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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Brooks P. Goldsmith, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF PERRY GUSTUS PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2022-001804

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3797

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
) Court of General Sessions
County of Richland) 2022CP1800791

In The Matter of the Care and) Transcript of Record
Treatment of Perry Gustus)
Phillips)

December 5, 2022
Richland, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge; and a jury.

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

Susanne Shaw, Attorney
Attorney for the State

James Falk, Attorney
Attorney for the Defendant

Heidi Gardner
Proofreader

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Rachel Carter

Mr. Falk

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Ms. Shaw

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Opening statement by Mr. Falk

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1 THE COURT: Good morning, everyone. Mr. Phillips has
2 joined us.

3 And would you call the case for us, please, Ms. Stevens?

4 THE CLERK: Yes, Judge. The first case set for trial
5 this week is the State v. Perry Gustus Phillips, case number
6 2022CP1800791. Ms. Shaw and Mr. Falk are here representing
7 the State and Mr. Phillips.

8 THE COURT: All right. And my hope was to get as far as
9 we could with regards to motions in limine, pre-trial matters.
10 We'll stop when the jury is ready for us to call them up once
11 they've checked in, but hopefully, we'll have probably 30 to
12 40 minutes to work.

13 So with that in mind, Mr. Falk?

14 MR. FALK: Your Honor, really, my main concern on my
15 motion in limine is the one that I filed relating to some of
16 the incidences of conduct that Dr. Carter identified in her
17 report, and I just want to discuss whether or not it's proper
18 for that testimony to then be uttered in the courtroom in
19 front of the jury.

20 I think it sort of falls into sort of two categories.
21 One is, there's a group of cases for which you don't know what
22 the disposition of them was, and you know, I think that poses
23 some type of question as far as relevancy.

24 Then there's a whole other group of cases or a whole
25 other section of her testimony which discusses allegations for

1 which no charges were brought, and I think that's another
2 issue. And my primary concern with this testimony is just
3 going to ultimately probably be offered through hearsay
4 testimony from Dr. Carter, and I certainly have concerns about
5 the admissibility of this hearsay testimony.

6 I can appreciate that there have been South Carolina case
7 law decisions that the State's going to rely on primarily,
8 Idle or Eittle, however that's pronounced, Corley, and White,
9 and -- and first of all, I think those -- I think there's been
10 some South Carolina case law that has come out since that time
11 that's maybe called into question the analysis followed by
12 those cases.

13 But also, more importantly, I think the context by which
14 that testimony was offered is going to be significantly
15 different than how it will -- than I anticipate it'll be
16 offered in this case, make it to show that those cases are not
17 necessarily precedent to admit it.

18 For example, I know that the State always wants to rely
19 on the White case, and I believe that White is not that
20 helpful because that was a case where the evidence of the
21 prior conduct was being offered at the probable cause hearing
22 and not at the commitment trial itself. And of course, we
23 know that the State's burden at the probable cause hearing is
24 considerably lower. It's just an element to establish
25 probable cause, and I would think that that's not unlike in a

1 criminal case at a preliminary hearing where the, sort of,
2 admissibility standards for evidence at that point are
3 considerably relaxed.

4 As we all know that at a preliminary hearing in a
5 criminal case, the judge determining whether or not there's
6 probable cause can rely on hearsay testimony, and so that's
7 not the case in here. They also -- I believe that they're
8 going to want to rely on Ettle, and Ettle is I believe
9 significantly different because in that case, Ettle admitted
10 to the conduct of the forensic examiner. And so really, that
11 testimony is not going to be classified coming in as hearsay,
12 but it's really an admission by a party opponent.

13 And the prejudice is significantly different because,
14 first of all, the source of the testimony is sitting in the
15 courtroom and he can come up and explain his points as opposed
16 to the source of the testimony that Dr. Carter will be
17 testifying to is not in the courtroom. So nobody has an
18 opportunity to challenge, you know, the source of the
19 evidence.

20 And the third one I think they want to rely on is Corley.
21 And again, if you look at what was at issue in Corley, and
22 Corley was a case where the State -- where respondent's
23 counsel sought to stop the admission of the indictments into
24 evidence. And instead, they were asserting that they were
25 going to just go ahead and stipulate to the conviction of the

1 offenses. And if you look in the Corley case, you can see
2 that really, the testimony that was coming in was sort of
3 that -- not boilerplate, but generic testimony that would be
4 attached to the indictment. It wasn't information found in
5 police reports or witness statements.

6 And finally, I know the Court made -- the State made a
7 reference to the Heigh (phonetic) case, and assuming
8 accurately that the State of South Carolina SVP laws are sort
9 of modeled after a Kansas case, so Kansas precedent may be
10 meaningful for us here.

11 However, if you actually look at the Heigh case, you'll
12 find that the testimony, the type that I would be complaining
13 about in this case came in from the actual victim statements.
14 They actually called the victims, and the victims testified in
15 Heigh. It's not coming in through the expert again, so I
16 don't think a reliance on Heigh is helpful and I don't think a
17 reliance on Corley, Eittle, or White is helpful.

18 I'd ask the Court to look to two more recent cases, and
19 although it comes up in a criminal proceeding, I think the
20 Jenkins case that I referred to in my memo is extremely
21 interesting and relevant here.

22 And Jenkins really calls the Court's attention to the
23 fact that just because 703 allows the State's expert to rely
24 on evidence which is not possibly admissible as long as it's
25 typical, that is not to say -- that's exactly how the Jenkins

1 case said. It's not the same as an open permission for them
2 to then testify to that evidence. And both the Jenkins case
3 and the Perry case talk about how evidence like that is really
4 coming in and offered for two purposes.

5 Certainly, the State has an interest in offering the
6 testimony in order to show support for the -- support for the
7 expert's opinions, but you can't run away from the fact that
8 it's also going to be offered -- the jury's going to be
9 listening to it for the truth of it asserted.

10 And now when we've come back around to cases for which
11 there's been no adjudication. That testimony really should
12 only be relevant if, in fact, it happened, but without knowing
13 whether or not it -- I mean, the only reason -- I mean, it
14 should only be relevant to Dr. Carter if the conduct happened.

15 So really, the relevance and the truth of it are
16 intertwined. I mean, it's hard to separate why Dr. Carter
17 would care about something she didn't know whether it happened
18 in reaching her opinion. So we would have to know whether or
19 not these acts actually happened, and when there is no
20 adjudication, that's difficult.

21 When there is no even charge being brought, I think
22 that's even further difficult at the poor language, and then I
23 mean, if the State were to parade all these people in here who
24 are actually made these allegations, that would be a different
25 story, but I've seen the State's witness list and I believe

1 they're only planning on calling Dr. Carter.

2 So really, in my memo, I kind of provided a list of
3 anticipated ones that I picked out of her testimony, which I
4 anticipate coming in. I mean, I don't think it's necessarily
5 an exclusive list, but you know, that's my concern. I want my
6 client to be -- if the jury finds that he's a sexually violent
7 predator, I want that to be based not on allegations that have
8 existed in the past, but only on, you know, Dr. Carter's
9 opinion and --

10 THE COURT: Is that it?

11 MR. FALK: -- I think we have a fundamental due process
12 issue here. Thank you.

13 THE COURT: Thank you. I get it, yes. Yes, ma'am, good
14 morning.

15 MS. SHAW: Good morning, Your Honor.

16 THE COURT: Yes.

17 MS. SHAW: May it please the Court.

18 THE COURT: Yes, ma'am.

19 MS. SHAW: Susanne Shaw on behalf of the State of South
20 Carolina. First, before I go into my response to Mr. Falk's
21 argument, I would like to put it on the record that I would
22 object to this motion in limine even being considered.

23 I was not provided with a hardcopy until just this
24 morning after I asked for it, and it was emailed to me at
25 exactly 5:30 on Friday night. And the other documents that

1 Mr. Falk and I are going to have to be arguing about were sent
2 even later than that. So I do not feel that I have had a fair
3 opportunity to both review and formulate responsive arguments
4 to this motion in limine.

5 This happens every time. I said this in our last trial.
6 This is sandbagging of the absolute worst sort and it's
7 inappropriate.

8 That being said, Mr. Falk would like for you to exclude
9 evidence of un-convicted and uncharged conduct. Evidence is
10 permissible. I mean, ordinarily, I agree this would be
11 considered hearsay, but under the sexually violent predator
12 law and our associated case law, which is Corley, White, and
13 Ettle, which specifically addressed these issues. The expert
14 is permitted under Rule 703 to consider any and all evidence
15 provided during the course of her evaluation so long as it is
16 relevant to her diagnostic purposes.

17 Mr. Falk is asserting that we have some sort of a dual
18 interest in getting this evidence in in order to produce
19 prejudice in a jury, but that's not the case. Dr. Carter
20 diagnosed Mr. Phillips, excuse me, with antisocial personality
21 disorder. Not a paraphilia, not biastophilic, not any of the
22 other relevant paraphilic disorders.

23 This is a very specific personality disorder which hinges
24 on the offender's complete and total lack of regard for the
25 rights of other people. This criminal history, which we will

1 not be going into in excessive detail because, frankly, he's
2 got so many convictions, we don't need to, but it will be
3 discussed in the context of that he was charged, he was
4 indicted, and many of the actual items -- I looked through the
5 petition as I was reviewing this.

