to the respondent, to the person that you're
4 scoring; or you can even, I think, skip that item
5 if you can't clearly determine it. But I felt
6 that I had enough information to say that he had
7 lived with a lover for two years.

8 Q Okay. And the Static-99, it's ten
9 questions, and they're generally, you would think,
10 pretty straight forward: What was his age of
11 release from the index offense. That's -- can't
12 be that much discretion in that.

13 A You'd be surprised. It's actually --
14 as Dr. Godfrey testified, it looks much simpler
15 than it is.

16 Q Okay. But even though these have
17 pretty, what to me look like straight forward
18 questions, any stranger victims, any male victims,
19 any unrelated victims, there's still some
20 discretion that you have to use in scoring this?

21 A There can be ambiguity in the
22 information. For example, in another case I had a
23 woman who was raped in front of her male child.
24 The guy was charged with, like, a lewd act against
25 the child. He didn't touch the child but he made

RW - M. GEHLE - RECROSS

1 the child stay in the room during the rape of his
2 mother, and so it was unclear -- he wasn't
3 convicted of that lewd act; it was dismissed. So
4 I actually had to reach out to the test developers
5 to determine in that case do you consider that boy
6 there a victim. So would this offender have a
7 male victim, and you know, they had -- they had
8 said that it appeared from the information I
9 provided that, no, it would not be the case but.
10 It's things like that, sometimes it's unclear
11 whether a victim is a stranger because they define
12 a stranger who you've known for less than two
13 years -- or, I mean, I'm sorry, less than 24
14 hours. An unrelated victim is -- could be like a
15 stepdaughter who you've known for less than two
16 years; but if it's a stepdaughter who you've known
17 for two years, you've had a stepdaughter
18 relationship with them for two years, then they're
19 a related victim. So there's -- there are
20 differences. There's -- it's more difficult than
21 it looks.

22 Q You have to make some type of
23 subjective determinations?

24 A They spot the rules so it's -- it's
25 not always often that you have to make subjective

1 determinations, but you have to be familiar enough
2 with the rules to be able to know where you need
3 to look to make determinations about how to score
4 certain things. There are a lot of little ins and
5 outs.

6 MR. FALK: No further questions, Your
7 Honor.

8 THE COURT: Thank you. Okay.
9 Recross.

10 MR. BOGLE: Briefly, Your Honor.

11 **RECROSS - EXAMINATION**

12 BY MR. BOGLE:

13 Q Dr. Gehle, regardless of any of the
14 things we discussed, your score on Static-99R is a
15 4, correct?

16 A Yes.

17 Q And that places Mr. Younger in the
18 above average risk to reoffend, correct?

19 A That's correct.

20 MR. BOGLE: No more questions, Your
21 Honor.

22 THE COURT: Okay. Mr. Falk.

23 MR. FALK: Nothing, Your Honor. Thank
24 you.

25 THE COURT: You may step down, ma'am.

1 Doctor, I'm sorry.

2 May I speak to the lawyers outside
3 please.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: Members of the jury, your
7 food is almost here. We have, as we know now,
8 possibly one more witness that will take a while.
9 I don't want to start that witness to break it and
10 have that witness suspended during the break time,
11 so I'm going to ask you to retire to your jury
12 room. And as soon as the food arrives, the clerk
13 will let us know and then divide you up into two
14 groups because of the COVID situation. As soon as
15 the food gets here, I'm sure it's going to take --
16 I don't want you to choke your food down and I
17 don't want to do it either but. Thirty to
18 forty-five minutes. This is the real smooth part
19 of a trial. It's not like television. This is
20 where you have to sort of play the game as it
21 comes to you. So retire to your jury room.

22 Please, again, -- you've been good
23 about this -- don't discuss this case among
24 yourselves or with any person directly or
25 indirectly by any means whatsoever. And if there

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1 are any questions that might arise, just let me
2 know. Okay? Y'all may be excused.

3 (WHEREUPON, the jury was removed from
4 the courtroom at 11:44 a.m.)

5 THE COURT: Gentlemen, as soon as I
6 look over these proposed charges, we'll get to
7 meet.

8 (Whereupon, a lunch break was taken.)

9 (WHEREUPON, the jury was returned to
10 the courtroom at approximately 1:11 p.m., and the
11 following proceedings commenced in open court.)

12 THE COURT: Mr. Falk.

13 MR. FALK: Your Honor, we'd like to
14 call Mr. Younger to the stand.

15 THE COURT: Yes, sir.

16 THE CLERK: Raise your right hand.
17 State your name.

18 THE WITNESS: James Gregory Younger.

19 WHEREUPON,

20 **JAMES G. YOUNGER,**
21 having been duly sworn by the clerk, testified
22 as follows:

23 THE CLERK: Thank you much. Watch
24 yourself coming up the ramp. State your name for
25 the record and spell your last name please.

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1 THE WITNESS: James Gregory Younger,
2 Y-O-U-N-G-E-R.

3 **DIRECT EXAMINATION**

4 BY MR. FALK:

5 Q Mr. Younger, tell me a little bit
6 about yourself. Your mother is here and your
7 sister is here, and they're from North Carolina.
8 Is that where you spent most of your time till
9 now?

10 A Yes, sir.

11 Q Okay. So where did you grow up?

12 A I grew up in a little town called
13 Trinity, North Carolina.

14 Q Trinity?

15 A Yes, sir.

16 Q You're going to have to speak up. I'm
17 not hearing you very well.

18 THE COURT: I'm not either. If you
19 will get closer to that.

20 THE WITNESS: Sure.

21 BY MR. FALK:

22 Q Trinity?

23 A Trinity.

24 Q All right. What's that near?
25 Winston, or where is that?

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1 A It's right outside of Archdale, High
2 Point, Greensboro. It's all like a little triad
3 community there.

4 Q Okay. So when you were talking about
5 going back to North Carolina at the end, that's
6 where you would go back to; is that right?

7 A Yes, sir.

8 Q How much time have you spent in South
9 Carolina?

10 A Very little. I had a contract job
11 here in 2012. I came down and worked for Farmers
12 Telephone. I did a six-month contract and then
13 went back to North Carolina which I call home. I
14 maintained a residence there the whole time I was
15 here, and I had an apartment here at the same time
16 at Pocala Springs down on 15 south.

17 Q Okay. That's when you were doing
18 fiber optic cable?

19 A Yes, sir.

20 Q Okay. Let me ask you, did you have --
21 there was some testimony from Dr. Godfrey about
22 that you were not the most agreeable person while
23 you were at the detention center here in Sumter
24 County. Were you suffering from a toothache at
25 the time?

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1 A Was I, yes, absolutely. I -- I put in
2 a sick call back in November. I believe it was
3 2019. I'm not sure 100 percent of the dates, but
4 it was sometime in November. I'm not sure -- I
5 think it was '19. Yeah, it had to be '19.

6 Q So what was it? Did you get --
7 ultimately get a tooth pulled after that?

8 A After -- well, they -- they initially
9 came and see me, and they gave me a little bit of
10 Ibuprofen, said, here, take two Ibuprofen, you
11 know, and see if that helps. And it just
12 progressively got worse. I mean, it was just
13 sensitive at first and then it progressed into
14 just unbearable pain, pain that I didn't even want
15 to get out of bed for every morning and it just
16 progressively got worse and ---

17 Q How long did it last?

18 A For a total of eight months. Five
19 months before the pandemic hit and then three
20 months after the pandemic hit, so a total of eight
21 months.

22 Q And so how did it get fixed?

23 A They eventually pulled it out.

24 Q Okay. So this was it like needing a
25 root canal or something like that or is it ---

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1 A I'm not sure the -- when you go to
2 Tandem Health over on Lafayette, they have this
3 big monitor in front of you. They do an x-ray and
4 then they show you the tooth and they show you the
5 decay and, you know, they say, here are your
6 options, we really can't fill this because it's
7 this close to the nerve and if we fix it it's just
8 going to continue to give problems so they
9 recommended extracting it and so that's what I
10 went with.

11 Q Did that affect your mood while you
12 were there, you think?

13 A While I was at the detention center?

14 Q Yes.

15 A Absolutely. There were days that the
16 pain was just unbearable. And the nursing staff
17 there, I mean, they did, you know, bring me some
18 medication, but it was like a ten day allotted
19 time frame. They would give you Ibuprofen for ten
20 days and then it would expire and they're like,
21 oh, you got to sign up for another sick call. I'm
22 like, okay, well, you know, can we just keep this
23 ongoing. And I spoke to the nurse practitioner
24 there, Ms. Hayward, and she's like, no, I can't do
25 that, protocol asks we give you Ibuprofen, we run

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1 it for ten days. They gave me a medicated
2 mouthwash which helped with the infection in the
3 tooth, and then every ten days I had to renew it.
4 Well, there were some days that they didn't bring
5 it at all. Even though I was signed up for it on
6 my ten days, they still didn't bring the I-- oh,
7 well, we were out of that or we were out of that,
8 or we don't have the mouthwash and, sorry, sign up
9 for a sick call. That's their answer for
10 everything, sign up for a sick call.

11 Q So did you sign up for a lot of sick
12 calls?

13 A I did. I did.

14 Q All right. Did you have some other
15 concerns about the diet that you were getting
16 there?

17 A Yes. I had applied for a kosher diet
18 and, of course, there's a process that you have to
19 go through through religion to be able to observe
20 kosher meals and so I signed up for that and I got
21 approved for it. Well, then, once the meals
22 started coming, they were serving raw carrots for
23 lunch, and the breakfast meal was a prepared TV
24 dinner so to speak. It came in a plastic tray
25 with a clear cellophane over the top. And I knew

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1 that they couldn't alter that. The dinner tray
2 was the same way. It was prepared. But the lunch
3 tray was four slices of bread, a pack of peanut
4 butter, and a side of raw carrots. The raw
5 carrots I can't eat. I don't have any molars.
6 When I went to prison back in 2014 I had a full
7 set of teeth. At prison, they don't do fillings;
8 they do extractions. So you're either left with
9 two options: You deal with the pain or you have
10 the tooth extracted. And so needless to say, I
11 lost a lot of teeth in prison.

12 Q And so your motivation was a kosher
13 diet that you think was healthier?

14 A Absolutely. Yeah, the meals were.
15 And a lot of the stuff that we're fed now is
16 just -- it's unhealthy. I mean, for example, this
17 morning we were given grits, bread, and a side
18 portion, a little small portion of egg.s And for
19 the most part, every meal is starch, starch,
20 starch, starch. There's very little protein at
21 all in the meals.

22 Q Okay. So you made some complaints
23 about the food as well?

24 A Yes, sir.

25 Q All right. So you went to prison, you

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1 went to SCDC in 2014. What did you do while you
2 were in prison? Did you take advantage of any
3 opportunities for enhancement?

4 A Absolutely. At first it was -- it was
5 a very depressing time, you know. I felt like
6 I -- my self-worth was just rock bottomed out. I
7 couldn't figure out why I was there. You know, a
8 lot of things that I didn't understand I dealt
9 with in a cold, dark, lonely room, and so I just
10 had to find a way to get out of that. And so, I
11 said I've got to something to make myself better;
12 and in doing that, I signed up for the barber
13 college. And the barber college allowed me to go
14 to a school every day where I could learn a trade.
15 Hopefully, when I got out, I could utilize that
16 trade and build on that to rebuild my life back
17 into society.

18 Q So where were you at when you went to
19 barber college?

20 A I was at Evans community, or Evans
21 Correctional Institute in Bennettsville, South
22 Carolina.

23 Q Okay. Is -- what is the term? I'm
24 drawing a blank. What's the term for the dorms
25 at, like, at Allendale?

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1 A The character dorms?

2 Q The character dorms. Was there a
3 character dorm at Evans also?

4 A No, sir, there was not. There was --
5 there was actually nothing going on at Evans
6 except for a lot of gang activity, a lot of drug
7 activity, a lot of things that I didn't really
8 want to participate in and so I tried to stay away
9 from that as much as possible. We didn't get any
10 rec. The whole two-and-a-half years I was there I
11 could probably count on both of my hands the
12 amount of time that we got for rec time.

13 Q Do you know -- so going back to the
14 barber school, how many hours was that? Do you
15 know?

16 A It was a -- it was a 12 month program,
17 but there was some lockdown times. There was
18 holidays and stuff like that so it actually ended
19 up stretching out to about 18, 16/18 months. It
20 was a total of 1533 hours that you -- well, you
21 could do the -- you could do, I think it was
22 either a 1000 or 1100, somewhere in that range you
23 could do for just the standard barber, or you
24 could go the master hair care specialist which
25 allows you to use a razor for shaving men's beards

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1 and neck lines and stuff like that and so I opted
2 to take the master hair care specialist and go for
3 the 1500 hour class.

4 Q How does that work for you? Were you
5 all the ones giving hair cuts to the other people
6 at Evans?

7 A Absolutely. What we do is we have
8 other inmates come in and they sign up. And then
9 if they have a specific barber that they would
10 like to have cut their hair, they can request that
11 barber; but pretty much there's about eight or ten
12 of us that are on the floor at any given time and
13 so it's just basically whoever comes available
14 cuts the next person in line. And that's really
15 how you're taught. The instructor would stand
16 there and say, okay, I want you to do this or she
17 would ask him first, what exactly are you looking
18 for today and then she would tell you how to go
19 about doing it and how to start, you know, a fade
20 or, you know, a temp, or whatever it was that he
21 was looking for.

22 Q There's been some talk about Jump
23 Start. What is your understanding what Jump Start
24 is?

25 A Well, I didn't actually get into the

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1 Jump Start program until I switched facilities. I
2 switched from Evans in February of 2016 ---

3 Q Well, that's okay, we'll get there.
4 What's -- I don't think this jury knows anything
5 about what Jump Start is.

6 A Okay. Jump Start is a faith based
7 program. It's a 42 week program where you
8 actually go to a meeting every day. No, I don't
9 think it was every day. I think it's -- I think
10 it's -- it was either every other day. I think
11 you had three -- you had three classes that you
12 met in the dorm, and then you actually have one
13 class where it was a group class where all the
14 dorms throughout the whole yard. Everybody came
15 to like the multipurpose gymnasium and met one day
16 a week. And basically what you did was you,
17 you're -- you had a -- you had a binder, and
18 within that binder you had an assignment every
19 week that you had to work on, and it gave you
20 accountability, it gave you homework. It gave you
21 basically stuff to do that would help you grow and
22 build your faith in certain areas, whatever that
23 specific topic was for that week.

24 Q But it's not Bible study. What other
25 topics were you all covering?

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1 A I don't even remember all the topics
2 that we covered. There were so many. It was
3 based off of the Purpose Driven Life book by, I
4 think, Rick Warren -- don't quote me on that, but
5 I think it was by Rick Warren. It was based on
6 basically when you open up the book, I think one
7 of the first pages that I remember says, this is
8 not about you. So it basically, the whole premise
9 of the class was that if you would allow wisdom
10 and truth to enter the center of your being that
11 God can transform your life.

12 Q And so Jump Start has some, like,
13 halfway houses on the outside?

14 A Yes, sir.

15 Q And had you discussed with them about
16 ---

17 A I had. I actually went through the
18 program at Allendale and then I came back to Evans
19 through facilitator's class. There were 17 of us
20 that was on the yard at Allendale that all took
21 this facilitator class and we all got certified to
22 be facilitators. And so, once we became
23 certified, they shipped us all to Evans to start
24 up a character program there. So I left Evans,
25 went to Allendale, learned all this information,

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1 and then got shipped back to Evans. Once I was at
2 Evans they put us in the Wax-haw dorm and they
3 said they were going to build this huge, awesome
4 program and we sat there for six months and they
5 did absolutely nothing.

6 Q So there was some talk about a
7 character dorm, what is that?

8 A It's based on building the character.
9 It's based on allowing men to learn the 49 traits
10 of the characters or the 49 character traits and,
11 I mean, there's so many different character traits
12 that I didn't even know was a character trait that
13 allowed me to learn and to grow from.