6 These are actually charges that were brought in
7 connection with other, far more serious charges, but which
8 were nolle prossed as part of a plea agreement. I know that
9 every time we do this, the Respondents like to relitigate the
10 underlying convictions as well as any underlying charges.

11 That is not an appropriate -- this is not an appropriate
12 form, this is a civil matter. We are not seeking to
13 incarcerate Mr. Phillips, but we do need to get that
14 information into the record and our case law supports the
15 admission of it in the context of she considered it for
16 purposes of making her diagnosis because it's essential. If
17 you do not have evidence of a conduct disorder before the age
18 of 15 as well as ongoing criminal conduct, which is directly
19 reflected in these charges, you can't make the diagnosis.

20 So she needs to be able to tell the jury what she
21 considered the charges. We won't be discussing specifics.
22 The lynching charge, that was -- actually, that charge from
23 April 21st, 1995. I believe Mr. Perry Gustus actually did
24 plead out on that to a lesser charge and he did admit, in
25 certain records, to beating the victim in that incident with a

1 mop handle.

2 So just because Mr. Phillips has not admitted to the
3 conduct, doesn't mean that it cannot be considered. And just
4 because he hasn't been convicted of it at this point, as long
5 as the --, for lack of a better word, I'll use, gory details
6 are not brought in, which certainly could prejudice a jury, I
7 think they are both appropriate to consider, appropriate to
8 discuss in terms of their consideration and the weight they
9 were given.

10 Because Dr. Carter, in formulating her opinions, relies
11 certainly most heavily on convictions, but she has to consider
12 this other charged but un-convicted conduct in the grand
13 scheme of things because we are looking for a pattern of
14 behavior in these matters, and that's exactly what it shows,
15 so --

16 THE COURT: All right. Let me ask you this question,
17 this sort of -- what conduct does she intend to testify
18 regarding that was not charged?

19 MS. SHAW: Nothing.

20 THE COURT: Okay.

21 MS. SHAW: Nothing.

22 THE COURT: Then we can drop that one, because that was a
23 concern. All right.

24 MS. SHAW: There's no --

25 THE COURT: What conduct does she intend to testify

1 regarding the details that was charged, indicted, and nolle
2 prosed, and was not part of a plea?

3 MS. SHAW: She would be testifying -- I think the biggest
4 one -- I mean, she'll certainly be testifying about the
5 first -- the 2018 sex offense, the 1999 sex offenses, and the
6 '94 sex offense. The 2004 allegation that Mr. Phillips had
7 raped a woman while he was conducting a home invasion with
8 some other individuals.

9 That was charged, but I do believe it was nolle prosed as
10 part of a plea agreement to another charge. She will be
11 discussing that he was charged with that and that he was
12 charged with both I believe orally forcing sex and vaginal
13 sex.

14 That's all she'll be discussing, is that he -- this was
15 alleged, he was charged with it, and it was nolle prosed, and
16 she will say that because that's the truth. That is, I think,
17 what the biggest concern is. Other than that, we're not going
18 to really be going into details about the very violent
19 offenses because they are what they are. He was charged with
20 armed robbery. There were multiple home invasions, multiple
21 possession with intent to distributes, public drunk. I mean,
22 all of these things for which he was convicted and also not
23 convicted, she's going to mention them, but the details will
24 not be covered.

25 THE COURT: Okay. So we're really talking about the one

1 charge that was dismissed as a part of the plea, and do you
2 know what he pled to?

3 MS. SHAW: I believe he pled to armed robbery, but I
4 would need to check my --

5 THE COURT: Okay. Because I noticed he was charged with
6 kidnapping.

7 MS. SHAW: No, I don't believe so. I think it was --

8 THE COURT: Okay.

9 MS. SHAW: If Your Honor would give me a moment?

10 THE COURT: Sure.

11 (Pause.)

12 MS. SHAW: Okay. This was the 2004 October 24th. He was
13 originally charged with criminal sexual conduct, first degree,
14 burglary, first degree, kidnapping, three counts, armed
15 robbery, three counts. Possession of a firearm during a crime
16 of violence, possession with intent to distribute cocaine
17 crack. He was found with drugs on him after he was arrested.
18 Two counts of that, and violation of probation.

19 He was convicted of the VOP burglary, second degree,
20 violent armed robbery with a deadly weapon, and possession,
21 two counts. He was not convicted of the CSE first. That was
22 the nolle prosequed charge.

23 THE COURT: Okay. Or kidnapping?

24 MS. SHAW: No. He was not convicted of kidnapping. That
25 also was nolle prosequed.

1 THE COURT: Okay. All right.

2 MS. SHAW: So it'll be mentioned only in the context that
3 it was charged, this was the allegation, and we'll move on.

4 THE COURT: Got you.

5 MS. SHAW: There is also one other incident in 2017 which
6 I forgot about, but which we are not going to be discussing in
7 any sort of length. Mr. Phillips was alleged to have sexually
8 assaulted a coworker on the job. He was charged I believe
9 initially, but it was dismissed.

10 I believe there was a victim credibility issue in that
11 one, so that was dismissed. That was out of Dorchester
12 County, 10/3/17 was the date of offense. So again, we'll just
13 be mentioning that it was charged, but that it was nolle
14 prosed.

15 THE COURT: Okay. And with regards to those to, same
16 objection, correct? Mr. Falk's concern is one of them, even
17 though it was nolle prosed pursuant to a plea, it was still
18 nolle prosed. And then with regards to the other one, the
19 other one really is in a different category because it was
20 dismissed.

21 MR. FALK: Right, and again --

22 THE COURT: And not part of a plea.

23 MR. FALK: And you know, there's one thing where a case
24 is nolle prosed, you know, so it's CSE first and then he
25 pleads to CSE second, you know.

1 THE COURT: Sure.

2 MR. FALK: But when it's -- I mean, it's an apples and
3 oranges kind of null pross with respect to the one. I mean, I
4 guess it was a -- I don't know if it was a kidnapping and a
5 rape case and he led to armed robbery. I mean, that's not
6 necessarily the same, so we have really no indication why it
7 was nolle prosed.

8 If it was nolle prosed exclusively because, you know, he
9 was going to plea to this, or if they had sufficient facts.
10 And again, I come back to, it's only relevant if it happened.
11 Him being charged -- I mean, if she can explain why being
12 charged with conduct which he may not have done is relevant to
13 her diagnosis, then I'd like to hear that and be able to
14 respond to that. The charges are only relevant if they
15 happened.

16 THE COURT: Got it, got it.

17 MR. FALK: Your Honor, I do not know if sandbaggery is an
18 actual word.

19 THE COURT: I thought it was -- I'm so glad you brought
20 that up. I thought it was fabulous. Sandbaggery, the baggery
21 part.

22 MR. FALK: In my response, A, I have not gotten a
23 hardcopy of Ms. Shaw's report. I just --

24 THE COURT: Mr. Falk, let me tell you something. Here's
25 the problem that you have when you both -- lawyers like the

1 two of you, and I know you guys go head to head repeatedly. I
2 know -- unfortunately, I am of the belief that none of this
3 comes as a surprise to either one of you. You're just both so
4 busy, you kind of get it going. That's why Ms. Shaw raised it
5 and kept going.

6 MR. FALK: Thank you.

7 THE COURT: I'm okay with that. I mean, I think she's
8 raised it -- she's preserved -- if it's an issue for the
9 future, I think that's absolutely appropriate. I get it. Not
10 a problem. I'm not going to amend the language because of
11 that.

12 MR. FALK: No, Your Honor. I mean, the motion in
13 limine -- it's not -- it's not really a pre-trial motion. I
14 mean --

15 THE COURT: Mr. Falk --

16 MR. FALK: I could raise all of them on the fly if we
17 wanted to.

18 THE COURT: Mr. Falk.

19 MR. FALK: Thank you.

20 THE COURT: I agree. And clearly, Ms. Shaw is well
21 prepared. I think that -- and all candid to both of you, it
22 would be an unusually, incredibly otherworldly brilliant
23 lawyer to find any issue that the two of you could not be
24 prepared for, just because you know these issues so
25 brilliantly. So it is only the Court that might be a step

1 behind the two of you, yes.

2 MS. SHAW: I sincerely doubt that, Your Honor, that the
3 Court would be behind us. But anyway, I just do want to
4 respond to Mr. Falk's argument that it's only relevant if it
5 happened. And I would refer to the Jenkins, Perry, and I
6 believe, also Wiles and Chroma (phonetic) cases that he cites
7 in his brief. Those are all criminal cases. A couple of
8 them -- I believe Jenkins was a capital murder case, and these
9 are distinguishable. Both the procedure and the law is
10 different in a criminal case as opposed to a civil case.

11 And so the assertion that these cases are applicable to
12 the present matter I would say is not accurate. So that's all
13 I have to add. Thank you.

14 THE COURT: Okay. Got it.

15 MR. FALK: In response, if there was a separate rule of
16 evidence that applied to criminal cases that didn't apply to
17 civil cases, I would buy that argument, but this is the same
18 Rule 703 that she's relying on, that they're relying on in a
19 criminal case. So I mean, it's the same rules of evidence.