14 Q Do you have some examples?

15 A Deference, just being...

16 Q Did you say deference?

17 A Yes, sir. That's one of the character
18 traits, and so it helped me to understand the
19 importance of other people's ---

20 Q Feelings?

21 A --- feelings, emotions. Emotions was
22 the word I was looking, but I drew a blank. I was
23 trying to think of something, but yeah, so. That
24 was just one of them. Empathy. I mean, there was
25 just so many that I'm drawing a blank.

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1 Q So at the character dorm, so there --
2 this is sort of -- so you have these programs
3 where you're trying to do some self-improvement.
4 Are there any advantages other than programs of
5 being in the character dorm versus being in the
6 general population?

7 A Well, yes, absolutely. There's --
8 there were so many benefits of going to Allendale.
9 There was rewards for good behavior. There was
10 animal programs there. There was pottery class.
11 There was bee keeping class. There were so many
12 programs to help you grow. I mean, as a
13 facilitator -- at first I was just a participant
14 of the classes and so I'd go in there, I would
15 take the notes, I would do the homework. And a
16 lot of it was about rebuilding -- or maybe not
17 necessarily rebuilding, but recognizing where you
18 may have gone wrong and why you became
19 incarcerated and how you could potentially change
20 your life through this class or how it can benefit
21 you to grow and recognize where your character was
22 lacking and how you could build your character and
23 how you could grow from the things that you
24 learned in that class.

25 Q What kind of takeaways do you have

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1 from that that relate to the charge for which you
2 were convicted of?

3 A Could you repeat that please?

4 Q You know, so, you learned some stuff
5 about your character, building your character.
6 You know, what -- how does that apply to the
7 charges that you were convicted of and what you're
8 gonna do next?

9 A As far as it relating to my charges, I
10 feel like ---

11 Q The kind of conduct that led to the
12 charges is what I'm talking about.

13 A The conduct. It led me to -- a lot of
14 the classes were really victim centered and so a
15 lot of the classes really, really emphasized
16 victim empathy and feeling, putting yourself in
17 your victim's shoes so that you could relate to
18 how they may have suffered. And so I think that
19 that was the biggest thing for me is that I really
20 was able to get a better understanding of how my
21 victim may have suffered that night, and so, yeah.

22 Q If you -- let's say you were at that
23 character dorm at Allendale and you had some type
24 of disciplinary infraction, what would happened?

25 A Well, the first thing that would

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1 happen is you would go to lockup because they have
2 a zero tolerance policy: No drugs, no cellphones,
3 no nothing. If you get caught doing anything, you
4 go to lockup. Then they send you to a 90 day
5 program in another dorm; and if it's a serious
6 offense, you immediately get kicked off the yard.

7 Q That's one of the better yards to be
8 in is Allendale.

9 A Absolutely.

10 Q It's a level 2?

11 A When you -- when I went from Evans to
12 Allendale -- and let me back up if I may. While I
13 was at Evans in the barber college, the associate
14 Warden McFadden actually came to me and asked me
15 if I would be interested in being a coordinator.
16 At that time I didn't know what he meant. I said,
17 what do you mean by a coordinator. He said, well,
18 we're trying to develop a character dorm here at
19 Evans and we need somebody who would be willing to
20 go to Allendale, learn the program, and then come
21 back and help us start a program here. And I
22 said, yeah, that sounds like something I'd be
23 interested. He said, okay, well, let me ask you
24 this, would you be interested in facilitating some
25 type of exercise class in that character program,

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1 and I said, absolutely, absolutely. That's kind
2 of, you know, my jam, you know. I like doing
3 exercise. I've exercised all my life. I like
4 being a yoga instructor. I like being an aerobics
5 teacher and all those things and so that's kind of
6 where I was feeling like, you know, he could use
7 me in that character program. So he took myself
8 and three other gentlemen and they shipped us down
9 to Allendale and I believe it was in May of '15,
10 and so we stayed down there for four weeks. We
11 went around to all the pods. We talked to all the
12 coordinators. We talked to everybody that we
13 could. We gathered as much information we could,
14 and we came back with these big, black three ring
15 binders that were about this big. There were
16 three or four of them. We brought them all back
17 to Evans after four weeks. We sat down with, I
18 think her name was Ms. Roberts. She was the one
19 over the character program at that time that was
20 being started up at Evans. And so she took all
21 the information, she made copies of it. And it
22 was just within a few weeks that she had the
23 Wax-haw A side dorm opened up, had everybody moved
24 in there and she kind of had us, you know, set
25 down with everybody in a big open pod and kind of

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1 tell everybody what the program was about, how we
2 went down there and what we learned, what we
3 gathered and what we brought back and what our
4 goal was and what we were trying to facilitate in
5 this dorm itself.

6 Q Let's go back to Allendale. Do you
7 have a program there that's a character based
8 housing unit right at Allendale?

9 A All the pods -- or I'm sorry, all the
10 dorms now are character based. When we first went
11 down there, I think there was the Bamberg dorm and
12 the Colleton dorm which the Colleton dorm is
13 anybody who comes to the yard who does not have a
14 GED, they automatically have to go to that dorm.
15 There's no ifs, ands, or buts about it. You have
16 to have a GED to be on that yard. That's one of
17 the things that they emphasize first and foremost.
18 But now, but to answer your question, all the
19 dorms there are now -- it's complete a character
20 yard now from my understanding, or at least when I
21 left there in 2018. All the dorms were character
22 dorms. When we first got there, only Colleton and
23 Bamberg were the two character dorms, but then now
24 all of them are made. Does that make sense?

25 Q So as far as violence from other

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1 offenders, you have less concern about it is when
2 you're in a character dorm?

3 A Absolutely. Absolutely. From when I
4 left Evans which was, you know, huge gang violence
5 there. I mean, it was just nonstop every day.
6 From that to when I went to Allendale it was just
7 like, whew, I can actually breathe now. You know,
8 I don't have to look over my shoulder constantly
9 worried who's going to stab me with a knife or hit
10 me in the back of the head with a jackknife.
11 Yeah, it was, the level of peace that I felt was
12 just...

13 Q Do you remember all of the classes and
14 stuff that you did while you were at Allendale?

15 A I don't remember all of them. I mean,
16 I took ---

17 Q Let me see if I can ---

18 A I took a large group of classes. I
19 think it was -- I mean, they have -- they have
20 over 100 classes there.

21 MR. FALK: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. FALK:

24 Q This is a sheet that you had given me
25 and we've talked about this, but this may help

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1 refresh your memory.

2 A Yes, sir. Yes, sir. Thank you.

3 Q All right. So the sheet that I'm
4 looking at says 540 hours. What does that mean?

5 A That was the total number of classes
6 that I had taken. The actual form doesn't have a
7 date on it, but I'm assuming from the time that I
8 got there to the time that this is actually filled
9 out was not when I left there in 2018. I think
10 this was actually when my first parole hearing
11 came up. I actually had requested a copy of this
12 so that I could take it to my parole hearing. And
13 at the bottom you'll see there is a list of things
14 that I have worked on or completed at -- like the
15 hospice worker that was working with handcuffed
16 inmates, that was actually at Evans yard facility.

17 Q So what did you do? What's is a --
18 what's it mean to be a hospice worker?

19 A You actually had to get certified to
20 work with the gentlemen that were handicapped.
21 They ---

22 Q How handicapped? Like, mobility
23 handicapped or mental health handicapped?

24 A No. Well, like, well, I mean, some of
25 them were questionable. I'm not sure. I didn't

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1 never really ---

2 Q Like wheelchair, walkers ---

3 A Yeah. Wheelchair, missing legs,
4 missing limbs, stuff like that that couldn't
5 really -- I mean, there was a specific handicap
6 dorm at Evans. I think it was the name was Cheraw
7 was the name of the dorm where most handicap
8 people, a lot of people with incontinence and
9 stuff like that that couldn't hold their, you
10 know, self ---

11 Q So what did you do for them?

12 A We would bring them in every day and
13 we had this big, huge mat that would lay down on
14 to the floor and we'd get them out of their
15 wheelchairs or we -- I mean, whatever their
16 disability was, each person was specifically
17 different so we sometimes we would -- I would help
18 a man named -- I think his name was Sherman. He
19 was in a wheelchair. He didn't have any legs. so
20 he would get out of his chair and down to the mat
21 and I would help him with stretches and we would
22 do some arm exercises. And they had, like, a
23 couple of the dumbbells there and it had some
24 different rubber bands and stuff, elastic bands
25 that they would work with.

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1 Q And that was able to draw some of your
2 training that you had before as a personal
3 trainer?

4 A Yes, sir. I felt like that was --
5 that was something that I really enjoyed doing. I
6 love helping people. And so when I think the
7 Nurse Smith was the one who had asked me,
8 initially asked me to come down and help with the
9 hospice guys and so that was something I felt
10 like, you know, I could really benefit from. That
11 was -- that was actually right before I started
12 attending the barber college. So the barber
13 college kind of -- I had to do one or the other so
14 I had to make a choice at that time so I went with
15 the barber college. But I enjoyed the hospice
16 service.

17 Q What about the Kairos program, what is
18 that?

19 A The Kairos?

20 Q Kairos.

21 A Kairos program was a three day weekend
22 they called it the walk. And depending upon what
23 weekend you got, I think -- I had signed up for it
24 at Evans but never got accepted. I think they
25 only accept 21, 22 people for the three day walk

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1 and then they have one twice a year: One in the
2 spring and one in the fall. And so I never made
3 the -- I never made the cut when I was at Evans.
4 But when I got transferred to Allendale, I signed
5 up for -- I had talked to a couple of gentlemen
6 there that I had talked to in the Bamberg dorm,
7 and I actually got into the Kairos '19 walk at
8 Allendale.

9 Q So what is it?

10 A Kairos walk is a -- it's a faith based
11 three day walk. All kinds of men come in and they
12 basically just, you know, lay out the law of God.
13 And they tell you, look, we don't know what you're
14 in here for, we don't care what you're in here
15 for, all we want to tell you is that God loves you
16 and that you can change your life if you will
17 allow him to. And so throughout the course of the
18 three day weekend it was just, you would -- it
19 wasn't them preaching at us. It wasn't them
20 trying to push anything down our throat. It was
21 just them expressing their love, you know, so.

22 Q And what was your faith like before
23 you went to prison?

24 A I, I mean, I knew who God was, you
25 know what I'm saying and I went to church

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1 regularly and I prayed and I, you know, did things
2 that, you know, believers did. But I never really
3 had a relationship with Jesus Christ and so going
4 through the Kairos walk that weekend, it changed
5 my life.

6 Q And then there's a Kairos reunion,
7 what is that?

8 A That is an event that they hold once a
9 month. And everybody who's ever been through a
10 Kairos walk, regardless of whether you did it at
11 Evans or whether you did it at Broad River or
12 whether you did it at Allendale, if you're on the
13 yard, once a month they hold this reunion and the
14 reunion allows everybody to just kind of
15 fellowship. They bring in chips, drinks, sodas,
16 and stuff like that.

17 Q One of the classes on this list says
18 loss of grief class. What is that? You have ten
19 hours of that.

20 A That was -- that was a class that I
21 took to...

22 Q Well, let me -- so what did you learn
23 at the horticulture class?

24 A Horticulture?

25 Q Yeah.

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1 A I don't know that I took a
2 horticulture ---

3 Q You have six hours there.

4 A Horticulture, I signed up to work in
5 horticulture, ---

6 Q Yeah.

7 A --- but I think the horticulture class
8 was basically we were doing this ---

9 Q Well, here's the question: What
10 classes did you get the most of out of while you
11 were at Allendale?

12 A Probably would be resolution for men,
13 the victim impact class, the Jump Start. There's
14 ---

15 Q What is resolution for men?

16 A Resolution for men is basically it's
17 engineered toward helping you determine where you
18 may have gone wrong in life and how sometimes we
19 don't always understand other people and where
20 they're coming from or their logic in what they do
21 so it helps us to -- or it helped me to be able to
22 relate to other people and to know that I wasn't
23 always kind. There was ---

24 Q That you weren't always what?

25 A Kind.

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1 Q Okay.

2 A You know what I'm saying.

3 Q Yeah.

4 A So it taught me how to be more
5 understanding, more compassionate. It helped me
6 to resolve some of the issues that I was dealing
7 with, that I had been dealing with in prison, and
8 that's what it was -- the whole premise was about:
9 How do you resolve the issues that have got you to
10 this point.

11 Q Did you think you had an anger
12 management problem prior to prison?

13 A I don't think I had -- no. I didn't
14 think I had ---

15 Q You got into a couple of scuffles?

16 A Yes, sir. I have gotten into a couple
17 of scuffles in prison.

18 Q No, I mean prior to prison. You had
19 the charge for assault and battery.

20 A Oh, yes, sir. Yes. You're talking
21 about the -- I don't even remember what year it
22 was, but it was sometime ago, yeah. There was a
23 conviction for assault with a deadly weapon; but I
24 felt like that was self-defense, but I felt like,
25 you know, I had been drinking and probably if I

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1 hadn't been drinking my level of thinking would
2 have not been so quick to respond in an aggravated
3 sense.

4 Q Dr. Godfrey suggested that you've got
5 a problem, that you had -- one of her diagnoses
6 was, you know, substance abuse. Do you think that
7 you had a problem with drugs and alcohol prior to
8 prison?

9 A I think there was a time in my life
10 when I drank too much.

11 Q How about pills or marijuana or ---

12 A Pills had never been an issue for me;
13 but marijuana, I enjoyed. I smoked marijuana. Do
14 I think I had a problem with it? No. I mean, I
15 did it casually, daily, but I don't feel I had a
16 problem with it. I didn't feel like I had to get
17 up in the morning and couldn't live without it if
18 I didn't smoke it.

19 Q There's a class on here that has eight
20 hours. It says, thinking for a change. What did
21 that mean?

22 A I'm, I'm not 100 percent sure. I
23 mean, I took a lot of classes. Some of the
24 classes I didn't really like. I didn't really
25 feel like they were benefiting, you know, what I

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1 really was trying to look for and that was
2 ultimately change. I don't think it's on here,
3 but there was an animal grooming class that I
4 participated in and that kind of carried over from
5 my barber college from Evans. And so when I got
6 to move into the Bamberg dorm, animal grooming was
7 one of the classes that I was really inspired to
8 take. I was able to go in there and we were able
9 to keep a dog or a cat. Well, initially, when I
10 worked -- when I moved back to the Bamberg dorm I
11 was on the cat side and so I had a cat in my room
12 and, you know, they're pretty self-sufficient.
13 They clean -- they go to the bathroom, whatever,
14 and then empty into the litter box. And basically
15 all you had to do is empty out the litter box and
16 change it and everything and keep it swept up
17 around there. And I mean, but they love you.
18 They come and jump up in your bed at nighttime,
19 and they sleep under your arm or close to your
20 body for the heat and the love and affection. And
21 so once I got moved to the dog side, that's
22 actually when you get to start grooming the
23 animals and so that program I absolutely loved. I
24 got to use my skills from barbering that I learned
25 at Evans. I got to bring that to Allendale and

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1 got to groom the animals and got to actually have
2 my own animal in my own room and that -- it was
3 very, it was very refreshing to have an animal in
4 your room every day and somebody who looked
5 forward to you coming home and that you could love
6 on and go out and walk every two hours and, you
7 know, just they had an agility field out on the
8 side of the dorm that you could take them out
9 there and play every two hours and run them
10 through this little obstacle course and it was
11 really refreshing.

12 Q There's a class called the impact of
13 crime. You took that class and completed it in
14 2016. Do you know what that class was about?

15 A I do. I do remember that class
16 specifically. There was a lot of accountability
17 with it.

18 Q First of all, was that at Evans? Was
19 that at ---

20 A All these classes were at Allendale.

21 Q Okay.

22 A Evans didn't really offer anything
23 other than the barber college.

24 Q Okay. So tell me about the impact of
25 crime class. How often would it be?

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1 A That was twice a week. I believe we
2 met twice a week for 12 weeks, and it was
3 facilitated by the pastor. I don't remember his
4 name. He was a super nice black man. But he, he
5 basically took us through a -- it was an 18 week
6 manual, but I think he, you know, designed it to
7 where he could do it in 12 weeks. he would show
8 us like a 20 minute video or whatever and then he
9 would go through the manual. He would give us
10 homework. we'd come back and be held accountable
11 for, you know, what we turned in. And then he
12 would look at it, either grade it, give it back to
13 us, tell us where we need to change. He would ask
14 us certain questions about how we answered certain
15 answers, well, you put this right here down, what
16 did you mean by this and how could you possibly
17 maybe relate to this differently.

18 Q What other types of topics that you
19 were covering there? I mean, what would an
20 assignment be?

21 A One of the specific topics I remember
22 was victim empathy.

23 Q Okay.

24 A That was absolutely one of the most
25 probably prevalent topics for me because I got to

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1 really sit back, analyze what I had done to get
2 myself put in prison, how I can relate with my
3 victim, and how I could change those actions to
4 make sure that nobody else ever had to go through
5 that same thing again.

6 Q And there's a program called Character
7 First. I guess that was an Evans program, right?

8 A That was -- that was an Allendale
9 program.

10 Q Okay.

11 A Well, I take that back because there
12 was a time when I first came back from Allendale
13 as one of the coordinators, there were several
14 classes that we took at Evans; but I don't
15 remember exactly what classes those were. I
16 believe there was some certificates.

17 Q So, yeah, I'm looking at one of those
18 certificates.

19 A All right.

20 Q What did you do? What was the class
21 about? What ---

22 A Character First, it was strictly based
23 on the 49 character traits.

24 Q Oh, okay.

25 A We had a guideline of the 49 character

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1 traits, and what we do is we chose a character
2 trait for that specific week and that's what we
3 taught on.

4 Q I see.

5 A And it was all out-- basically
6 outlined for us in a manual that we had actually
7 obtained from Allendale that we brought back.

8 Q And there's one here about good
9 business by the book. What is that about?

10 A That was teaching men how to open up
11 their own small business, and I was really
12 interested in that because I'd taken the barber
13 college classes and I felt like if I could take
14 that trade and open up my own little barber shop
15 when I got out that I wanted to know, you know,
16 what are the fundamentals of running a business.
17 I mean, I had run a business for quite some time,
18 but I didn't -- I mean, it was basically
19 self-taught. I didn't really know all there was
20 to know about running a business.

21 Q And I'm looking at a certificate for
22 resolution for men. You already talked about that
23 one, right?

24 A Yes, sir.

25 Q And that, again, is sort of changing

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1 your character going forward?

2 A Absolutely. And they're all based off
3 of character change and how you can eliminate, you
4 know, bad character traits and move forward and
5 learn new character traits that will make you a
6 better person.

7 Q I have a picture here. So did you
8 take some pottery classes there?

9 A Yes, sir.

10 Q So how long did they last? So those
11 are all that you've done?

12 A Yes, sir. There is a program at
13 Allendale. It's called the Jeremiah 18 Pottery
14 Program. Super nice lady, Ms. Liz -- I'm sorry, I
15 drew a blank there. But Ms. Liz had over 20
16 something years experience. She came in twice a
17 week, Tuesday and Friday, and she basically showed
18 you how to make pottery and help you understand
19 exactly what the premise of the pottery is and how
20 sometimes our life is like a big lump of clay and
21 sometimes we are molded into something that is not
22 realistic or it's not who God intends for us to be
23 so, you smash the lump of clay down. And then,
24 and she goes through this whole speal at the
25 beginning of class. All the new people that come

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1 in, she takes and pulls to the side. She explains
2 to you the Jeremiah 18 premise, and it's all about
3 pleasing God and how sometimes we are molded into
4 these pieces of ceramic or pottery or clay or
5 whatever it is and then sometimes that's not who
6 we're designed to be and we deviate from our
7 planner for God's will for our life and so
8 sometimes we have to be just smashed down into a
9 lump and start over. And that's how -- I had a
10 picture here of another piece. Excuse me one
11 second. But, yes, these pieces here, one of the
12 first pieces that I did there was the picture on
13 the bottom, the Jeremiah 18, with the full armor
14 of God on it. It has the belt, the helmet, the
15 sword, the breastplate, and the shield, and then
16 of course the word God. There is, is -- it was
17 actually, it's called a small box challenge.
18 Excuse me one second.

19 So the other pieces, I don't know if
20 you can see this bowl here at the top, it was one
21 of the first pieces that I made. And it was a
22 fruit bowl that I made for my mom and I had
23 painted these pictures of all these nine different
24 fruits of the spirit inside the bowl. And then so
25 I sent it to her and she said, well, Greg, where's

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1 the fruit. And I said, mom, I painted it on the
2 inside of the bowl. She said, well, son, that's
3 not good enough. So I went back and I made each
4 piece of fruit, the banana, the grapes, the apple,
5 the pear, the peaches, the plum, the strawberries,
6 and I sent them all to her and I thought she was
7 extremely happy with that so.

8 Q So those are photographs of your -- of
9 your creation of pottery?

10 A Absolutely. I discovered a talent I
11 didn't know I had, amongst many others; but yes,
12 doing pottery was one of them.

13 MR. FALK: Your Honor, I guess we
14 would like to introduce this as Respondent's
15 Exhibit No. 1.

16 THE COURT: Any objection?

17 MR. BOGLE: No objection.

18 THE COURT: Without objection.

19 (WHEREUPON, Defense Exhibit No. 1 was
20 marked for identification and admitted into
21 evidence.)

22 BY MR. FALK:

23 Q One more, somewhat of the creative
24 side that I wanted to talk about. Did you take a
25 quilting class also?

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1 A Yes, sir, I did.

2 Q Was there a faith component to the
3 quilting class also?

4 A Absolutely. Ms. Nancy was -- she was,
5 she was a special agent. She wasn't but about
6 4'5", 4'8", super small lady, but had the biggest
7 heart in the world.

8 Q So what are those pictures of on that?

9 A This is actually ---

10 MR. FALK: Your Honor, so he's not
11 showing it to the jury so.

12 BY MR. FALK:

13 Q those are quilts that you participated
14 in creating?

15 A Yes, sir.

16 Q Those are photographs of them?

17 A Yes, sir.

18 MR. FALK: Your Honor, we move that as
19 Respondent's Exhibit 2.

20 THE COURT: Without objection, in.

21 (WHEREUPON, Defense Exhibit No. 2 was
22 marked for identification and admitted into
23 evidence.

24 BY MR. FALK:

25 Q Okay, so, tell us about that.

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1 A All right. So the first thing Ms.
2 Nancy does, she teaches you the fundamentals of
3 why she's there and how she came to be a
4 participant at Allendale to do the quilting class.
5 And then the first thing she does is she teaches
6 you to do this seduko (ph) quilt and it's
7 basically, she calls it patchwork, and she says --
8 I don't remember everything that she says, but she
9 tells you this little story that she has about how
10 God takes many users of one body and he puts them
11 all together. And these are symbolic to all the
12 different pieces that we are as a whole how
13 everybody comes together and God uses these for
14 different things and different challenges and
15 different traits and how all of us eventually end
16 up together, but how we're all uniquely
17 individually different.

18 Q So did you work on those with a group,
19 or are those your own quilts?

20 A These are my own quilts. We actually
21 come to a class two days a week, Tuesday and
22 Thursday, for three hours in the afternoon from 12
23 to 3. But there was some activities that we did
24 as a group, you know, little small projects, but
25 these were specific individual projects that I

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1 did. I made this seduko quilt for my mom. I made
2 this other small patch. And this was very time
3 consuming, but luckily I was able to have pottery
4 craft in my room where I could have needle and
5 threads and fabrics and scissors and stuff like
6 that in my room at Allendale and I was able to
7 make my dad this little two-and-a-half inch
8 patchwork quilt. This top one up here is a Dallas
9 Cowboy queen size quilt that I made for my son
10 Coby for Christmas which was very time consuming.
11 I mean, each little small patch that you see there
12 was all sewn together and so I made the
13 pillowcases, and then, of course, I made my sister
14 one that was the same Dallas Cowboy. She's,
15 unfortunately, a Dallas Cowboy fan but. I did
16 make ---

17 Q Did you say unfortunately?

18 A Yes, sir. But I'm a Pittsburgh
19 Steelers fan so. but I did make -- I tried to
20 make everybody one that I could, and these were
21 all very time consuming and so I put a lot of hard
22 work and effort into those and I felt like my
23 family really appreciated it. Although I didn't
24 get to see my son's reaction when he opened up the
25 box, my family told me that it was well received.

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1 Q How much contact have you had with
2 your family?

3 A My mom and my sister and my dad and my
4 brothers, I've had a lot of contact with them. I
5 kept in touch with them the whole time. They've
6 been my support system. They've help me
7 financially. They've helped me in ways I just
8 can't even explain.

9 Q Did they visit you when you were at
10 Allendale and Evans?

11 A Absolutely. They have come to visit
12 me religiously since the day I got incarcerated.

13 Q They visited you -- have you been in
14 contact with them since you been here in Sumter?

15 A I have. Unfortunately, they've taken
16 the visitations away at the detention center.
17 They now have the video visitation.

18 Q Because of COVID?

19 A Because of COVID, yes, sir. Yeah.
20 When the COVID, you know, and they took the
21 visitations away but. Until that point, yeah,
22 they came to see me regularly, maybe once or twice
23 a month. It's, you know, a pretty good drive for
24 them and they came when they could and they were
25 only allowed to stay an hour. So they drove here

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1 three hours, they stayed an hour, and they drove
2 back three hours so it was a full day for my mom.
3 You know, she's recovered from cancer so it was
4 very difficult for her to try to make the trip
5 sometimes.

6 Q Where is your son right now?

7 A I am not sure.

8 Q When was the last time you had contact
9 with him?

10 A Probably about six or eight months
11 before I went to prison.

12 Q So can you tell the jury how you are a
13 different person today? Well, first I want to ask
14 you one other question. I got to. Why did you
15 get 16 Bibles in your cell at the Sumter County
16 Detention Center?

17 A Well, it's a long story. My mom
18 always told me that the world would make me
19 stronger and so I took that literally. When I
20 came to the detention center I was unable to work
21 out so I keep the Bibles in my room, one primarily
22 for educational purposes, that I open up every day
23 and I look forward to spending that time with my
24 creator and the word of God has strengthened me to
25 just -- I can't even describe all the things that

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1 I've gained in the knowledge that I've gained from
2 that. And I feel all this has been a growing
3 process for me, but the Bibles were primarily for
4 working out. I use them once in the morning to
5 strengthen my inner man and then I use them in the
6 afternoon to strengthen my outer man.

7 Q Very good. So did you -- you said
8 that you went to church and you were a believer;
9 but would you read your Bible as much before? I
10 mean, is there any kind of transition as far as
11 your faith goes to the man you are now versus the
12 man you were ten years ago?

13 A Absolutely. Ten years ago I don't
14 even think I opened a Bible other than if somebody
15 mentioned a specific verse. I may have looked it
16 up. I may have read a little bit. I may have
17 read, you know, something specific that was given
18 to me in a daily devotional or something. But as
19 far as actually opening it up, reading the story
20 and learning from it and trying to apply it to my
21 life, no, I don't think I did that ten years ago.
22 As a matter of fact, I know I didn't do that ten
23 years ago but. Being here at the Sumter-Lee
24 Regional Detention Center has given me time and I
25 feel like time is one of God's most effective

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1 tools to teach us to rely on Him and I've utilized
2 that time to dig deep, soul search, and -- excuse
3 me -- and just realize, you know, there are things
4 about my life that needed to be changed and so...

5 Q You understand that you're going to go
6 to North Carolina after these -- this proceeding,
7 one way or the other; is that right?

8 A That is my understanding.

9 Q What do you want to do when you go to
10 North Carolina?

11 A Is that with ---

12 Q What I mean is, you know, you've
13 been -- you have had a lot -- you have a lot of
14 accusers up there in North Carolina.

15 A That is true, unfortunately.

16 Q What do you want -- and so you're
17 going to be brought up there on charges ---

18 A Uh-huh.

19 Q --- and face these accusers. What I
20 mean, is it your intention to tell your side of
21 the story or what?

22 A Absolutely. It is my full intention
23 to have my day in court and allow, or be given an
24 opportunity to face my accusers.

25 Q Okay. Now getting back to the

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1 question I interrupted myself on. How are you a
2 different man today than you were when you went to
3 prison?

4 A I feel like I have grown. I feel like
5 I have been given an opportunity to sit back and
6 evaluate and contemplate life and see exactly what
7 is it that allowed me to be put in a position
8 where I had to face going to prison and so I've
9 taken that opportunity and I've taken full
10 advantage of it. I feel like I've been -- I've
11 given -- I feel like I've afforded time to
12 reevaluate myself. I've been given the
13 opportunity to take a second look at life and say,
14 all right, these are the things that you were
15 doing, these are the things that you were doing
16 wrong, how can you take those and improve on them.
17 And I've been afforded time. I feel like, I feel
18 like I was living in sin, okay. I didn't really
19 realize it at the time or maybe I did realize it
20 and didn't really acknowledge it. There were
21 times when I -- and I'm embarrassed to say this.
22 There are times when I slept with other men's
23 wives and I'm embarrassed to say that.

24 Q The lady that you were going out with
25 in 2012 who had accused you of those charges, if

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1 she walked in here today what would you say to
2 her?

3 A I'm sorry, I apologize. I never, I
4 never had any intent or desire to hurt her.

5 MR. FALK: Your Honor, I have no
6 further questions.

7 THE COURT: All right. It is 2:00.
8 Almost, almost an hour since we've been back in
9 here since lunch. Let us take approximately 15
10 minutes. We all need a break. I'm going to ask
11 you, again, as I've asked you earlier and you've
12 been so good in complying with my request, do not
13 discuss this case among yourselves or any other
14 persons directly or indirectly. We will be back
15 with you shortly. Thank you.

16 (WHEREUPON, the jury was removed from
17 the courtroom at 2:02 p.m.)

18 THE COURT: Mr. Younger, you are a
19 live witness. You're not allowed to talk to your
20 attorneys during the break. You simply may go to
21 the restroom as they allow, but you're not to
22 discuss this matter with anybody on your defense
23 team -- do you understand? -- or anybody else?
24 All right, sir. We'll be back in a few minutes,
25 folks.

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1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 (WHEREUPON, the jury was returned to
4 the courtroom at approximately 2:22 p.m., and the
5 following proceedings commenced in open court.)

6 THE COURT: All right, Mr. Bogle.

7 MR. BOGLE: Thank you, Your Honor.

8 May it please the Court.

9 **CROSS-EXAMINATION**

10 BY MR. BOGLE:

11 Q Mr. Younger, you have heard the
12 testimony yesterday about the number of incidents,
13 or whatever you call them, at the jail, while
14 you've been at the jail, right? Sick calls,
15 mattresses, Bibles, contraband, things like that,
16 Mr. Younger, given the verbal thing with other
17 inmates. You heard the list of things like that
18 that Dr. Godfrey went through yesterday?

19 A Yes.

20 Q Okay. Is it safe to say that based on
21 all those things, whether right or wrong, the jail
22 might think of you as sort of a problem child
23 right now?

24 A I wouldn't necessarily say a problem
25 child.

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1 MR. FALK: Objection.

2 THE COURT: Yes, sir, I overrule it --
3 I mean, sustain that, sorry.

4 BY MR. BOGLE:

5 Q Let's talk about -- well, there's been
6 a number of things: Fifty or more sick calls, the
7 extra mattresses in your room, the extra Bibles in
8 your room, other things that you're not supposed
9 to have in your room. There's been a lot of those
10 things, right?