20 THE COURT: This is how we're going to proceed. Under
21 703, she can rely on hearsay testimony if it is reasonably
22 relied upon by other experts in the field in opining the way
23 that she opines.

24 That's 703. That's basic evidence of the experts. End
25 of discussion. Your concern is what hearsay evidence can she

1 talk about, and that's where your concern is. Was it this
2 null pross pursuant to a plea? Was it pled down?

3 Can we talk about the facts in those circumstances as
4 opposed to evidence that she's just talking about -- she --
5 there's some information that was received that was never
6 charged as a crime, et cetera. They're very good agents of
7 that.

8 My understanding is we will be involved in this case in
9 the following categories. Obviously, conduct for which Ms.
10 Phillips was charged and convicted. Conduct for which he was
11 charged, convicted on a number of offenses, but as part of the
12 plea, some charges were nolle prossed as part of the plea. And
13 then of greatest concern as I understand it, and I understand
14 why, two, Mr. Phillips, those instances where he was charged,
15 there was not -- there was no plea and the matter was
16 dismissed.

17 Now, I am not concerned about Dr. Carter taking that
18 information, uploading that information. The testimony is --
19 absolutely, this is the type of information that experts in
20 the field rely on when opining.

21 The concern that I have -- and in taking a look at this
22 case, the concern that I have would be her taking to the jury
23 about those specific allegations. That's a different
24 category. And I think what we'll do is just so you preserve
25 the record, we'll be sure that we do that very quickly, very

1 quickly with her before -- outside the presence of the jury,
2 and just let her talk about that snippet. And that way, we
3 can take it separately before it appears in front of the jury.

4 Not worried -- not worried about her having the
5 information. 703 allows her to have it if it's relied upon,
6 and I'm going to presume that you're going to have that
7 testimony in any event. The only part of it I want to put on
8 the record outside the presence of the jury is the -- in the
9 specifics, the specifics for any charges that were dismissed,
10 not part of a plea.

11 MS. SHAW: Let me make sure I understand the Court, so I
12 can tell Dr. Carter.

13 THE COURT: Sure.

14 MS. SHAW: --I'll be calling her once --

15 THE COURT: Yeah, yeah, yeah.

16 MS. SHAW: -- we're done selecting the jury, if she's not
17 already here.

18 THE COURT: Sure.

19 MS. SHAW: So Your Honor is going to permit testimony
20 about the details of the offenses that were both charged and
21 convicted?

22 THE COURT: Oh, without a doubt.

23 MS. SHAW: The introduction of the charges for -- and
24 some minor detail, just what the nature of the offense was, as
25 to charges that were pressed but not convicted. And then we

1 are going to be very, very limited in the charges that were
2 charged, but not convicted at all, like the harassment charges
3 and the sexual assault that I mentioned a few moments ago.

4 THE COURT: If she can talk about the relevance, just the
5 relevance with an eye towards the White case and the Ettele
6 or -- E-T-T-E-L (sic) case, if she can do it in that context,
7 but she's got to do it in the context of 703.

8 MS. SHAW: That's not a problem, Your Honor. I'll advise
9 her accordingly and let her know what your ruling is.

10 THE COURT: Yeah. That'd be great.

11 MR. FALK: If I can answer? My client is running me some
12 messages and I --

13 THE COURT: Sure.

14 MR. FALK: -- and they're well-founded, is that he just
15 wants to make sure if you're talking about something with the
16 term, charged, that he was, in fact, actually formally
17 charged, and not just that somebody said something that he did
18 it?

19 THE COURT: No, that's not coming in.

20 MR. FALK: He's saying that some of these issues, he was
21 never charged with.

22 THE COURT: Yeah.

23 MR. FALK: Formally charged with.

24 THE COURT: Yeah. Those, the State is not even going to
25 offer those.

1 MS. SHAW: No, Your Honor. Anything I intend to offer
2 was charged.

3 THE COURT: Yes.

4 MS. SHAW: So Mr. Phillips --

5 THE COURT: That was my understanding. I'm not worried
6 about that.

7 MS. SHAW: Yeah.

8 THE COURT: Yeah. And there's a record to say what he
9 was charged with or not. Okay. Got it?

10 MS. SHAW: Yes, ma'am.

11 THE COURT: All right. Now, go ahead, go ahead. Go
12 ahead and talk.

13 MS. SHAW: Yeah, while Mr. Falk is talking to his client,
14 I do have my own standard three motions in limine. And --

15 THE COURT: I know, and we'll -- we're going to get to
16 that. I'm going to get that one sort of out of the way. You
17 ready? And then go flip that.

18 And the State, yes.

19 MS. SHAW: Thank you. Okay, I was going to wait, but I
20 do have two more oral motions, so how would you like me to
21 proceed?

22 THE COURT: I don't care.

23 MS. SHAW: Okay. My standard first motion in limine, we
24 file these in every case. It's just we are requesting that
25 the Court bar the Respondent or his counsel from making any

1 references to Mr. Phillips being incarcerated or
2 reincarcerated or committed for life in the event that he is
3 committed, because those terms can be highly prejudicial.

4 This is not a criminal proceeding, as we've already
5 discussed, so -- and we're not seeking to punish him. I mean,
6 that's not the purpose of this type of proceeding, so any
7 reference to there being some sort of a penal interest, we
8 would request that the Court bar the defense from discussing
9 that or mentioning it.

10 MR. FALK: Your Honor, I think I'm certainly entitled to
11 talk about the fact -- first of all, to the extent the witness
12 has any information as to where he's going to be confined, I
13 think --

14 THE COURT: Yeah, and that's not a problem. That's not
15 what we're -- it's not punitive.

16 MR. FALK: Right.

17 THE COURT: He is in a secure facility. I don't care
18 about whether -- you tell him that, so secure facility is
19 absolutely not a problem. That if you want to talk about the
20 fact he -- if he is found to be a sexually violent predator,
21 he will be in a secured facility until such time as he no
22 longer is a risk to reoffend.

23 You can absolutely talk about that all day long because
24 that's reality and that's true. I have no problem with that.
25 It is not -- it is not punitive and I am going to ask, just as

1 last time we had an SVP trial, it's not appropriate. It's not
2 punitive, and he would not be in there for the rest of his
3 life unless -- you know, unless -- that's not -- has
4 absolutely nothing to do with the duration of the time that a
5 person is in the -- is with the Department of Mental Health.

6 And we're all aware of that and I won't -- I don't want
7 this jury mislead in any way and I know you won't.

8 MR. FALK: I think there is a particular issue that is
9 relevant here.

10 THE COURT: Okay.

11 MR. FALK: That is close to some of the other ones.

12 THE COURT: Sure.

13 MR. FALK: Is a lot of Dr. Carter's experience is in
14 providing annual review evaluations.

15 THE COURT: Okay.

16 MR. FALK: And I think that the term, annual review
17 evaluation, can be highly prejudicial unless we're going to
18 start talking about how long people are in there on an average
19 period of time or something like that, but if the jury thinks,
20 well, he might get out in a year, I think it's unfair.

21 So the last time we did one of these cases in
22 Chesterfield, we sort of crafted some language saying other
23 sexually violent predator evaluations or something like that,
24 but the term, annual or periodic, I think is -- if that comes
25 in, then I think that opens the door to me to try to explore

1 it, and she will have some knowledge as to --

2 MS. SHAW: Your Honor, I might be able to short circuit
3 this. Mr. Falk and I had this same issue and we agreed to use
4 a different term. I don't agree with his assessment about
5 annual review being prejudicial or in some way swaying it, but
6 I have no problem if you want to use some sort of other
7 terminology.

8 THE COURT: Well, if you all come up to an agreement, you
9 know, I don't care.

10 MS. SHAW: Yeah. I mean, I just don't see the need to
11 argue about this. We've had this issue before. I don't agree
12 with Mr. Falk and he doesn't agree with me, but we can figure
13 out a solution and we have done that, so.

14 MR. FALK: Fine. Since we're on that subject, I brought
15 it into the other one.

16 THE COURT: Okay. All right. So you all just -- if you
17 can figure out some language, fine. If not, come back and
18 I'll make a determination.

19 MS. SHAW: I was going to suggest progress review or
20 status review. Something of that nature.

21 MR. FALK: Then I can ask her -- if we can do status
22 reviews and I can ask her, well, on some of these status
23 reviews, how many times -- how long has the person been in
24 custody before you've done these status reviews? It's unfair,
25 or let her answer because she's going to have information

1 because she's going to do.

2 Yeah, I've done reviews on one about, god, four, five,
3 six times. If she wants to open the door to that testimony,
4 I'm fine.

5 MS. SHAW: Your Honor, that's not what we're going to be
6 discussing, and how long another offender has been in the
7 program as opposed to how long this particular offender may
8 end up being in the program is completely irrelevant. It's
9 going to confuse the jury.

10 THE COURT: So let me ask you this question, and I just
11 ask. Tell me when the discussion about annual review comes
12 up. When would that arise?

13 MS. SHAW: The only time it comes up is when I'm doing
14 voir dire to request that Dr. Carter be qualified. She is a
15 younger evaluator. I mean, everybody's got to start somewhere
16 and DMH starts their fellows and their younger evaluators
17 doing annual reviews, and then they eventually move them over
18 to start doing precommitment evaluations, which Dr. Carter has
19 been doing.