11 A I think that would be safe to say.

12 Q Okay. Now the things we do know, we
13 do know there was a 1990 conviction for assault on
14 a female. You heard testimony about that
15 yesterday.

16 A I'm not sure.

17 Q Okay. Well, we also heard --

18 A I mean ---

19 Q --- testimony of a 1990 probation
20 violation. The probation you were on for the
21 conviction apparently got revoked for some reason.
22 Correct? You had to go to jail.

23 A No, that's not true.

24 Q Okay. Then in 2008 we have assault on
25 a female. You grabbed that woman's breast at the

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1 Def Leppard concert. That happened, right?

2 A I was convicted of that.

3 THE COURT: Wait, wait, Mr. Younger.
4 I can't hear a word you're saying, sir. I don't
5 think the jury can hear you either.

6 BY MR. BOGLE:

7 Q You were convicted of that, right?

8 A I was.

9 Q Okay. And then we have the 2012 crime
10 here in Sumter leading to the conviction in 2014
11 for criminal sexual conduct in the third degree,
12 right? That happened here?

13 A Correct.

14 Q Okay. And I've looked at -- I put a
15 yellow marker up there. Is it gone? Is it still
16 there? When you handed this -- when your lawyer
17 handed this sheet of paper to you, it's a list of
18 the courses you talked about you took at the
19 Department of Corrections, right?

20 A Correct.

21 Q And at the top it says "total hours,
22 540."

23 A Correct.

24 Q Is that the total hours for everything
25 on the sheet of paper?

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1 A I'm assuming. I'm not sure where the
2 number came from.

3 Q Okay. Okay. And some are printed
4 down there right here and some are handwritten by,
5 I assume by you?

6 A The handwriting part is at the bottom
7 is me, yes, sir.

8 Q Okay. Let me hand -- do you have a
9 copy? Here's another -- is that a copy of what
10 your lawyer showed you?

11 A It is.

12 Q Okay. Take that yellow marker if you
13 would. Highlight for me the part about sex
14 offender treatment.

15 A I don't know that there's anything on
16 there about sex offender treatment. There wasn't
17 a specific class for that, sir.

18 Q There wasn't a class for that?

19 A No, sir.

20 Q Are you saying that you were not
21 offered the chance to take sex offender treatment
22 while in prison?

23 A That's exactly what I'm saying.

24 Q Okay. Did you ask for sex offender
25 treatment?

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1 A I absolutely did.

2 Q I'm sorry?

3 A I absolutely did.

4 Q Do you think you need sex offender
5 treatment?

6 A I think that everyone can benefit from
7 counseling, sir.

8 Q That wasn't what I asked. Do you
9 think you need sex offender treatment for sex
10 offenders?

11 A Like I said, I believe everyone can
12 benefit from counseling which I believe sex
13 offender treatment would be counseling.

14 Q Okay. Well, let's think ahead. The
15 case -- your case involving you is going go to the
16 jury today or maybe tomorrow, something like that,
17 very soon, and they may decide to release you. If
18 that being the case, have you made an appointment
19 somewhere or had your family make an appointment
20 somewhere for sex offender treatment if you get
21 released by the jury?

22 A Can you restate the question?

23 Q If you get released by this jury, have
24 you already made -- through your family or
25 yourself or your lawyer -- made appointment for

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1 sex offender treatment on the outside?

2 A Have I already?

3 Q Yeah.

4 A No, sir.

5 Q Okay. Isn't it true that when it came
6 up, when sex offender treatment became an
7 option -- Ms. Sylvia Roberts is one that offered
8 it -- it would have had you to move to another
9 particular prison to take it and you didn't want
10 to move there. Isn't that what happened?

11 A That is not accurate statement. Ms.
12 Sylvia Roberts did not offer it. I actually
13 inquired on it through the law library. I went to
14 the law library and researched treatment for sex
15 offenders. It's called the SOT program.

16 Q Right.

17 A SOTP program in the policy and
18 procedures manual in the law library. I went
19 there, I researched it, I looked it up. I found
20 out who I needed to contact to inquire on that
21 class or that program, and I wrote Ms. Sylvia
22 Roberts a staff request which I was in
23 Bennettsville, she was in Columbia. I sent her a
24 staff request inquiring on the program and then
25 she replied back that the program would require me

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1 to move to Broad River.

2 Q Uh-huh.

3 A So then at that point I inquired,
4 well, what is the yard like? Is it level two
5 offenders, is it level three offenders, is there a
6 lot of gang activity, what is going on, because I
7 was trying to get away from the gang activity at
8 Evans. I was about to finish up my barber college
9 at Evans so I wanted to transition into something
10 else that I could benefit and make myself a better
11 person from, so I inquired on the sex offender
12 treatment program because I felt like I can
13 benefit from that treatment program. So when I
14 inquired to Ms. Sylvia Roberts the second time,
15 asking her about the yard and asking her about the
16 gang activity and asking her if they were level
17 two or level three offenders, you know, I never
18 got a response back ---

19 Q Okay.

20 A --- on that, none whatsoever.

21 Q So your concern was, would I have to
22 move there to take it and what kind of place is
23 this?

24 A No. It wasn't so much my concern as
25 having to move there as it just was, was the yard

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1 good yard, was there a lot of gang activity
2 because the gang activity was pretty prevalent at
3 Evans and that's what I was trying to get away
4 from.

5 Q So the activities, the things going on
6 and where you might have to move were more
7 important than taking the course itself?

8 A Absolutely not. That's not what I
9 said.

10 Q You talked about -- now we also have
11 an incident -- while out on bond for the 2012
12 Sumter offense in 2013, we have you sexually
13 assaulting, or assaulting, sneak up on a sleeping
14 woman in her bed and having oral sex with her in
15 2013 while you're out on bond, okay. Now when
16 you're out on bond for something, you violate the
17 bond, you go to jail, right?

18 A I would think so.

19 Q Okay. You talked about some of the
20 courses helped you understand emotions and victim
21 empathy. I think that was the word you used, the
22 emotions of the victims, that sort of thing, and
23 appreciate more that type of thing. Is that
24 right?

25 A That's correct.

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1 Q Okay. Did that help you in
2 understanding or anticipating the emotions that
3 some women may not want to be anally raped against
4 their will, may not want to be choked or
5 smothered, or may not want to be drugged or
6 photographed without their knowledge? Did you
7 learn those kind of things?

8 A I think that the classes that I took
9 helped me to understand the pain and suffering
10 that a victim could have potentially went through.
11 There was no underlying facts as far as it being
12 specific as to the actions you're talking about.

13 Q Are you a betting man?

14 A Am I a betting man?

15 Q Are you a betting man?

16 A No, I don't like to lose a dollar.

17 Q How about when you were younger, more
18 careless? Ten years ago.

19 A I've been younger all my life.

20 Q Bet on a football game maybe with a
21 football or something like that?

22 A I'm sorry?

23 Q Bet on a football game? Maybe not
24 money, but bet on lunch or something like that on
25 one of the football games?

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1 A I have before, yeah.

2 Q Okay. And when you're doing that, you
3 kind of want to look at the teams and decide what
4 the odds are -- aren't you? -- who is favored to
5 win?

6 A Sure. I mean, I think that's part of,
7 you know, if you're gonna bet on a football team
8 you want to know what their record is.

9 Q Yeah, what are the odds. What are the
10 odds here.

11 A Exactly.

12 Q So what are the odds, Mr. Younger, of
13 some 15 or 16 women in addition to the ones you've
14 been convicted of, coming forward and saying
15 essentially ---

16 MR. FALK: Objection.

17 MR. BOGLE: --- the same things over
18 and over again.

19 MR. FALK: He's clearly asking for
20 speculation.

21 MR. BOGLE: Not at all, Your Honor.
22 Asking him to react to these allegations.

23 THE COURT: Respectfully overruled,
24 sir.

25 BY MR. BOGLE:

1 Q What are the odds of 15 or 16 women
2 from all these different places in North Carolina
3 other than the woman you were convicted of here in
4 South and North Carolina, coming forward with
5 allegations that are so similar -- choking, drugs,
6 smothering, anal sex against their will -- what
7 are the odds of all this happening?

8 A I'd say the odds are slim to none.

9 Q Okay.

10 MR. BOGLE: One moment, Your Honor.
11 Thank you, Judge.

12 THE COURT: Okay. Mr. Falk.

13 MR. FALK: No redirect, Your Honor.

14 THE COURT: Oh, okay.

15 You may step down, sir.

16 Mr. Falk, any other witnesses, sir?

17 MR. FALK: No, Your Honor. The
18 Respondent will rest its case.

19 THE COURT: All right. I'm going to
20 ask the jury to now return to your room.

21 Well, I'm sorry, Mr. Bogle, did you --
22 are you going to call reply?

23 MR. BOGLE: Nothing further from the
24 State, Your Honor.

25 THE COURT: Okay. I'm going to ask

1 the jury to return to your room. As I've asked
2 many times, you know what I'm going to tell you,
3 one more time at least. Do not discuss this case
4 among yourselves or with any other person directly
5 or indirectly. I'll tell you when to do that
6 later. Thank you.

7 (WHEREUPON, the jury was removed from
8 the courtroom at 2:32 p.m.)

9 THE COURT: Mr. Falk.

10 MR. FALK: Yes, Your Honor. At this
11 time we'll renew all of our other motions that we
12 have made to date. I will renew my motion for
13 directed verdict. And I think this is a case, you
14 know, I think we've got two qualified experts who
15 have a difference of opinion. I'm not sure how
16 you can, a jury can reach any decision by a
17 reasonable doubt or either they have to completely
18 discount the testimony from one qualified expert.
19 I think this is clearly a reasonable doubt case,
20 and I don't see how this jury can reach a
21 decision. Otherwise, I do not think the State has
22 sufficiently proven the case in order to send this
23 to the jury.

24 THE COURT: Mr. Bogle.

25 MR. BOGLE: Thank you, Your Honor.

1 May it please the Court. I would submit that
2 looking at both sides, everything you've heard
3 today, everything the jury has heard today and the
4 other day, that there has been sufficient evidence
5 presented to establish the crime beyond a
6 reasonable doubt. It's just a jury's decision.

7 THE COURT: Yes, sir, and I would
8 agree. I respectfully deny your motion, Mr. Falk,
9 and I'm called upon to think that somewhere in
10 that file this jury charge has that request they
11 can believe all of the witnesses' testimony or
12 none of it or some of it.

13 MR. FALK: It is.

14 THE COURT: Now, gentlemen, do you
15 need a few minutes to get ready? If you do, it's
16 fine. We're doing well on time today.

17 MR. BOGLE: I would suggest that the
18 Fifth Amendment part that you made as a separate
19 charge is not needed.

20 THE COURT: It won't be. It won't be.

21 MR. BOGLE: Okay.

22 THE COURT: But do y'all need a few
23 moments to -- regarding your arguments?

24 MR. BOGLE: Just a couple.

25 THE COURT: Yes, sir. Let's -- just

1 whenever you're ready, come get me or send
2 somebody to come get me.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: Ready, gentlemen.

6 You can bring them in.

7 (WHEREUPON, the jury was returned to the courtroom
8 at approximately 2:48, and the following
9 proceedings commenced in open court.)

10 THE COURT: Members of the jury, the
11 attorneys will now present their closing arguments
12 to you.

13 Mr. Bogle.

14 MR. BOGLE: Thank you, Your Honor.
15 May it please the Court, Mr. Falk.

16 THE COURT: Yes, sir.

17 MR. BOGLE: I'm not going to be a
18 television lawyer so I got to refer to notes.
19 Please bear with me on that. In any event,
20 remember the other day we started and I read to
21 you some things that the general assembly has said
22 about this law when they passed it, remember they
23 said that they found that there was an extremely
24 or mentally abnormal, an extremely dangerous group
25 of sexually violent predators who exist who

1 require involuntary civil commitment. That's why
2 we're here today. That's why this law was passed.
3 First I'd like to thank you for your patience, for
4 your willingness to sit here and pay attention to
5 every word that's been said. I've been watching
6 you and that's what you're doing and that's what
7 you're supposed to be doing. It's a very valuable
8 case, very important to both the State and to Mr.
9 Younger, and I appreciate your patience in doing
10 this.

11 Every case has a theme of some sort,
12 and to me, the theme here is the word "pattern."
13 Keep that in the back of your mind, the word
14 "pattern," because you heard a lot about pattern
15 of behavior and how it's important in cases of
16 this nature. Now bear in mind, remember the
17 elements we have to prove. The State has to prove
18 to you beyond a reasonable doubt, and the judge
19 will explain that to you. Generally speaking, if
20 you are firmly convinced that we've proven these
21 things to you, you find a verdict for the State.
22 You think there's a reasonable chance we have not,
23 you'll find a verdict for the Respondent; but
24 that's kind of -- the judge will tell you what the
25 definition of reasonable doubt means. We have to

1 prove whether or not the respondent has been
2 convicted of a sexually violent crime. That's not
3 in dispute. We have the criminal sexual conduct
4 in the third degree. You'll have the indictment
5 and the sentencing sheet to look at back in the
6 jury room. The next thing is, does he have a
7 mental abnormality or a personality disorder.
8 And, of course, the State's contention is he has
9 both, more than one. And do these things affect
10 his ability to control his behavior to the extent
11 that he cannot and to where he's likely to commit
12 acts of sexual violence in the future unless he's
13 confined for long term control care and treatment.
14 So that's where we are.

15 Now, I told you about the steps of the
16 case the other day. You heard from the witness
17 stand. The court ordered an evaluation. The
18 Department of Mental Health does these things.
19 They directed Dr. Gehle, Dr. Marie Gehle, to do
20 the evaluation, and she did. And she said he did
21 not fit the criteria to be committed as a sexually
22 violent predator. Then additional information,
23 remember she testified, came from North Carolina.
24 So she looked at again and issued a separate
25 report, addendum or amendment report, basically

1 saying she hadn't changed her mind. She looked at
2 all this stuff, but it didn't change anything.
3 The law allows the Attorney General's Office to
4 get a second person, if we feel appropriate, and
5 we did. So now we have MUSC, Dr. Emily Godfrey,
6 evaluate the guy looking at the same kind of
7 stuff, look at all the information.

8 Now, remember the burden is beyond a
9 reasonable doubt. You might be thinking, you
10 know, two people both qualified by the judge as
11 expert witnesses, allowed to give opinions, look
12 at the same guy, look at the same stuff, and yet
13 came up with a different opinion, isn't that by
14 definition a reasonable doubt? And I would
15 suggest to you, no, not necessarily. You got to
16 look further. Because like the judge said, you
17 have to treat an expert witness like you would any
18 other witness because you are the ultimate finders
19 of the fact. You can believe all of what any
20 witness says, including an expert. You can
21 believe none of it or somewhere in between. That
22 is your call and nobody else's. And I think what
23 you got to look at is what the different experts
24 did. Remember Dr. Godfrey used a term called data
25 points? The more data points, the more things she

1 has about a guy, the better she is to make a
2 recommendation or a final opinion about him; and I
3 think that's what you're going to see here.

4 We have a criminal history going back
5 to 1998 which started with an assault on a female
6 that was dismissed. And remember, cases like
7 this, you don't just look at things where they're
8 convicted, you look at things where charges
9 happened, where they've been brought, also where
10 conduct has been alleged but maybe it didn't
11 result in a charge. Why is that important?
12 Because it shows a pattern of behavior over and
13 over and again, it keeps happening again. We have
14 a criminal history going back to 1988. A lot of
15 these things were not sexual in nature, some were.
16 An assault on a female in 1990, a conviction there
17 involved allegations of forced sex and choking.
18 We have the 2019 indictments involving rape on a
19 helpless victim. It involves the same thing. The
20 lady said she has no memory. That suggests being
21 drugged. A vaginal tear to her rectum, anal sex
22 against their will. We have the criminal sexual
23 conduct in the third degree conviction right here
24 in Sumter that involved choking, drugs, anal sex
25 against the girl's will. We also have another

1 indictment pending in North Carolina that also
2 involves tears to the girl's vagina. It involves
3 drug use because of no memory what happened so,
4 and we have the number of women who have gone to
5 the police and the police have talked to them and
6 written down reports of allegations against him.
7 Now, yes, these haven't been convicted. In some
8 cases or most of them, charges haven't been
9 brought. But in this type of case, it's the kind
10 of thing the doctor has to look at because if it
11 happens over and over again, even if criminal
12 charges weren't brought, doesn't that suggest a
13 pattern? And like I said when I was talking to
14 Mr. Younger, what are the odds that 15 or 16 women
15 over a 20 something year period all over North
16 Carolina, not just one town, come forward with a
17 lot of the same allegations: Choking, drugging,
18 forced sex, and sometimes anal and very painful.
19 What are the odds of that happening. Pattern of
20 behavior is what you've got.

21 Now Dr. Gehle looked at these and she
22 took a very good view I think: Okay, he hadn't
23 been convicted; I can't consider them. Is that a
24 good view? I think not. It is and it isn't.
25 Dr. Godfrey said the rule book on evaluations like

1 this is you have to look at illegal conduct.
2 Conduct was illegal. Whether or not it results in
3 criminal charges are not, and even charges that
4 were dismissed. And she looked at all those.
5 Dr. Gehle said when she scored him on the Static
6 99R -- I'll talk about that more later -- one of
7 the issues is, have you lived with a lover more
8 than one year. Well, Mr. Younger couldn't
9 remember; he wasn't sure. His mom could. So
10 Dr. Gehle gave him a zero for that and helped him
11 out, gave him a lower score on the Static because
12 she believed the girls -- the guy's mom. Well, is
13 the mom any more credible than these 15 or 16
14 women which she chose apparently to discard
15 because they'd never gone to court or something
16 like that? Again, pattern of behavior.

17 Now Dr. Gehle could not reach a
18 diagnosis of respondent. She tried to -- she
19 could not find a mental abnormality or a
20 personality disorder. Also, it was clear from
21 both doctors' testimony he never went to sex
22 offender treatment program. Remember that big
23 list I showed you a few minutes ago, I was showing
24 him? His attorney talked about it, the big list.
25 I said there's 540 hours on here. And I said,

1 take that yellow highlighter and circle the one
2 that says sex offender treatment. Not on here.
3 Of all the courses he went to, he's a great
4 quilter. I'd buy some of that pottery. But what
5 about sex offender treatment. And if you, the
6 jury, decide he's not a predator, he's going to
7 get let go, has he got an appointment, say, next
8 week with somebody for sex offender treatment?
9 No, because he thinks he needs counseling,
10 whatever that is. But I think looking at the
11 pattern of behavior here, if there ever was a
12 person that needed sex offender treatment which
13 apparently is offered at the prison, it would be
14 him.

15 Now Dr. Godfrey, she scored him on the
16 Hare psychology test to see if he's a psychopath.
17 He was one point below the cut-off on that. That
18 again, that's another data point for her, another
19 thing to look at. She also scored him as a sexual
20 violent risk then, the SVR20 or something like
21 that, whatever it's called. Again, another data
22 point. Is he a risk to commit acts of sexual
23 violence.

24 Then we come down to the status
25 course. Now, like she said, if you were to apply

1 for life insurance and say the company says, go
2 get a physical, and you go to your doctor for a
3 physical, now they're trying to see from that
4 doctor is there anything you have that makes you
5 more likely to die at a younger age. If that's
6 the case, they're going to charge you a higher
7 premium; we all know that. Okay. Just like with
8 auto insurance, if you have a child, a boy who is
9 25 or younger, you pay a lot more auto insurance.
10 Not because he's going to have an accident, but
11 young boys are more likely to. Same thing with a
12 life insurance physical. They're not saying
13 you're going to die young, but people with these
14 characteristics are more likely to. Well, that's
15 what the Static 99R and the Static 2002R, that's
16 what they measure. You have these types of things
17 in your life you are more likely after being
18 convicted to commit another sexually violent
19 sexual offense; that's what they do. And both Dr.
20 Gehle and Dr. Godfrey, Dr. Gehle gave him a 4 on a
21 Static 99, 5 if she'd believed him instead of his
22 mother. She also gave him a 5 on the 2002R and 5,
23 and 5 were the same scores Dr. Godfrey did. And
24 what do these scores mean? First off, he's in the
25 category of more likely to commit another sexual

1 offense. Second off, five years out, that's a 15
2 percent chance of doing it again for the Static
3 99R. For the 2002R, five years out is a 13 point
4 chance of doing it again, 78 percentile for the
5 2002 and the 88 percentile for the 99. So using
6 these things based on static unchangeable factors
7 by his history, he's above average likely to
8 reoffend.

9 But Dr. Gehle couldn't get a
10 diagnosis. She looked at antisocial personality
11 disorder, okay, a valid thing. But you got to
12 have some kind of bad conduct before age 15, and
13 we couldn't find it on this guy. But Dr. Godfrey
14 went a step further. What about other specified
15 personality disorders with antisocial traits?
16 He's got lots of antisocial traits. She listed
17 them all for you, and that's what she found. She
18 also found a mental abnormality, other specified
19 paraphilic or deviant behavior, and the type is
20 coercive sex or what's called biastophilia,
21 coercive sex. If he is -- it's not so much the
22 sex as him getting turned on by the aggressiveness
23 of the sex, okay. And I think in a lot of these
24 cases it came out it might have began
25 consensually, but then at some point in time

1 things changed when they have anal sex against
2 their will. We have the drugging, we have sex
3 while they're unconscious. Remember, Dr. Godfrey
4 testified that among the photographs she looked
5 at, sees where this unconscious girl in the cargo
6 compartment of a vehicle. Now it may be argued
7 that it's okay to have rough sex, it's okay to
8 have bondage and things like that. Some people's
9 sexual behaviors are different. But where in
10 these accepted sexual behaviors is a girl
11 unconscious in the cargo part of a car.

12 We have diagnoses: Narcissistic
13 personality disorder. Why did Dr. Godfrey talk
14 about all that jail stuff? Because the jail
15 incidents basically said it's all about me. The
16 whole world in jail is all about me and that's
17 what he distributes, I think from the jail records
18 and on the witness stand. It's about me, not
19 about somebody else. So narcissistic personality
20 disorder, she found that. She found the other
21 specified personality disorder with antisocial
22 traits that document back a number of years. She
23 also found the other specified paraphilia, that's
24 the mental abnormality type disorder, coercive
25 sex, also known as biastophilia. Strange Latin

1 names for things. So that's what we have. Have
2 we proved the sexually violent crime? Yes. Have
3 we proved the mental abnormality and a personality
4 disorder? It's one or the other; we've got both.
5 And we have two personality disorders. So the
6 question now is, and based on the Static course,
7 both experts agree that he's in above average
8 category of likely to reoffend sexually. So, can
9 he control his behavior? I would suggest not.
10 And one element of the "not" is the fact there's
11 540 hours of good things he's done, learned things
12 he's learned while in prison, where is there sex
13 offender treatment? Not there. He told the
14 experts, "I don't think I need it." So, that's
15 the case.

16 Again, I thank you for your attention.
17 I thank you for doing the right thing in this
18 case, rendering verdict for either side, but I
19 thank you -- I think given the weight of the
20 evidence before you, that beyond a reasonable
21 doubt the State has shown that Mr. Younger is
22 indeed a sexual violent predator. Thank you.

23 Your Honor.

24 THE COURT: Mr. Falk.

25 MR. FALK: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. FALK: At the beginning of this
3 case back on Tuesday I said there's a couple of
4 things that I think run throughout the case, and I
5 think -- I want to sort of show you how I believe
6 they come into play here. One is, I told you that
7 issue is whether or not today he's a sexually
8 violent predator, not who he was in 2012, who he
9 was -- who is he today. And looking at
10 information that occurred 15 years ago, is that
11 really a good indication of who the man is today.
12 I said there's another thing that we have to talk
13 about is that this is a case that is about mental
14 health and not criminal conduct. The State spent
15 a lot of time -- Attorney General's Office spent a
16 lot of time talking about the conduct that led to
17 his conviction in the 2014 to the CSC, to the
18 criminal sexual conduct case, and kept repeating
19 it, wanted you to get mad about that. But he has
20 already been found guilty of that charge and he
21 has gone to prison for that charge, I mean. So
22 we're not talking about whether or not he has a
23 criminal record. He's got a criminal record. My
24 client is a criminal, okay. He had -- defined by
25 somebody who has a criminal record. He's not a

1 sexually violent predator, but he does have a
2 criminal record. The State has got to prove to
3 you that he is a sexually violent predator. I
4 believe that's a different issue here.

5 I also told you that, you know, we're
6 going to try and balance having a case where you
7 got to make a decision based on beyond a
8 reasonable doubt and a case based on when you got
9 two experts and both of whom are qualified. The
10 judge qualified both of them as being allowed to
11 testify as experts in this case. And how can you
12 decide that one expert is so much more qualified
13 than the other than can be you have to completely
14 disregard her opinion. I think that that is
15 inconsistent with the case where you've got to
16 find somebody guilty beyond a reasonable doubt.

17 And the other thing I wanted to
18 explain to you that this is a, you know, this is
19 an important decision. Your decision is going to
20 have a lot to do with his freedom as we go
21 forward. Now, if the judge made a mistake in this
22 trial, there's a process that can fix that; it's
23 called an appeal. He can appeal his conviction.
24 If I made a mistake in this trial, there's a
25 process that that can get fixed. It's called a,

1 you know, an action for ineffective assistance of
2 counsel. But if y'all make a mistake here,
3 there's no appeal. There's no appeal from your
4 decision. Your decision is going to be the
5 decision and there's not going to be any ability
6 to appeal whether or not you made the right
7 decision or the wrong decision. So it requires
8 that you make a thoughtful consideration here.

9 Now this is a battle of experts. The
10 State really only put up one witness and that was
11 their expert. Now Mr. Bogle is trying to tell you
12 that, well, you really can't consider Dr. Gehle's,
13 you know, analysis in this case; but this is the
14 same person who the State has used on numerous
15 occasions as their expert in a sexually violent
16 predator precommitment case. They have relied on
17 Dr. Gehle's testimony on numerous occasions. But
18 here, for some reason, her analysis is all wrong.
19 You have to consider if that makes sense to you.
20 And you also -- I think you have to get a
21 consideration that there are a lot of subjective
22 decisions that have to be made by these experts in
23 this case. I mean, they're using the term
24 diagnosis and a lot of times diagnosis kind of
25 brings a medical diagnosis that you get from your

1 doctor. But this is a diagnosis where I think two
2 people can probably see the same facts and get a
3 different diagnosis. This is not the same kind of
4 precision that there possibly is in medicine. For
5 example, if my client had a broken arm and we took
6 an x-ray of his broken arm and the doctor here in
7 Sumter to look at it and sees the bones don't line
8 up and he says they're broken, we can take that
9 same x-ray, we could send it to a doctor in India
10 who could look at that x-ray and reach the same
11 opinion, I mean, that x-ray, and he'd reach the
12 same opinion. I mean, that's why that part of
13 medical science has more certainty to it. But
14 here there's a lot of subjective judgments. I
15 mean, even when we're talking about the Static 99
16 evaluation, would seem to have some pretty clear
17 cut questions, still the experts can disagree as
18 to how you need to score. So really, you got to
19 balance experts' testimony in here.

20 You have Dr. Gehle who has probably
21 made, I think she said 200 of these types of
22 evaluations. She's testified maybe 74 times in
23 court. That's all she does practically is
24 evaluate whether or not somebody is a sexually
25 violent predator for these precommitment

1 evaluations. That's what she does. You have to
2 balance that amount of experience and expertise
3 versus somebody who does other stuff and has done,
4 as I think she testified, maybe 12 times maybe,
5 maybe three times in court in these types of
6 cases. Don't hold me to that. I know it was less
7 than ten. But so you got to balance the
8 experience. And the reason why I was asking her
9 about whether or not this program is for the worst
10 of the worst, it's because she recognizes and I
11 think the State when they passed this legislation
12 that the legislature recognized that this statute
13 is designed for the worst of the worst, not
14 somebody who has committed a rape needs to go to
15 this program. It is for the worst of the worst.
16 It's somebody who has seen numerous, numerous in
17 these evaluations has a better judgment as to who
18 is the worst of the worst.

19 Mr. Bogle did talk a lot about these
20 other data points, this Hare test and the SR20.
21 But if you listen to some of my questions, all
22 these tests, it might be just a different way to
23 look at the same information because as Dr. Gehle
24 said that, you know, she -- all the information
25 that she had to fill out one of these Hare

1 question sheets. I mean, she had when she got
2 done with her evaluation. I mean, she talked to
3 the guy for six hours the first time and then came
4 back another time and I think talked to him for a
5 little bit over an hour. She's had a lot of time
6 with her interview the way she has a structured
7 interview. She has a certain way to do it. She
8 didn't think the Hare test was necessary. And
9 also, we know that that Hare test, you know, I
10 think a lot of times they want to try and sort of
11 make it look more precise than it is; but, you
12 know, the question is, you know, you look at all
13 these facts, did it look, you know, you think that
14 he is superficial and you give him either he is.
15 I gave him, I think gave you two points he is
16 superficial; sort of superficial, there's one
17 point; if there's no superficial, then zero
18 points. That's not really that precise, and
19 there's a lot of gray and there's a lot of
20 judgment in there. And I contend that the same
21 applies to this SR20 and she's only used it for a
22 couple of years.

23 And Dr. Gehle and actually Dr. Godfrey
24 also acknowledged that when doing that Hare test,
25 that there's a lot of unreliability when you're

1 comparing two evaluators. I mean, Dr. Godfrey
2 acknowledged they have tests that when you're
3 hired by one side and score the Hare test, you
4 tend to come up with an opinion that supports the
5 person who hired you and there is data that
6 supports this, and she acknowledged that.

7 Now remember, the State hired
8 Dr. Godfrey. Dr. Gehle was appointed by the court
9 to do this evaluation. She's an independent
10 evaluator. I did not hire her. She was appointed
11 by the court. She works for the South Carolina
12 Department of Mental Health and she did this
13 evaluation, so she's not my witness. She just
14 happens to be testifying for Mr. Younger in this
15 case because she needs to support her opinion, but
16 she's not my witness.

17 Another thing that the -- which I
18 thought was really interesting, is Dr. Godfrey
19 really focused on, you know, some conduct problems
20 that may have occurred at the detention center,
21 you know, and you know, trying to show how that
22 supported her diagnosis, that it's all about him,
23 maybe it's a support that he's narcissistic, she
24 never told you. You would never had heard unless
25 I asked her the question, that over the entire

1 time he was at South Carolina Department of
2 Corrections, he had no disciplinary infractions at
3 all. So during that short period of time when
4 he's in Sumter County, he had some disciplinary
5 infraction, but he didn't -- there was some
6 complaints. The staff had some complaints about
7 him, and you know, I have needed a root canal and
8 I had to get the tooth pulled. I mean, that is a
9 lot of pain. If you can imagine, I don't know if
10 any of y'all have had oral surgery, you know. If
11 any of you have had one, if you can imagine going
12 for eight months with that kind of tooth pain and
13 not having anybody listening to you. The only
14 thing they're giving you is two Ibuprofen. I
15 think you may -- if you were in those -- that same
16 situation, you would probably be pretty cranky,
17 pretty irritable, pretty hard to get along with if
18 you were suffering that way.