20 She's done I think 103 annual reviews and 6 precommitment
21 evaluations. It just goes to her experience in this field,
22 conducting these types of assessments, because in the annual
23 review is very similar, but you're asking a different
24 question. The individual is already in the program in that
25 situation, and so they have to look at, okay, what is this

1 individual's history, what have they been doing in treatment,
2 what kind of progress have they made, and are they ready for
3 discharge.

4 It's a different question than a precommitment evaluation
5 which says, okay, this guy has the qualifying conviction, but
6 does he have the mental abnormality or personality disorder
7 that makes it likely he will reoffend?

8 So it's a nuance, but they're two very different
9 questions. It's, has he changed enough that he's safe or does
10 he have the mental abnormality, or personality disorder in the
11 first place. So that's the only context that I would be
12 discussing an annual review at all, is just that she's done
13 them. It's two different types of questions. If I even go
14 into that far, because they're the same general process. You
15 do the interview, you do the record review. You score
16 actuarial assessments and you assess dynamic risk factors.
17 They use the same instruments in both evaluations. Just the
18 question is different.

19 THE COURT: Okay. And your concern is?

20 MR. FALK: Anything that has a temporal connotation --

21 THE COURT: Yeah.

22 MR. FALK: -- is what I think is prejudicial.

23 THE COURT: Just you call it inpatient. Inpatient
24 review. How many inpatient reviews have you done, as opposed
25 to pre-trial.

1 MR. FALK: Your Honor, probably in a third of these
2 cases, the only question that comes back from the jury after
3 they deliberate is, how long will he be in there, so I mean,
4 it's on their mind.

5 THE COURT: Yes, I understand.

6 MR. FALK: So anything that lets them think that it's
7 possibly one year I think is unfair.

8 THE COURT: Yeah, I understand. Inpatient review. You
9 know, inpatient review is what it is.

10 MR. FALK: I can live with that.

11 THE COURT: Yeah. I mean, it absolutely is what it is,
12 so we'll go with it. That's how we'll refer to it.

13 MS. SHAW: No problem, Your Honor. I'll advise Dr.
14 Carter.

15 THE COURT: Yeah. Okay. Good, good. All right. Next?

16 MS. SHAW: Number two. I would request that the Court
17 prohibit Mr. Phillips or Mr. Falk from discussing any matters
18 related to treatment, the potential efficacy of treatment,
19 what kind of treatment Mr. Phillips could or might get,
20 whether it be inpatient or outpatient.

21 That's not the question the jury has to answer and it
22 will confuse them. Again, because what frequently happens in
23 these cases is respondent will suggest that they can do
24 outpatient treatment, and that's not the question that we're
25 asking here. Is does he have that mental abnormality or

1 personality disorder and is he likely to reoffend, not, could
2 treatment be effective.

3 And I would refer the Court specifically to --

4 THE COURT: I'm aware. I got it. I'm aware.

5 MS. SHAW: -- Kansas v. Hendricks.

6 THE COURT: Yeah.

7 MS. SHAW: It doesn't need to be --

8 THE COURT: Yes.

9 MS. SHAW: Yes.

10 MR. FALK: Your Honor, if I may?

11 THE COURT: Um-hum.

12 MR. FALK: I think it's particularly relevant in this
13 case because he is going to have five years of supervised
14 probation, which is going to include sex offender treatment.
15 So that -- I'll admit in other times, it might not be as
16 relevant, but I think it's going to be significantly relevant
17 here is if the jury just thinks he needs treatment. And if
18 he's going to get treatment through a supervised probation and
19 have time holding on his head why that's not going to be
20 sufficient, I think I'm entitled to go there, especially under
21 the facts in this case.

22 THE COURT: Got it. That's not before the jury. That's
23 not the question that they're answering. Obviously, that's
24 already been answered, that he needs treatment. That's in his
25 order. If he's been ordered in probation with sex offender

1 treatment, that's not for this jury. That's already been
2 decided.

3 That, if you will, is the law of this matter. He isn't
4 going to have that. The question is, is whether or not he has
5 a sexual abnormality that would cause him to be likely to
6 reoffend. That's what they're going to ask and so
7 (indiscernible).

8 MR. FALK: Your Honor, I respectfully disagree.

9 THE COURT: I know.

10 MR. FALK: Because I think that the statute calls for,
11 unless confined for custody, care, and treatment. So if the
12 jury thinks that they have proven that he needs treatment,
13 then the issue really has to be, does the treatment have to be
14 in a secure facility or not. That's what I think the crux of
15 the issue is.

16 THE COURT: That's not for them. That's already been
17 decided. He's going to be in treatment. The question is,
18 does he have a mental abnormality such that he is likely to
19 reoffend? That's for this jury. That's for this jury.

20 We know you'll get treatment. The question is, does he
21 have an abnormality that will make him likely to reoffend?
22 Yeah, we're not going to get into that.

23 MR. FALK: Well, then, if he -- if she starts testifying
24 that he needs treatment -- if her witness starts testifying
25 that he needs treatment, then I think that opens the door

1 that, well, is he not going to get treatment under the terms
2 of his probation?

3 MS. SHAW: Your Honor, she's not going to discuss that.
4 She didn't assess --

5 THE COURT: Let me just leave it -- if she opens the
6 door, you're going to be right there. Opening the door is a
7 whole -- you all going to understand that I only have what I
8 have. Door gets opened, door gets opened. You with me?

9 MR. FALK: Yes, Your Honor.

10 THE COURT: That's a horse of a different color, as they
11 say, so don't -- you know, you're going to be right there,
12 yeah. You know, I want the jury focused on what they're
13 focused. The whole issue is treatment, but that's not what's
14 going to be before them. What's before them are the issues,
15 does he have an abnormality such that would cause him --
16 mental abnormality that would cause him to be likely to
17 reoffend? That's what they will be concerned about.

18 MR. FALK: Our report says that he's going to get -- that
19 she's contacted probation, knows the terms, and part of the
20 terms of his five years' probation is sex offender treatment.
21 Can I ask her that? That's part of her report.

22 THE COURT: It's not going to be relevant if you don't
23 get -- you're going to get an objection, I would think,
24 because that's not for the jury. He's absolutely -- it's not
25 about whether or not he's going to get treatment.

1 That's done. That's not for this jury. That's
2 irrelevant, and we're causing them to opine on issues other
3 than the appropriate issue, and I want to focus on the
4 appropriate issue.

5 MR. FALK: Your Honor, I appreciate your ruling, but I
6 want to preserve my record.

7 THE COURT: Please. Absolutely do that. I'm 100 percent
8 in favor of that. Noting your exception for this record, and
9 I do hope -- and I intend for it to be preserved in every way
10 it could be. Perfect, yes. All right. Next.

11 MS. SHAW: Yes, ma'am. Three more, and this one is going
12 to be real quick.

13 THE COURT: All right.

14 MS. SHAW: Because it doesn't -- I mean, we filed it as a
15 standard motion, but we -- it doesn't particularly apply to
16 Mr. Phillips. He just maxed out. It's a request to keep the
17 Respondent from referencing the total amount of time he has
18 remained incarcerated if he is beyond his max out date.

19 As I said, Mr. Phillips just maxed out. He was just
20 transferred to Dorchester I believe on December 1st. So it's
21 not particularly applicable, but it could confuse or mislead
22 the jury, you know, that the State's been keeping this guy
23 locked out in prison. He's maxed out. He shouldn't be there,
24 so we just try and prohibit references to that to keep us
25 focused.

1 THE COURT: I understand. It doesn't have any relevance.

2 MR. FALK: Your Honor, but the issue is, is he a sexual
3 offender today?

4 THE COURT: That's right.

5 MR. FALK: So just the total elapsed time is obviously
6 relevant. I'm not going to make some reference to you served
7 out and they've been holding you.

8 THE COURT: Yeah. What I don't want is that he's served
9 his debt to society, because that's not what this is about,
10 because he has. If he's maxed out, he 100 percent has. This
11 is a whole different deal.

12 MR. FALK: Yes, Your Honor.

13 THE COURT: Yeah.

14 MS. SHAW: Thank you, Your Honor. Mr. Falk, last week,
15 emailed me that he intends to call Mr. Phillips' brother to
16 testify, and I would like a proffer as to what the testimony
17 he intends to offer is.

18 I don't think it would have any sort of relevance to the
19 jury making the decision about whether Mr. Phillips has
20 antisocial personality disorder and is likely to reoffend, so
21 without having heard at least a basic proffer that maybe this
22 individual knows what he did or -- I mean, I just don't know
23 what he's going to have to say.