19 Again, we're talking about whether or
20 not he's a changed man. And the reason why I had
21 him up there talking to you for about an hour is I
22 just wanted you all to listen to him and I just
23 wanted to see if you could get a sense of who he
24 was. I mean, I've had -- I spent hours talking to
25 him and Dr. Godfrey has talked to him, Dr. Gehle

1 has. But you really had very little time to know
2 who he is. I thought it would be helpful for you
3 to sort of get an opinion of him and then you can
4 make your own decisions about whether or not you
5 think he's the same kind of person who went into
6 prison in 2014 as to who the person is today. You
7 can accept for yourself whether or not you think
8 he's a changed man or whether or not he's found
9 Jesus Christ. I mean, that's your decision. He
10 told you what it is. You can decide whether or
11 not you think that's sincere. It's your decision
12 whether or not you think he's a changed man.

13 Now let's talk about the North
14 Carolina charges. He's got pending charges in
15 North Carolina. I think that it's probably the
16 difference in this case as how y'all are gonna
17 view these charges in North Carolina. I think
18 that's going to probably make this, I would guess,
19 is it's probably gonna be the biggest signature to
20 base your decision on on these charges in North
21 Carolina. Because if you take those away and all
22 that you've got is the 2008 assault where he was
23 at a rock concert, I think there was some
24 testimony about a lot of drinking and he grabbed a
25 woman's breast. Have that charge in 2008. Then

1 you have the conduct in 2014 which is bad, that's
2 bad. That's not a pattern. 2008, the fondling
3 case in 2008, 2014, doesn't form a pattern. It
4 forms two instances of criminal conduct. There
5 was two instances when he was punished by the
6 criminal justice system, but it's not a pattern.
7 In order to find a pattern you've got to consider
8 these cases in North Carolina; but before you do
9 that, let's consider a couple of other things.
10 Dr. Gehle completed this, her report, sometime I
11 think in December of 2019 is when she had
12 published her report where she gave her opinion
13 that he does not, that he does not qualify as a
14 sexually violent predator. Now after that opinion
15 is made public, then the State of North Carolina
16 decides to issue these indictments. Now,
17 remember, this is conduct that happened in 2005
18 and 2008, but they're only going to issue these
19 indictments after they find out that maybe the
20 State, maybe South Carolina is not going to commit
21 him as a sexually violent predator. But Dr. Gehle
22 testified that there's really no new evidence that
23 the State has, the State of North Carolina has.
24 They just have now decided, ooh, we better maybe
25 try and indict him. But why -- if these are good

1 cases, why do you want so long? Why is the state
2 of North Carolina going to wait so long to try
3 avenge the -- its citizens who are allegedly
4 victims of these sexual assaults. Why would they
5 wait so long if they thought these cases were
6 serious. You have to make that decision whether
7 or not you believe so. But I contend that I think
8 this timeline of how these indictments came down
9 is suspicious.

10 Dr. Gehle believes that he's innocent
11 until he's proven guilty. She believes that he
12 should have the opportunity to go to North
13 Carolina in order to address these charges. She
14 didn't know that in 2005 on that one case the case
15 got dropped once Mr. Younger had an opportunity to
16 sort of say something, you know, to give his side
17 of the story. And once it became evidence that he
18 had evidence of this alleged victim in this case
19 posing for a naked on his camera, whatever it was,
20 then she decides to drop the charges. I don't
21 know if that would happen on these other charges
22 again in North Carolina, but it shows that he
23 had -- at that time he had opportunity to go up
24 there and address the charges. Dr. Godfrey is
25 trying to commit him based on a pattern of

1 accusations. Dr. Gehle wants to reach her
2 conclusion based on pattern of facts. It's
3 basically -- and I don't care how many cities it
4 all occurred to, how many people that there are
5 still accusations, until he's had an opportunity
6 to go through the criminal justice system. This
7 is really not like cases that were dropped in the
8 past. These are cases that are pending right now.
9 There has been no opportunity -- the only thing
10 that they've got are police reports and the police
11 reports, she said, are primarily based on the
12 alleged victims' statements. And I would guess
13 that those statements are going to be kind of one
14 sided. That's what, that's what they're basing
15 those charges on. That's how all the criminal
16 cases are based mostly. She also said there's not
17 a lot of forensic evidence supporting those
18 charges. They're -- all of those cases up there,
19 they're all he said/she said. I'm not trying to
20 make light of, you know, the sexual assaults if
21 they existed; but I'm saying, he has an op-- he
22 should have the opportunity to go up there right
23 now and face these charges. He hadn't had that
24 opportunity before. They just sent this in --
25 they just put this in, this detainer down really

1 recently. So if he is released, he's not going to
2 go -- you know, it's fun-- Mr. Bogle is talking
3 about, well, he has no plans, you know, to get
4 treatment. Well, where he's going next he's going
5 to North Carolina and he's going to face these
6 charges. That's what he's doing next. So whether
7 or not he's signed up for treatment yet or not is
8 really irrelevant because he -- what's next for
9 him is to go to North Carolina and to face these
10 charges.

11 I think Mr. Younger deserves his day
12 in court. I think the accusers, the people in
13 North Carolina who have, who said that they have
14 been wronged by him, they deserve their day in
15 court. That should happen. If he goes to
16 sexually violent program, he's gonna stay here in
17 South Carolina until they're done with him. It
18 seems to me that if you don't believe the North
19 Carolina charges and you think there might be,
20 there might be some suspicious parts of the North
21 Carolina charges, it seems to me that then you got
22 to base the opinion on the 2008 groping case,
23 fondling case, and the 2014 criminal sexual
24 conduct. Now you have to find a pattern for that.

25 If you think the charges are true, the

1 best thing to do would be to let him go to North
2 Carolina and face the charges and let them
3 determine whether or not they're true because if
4 the charges are true, I -- we can probably guess
5 that he's going to spend some time in prison in
6 North Carolina if the charges are true. It's hard
7 to understand, with very little ties to the State.
8 He was down here for a couple of years. He had a
9 contract to put down fiber optic cable. He lived
10 in North Carolina. He has family in North
11 Carolina. He's a North Carolina problem. He
12 ought to go back to North Carolina. He ought to
13 face his charges in North Carolina. I think at
14 the end of the day when you're thinking about this
15 case, you're going to find that the State has not
16 proven their case beyond a reasonable doubt. I
17 grant it they have put together proof -- I mean,
18 Dr. Gehle -- I mean, Dr. Godfrey is a qualified
19 expert, but Dr. Gehle is a qualified expert. Dr.
20 Gehle has testified for the State on numerous
21 occasions. She doesn't think so. And this is not
22 some kind of clear cut medical decision like
23 whether or not the arm is broken and what, and you
24 know, two different doctors, they can both look at
25 an x-ray and they can both agree. All these

1 doctors admitted that there's a lot of discretion,
2 there's a lot of subjectivity in reaching their
3 decisions. This is not like a med mal case when
4 you got to decide whether or not you've got one
5 expert saying that the doctor didn't do anything
6 wrong and you got another expert saying, no, the
7 doctor breached the standard of care. You got to
8 find that Dr. Gehle's opinion here is so
9 uncredible you have to completely disregard it in
10 order for there not to be reasonable doubt in this
11 case. How can the State ask you to completely
12 disregard Dr. Gehle's testimony when she's been
13 their witness on numerous occasions.

14 These cases are hard. It's hard to
15 separate the emotion out of these cases. You
16 know, people who commit these kinds of offenses,
17 nobody has any sympathy for them; but you've got
18 to sort of put those emotions away and you just
19 got to decide what makes sense here. Now if the
20 charges in North Carolina make sense to you, then
21 probably the best thing to do is to send him to
22 North Carolina to face the charges. If the
23 charges in North Carolina don't make sense to you,
24 then the best thing to do, that is you got to find
25 that he's not a sexually violent predator. I hope

1 you'll think about some of those things when you
2 make your decision.

3 Again, there's no appeal from your
4 decision. Whatever you decide is going to be,
5 it's going to be a result and there's not going to
6 be any recourse unless you -- if y'all get it
7 wrong. I hope y'all give some thoughtful decision
8 to it. Thank you.

9 THE COURT: Mr. Bogle.

10 MR. BOGLE: Nothing further, Your
11 Honor. Thank you.

12 THE COURT: Any objection to my coming
13 down to stand in front of the jury?

14 MR. BOGLE: No, Your Honor.

15 MR. FALK: No, Your Honor.

16 THE COURT: We meet again, folks.
17 It's now my turn to charge you on the law to apply
18 to the facts for this case, and of course, this
19 case being the Matter of the Care and Treatment of
20 James Gregory Younger. It's going to take me
21 about eight minutes to read this to you. Please
22 listen carefully to what I say because this is
23 important.

24 I remind you that during this trial
25 you and I have, and had, certain duties to

1 perform. As the trial judge it is my
2 responsibility and was my responsibility to
3 preside over the trial of this case, and I have
4 also had an avid duty to rule on the admissibility
5 of the evidence offered during this trial. You
6 are to consider only the competent evidence before
7 you. If there was any testimony ordered stricken
8 from the record, you must -- in this case during
9 this trial -- you must disregard that testimony.
10 You are to consider only the testimony which has
11 been presented from the witness stand, any
12 exhibits which have been made a part of the record
13 in this case, and any stipulations of counsel. I
14 have additional duty to charge you the law
15 applicable to this case. As the presiding judge,
16 I am the sole judge of the law in this case and it
17 is your duty as jurors to accept and apply the law
18 as I now state it to you. If you already have any
19 idea as to what the law is or what the law ought
20 to be and it does not agree with what I now tell
21 you the law is, you must abandon this idea because
22 you are sworn to accept the law and apply the law
23 exactly as I state it to you.

24 In every case tried in this court
25 before a jury, the jury becomes the sole and

1 exclusive judge of the facts in the case. A trial
2 judge cannot intimate, state, comment on, or make
3 any statement to a trial jury about the facts in a
4 case. Since you, the jury, are the sole judge of
5 the facts in this case, you are not to infer from
6 what I have said during the progress of this trial
7 in ruling upon the admissibility of evidence, or
8 otherwise, or anything that I say now during the
9 course of this instruction to you, that I have any
10 opinion about the facts in this case. The law
11 does not allow me to have an opinion about the
12 facts in this case. This is a matter solely for
13 you, the jury, to determine. As jurors, it is
14 your duty to determine the effect, value, weight,
15 and truth of the evidence presented during this
16 trial.

17 The State has the burden of proving
18 beyond a reasonable doubt that the respondent is a
19 sexually violent predator. Some of you may have
20 served as jurors in civil cases where you were
21 told that it is only necessary to prove that a
22 fact is more likely true than not true, such as by
23 the greater weight or preponderance of the
24 evidence. However, in this particular case under
25 this particular statute, the State has a higher

1 burden of proof; it must be beyond a reasonable
2 doubt. The term "reasonable doubt" should be
3 given its plain and ordinary meaning. A
4 reasonable doubt is the kind of doubt that would
5 cause a reasonable person to hesitate to act.
6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced that the respondent is
8 a sexually violent predator. There are very few
9 things in this world that we know with absolute
10 certainty; and in this case, the law does not
11 require proof that overcomes every possible doubt.
12 If based on your consideration of the evidence you
13 are firmly convinced that the respondent is a
14 sexually violent predator, you must return a
15 verdict for the State. If, on the other hand, you
16 think there is a real possibility that the
17 respondent is not a sexually violent predator, you
18 must return a verdict for the respondent.

19 Necessarily, you must determine the
20 credibility of witnesses who have testified in
21 this case. Credibility simply means
22 believability. It becomes your duty as jurors to
23 analyze and to evaluate the evidence and determine
24 which evidence convinces you of its truth. In
25 determining the believability of the witnesses who

1 have testified in this case, you may believe one
2 witness over several witnesses or several
3 witnesses over one witness. You may believe a
4 part of the testimony of a witness and reject the
5 remaining part of that testimony of that same
6 witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony of
8 a witness in its entirety. You may consider
9 whether any witness has exhibited to you any
10 interest, bias, prejudice, or other motive in this
11 case. You may also consider the appearance and
12 manner of a witness while on the witness stand.

13 The rules of evidence ordinarily do
14 not permit witnesses to testify to opinions or
15 conclusions. An exception to this rule exists for
16 witnesses we call expert witnesses. A witness who
17 by education and experience has become expert in
18 some art, science, profession, or calling, may
19 state an opinion as to relevant and material
20 matters in which the witness claims to be an
21 expert and may also state the reasons for the
22 opinion. An expert witness' testimony is to be
23 given no greater weight than that of other
24 witnesses simply because the witness is an expert.
25 Further, you are not required to accept an

1 expert's opinion even though it is not
2 contradicted. You should consider any expert
3 opinion received as evidence in this case and like
4 any other evidence, give it the weight you think
5 it deserves. If you decide that the opinion of an
6 expert witness is not based on sufficient
7 education, experience, or if you conclude that the
8 reasons given in support of the reason are not
9 sound or that the opinion is outweighed by other
10 evidence, you may disregard the opinion entirely.

11 There are two types of evidence which
12 are generally presented during a trial: Direct
13 evidence and circumstantial evidence. Direct
14 evidence is the testimony of a person who claims
15 to have actual knowledge of a fact, such as an
16 eyewitness. Circumstantial evidence is proof of a
17 chain of events, facts, and circumstances
18 indicating the existence of a fact. The law makes
19 absolutely no distinction between the weight or
20 value to be given to either direct or
21 circumstantial evidence; nor is a greater degree
22 of certainty required of circumstantial evidence
23 than of direct evidence. You should weigh all the
24 evidence in this case. The State has the burden
25 of proving respondent is a sexually violent

1 predator beyond a reasonable doubt. This burden
2 rests with the State regardless of whether the
3 State relies on direct evidence, circumstantial
4 evidence, or some combination of the two.

5 In this case the State of South
6 Carolina alleges or claims that the respondent
7 James Gregory Younger is a sexually violent
8 predator under the laws of this state. The
9 respondent, Mr. Younger, denies that he is a
10 sexually violent predator and the burden of proof
11 is, therefore, on the State to prove by evidence
12 sufficient to satisfy each of you beyond a
13 reasonable doubt that Mr. Younger is a sexually
14 violent predator. If you find the State has not
15 met this burden, you must find for the respondent
16 that he is not a sexually violent predator. If on
17 the other hand, you find that the State has met
18 its burden of proof, the State is entitled to a
19 finding that Mr. Younger is a sexually violent
20 predator.

21 I want to make sure that you
22 understand that Mr. Younger is not accused of
23 committing a crime in this proceeding. As you
24 heard from the testimony, he did have previous
25 charges for which he was sentenced by the court.

1 The respondent has completed his sentence for
2 those charges, and the State has now alleged that
3 Mr. Younger is a sexually violent predator. To
4 prove that respondent is a sexually violent
5 predator, the State must first prove that the
6 respondent has been convicted of a sexually
7 violent offense. I charge you that criminal
8 sexual conduct in the third degree is a sexually
9 violent offense.

10 The State must then prove that the
11 respondent suffered from a mental abnormality or
12 personality disorder that makes him likely to
13 engage in acts of sexual violence if not confined
14 in a secured facility for long term control, care,
15 and treatment. A mental abnormality means a
16 mental condition affecting a person's emotional or
17 volitional capacity that predisposes the person to
18 commit sexually violent offenses. This mental
19 abnormality or personality disorder must cause Mr.
20 Younger serious difficulty in controlling his
21 behavior. "Likely to engage in acts of sexual
22 violence" means the person's propensity to commit
23 acts of sexual violence is of such a degree as to
24 pose a menace to the health and safety of others
25 so that he is dangerous to others.

1 Inherent in these three elements is
2 that the State must prove the requirement that the
3 respondent's mental abnormality or personality
4 disorder is causes him serious difficulty in
5 controlling his behavior. In other words, the
6 State must prove beyond a reasonable doubt that
7 the individual seeks to commit or suffers from a
8 mental illness which he cannot sufficiently
9 control without the structure and care provided by
10 a mental health facility rendering him otherwise
11 likely to commit a dangerous act. Again, I remind
12 you that the burden of proof is on the State to
13 prove beyond a reasonable doubt to your
14 satisfaction that the respondent has been
15 convicted of a sexually violent offense as I have
16 instructed you and also suffers from a mental
17 abnormality or personality disorder that makes him
18 likely to engage in acts of sexual violence, if
19 not confined in a secured facility.

20 If the State meets their burden of
21 proof and convinces you beyond a reasonable doubt
22 as to each of the three elements in this cause of
23 action, the State is entitled to a finding that
24 Mr. Younger is a sexually violent predator. If
25 the State does not meet that burden of proof as to

1 one or all of these elements, respondent is
2 entitled to a finding that he is not a sexually
3 violent predator.

4 Madam Forelady, foreperson, and ladies
5 and gentlemen of the jury, as you retire to begin
6 your deliberation, I wish to express my hope that
7 you will be mindful of the force of your
8 responsibility. I have every confidence that you
9 will consider only the law and evidence that you
10 have been -- that you've heard in this courtroom,
11 and you will weigh that evidence fairly and
12 impartially. Your verdict cannot be based on
13 sympathy, compassion, prejudice, emotion, or any
14 other consideration not found within the evidence
15 presented here.

16 There are two possible verdicts in
17 this case which you may find in this case: For
18 the respondent that he's not a sexually violent
19 predator and for the State that Mr. Younger is a
20 sexually violent predator. There's no
21 significance whatsoever in the order in which I
22 state these possible verdicts. It is simply that
23 one must be stated first. Your verdict must be a
24 unanimous one.

25 Madam Foreperson, when the jury agrees

1 on the verdict, you will write the verdict on the
2 verdict form which I provide for you and sign your
3 name as the foreperson. Then knock on the jury
4 room door and inform the bailiff that you have
5 reached a verdict. At that time we will receive
6 you back into the courtroom. I'm going to ask now
7 that you return to your jury room, but do not yet
8 begin deliberations until you are told by the
9 clerk or the bailiff to do so. There are a few
10 matters which I must discuss with the attorneys
11 before you begin your deliberations.

12 Gentlemen, before they leave, any
13 comments or exceptions?

14 MR. BOGLE: No exceptions to the
15 charge, Your Honor.

16 MR. FALK: No, Your Honor.

17 THE COURT: If you would take them to
18 the jury room, sir. Hold one second, one second.
19 Here's the jury verdict form. Simply stated: We,
20 the jury, unanimously answer the questions as
21 follows: Yes, James Gregory Younger is a sexually
22 violent predator; or, no, James Gregory Younger is
23 not a sexually violent predator. The forelady
24 signs here and dates it.

25 You can go ahead and take them, sir.

1 THE BAILLIFF: Your Honor.

2 (Bailiff confers with the Court.)

3 THE COURT: The two alternates, you've
4 been kind and you've been patient, but we are at
5 the end of the trial now. Your instructions are
6 no longer needed so you are released. Okay, thank
7 you very much for your service.

8 (Alternates were excused.)

9 (WHEREUPON, the jury was removed from
10 the courtroom at 3:36 p.m.)

11 THE COURT: Is all the evidence ready
12 to go to the jury? Will y'all check that these
13 here are all exhibits?

14 MR. BOGLE: Here are all the exhibits.
15 We got the two sheets for the State and two
16 separate Defense exhibits, and there's a verdict
17 form so that's everything.

18 THE CLERK: Yes, sir.

19 THE COURT: Sir, if you will go tell
20 the jury after you give them that information,
21 they may begin their deliberations.

22 (WHEREUPON, jury began deliberations at 3:38 p.m.
23 and a recess was taken from the proceedings.)

24 THE COURT: Madam Foreperson, does
25 your jury have a verdict, ma'am?

1 THE FOREPERSON: We do, Your Honor.

2 THE COURT: Would you pass it to the
3 bailiff please.

4 (Court reviews the verdict form.)

5 THE COURT: All right, sir. If you'd
6 publish it please.

7 THE CLERK: May I please the Court,
8 Your Honor.

9 THE COURT: Yes, sir.

10 THE CLERK: In the Court of Common
11 Pleas, Third Judicial Circuit, case number
12 2018-CP-43-01388, State of South Carolina, County
13 of Sumter, In the Matter of Care of the Treatment
14 of George [sic] Gregory Younger, respondents. Has
15 the petitioner, the State of South Carolina,
16 proven beyond a reasonable doubt that James
17 Gregory Younger is a sexually violent predator
18 under the South Carolina sexually violent predator
19 act? We, the jury, unanimously answer the
20 question as follows: Yes, James Gregory Younger
21 is a sexually violent predator. Signed Carmen
22 Yoder, foreperson. April the 22nd, 2021, Sumter,
23 South Carolina.

24 Your Honor, the verdict has been read.

25 THE COURT: Yes, sir. Any desire to

1 poll the jury?

2 MR. FALK: Please, Your Honor.

3 THE COURT: Okay.

4 THE CLERK: May I please the Court,
5 Your Honor.

6 THE COURT: Yes, sir.

7 THE CLERK: Ladies and gentlemen of
8 the jury, I will be calling your name and your
9 juror number. All I just want you to say "yes" or
10 "no." Juror No. 174, Carmen Yoder. Is this your
11 verdict and still your verdict?

12 JUROR YODER: Yes.

13 THE CLERK: Juror No. 161, Betty B.
14 Washington, is this your verdict and still your
15 verdict?

16 JUROR WASHINGTON: Yes.

17 THE CLERK: Tijuana -- correction.
18 Juror No. 124, Tijuana A. Parrott, is this your
19 verdict and still your verdict?

20 JUROR PARROTT: Yes.

21 THE CLERK: Juror No. 88, Albert W.
22 Lynch, is this your verdict and still your
23 verdict?

24 JUROR LYNCH: Yes, it is.

25 THE CLERK: Juror No. 20, Cynthia M.

1 Capers, is this your verdict and still your
2 verdict?

3 JUROR CAPERS: Yes.

4 THE CLERK: Juror No. 85, William D.
5 Lucas, is this your verdict, still your verdict?

6 JUROR LUCAS: Yes.

7 THE CLERK: Juror No. 25, Steven
8 Choice, is this your verdict and still your
9 verdict?

10 JUROR CHOICE: Yes.

11 THE CLERK: Juror No. 37, David C.
12 Dubose, is this your verdict, still your verdict?

13 JUROR DUBOSE: Yes.

14 THE CLERK: Juror No. 53, Lafonda S.
15 Habersham, is this your verdict, still your
16 verdict?

17 JUROR HABERSHAM: Yes.

18 THE CLERK: Juror No. 126, Jonathan
19 Perry, is this your verdict and still your
20 verdict?

21 JUROR PERRY: Yes.

22 THE CLERK: Juror No. 41, Dean A.
23 Evans, is this your verdict and still your
24 verdict?

25 JUROR EVANS: Yes, it is.

1 THE CLERK: Juror No. 29, Dariyan
2 Hatcher, is this your verdict, still your verdict?

3 JUROR HATCHER: Yes.

4 THE CLERK: Your Honor, the jury has
5 been polled.

6 THE COURT: Yes, sir.

7 Is there anything else, gentlemen?

8 MR. FALK: No, Your Honor.

9 MR. BOGLE: Not from the State, Your
10 Honor.

11 THE COURT: All right. Would you
12 please take the jury back to the jury room, sir.

13 (WHEREUPON, the jury was removed from
14 the courtroom at 4:23 p.m.)

15 THE COURT: Gentlemen, I have no
16 sentence to render.

17 MR. BOGLE: May I approach, Your
18 Honor.

19 THE COURT: Yes, sir.

20 (Document tendered to the Court.)

21 THE COURT: Mr. Falk.

22 MR. FALK: Yes, sir.

23 THE COURT: Any objection to this?

24 MR. FALK: Oh, no, I've seen it
25 before.

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* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

In Re Care and Treatment of

James Gregory Younger

Respondent,

RECORDED

2019 FEB 26 PM 12:31

D. C. CAMPBELL

CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COMMON PLEAS COURT

FOR THE THIRD JUDICIAL CIRCUIT

CASE NO.: 2018-CP-43-1388

MOTION IN LIMINE TO EXCLUDE
TESTIMONY RELATING TO
RESPONDENT'S PENDING CRIMINAL
CHARGES.

To: James Bogle, Jr. Office of the S.C. Attorney General, PO Box 11549, Columbia, SC 29211-1549.

Respondent, by counsel moves the Court *in limine* to exclude the utterance or introduction of any testimony regarding criminal charges and or open criminal investigations pending against Respondent in North Carolina state court. The relief sought herein would prohibit the State from referring to these pending charges and the investigations leading to these charges in the State's opening statement, case in chief, and closing argument.

INDICTMENTS PENDING IN NORTH CAROLINA STATE COURT

1. Indictment 19CRS025501: Court of General Justice, Superior Court Division, Guilford County- First Degree Kidnapping, issued July 22, 2019.
2. Indictment 19CRS025502: Court of General Justice, Superior Court Division, Guilford County- Second Degree Forcible Rape; Second Degree Forcible Rape (Physically Helpless Victim), issued July 22, 2019.
3. Indictment 19CRS025503: Court of General Justice, Superior Court Division, Guilford County- Second Degree Forcible Rape, and Second Degree Forcible Rape (Physically Helpless Victim), issued July 22, 2019.
4. Indictment 19CRS001268: Court of General Justice, Superior Court Division, Randolph County - Second Degree Forcible Rape and Second Degree Forcible Rape (Physically Helpless Victim), issued August 27, 2019.

SOURCE OF INFORMATION SOUGHT TO BE EXCLUDED

Dr Marie Gehle, of the South Carolina Department of Mental Health, is the court-appointed expert who evaluated Respondent to determine whether Respondent met commitment criteria under the SVP Act. Dr Gehle opined that Respondent did not meet criteria for SVP commitment. The State then retained Dr Emily Gottfried of the Medical University of South Carolina to perform an independent evaluation. Dr Gehle reports that the State provided her with two flash drives containing information the State received from North Carolina law enforcement agencies regarding open criminal investigations and pending indictments against Respondent. Dr Gehle specifically identified the information contained on the first flash drive on pages 2 -3 on her Amended Report dated June 4, 2020. Dr Gehle identified the information contained on the second flash drive on pages 3-18 of her Amended Report. Most of this information is also identified in pages 2-6 of Dr Gottfried's report, although Dr Gottfried's report does not specifically identify which information came directly from the two flash drives. (Dr Gehle's description of this information is attached hereto as Exhibit A). Both of the experts reviewed the information that is contained on the two flash drives. Dr Gottfried opined that Respondent does meet SVP commitment criteria and she devoted approximately sixty pages of her report to the information obtained by various North Carolina law enforcement agencies during the course of their investigations leading to the pending indictments.

FIFTH AMENDMENT ISSUES

The introduction of this information would be highly prejudicial towards Respondent's defense in this SVP commitment action. Respondent would be unable to rebut the allegations made by his alleged victims unless he were to testify at his commitment trial. However, if Respondent were to testify at his commitment trial regarding these allegations leading, that testimony could potentially be used against him at any subsequent North Carolina criminal trial. As a result Respondent could not fully defend himself in this action without jeopardizing his 5th Amendment rights in a subsequent North Carolina criminal proceeding.

RULE 403 SCRE

The probative value of the information regarding the pending North Carolina indictments is substantially outweighed by the danger of unfair prejudice to Respondent. On page 58 of her Amended Report Dr Gehle states that the existence of the pending North Carolina indictments

does not impact Respondent's scores on the Static 99R and the Static-2002R, *because the charges stem from alleged offenses that occurred prior to his most recent sexual offense charge and conviction. As such, they are considered "pseudo-recidivism" on the Static-99R.*²⁵ Charges that do not result in convictions are generally not calculated in scoring the Static-2002R. The Static-99R and the Static 2002R are instruments that forensic psychologists routinely use in assessing an individual's likelihood for recidivism. Since the pending North Carolina indictments are not proper factors to consider in measuring Respondent's risk to reoffend, the probative value of this information toward the issues in this SVP commitment case is diminished. However, as addressed above, the unfair prejudice Respondent would suffer by the introduction of this testimony would be substantial.

Moreover the introduction of information relating to the pending indictments could confuse the jury as to the issues at Respondent's SVP trial. Counsel is informed and believes that introduction of this testimony could either confuse or mislead the jury into concluding that Respondent is guilty of some or all of the alleged crimes and thus influence their decision in this commitment action.

IMPERMISSIBLE HEARSAY

Any testimony that the State's expert could provide regarding the allegations in the pending indictments would originate from hearsay statements Respondent's alleged victims made to law enforcement. Since there has been no adjudication of these charges, testimony regarding these statements would fall outside scope of hearsay evidence permitted under Rule 703 SCRE.

Rule 703 provides:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

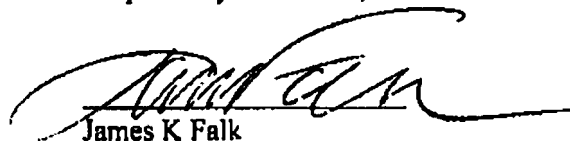
Unlike testimony from victims on charges for which an SVP respondent was convicted, there is no assurance of reliability regarding hearsay testimony from alleged victims in a pending criminal case. Therefore the hearsay statements from the alleged victims are unreliable and the State's expert would be unreasonable if she were to rely on these statements in reaching her conclusions.

The South Carolina Supreme Court recently recognized that civil commitment under the SVP Act "*constitutes a significant deprivation of liberty that requires due process protection.*"

Matter of Chapman, 419 S.C. 172, 179, 796 S.E.2d 843, 846 (2017) (quoting Addington v. Texas, 441 U.S. 418, 425, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979)). The South Carolina Court of Appeals recently examined the implications for a Respondent's due process rights resulting from the introduction of hearsay testimony from the State's expert at an SVP commitment trial. In re Bilton, 432 S.C. 157, 851 S.E.2d 442 (S.C. Ct. App 2020). The Bilton Court stated: due process does not allow an expert to serve as a "conduit" for hearsay without some baseline showing that the hearsay is reliable. Bilton, 851 S.E.2d at 446. *See also* State v. McCray, 413 S.C. 76, 773 S.E.2d 914 (Ct. App. 2015) (prohibiting an experts testimony regarding test performed by a non-testifying expert). Counsel is informed and believes that the State's expert has not spoken directly to any of the alleged victims in the pending indictments. Therefore Dr Gottfried's testimony regarding the victim's allegations would merely be a conduit for the hearsay information contained in the investigative files of the relevant law enforcement agencies.

In an SVP civil commitment trial, the State's expert is usually permitted to recount the victims' hearsay statements from cases resulting in a criminal conviction. However, when a defendant is convicted in a criminal case the reliability of the victims' hearsay testimony was vetted by the jury in reaching their verdict. Similarly when a criminal defendant pleads guilty, the defendant's allocution during the plea colloquy attests to the reliability of the victims' hearsay testimony. Absent a baseline showing that the testimony from Respondent's alleged accusers is reliable, the testimony regarding the hearsay statements will violate Respondent's *due process* rights.

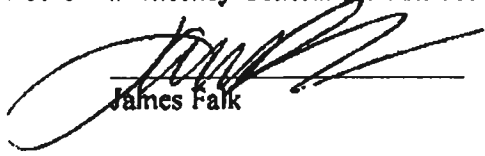
Respectfully Submitted,



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

CERTIFICATE OF SERVICE

A copy of the above was mailed this 22 day of February 2021 , to James Bogie, Jr. Esq. at the Office of South Carolina Attorney General PO box 11549, Columbia, SC 29211-1549.