24 THE COURT: Did you serve discovery?

25 MS. SHAW: I didn't -- well, no, Your Honor. I did not

1 make a formal request for discovery --

2 THE COURT: Sure.

3 MS. SHAW: -- because I was just advised of this last
4 week.

5 THE COURT: Sure. I understand.

6 MS. SHAW: So just I would like a proffer as to what the
7 nature of the testimony is going to be.

8 THE COURT: Well, I tell you what. Is he here?

9 MS. SHAW: He is, I believe.

10 THE COURT: The brother's here?

11 MR. FALK: Well, I've seen him. I'm not sure -- oh, he's
12 here.

13 MR. STEWART: I'm here.

14 THE COURT: Hello.

15 MR. STEWART: Hello.

16 THE COURT: Thank you for identifying yourself.

17 MR. STEWART: Good afternoon, Your Honor.

18 THE COURT: Thank you. For our record, do you mind just
19 telling me your name?

20 MR. STEWART: My name is Julius Stewart (phonetic).

21 THE COURT: Thank you, Mr. Stewart.

22 MR. STEWART: I reside in Atlanta, Georgia.

23 THE COURT: Bless your heart. Did you drive up this
24 morning?

25 MR. STEWART: Last night, absolutely.

1 THE COURT: Thank goodness it was last night.

2 MR. STEWART: You're so cordial. Thank you.

3 THE COURT: That would have been really an early morning.

4 MR. STEWART: Thank you.

5 THE COURT: All right. Very well. Thank you for being
6 here. You can talk to him.

7 MS. SHAW: Well, Your Honor, just what is the relevance
8 of the testimony --

9 THE COURT: I don't know.

10 MS. SHAW: -- he had, like, a proffer for Mr. Falk?

11 THE COURT: I don't know, I don't know. I don't need --
12 what is your position about telling Ms. Shaw about what --

13 MR. FALK: I think in light of Dr. Carter's evaluation
14 and some of the paragraphs included in her evaluation, I think
15 his testimony is relevant, and honestly, specifically
16 addresses future plans. Future plans.

17 THE COURT: Future plans.

18 MR. FALK: Dr. Carter talks about that. They talk about
19 support in the communities all being protective factor, his
20 future plans. To the extent I've had clients be attacked by
21 not having realistic future plans in the past, I've got
22 somebody here who's going to address the future plans.

23 THE COURT: Okay. I can't imagine that that's going to
24 come in because I don't think it's relevant, but --

25 MS. SHAW: That's going to be my objection, and I'm going

1 to move to bar the witness, Your Honor, because that question
2 is not relevant to the question the jury has to answer. It's
3 just not.

4 THE COURT: It is not. However, if -- he is here in the
5 event that the door get opened.

6 MS. SHAW: At that point, then, Your Honor, I would just
7 request that while Mr. Phillips is testifying and while Dr.
8 Carter is testifying, that the witness be sequestered.

9 THE COURT: Your position to that?

10 MR. FALK: That's fine.

11 THE COURT: Okay.

12 MS. SHAW: Thank you, Your Honor.

13 THE COURT: Very well.

14 MS. SHAW: And my last motion in limine would be a motion
15 to bar the Respondent under his counsel from attempting to
16 relitigate the underlying convictions by attempting to assert
17 that the facts are other than as were contained in the
18 documents reviewed by Dr. Carter.

19 This is not a forum to relitigate that. It's
20 inappropriate for this kind of a proceeding and it will
21 definitely confuse a jury and lead them down a path that is
22 not appropriate for them to go, so that would be my request is
23 that we have no testimony concerning his denials of certain
24 offenses that he has been convicted of and/or charged with.

25 I mean, I'm not going to go into the details because he

1 should not be permitted to deny it.

2 THE COURT: Okay. I understand, I understand.

3 MS. SHAW: Thank you, Your Honor.

4 MR. FALK: I disagree.

5 THE COURT: Let me tell you where I am about it. If he's
6 being convicted, he's not going to disagree, okay? So if it's
7 a conviction, it's what the indictment says it is, then we're
8 done because he's been convicted, I gather, by a plea.

9 And if he's been convicted, there'll be no conversation
10 about that, but keep me posted with regards to the dismissed
11 matters or the matters that were -- if they were -- if matters
12 were nolle prossed as a part of a plea and it was a different
13 set of facts, keep me posted on that one, because I'm going to
14 hear that testimony out of the presence of the jury by Dr.
15 Carter -- and I may feel differently about that.

16 MR. FALK: All right.

17 THE COURT: But if he's being convicted, oh, no, it's not
18 going to be in front of the indictment.

19 MR. FALK: Your Honor, then I would ask to be able to
20 proffer the testimony because my argument for the conviction
21 is --

22 THE COURT: Absolutely, Mr. Falk, 100 percent.

23 MR. FALK: Okay. Can you at least hear my legal argument
24 for it?

25 THE COURT: Sure.

1 MR. FALK: My theory is that my client, since he's facing
2 civil commitment, he's entitled to put forth a complete
3 defense to completely rebut the charges against him. Now, we
4 are not -- we would not be saying that he is not convicted of
5 these charges, but it's not uncommon for somebody in a
6 sexual -- in a sexually violent crime for somebody to take a
7 plea deal because they were worried about he-said/she-said
8 kind of situations.

9 I mean, that is a fact of life in our court. To the
10 extent that he wants to say, I pled guilty because I want to
11 spare my family from going through this, or I wanted to get
12 whatever, I think he's entitled to it. And the reason why I
13 think he's entitled, because again, the conviction plays two
14 parts in this case.

15 One, the conviction obviously is relevant to the first
16 part of the State's burden here, is whether or not he's been
17 convicted of the crime, but then the commission of the crime
18 itself and the underlying details of the crime itself are
19 relevant to her -- she's basing her opinion, in part, on those
20 facts. And if he wants to say, I did it for -- I pled guilty
21 for ABC reason, I think he should be entitled to and he'd be
22 subject to cross-examination.

23 THE COURT: Not going to happen when he's being
24 convicted. Got it. Your record is preserved. If you want to
25 proffer it, let me know and we'll do that. I'm a little bit

1 concerned about the jury coming out. We won't do that now,
2 but we will certainly do that. Just remind me --

3 MR. FALK: Yes, Your Honor.

4 THE COURT: -- and we will certainly do that. But if
5 he's being convicted, oh, no, no, we're not going behind that.
6 No, but maybe with regards to the other ones, I'll consider if
7 there's been a matter that was dismissed pursuant to a plea
8 and it was a separate instance, date, and separate set of
9 facts.

10 MR. FALK: Thank you.

11 THE COURT: Are they ready?

12 THE CLERK: They are -- they just (indiscernible).

13 THE COURT: Okay. Great. So -- but she didn't do the
14 roll call down there other than to find out who's there?
15 Okay, great. They'll be coming up in just a little bit. Now,
16 how many more motions do you have?

17 MS. SHAW: Your Honor, I'm only making this last one on
18 the fly because Mr. Falk just brought it up that his client is
19 going to want to discuss why he would take a plea deal.

20 THE COURT: No.

21 MS. SHAW: That is on --

22 THE COURT: No.

23 MS. SHAW: Okay.

24 THE COURT: Not happening. I'm not going to do that.

25 MS. SHAW: Okay. Thank you, Your Honor.

1 THE COURT: We're not going behind the convictions.
2 We're not.

3 MS. SHAW: That was my only concern.

4 THE COURT: We're not going behind the convictions.

5 MS. SHAW: The only other thing we have to do is probably
6 argue either in chambers or, if you want, on the record, about
7 the proposed voir dire as well as jury questions, and we would
8 probably need to do that before they come out, because there
9 are some issues I have with the voir dire I was presented this
10 morning.

11 THE COURT: Not a problem. We'll do that, but I'm going
12 to get the jury general qualification out. I always give them
13 a break before we actually qualify them with regards to the
14 case, so you know, we'll do that.

15 MS. SHAW: Thank you, Your Honor.

16 THE COURT: Okay. And how many do you have? How many
17 more do you have, motions?

18 MR. FALK: I'm done.

19 THE COURT: Yay. All right. We did pretty well. All
20 right. Now, with regards to voir dire, I'm going to handle
21 those very quickly in between the general qualification when
22 we do the qualification for this particular matter.

23 (Unrelated proceedings discussed.)

24 (Whereupon, the prospective jury came into open court at
25 approximately 10:46 a.m.)

1 THE COURT: Thank you so much, everyone. Please be
2 seated. Good morning, good morning. Ladies and gentlemen, I
3 want to thank all of you for being here this morning. Thank
4 you so much. You ought to be thanked a lot for being here
5 because we are a citizen based judicial system in the United
6 States.

7 I would submit to you this is the finest system of
8 justice that people have ever come up with and it is because
9 of you, and because places all over this country this day,
10 folks are showing up to help fellow citizens resolve disputes,
11 and for that reason, I am so truly grateful to each and every
12 one of you for being here this morning.

13 Now, ladies and gentlemen, I should introduce myself.
14 I'm Diane Goodstein and I am one of the two resident judges
15 from the First Judicial Circuit. We are also so very lucky to
16 have Judge Murphy who is actually an at large judge, but she
17 is here in the First Circuit, so we're really lucky to have
18 her chambers here in the First Circuit, here in Dorchester
19 County.

20 I would tell you, like, a civics lesson. The First
21 Circuit is Dorchester, Calhoun, and Orangeburg County, and
22 that's where you live. You live in the First Judicial
23 Circuits, congratulations, and thank you for being here in St.
24 George.

25 Another civic lesson. St. George is the county seat for

1 Dorchester County. It is not Summerville. Are you surprised?
2 Well, it's St. George, which is why our courthouse is here
3 because our law provides that your courthouse should be in the
4 county seat of your county. Hence why you all are here in St.
5 George.

6 Typically, about 80 percent, 90 percent of our jurors are
7 from the lower part of the county and have the wonderful
8 opportunity to visit other parts of the county, hence St.
9 George. So thank you all for being here this morning.

10 Have you had a chance to meet our esteemed wonderful
11 clerk of court, Chell Graham (phonetic)? You introduced
12 yourself?

13 THE CLERK: I did.

14 THE COURT: Wonderful. Did you --

15 THE CLERK: I (indiscernible).

16 THE COURT: Well, you're going to do all of that in just
17 a moment. All right. Go for it. Okay. Well, they'll
18 introduce themselves. All right, but I'm going to introduce
19 the clerk of court.

20 I've known her for a very long time. I'm not going to
21 tell anyone -- I'm not going to tell a jury panel, you guys.
22 I'm not going to tell you that I've known her since before
23 either one of us used hair dye. Not saying that because she's
24 always -- gets irritated when I do that, but I'm not saying
25 that.

1 I have known her though a very long time and it's been a
2 joy of my life to know her for as long as I have. She is a
3 remarkable person. She has martialed this court's office
4 literally from pencil and paper through the development of the
5 case management system and electronic filing.

6 She is now known as a computer geek. She did not come
7 kicking and screaming when the chief justice at the time who
8 was -- two former chief justices was looking for a more rural
9 county, she came to Ms. Graham as they were developing the
10 case management system and said, can we come hang out in
11 Dorchester County, and she said sure.

12 And the chief justice's staff spent a year in Dorchester
13 County as they refined the case management system, which is
14 really one of the first great case management systems in the
15 country and was really the envy of all, and many, many states
16 around the country came to South Carolina to emulate our case
17 management system, and Ms. Graham was one of the cornerstones
18 of the development of that system.

19 And she's added to that electronic filing in the last
20 five years and she's done just a marvelous, just a marvelous
21 job at uploading the electronic filing, and now she's moving
22 on to the family court to do the same.

23 She really is extraordinary. She's so bright and so
24 capable and does just a phenomenal job. She's going to
25 introduce the folks in her office, and our bailiffs are going

1 to introduce themselves to you, and our court reporter. Our
2 digital court reporter is going to introduce herself as well.
3 Yes, ma'am, Ms. Graham.

4 THE CLERK: I introduced Theresa Mason (phonetic) here,
5 and over there is (indiscernible) Claire and Bethany Stephen
6 (phonetic). She is one of my chief deputy clerks, and also
7 she handles the civil cases docket. She works with attorneys
8 and the judge, and to the left side of her is Priscilla
9 (phonetic) Rolland. Priscilla is fairly new to my office, but
10 she's setting up (indiscernible), so I believe in cross
11 training, and so yeah.

12 THE COURT: All right. And it's normal and customary
13 that whenever court is in session, that we have security
14 present, and you're our lone security person, right?

15 DEP. BARRON: Yes, ma'am.

16 THE COURT: Introduce yourself.

17 DEP. BARRON: I'm Dep. Barron (phonetic).

18 THE COURT: Thank you, and again, it's normal and
19 customary that we have security whenever court is in session.
20 We have our bailiff, Ms. Katherine (phonetic). Wave, Ms.
21 Katherine. Our bailiff, it is their job to keep all of us
22 where we are supposed to be when we are supposed to be there.

23 Those of you who get the opportunity to serve on a jury
24 this week, if you are here during this lunch, they're a pretty
25 good resource of where you want to go for lunch as well in St.

1 George if you're not familiar.

2 To my right is my lawyer, Amy Satkas (phonetic). She is
3 a brand new lawyer. She is entering her third week. Fourth
4 week? She's been a lawyer for, like, four weeks.

5 And we have the honor of having a recent graduate from
6 law school, and she's a recent graduate from the Charleston
7 School of Law, and just she passed the bar, was just sworn in
8 by the Supreme Court, and she would spend this year, this next
9 year as my law clerk.

10 It's wonderful for the law clerk because they get to
11 observe trials in court. They get to see that what they've
12 been studying for for the last three years really happens, and
13 of course, it's wonderful for us because they just graduated
14 from the law school so they know everything, so it's just a
15 grand opportunity for us and for them, and this is Ms. Satkas,
16 my law clerk.

17 We have an esteemed digital court reporter.

18 THE COURT REPORTER: Hello. My (indiscernible).

19 THE COURT: Thank you.

20 THE COURT REPORTER: Hello. I'm Sherry Jones (phonetic).
21 I'm the digital court reporter. The only thing I need you to
22 do is talk loud so I can hear you.

23 THE COURT: Every court reporter is so on that. I love
24 it. Yes, I think that's the bane of their existence when
25 people don't speak loudly enough. Thank you, Ms. Jones. I'm

1 so happy that you are here.

2 We have added digital court reporters and they're a --
3 with the advent of technology, we have the good fortune to
4 have digital court reporters and they do a wonderful job, and
5 we've just added digital court reporters to our system, what,
6 three, four years ago? Four, five years ago? It was before
7 the -- maybe -- it was about a year before the pandemic,
8 wasn't it?

9 Yeah, you were up and ready to go. Wait a minute, hold
10 up, we got a pandemic, so we're real lucky to have Ms. Jones
11 with us. Where's your normal county?

12 MS. JONES: Sumter County.

13 THE COURT: Sumter County, so they travel all over the
14 state. They all love getting their call at 7 o'clock in the
15 morning when they thought she was going to be in Sumter and
16 then she got a call saying, you need to be in Dorchester by
17 9:30, so it's an exciting life that they lead. It really is.

18 And the other folks who are here. There are members of
19 the public. There are attorneys. They have matters pending
20 before the Court or the members of the public and they just
21 want to participate, observe the court. This is a public
22 place and we welcome members of the public, and the lawyers
23 that are here have matters on the docket this week, and they
24 want to get a look at you.

25 And so that sort of will round up folks that are present.

1 The lawyers that are going to be trying cases, I'll have an
2 opportunity to introduce those folks to you and I look forward
3 to doing that as well.

4 Jury qualification is done in stages. It's done in
5 stages. In just a little bit, we're going to have the roll
6 call, and when Ms. Graham calls the roles, I'm going to ask
7 you to give us the information you can see it from the
8 monitor. And just, we want just a little bit of information
9 about you, and if you will stand, and in a clear and audible
10 voice, tell us how you are employed, and then if you are
11 married, your spouse's employment as well.

12 We're interested even in the event that you are retired,
13 please tell us the position from which you are retired, and
14 the same is true of your spouse, and if you are self-employed,
15 just a word or two about how you are self-employed.

16 For example, I'm a retired dog groomer. I'm a self-
17 employed dog groomer. That would be very helpful. We'll be
18 so grateful for that information, and then once we've gone
19 through the roll call process, there are certain statutory and
20 mandated questions that I must ask of you and we'll go through
21 that process, and when we have concluded that, we'll have a
22 very short comfort break. You will be ready for that comfort
23 break, and then we will return from our comfort break, and I'm
24 going to introduce you all to some folks, ask you some
25 additional questions that have relevance to our first case for

1 trial, and if we have time, then I'll do the same again for
2 our second case for trial. I would love to be able to pick
3 two juries this morning, but I don't know that the time will
4 permit us to do that, so we'll just simply have to see.

5 So without further ado, I'm going to ask you to please
6 stand and raise your right hand and be sworn in as our jury
7 panel.

8 (Whereupon, all jurors' hands were raised.)

9 THE COURT: Ladies and gentlemen, do you solemnly swear
10 or affirm that you will provide truthful and complete answers
11 and responses during this jury qualification process? If you
12 accept the oath, please indicate by doing two things. Say, I
13 do, and be seated.

14 THE JURY: I do.

15 THE COURT: And is there anyone who failed to take the
16 oath? If so, please stand. I find no one standing. We
17 receive our names from jurors from three sources, from three
18 sources. From the voter registration rolls of Dorchester
19 County and from the Highway Department in the form of driver's
20 licenses or identification cards.

21 If you do not have at least one of those in addition to
22 the identification, I'm going to ask you to please stand. I
23 find no one standing. Wonderful. At this time, Ms. Graham,
24 if you would call the role?

25 THE CLERK: Thank you.

1 THE COURT: Thank you.

2 THE CLERK: As I call your name, please stand and give me
3 the information from the -- on the monitored, and it's also on
4 the back of the card. And if you're retired or self-employed
5 or --

6 Juror Number 5, June Andois (phonetic)?

7 JUROR NO. 5: Yes. I'm a retired bank officer and my
8 husband is a retired estimator.

9 THE COURT: Husband's a retired estimator?

10 JUROR NO. 5: Yeah.

11 THE COURT: For?

12 JUROR NO. 5: For construction company.

13 THE COURT: Got you. And you are?

14 JUROR NO. 5: A retired bank officer.

15 THE COURT: A retired bank officer?

16 JUROR NO. 5: Yes.

17 THE COURT: Thank you so much.

18 THE CLERK: Thank you. Juror Number 11, Brandon Beasley
19 (phonetic)?

20 JUROR NO. 11: I'm employed by Boeing and my job is
21 quality inspector.

22 THE CLERK: And are you married?

23 JUROR NO. 11: Not married.

24 THE CLERK: Okay.

25 THE COURT: All right. And I'm going to stop you right

1 there. Ladies and gentlemen, you just saw Ms. Graham go from
2 number 5 to number 11. What happened to numbers 1, 2, 3, and
3 4, and of course from between 5 and 11. I want to explain
4 that to you and what happens.