James Falk

1. Info from Victim's phone taken by Sumter PD.xlsx (424 lines) (text messages between K.B. and Mr. Younger from July 28, 2012 to September 24, 2012);
2. New Indictments
 - A. Guilford County Indictments.pdf
 - a. State of North Carolina, General Court of Justice, Superior Court Division, Guilford County, Order for Arrest #19OFA882761 for file 19CRS025501 for First Degree Kidnapping issued July 22, 2019;
 - b. North Carolina Warrant Repository in the General Court of Justice, Superior Court Division, Guilford County, for File 19CRS025501;
 - c. General Court of Justice, Superior Court Division, Guilford County Notice of Return of True Bill of Indictment in the for file 19CRS025501-03 dated July 22, 2019 and Certificate of Service (Attaching it to an Order for Arrest to be served on the defendant) dated July 23, 2019;
 - d. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025501 for First Degree Kidnapping dated July 22, 2019;
 - e. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025502 for Second Degree Forcible Rape (count one) and Second Degree Forcible Rape (Physically Helpless Victim) (count two) dated July 22, 2019;
 - f. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025503 for Second Degree Forcible Sex Offense (count one) and Second Degree Forcible Sex Offense (Physically Helpless Victim) (count two) dated July 22, 2019;
 - B. Randolph County Indictments.pdf
 - a. General Court of Justice, Superior Court Division, Randolph County, Notice of Return of Bill of Indictment for file 19CRS001268 issued on August 26, 2019 and Certificate of Service (Other: Emailing to SBI office) signed on August 27, 2019;
 - b. General Court of Justice, Superior Court Division, Randolph County, Notice of Return of Bill of Indictment for file 19CRS001268 issued on August 26, 2019 and Certificate of Service (Other: Emailing to SBI office) signed on August 27, 2019 (Copy-Defendant);
 - c. General Court of Justice, Superior Court Division, Randolph County, Grand Jury Indictment 19CRS001268 for Second Degree Forcible Rape (count one) and Second Degree Forcible Rape (Physically Helpless Victim) (count two) dated August 12, 2019;
3. Previously undisclosed Archdale reports;
 - A. 20190515111029882.pdf
 - a. Archdale Police Department Incident/Investigation and Supplemental Reports for case 200505596;
 - b. Winston-Salem Police Department Incident/Investigation and Supplemental Reports for Case 1355558;
4. rec'd 6-19-19.pdf
 - A. Sumter Police Department Investigative report for case 12129527;
 - B. Sumter Police Department Incident and Supplemental Reports for case 12129527;
 - C. Sumter Municipal Arrest Warrant 2012A4320100578 for Assault and Battery in the Second Degree issued November 21, 2012 and returned December 27, 2012;

- D. Sumter Municipal Arrest Warrant 2012A4320100577 for Criminal Sexual Conduct in the Third Degree issued November 21, 2012 and returned December 27, 2012;
- E. Sumter Family Health Center Records for K.B. dated October 4, 2012;
- F. Sumter County Summary Court Search Warrant and Affidavit for Case 12129527 dated June 1, 2014 and return dated June 2, 2014;
- G. South Carolina Law Enforcement Division (SLED) Receipt for Property dated June 6, 2014;
- H. SLED Evidence Submission Receipt dated June 2, 2014;
 - I. South Carolina Computer Crime Center Evidence Intake for case 7014-0073 dated June 2, 2014;
 - J. National Criminal Information Center (NCIC) criminal history report for Mr. Younger printed September 26, 2012;
- K. NCIC Activity/Control Form dated December 6, 2012 (and related NCIC communications);
- L. Sumter Police Department Evidence Inventory and Chain of Custody for Case 12129527 dated December 5, 2012;
- M. In the General Court of Justice, District Court, Guilford County, North Carolina Waiver of Extradition Findings and Order by Judge and Waiver of Defendant for file number 12CR96782 dated December 14, 2012;
- N. In the General Court of Justice, District Court, Guilford County, North Carolina Search Warrant and Application dated December 6, 2012;
- O. High Point Police Department Receipt for Property for Case 2012-44170 dated December 6, 2012;
- P. Sumter Police Department Evidence/Property Log Case 12129527 dated December 5, 2012;
- Q. Receipt for Exhibits for Case 2013-GS-43-0315 dated June 11, 2014;
- R. Letter from Tyler Bryant Brown, Assistant Solicitor, Third Judicial Circuit, to Bryan P. Stirling, Director, South Carolina Department of Corrections (SCDC) dated October 21, 2015;
- 5. Updated powerpoint 5-15-19;
 - A. Finalv8_5-13-19 James...Younger (Redacted).pptx
 - a. Summary of Investigation Conducted by: North Carolina State Bureau of Investigation, Archdale Police Department, & Burlington Police Department (110 slides; redacted version) dated May 13, 2019;
- 6. Victim Photo she took of her healing injury
 - A. 2012-09-22 09.57.26.jpg.

After reviewing the contents of the flash drive, we requested follow-up information, including an unredacted copy of the PowerPoint presentation in December 2019. The following was received in March 2020:

- 1. PowerPoint presentation: Summary of Investigation Conducted by: North Carolina State Bureau of Investigation, Archdale Police Department, & Burlington Police Department (110 slides; unredacted version) dated May 13, 2019;

EXHIBIT A

In April 2020, we received an encrypted flash drive containing 16.5 gigabytes of records from the NCSBI via the South Carolina Attorney General's Office. The flash drive appeared to contain the NCSBI's entire investigative file for Mr. Younger organized into numerous folders, subfolders, and files. New information included, but was not limited to, thousands of digital images and videos retrieved during searches of Mr. Younger's property, additional NCSBI investigative records, and police incident reports. The flash drive contained the following records (all included in a folder entitled, *Verbatim*):

1. Finalv8_5-13-19 JAMES GREGORY YOUNGER (Redacted).pptx (Summary of Investigation Conducted By: North Carolina State Bureau of Investigation, Archdale Police Department, and Burlington Police Department for SBI Case 2009-01588 Power Point presentation, 110 slides);
2. Younger Summary (four pages);
3. Younger Summary (seven pages);
4. Younger Timeline (two pages);
5. Younger Victim Table (two pages).
6. SC:
 - A. Rec'd 6-19-19.pdf (Sumter Police Department Case File 12129527, 87 pages);
 - B. Trial Transcript of SC Case
 - a. Younger James – Transcript (00533116xD2C78).pdf (Transcript of Record for case 2013-GS-43-00315, June 9th-11th, 2014, 42) pages);
7. Archdale PD rec'd 6-12-19
 - A. Archdale PD Case File.pdf (including the following documents):
 - a. Handwritten notes;
 - b. Email from Irene Culick to Mickey Denny dated October 16, 2012 with hand written notes;
 - c. Sign-in sheet;
 - d. Email from Russell E. Connor, District Attorney Investigator, 30th Prosecutorial District of North Carolina, to Mickey Denny dated October 21, 2011;
 - e. Email from Josh Litchfield, Chief of Police, Andrews, North Carolina, to Mickey Denny dated July 29, 2011;
 - f. Archdale Police Department Incident/Investigation and Supplemental Reports for case 200305262 (including pictures, notes, maps) (Possession of Firearm by Felon);
 - g. Email from John Long to Mickey Denny dated July 31, 2009;
 - h. Randolph County, North Carolina Search Warrant and Application issued on January 25, 2006 and executed on January 26, 2006 and associated evidence records;
 - i. Handwritten letter (12 pages) from Mr. Younger to "Trace" dated March 3, 1991;
 - j. Important Notice from the District Attorney Prosecution Summary Due to Mickey Denny and signed by Andy Gregson, Assistant District Attorney, dated November 17, 2005;
 - k. Felony Prosecution Summary for Judicial District 19-B dated December 13, 2005;
 - l. Victim/Witness Information Worksheet for Victim L.R. ;
 - m. Assault Case Worksheet (Victim L.R. ;

- n. Archdale Police Department Incident/Investigation and Supplemental Reports for case 200505596 (handwritten notes, typed summary of timeline, computer records, letter, and "internal" records);
 - o. Memorandum from Assistant District Attorney Rob Wilkins to Detective Denny dated December 14, 2005;
 - p. Email from T.G. Mickey Denny dated September 19, 2005;
 - q. Yahoo Personals page for Mr. Younger printed January 14, 2006;
 - r. Younger Image Fitness Team Challenge 2006 flyer;
 - s. Application for Search Warrant filed in Randolph County received on November 16, 2005, executed on November 17, 2005, and returned on November 18, 2005 and associated evidence records;
 - t. Archdale Police Department Arrest Report for case 200505596 dated November 17, 2005 (typed and handwritten copies);
 - u. Randolph County Warrant for Arrest related to case 200505596 (undated);
 - v. North Carolina Administrative Office of the Court Criminal Defendant Name Inquiry Active Files dated December 6, 2005;
 - w. Computerized Criminal History dated December 6, 2005;
 - x. Computerized Criminal History dated August 9, 2005;
 - y. North Carolina Administrative Office of the Court Criminal Defendant Name Inquiry Active Files dated August 9, 2005;
 - z. Mugshot dated November 17, 2005;
 - aa. Mugshot dated August 9, 2005;
 - bb. North Carolina State Bureau of Investigation (NCSBI) Request for Examination of Physical Evidence for case 200505596 from Mickey Denny (L.R. sexual assault kit, blood, urine) (typed and handwritten copies);
 - cc. NCSBI Laboratory Report dated July 21, 2005;
 - dd. Letter from Garland N. Yates, District Attorney for the 19-B Prosecutorial District, to T. Ivey, Chemical Analyst, Drug Chemistry Section, Laboratory Services, NCSBI, dated August 4, 2005;
 - ee. NCSBI Laboratory Report dated September 30, 2005;
 - ff. Patient Drug Education Monograph for Zolpidem (Ambien) from Archdale Drug Company, Incorporated;
 - gg. WebMD web pages for Zolpidem printed November 7, 2005;
 - hh. Medline Plus Drug Information web pages for Zolpidem printed November 7, 2005;
 - ii. Information for the District Attorney's Office dated November 10, 2005;
 - jj. Checklist for the Victims Rights Legislation for L.R. dated November 23, 2005;
 - kk. High Point Regional Health Medical Records (sexual assault examination) for L.R. dated July 7, 2005;
8. New Indictments:
- A. Guilford County Indictments.pdf (including the following documents):
 - a. State of North Carolina, General Court of Justice, Superior Court Division, Guilford County, Order for Arrest #19OFA882761 for file 19CRS025501 for First Degree Kidnapping issued July 22, 2019;

- b. North Carolina Warrant Repository in the General Court of Justice, Superior Court Division, Guilford County, for File 19CRS025501;
 - c. General Court of Justice, Superior Court Division, Guilford County Notice of Return of True Bill of Indictment in the for file 19CRS025501-03 dated July 22, 2019 and Certificate of Service (Attaching it to an Order for Arrest to be served on the defendant) dated July 23, 2019;
 - d. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025501 for First Degree Kidnapping dated July 22, 2019;
 - e. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025502 for Second Degree Forcible Rape (count one) and Second Degree Forcible Rape (Physically Helpless Victim) (count two) dated July 22, 2019;
 - f. General Court of Justice, Superior Court Division, Guilford Grand Jury Indictment 19CRS025503 for Second Degree Forcible Sex Offense (count one) and Second Degree Forcible Sex Offense (Physically Helpless Victim) (count two) dated July 22, 2019;
- B. Randolph County Indictments.pdf (including the following documents):
- a. General Court of Justice, Superior Court Division, Randolph County, Notice of Return of Bill of Indictment for file 19CRS001268 issued on August 26, 2019 and Certificate of Service (Other: Emailing to SBI office) signed on August 27, 2019;
 - b. General Court of Justice, Superior Court Division, Randolph County, Notice of Return of Bill of Indictment for file 19CRS001268 issued on August 26, 2019 and Certificate of Service (Other: Emailing to SBI office) signed on August 27, 2019 (Copy-Defendant);
 - c. General Court of Justice, Superior Court Division, Randolph County, Grand Jury Indictment 19CRS001268 for Second Degree Forcible Rape (count one) and Second Degree Forcible Rape (Physically Helpless Victim) (count two) dated August 12, 2019;
9. Powerpoint:
- A. FINALv7-3-29-16 JAMES GREGORY YOUNGER.pptx (Summary of Investigation Conducted By: North Carolina State Bureau of Investigation, Archdale Police Department, and Burlington Police Department for SBI Case 2009-01588 Power Point presentation, 101 slides);
 - B. J5_MK_04032015.docx (Transcript of Recordings dated April 3, 2015);
 - C. SAFE SEARCH WARRANT.docx (Affidavit in Support of Search Warrant by John J. Long, Special Agent, NCSBI (dated November 2014, though unsigned and not notarized);
 - D. Updated powerpoint 5-15-19
 - a. FINALv8_5-13-19 JAMES GREGORY YOUNGER.pptx (Summary of Investigation Conducted By: North Carolina State Bureau of Investigation, Archdale Police Department, and Burlington Police Department for SBI Case 2009-01588 Power Point presentation, 110 slides);
 - E. Wonder.pptx (Power Point presentation about the book Wonder by R.J. Palacio);
 - F. X26 User Course V20.pptx (Power Point presentation by Taser, X26 Conducted Electrical Weapon End-User Course, Version 20 – Effective January 1, 2016);
10. Rec 6-21-19:

- A. Carnes MD CV 2019.msg (email from Paul R. Carnes to Leslie Cooley-Dismukes and Ryan Haigh dated June 21, 2019);
 - a. Carnes MD CV 2019.docx;
- 11. Rec 9-20-19:
 - A. FW Younger Charts.msg (email from John J. Long, Assistant Special Agent in Charge, NCSBI to Leslie Cooley-Dismukes dated September 20, 2019):
 - a. Chart 1.JPG;
 - b. Chart 2.JPG;
 - c. Chart 1.png;
 - d. Timeline 7-9-19.png;
 - e. Younger Contact & Activity.png;
- 12. SBI
 - A. 2009-01588-0084_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF;
 - B. 2009-01588-0085_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF;
 - C. 2009-01588-0086_SBI11A (Mobile Device Extraction).PDF;
 - D. 2009-01588-0087_SBI11A (Computer Forensic Examinations).PDF;
 - E. SBI 10 – Archive Laboratory information.pdf;
 - F. SBI 10 – Case Identification Report.pdf (contact information for six individuals dated June 16, 2015);
 - G. 2018 11 09.zip:
 - a. 2009-01588-0084_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF;
 - b. 2009-01588-0085_SBI11A (Search Warrant, Inventory-Seized Prop, Other Related Evidence Activity).PDF;
 - c. 2009-01588-0086_SBI11A (Mobile Device Extraction).PDF;
 - d. 2009-01588-0087_SBI11A (Computer Forensic Examinations).PDF;
 - e. SBI 10 Archive Laboratory Information.pdf;
 - f. SBI 10 Case Identification Report.pdf;
 - H. Previously undisclosed Archdale reports:
 - a. 20190515111029882.pdf (Archdale Police Department Incident/Investigation and Supplemental Reports for case 200505596, L.R.);
 - I. Infoshare Downloads:
 - a. 1 5 2017:
 - 1. 2009-01588-0079_SBI11A (Interview).PDF (Interview of Dr. Kenneth M. Barnes, Raleigh Neurology Associates, on July 1, 2015);
 - 2. 2009-01588-0080_SBI11A (Interview).PDF (Interview of G.S. on July 23, 2015);
 - 3. 2009-01588-0081_SBI11A (Medical Reports_Records) W_Attachment(s).PDF (report of activity dated July 30, 2015 and Medical Records from Kaur Psychiatric Associates for (G.S.));
 - 4. 2009-01588-0082_SBI11A (Agent Notes) W_Attachment(s).PDF;
 - 5. 2009-01588-0083_SBI11A (Agent Notes) W_Attachment(s).PDF;
 - 6. SBI 10 – Archive Laboratory Information.pdf;