5 Obviously, we are going through the numbers of the jurors
6 who are present. For the jurors who are not present, when we
7 finish here today, Ms. Graham will go back to her office with
8 her folks and they will find the other jurors.

9 Some of them, they already know that they've moved from
10 the county and they are already aware of that. For those that
11 they're unaware, they will locate those folks. Typically,
12 what happens is that folks have moved from the county and
13 they've got either their driver's license or their voter
14 registration because they have not updated their address, new
15 address, and she will contact these folks and suggest they get
16 that done.

17 And so for those people who remain in the county, we
18 will -- she'll talk to me about that when she's located them
19 and moved south, come on down and have conversations, which is
20 typical, and then we will transfer them to another term of
21 court probably next week, and if we don't get a satisfactory
22 explanation why they were not present, I'll deal with those
23 ones.

24 But I do want you to know that we do follow up because I
25 don't think it honors your presence if we don't have

1 information on why folks did not show up, so I did want you to
2 know that we do follow up.

3 All right. Yes, ma'am?

4 THE CLERK: Thank you.

5 THE COURT: Uh-huh.

6 THE CLERK: Juror Number 15, Robert Blitch (phonetic).

7 JUROR NO. 15: I'm a retired (indiscernible) electrical
8 mechanic. My wife is deceased.

9 THE COURT: Thank you.

10 THE CLERK: Juror Number 22, Dusty Brownly (phonetic)?

11 JUROR NO. 22: I work for Walmart. I'm a pharmacist
12 there. My wife works for Rev (phonetic) Federal Credit Union
13 and she's an IT specialist.

14 THE CLERK: Juror Number 24, Joy Bringleson (phonetic)?

15 JUROR NO. 24: I'm employed by Bright Start. I'm an
16 early intervention supervisor.

17 THE CLERK: Are you married?

18 JUROR NO. 24: No, ma'am.

19 THE CLERK: Juror Number 26, Ava Burrows (phonetic)?

20 JUROR NO. 26: I'm employed by Bareli (phonetic) Barber.
21 I'm a barber and I'm not married.

22 THE CLERK: Juror Number 31, Rebecca Carol (phonetic)?

23 JUROR NO. 31: I'm employed by HALOS. I'm a research
24 coordinator and I don't have a spouse.

25 THE CLERK: Juror Number 42, Holly Cooperage (phonetic)

1 JUROR NO. 42: I work for Life Care Centers of America.
2 I'm a speech and language pathologist and I am fortunate
3 enough to be divorced.

4 THE CLERK: Juror Number 45, Brian Davis (phonetic)?

5 JUROR NO. 45: I'm employed by Habitat for Humanity of
6 (indiscernible) County. I'm the family services manager and
7 I'm widowed.

8 THE CLERK: Juror Number 50, Marquee Segal (phonetic)?

9 JUROR NO. 50: I'm employed by (indiscernible) Services.
10 I'm an HVAC tech mechanic, and my wife works for group of St.
11 Francis in medical assistance.

12 THE CLERK: Juror Number 51, Joshua Eckov (phonetic)?

13 JUROR NO. 51: I work at AutoZone and I'm a manager
14 there.

15 THE CLERK: Married?

16 JUROR NO. 51: No.

17 THE CLERK: Juror Number 52, Kevin Eddinger (phonetic)?

18 JUROR NO. 52: I'm employed by W.W. Williams. I'm a
19 diesel mechanic. My wife works at Palmetto Primary Care.
20 She's a medical assistant.

21 THE CLERK: Juror Number 54, Mark Essy (phonetic)?

22 JUROR NO. 54: Yeah, I'm employed by North Palm Church.
23 My job is senior pastor. My spouse is also employed by North
24 Palm Church and she's an administrator counselor.

25 THE CLERK: Juror Number 68, Michelle Gelser (phonetic)?

1 JUROR NO. 68: I'm a licensed (indiscernible) in early
2 childcare. No spouse.

3 THE CLERK: Juror Number 71, Janice Glover (phonetic)?

4 JUROR NO. 71: It's Janice Glover. I have two employers.
5 I work for Lowe's in Summerville, cashier, and Meko's Cleaning
6 Services. I'm a (indiscernible). I'm divorced.

7 THE CLERK: Juror Number 76, Michael Greene (phonetic)?

8 JUROR NO. 76: I'm employed by Universal Truck, and I'm a
9 truck driver. I'm single.

10 THE CLERK: Juror Number 81, Barbara Hardy (phonetic)?

11 JUROR NO. 81: I'm employed by (indiscernible) Society
12 and its federal halfway house, and I'm divorced.

13 THE CLERK: Juror Number 84, (indiscernible) Hayes
14 (phonetic)?

15 JUROR NO. 84: I'm a self-employed nail tech and I'm not
16 married.

17 THE COURT: Self-employed nail tech?

18 JUROR NO. 84: Yes.

19 THE COURT: Thank you.

20 THE CLERK: Juror Number 94, Philip Jackson (phonetic)?

21 JUROR NO. 94: Self-employed musician. Not married.

22 THE CLERK: Juror 104, Brenda Keene (phonetic)?

23 JUROR NO. 104: I'm employed by We Are Sharing
24 (indiscernible). I'm a director of the communications center
25 and my spouse is employed by (indiscernible) and he paints

1 cars.

2 THE CLERK: Juror 106, Michael Frasier (phonetic)?

3 JUROR NO. 106: I'm employed by Robert Bosch. I'm a
4 (indiscernible) mechanic and my spouse is employed by Home
5 Health and she is a medical assistant.

6 THE CLERK: Juror number 108, Teresa Labar (phonetic)?

7 JUROR NO. 108: I'm employed by MUSC and I'm a certified
8 medical assistant, and I am happily divorced.

9 THE CLERK: Juror Number 109, Robert Lair (phonetic)?

10 JUROR NO. 109: I'm employed by (indiscernible) and my
11 wife's an engineer.

12 THE COURT: And we had a little bit of trouble. You're
13 employed by Boeing?

14 JUROR NO. 109: Boeing.

15 THE COURT: And are you married?

16 JUROR NO. 109: I am but she doesn't work.

17 THE COURT: Outside the home?

18 JUROR NO. 109: Correct.

19 THE COURT: Got it.

20 THE CLERK: Juror 115, Joanne Lewis (phonetic)?

21 JUROR NO. 115: I'm employed by Austin Industries. My
22 husband's retired and he worked for (indiscernible) AD
23 (phonetic).

24 THE CLERK: Juror 117, Gabriel (indiscernible)?

25 JUROR NO. 117: I'm a self-employed musician and not

1 married.

2 THE COURT: You're a musician and you're unmarried?

3 JUROR NO. 117: Yes.

4 THE COURT: Thank you.

5 THE CLERK: Juror 119, Benjamin Lays (phonetic)?

6 JUROR NO. 119: I am employed by (indiscernible)

7 Services, and I am a diesel mechanic, and I'm not married.

8 THE CLERK: Juror 121, Janet McLawhorn (phonetic)?

9 JUROR NO. 121: I am not employed outside of the home and
10 my husband works for (indiscernible) Dredging. He's the
11 dredge supervisor.

12 THE CLERK: Juror 124, Angel Mendez (phonetic)?

13 JUROR NO. 124: I'm employed by IBEW and I'm a journeyman
14 electrician. My spouse works for market stores in sales.

15 THE CLERK: Okay. Juror 130, Anthony Montgomery
16 (phonetic)?

17 JUROR NO. 130: Hello. I'm employed by (indiscernible).
18 I work with the military police. I process police reports,
19 traffic citations for military members, and my wife is a
20 homemaker.

21 THE CLERK: Juror 134, Matthew Lohanette (phonetic)?

22 JUROR NO. 134: I'm employed by Robert Bosch as a
23 controls engineer. My wife is a stay at home mother.

24 THE CLERK: Juror 139, Kaylee Owens (phonetic)?

25 JUROR NO. 139: I'm employed by Solomon Family Dentistry

1 and I'm a dental assistant and I'm not married.

2 THE CLERK: Juror 142, Morrigan Parker (phonetic)?

3 JUROR NO. 142: I'm employed by Pickin's Chickin's. I'm
4 a waitress and I'm not married.

5 THE CLERK: Juror 143, Scott Paynes (phonetic)?

6 JUROR NO. 143: I'm employed by F5. I'm a consultant.
7 My wife works at Summerville Medical Center and she's a nurse.

8 THE CLERK: Thank you, sir. A little louder.

9 JUROR NO. 143: Okay. I work for a company named F5.
10 The number -- or the letter F, and then the number five. I'm
11 a consultant. My wife works for Summerville Medical Center.
12 She's a nurse.

13 THE CLERK: Juror 146, Ian Flegger, Fledger (phonetic)?

14 JUROR NO. 146: Flegger. I'm employed by (indiscernible)
15 Chemicals. I am an instrumentational electrical tech and
16 divorced.

17 THE CLERK: Juror 148, Leonardo Panelle (phonetic)?

18 JUROR NO. 148: Tomorrow, I start my first day at UPS as
19 a personal parcel delivery service guy, and I'm single.

20 THE CLERK: Juror 151, Daniel Prolhaska (phonetic)?

21 JUROR NO. 151: Prolhaska, yes. I'm employed by Lions
22 Vision Services. My job is president and CEO. My spouse is
23 employed by Lifeway Christian Resources and she is a
24 publisher -- or editor.

25 THE CLERK: Juror 164, Daniel Santos (phonetic)?

1 JUROR NO. 164: I'm self-employed. My wife is a stay at
2 home mom.

3 THE COURT: Self-employed in what regard?

4 JUROR NO. 164: Exterior site construction.

5 THE CLERK: Juror 164 -- I'm sorry, 165, Tyler Avia
6 (phonetic)?

7 JUROR NO. 164: I'm self-employed in the construction
8 field and my wife works at Shielding Insurance (phonetic) as
9 an account manager.

10 THE CLERK: Juror 168, Melissa Shoenever (phonetic)?

11 JUROR NO. 168: I'm employed by the Department of
12 Defense. My job is federal investigator. My spouse is
13 employed by the Air Force and his job is an Air Force pilot.

14 THE COURT: I am so sorry. I could not hear. Could you
15 run all of that over? Yeah.

16 JUROR NO. 168: I'm employed with the Department of
17 Defense.

18 THE COURT: Yes.

19 JUROR NO. 168: As a federal investigator.

20 THE COURT: Okay.

21 JUROR NO. 168: My spouse is employed by the Air Force
22 and he is an Air Force pilot.

23 THE COURT: Perfect.

24 THE CLERK: Juror 171, Laura Seller (phonetic)?

25 JUROR NO. 171: I'm employed by Regions Bank as a client

1 services specialist and my husband is employed by Raising
2 Cane's as the area leader of marketing.

3 THE CLERK: Juror 172, Frank Seltzer (phonetic)?

4 JUROR NO. 172: I'm employed by (indiscernible)
5 Communications. My job is IT sales manager and my wife is
6 employed by Cummins, and she is a (indiscernible) specialist.

7 THE CLERK: Juror 174, Beatrice Simmons (phonetic)?

8 JUROR NO. 174: I'm employed by (indiscernible)
9 healthcare and I am a travel registered nurse.

10 THE CLERK: Are you married?

11 JUROR NO. 174: I'm married.

12 THE CLERK: Juror 177, Stacy Siffel (phonetic)?

13 JUROR NO. 177: I'm employed by MUSC and I'm a registered
14 nurse. My husband is employed by FedEx Freight and he is a
15 driver.

16 THE CLERK: Juror 178, Ruby Slack (phonetic)?

17 JUROR NO. 178: I'm employed by Ulta Beauty and I'm the
18 retails sales manager, and I'm not married.

19 THE CLERK: Juror 180, Mary Smith (phonetic)?

20 JUROR NO. 180: I'm employed by (indiscernible). I'm a
21 manager. My husband is employed by (indiscernible). He's a
22 manager.

23 THE CLERK: Juror 181, Erica Span (phonetic)?

24 JUROR NO. 181: I'm employed at Boeing. I'm an
25 electrical mechanical engineer planner and I'm happily single.

1 THE CLERK: Juror 182, (indiscernible)?

2 JUROR NO. 182: I work at Boeing and I'm a quality
3 product manager. My wife works for Carolina One and she's a
4 realtor.

5 THE CLERK: Thank you. Juror 184, Catherine Stenysky.

6 JUROR NO. 184: Catherina Stenusky (phonetic). I'm self-
7 employed. I sell life insurance and I'm not yet married.

8 THE CLERK: Juror 186, Travis Wetman, Jr. (phonetic)?

9 JUROR NO. 186: Deployed by (indiscernible) and I'm a
10 diesel mechanic. I'm single.

11 THE CLERK: Juror 198, Timothy Sulfer (phonetic)?

12 JUROR NO. 198: I am a retired DOD Medical Clinic
13 (phonetic) IT director. My wife is also retired,
14 (indiscernible) sales manager for (indiscernible).

15 THE CLERK: Juror Number 200, Laura Tyson (phonetic)?

16 JUROR NO. 200: I am a mail carrier for the United States
17 Postal Service. My husband, who I do claim for 30 years, he
18 is also a retired, disabled mail carrier.

19 THE CLERK: And Juror 203, Zachary Wade (phonetic)?

20 JUROR NO. 203: I'm employed by (indiscernible) sales
21 development rep, and my wife is employed by (indiscernible).
22 She is a production coordinator.

23 THE CLERK: Any of you I missed? Thank you very much,
24 and thank you, Judge.

25 THE COURT: Thank you. Ladies and gentlemen, I now have

1 certain statutorily mandated questions to ask of you, and this
2 is how we will be proceeding. I'm going to ask the question
3 and I'm going to say anyone who needs to respond, please
4 stand.

5 So that's how we're going to be proceeding. Now, it's
6 real important that I have accurate information, so with
7 regards to some of these questions, you may find them to be a
8 little more personal, and if you need to respond, you might be
9 shy and embarrassed to stand and disclose certain information
10 in the presence of your fellow jurors, so here's how we're
11 going to be proceeding.

12 If I ask a question and you need to respond to it and
13 you're going to be embarrassed by standing and disclosing that
14 information in the presence of your fellow jurors, at the end
15 of this part of the process, I'll issue an invitation for you
16 to come forward, and that will be your opportunity to come
17 forward and disclose that information a little more privately
18 with me, of course, and our court reporter and our clerk.

19 Now, what would not be okay would be that you needed to
20 disclose information, be embarrassed, and choose not to. That
21 would be a violation of your oath and would be in contempt of
22 court, but I'm sure I don't have to worry about anyone
23 doing -- proceeding in that regard.

24 Now, here are the questions which determine your general
25 eligibility to serve. Does any member of our jury panel -- or

1 I should ask it this way. Is any member by jury panel not a
2 citizen of the United States? If you are not a citizen of the
3 United States, please stand.

4 I find no one standing. Do we have any members of our
5 jury panel who are not now a citizen and resident of
6 Dorchester County? If you are not now a citizen and resident
7 of Dorchester County, please stand. And I find no one
8 standing.

9 Do we have any member of our jury panel who is unable to
10 read, write, speak, or understand the English language? Do we
11 have any member of our jury panel who is unable to read,
12 write, speak, or understand the English language? Please
13 stand.

14 No, I don't know how to answer if you don't understand
15 the English language. How are you supposed to understand that
16 you don't understand the English language if that's what
17 you're being asked? I don't know the answer to that, which is
18 why I tell jury panels that these are statutorily mandated.
19 Very well. I find no one standing.

20 Do we have any member of our jury panel who is unable,
21 not able by reason of a mental or physical infirmity, to
22 render efficient jury service? For example, do we have any
23 member of our jury panel who believes that they cannot serve
24 jury on a -- this week because of a physical or mental
25 infirmity or mental or physical problem?

1 Let me give you just a little bit of information. We
2 will start court in the morning at 9:30 and we'll work about
3 an hour and a half, take a morning break. We're going to take
4 a break for lunch around 1 o'clock. We'll break between an
5 hour and a hour and a half. We'll come back in the afternoon.
6 We'll work about an hour and a half. We'll take our afternoon
7 break and then we're going to conclude in the afternoon
8 between 5 and 5:30.

9 Now, please know that we have a good ability to
10 accommodate any juror. We're happy to do that. Please keep
11 that in mind. If you have any particular need, if you think
12 you're hard of hearing, we can accommodate that. If you need
13 to take more frequent breaks, we can accommodate that.

14 Just let us know what we need to do and we're happy to do
15 that, but that's the question. You can stand now and disclose
16 the information or come up at the end. And I find no one
17 standing.

18 Do we have any member of our jury panel who has less than
19 a sixth grade education or its equivalent? Do you have a
20 sixth grade -- do you have less than a sixth grade education
21 or its equivalent? If this applies to you, please stand, or
22 certainly, you can come up at the end. And I find no one
23 standing.

24 Now, do we have any member of our jury panel who has been
25 convicted, and that's either by guilty plea or by a trial in a

1 state or federal court of record of a crime punishable by
2 imprisonment for more than a year and your civil rights have
3 not been restored by pardon or amnesty?

4 And now, punishable by imprisonment means that you could
5 have received punishment of more than a year in prison. You
6 may have received a probation recently or a fine, but what is
7 relevant here is that you could have received punishment of
8 more than a year in prison and your civil rights have not been
9 restored by pardon or amnesty. If this applies to you, and
10 you can please stand at this time. I find no one standing.

11 Now, do we have any member of our jury panel who is a
12 clerk, deputy clerk of court, constable, sheriff, or other
13 commission, commission law enforcement officer, county
14 officer, county commissioner, or any person employed within
15 the walls of any courthouse? If so, please stand. And I find
16 no one standing.

17 Do we have any member of our jury panel who has
18 previously served on jury duty in a court of record? That
19 would be common pleas, general sessions, not magistrates or
20 municipal court during the calendar year 2022? If so, please
21 stand. And I find no one standing.

22 And do we have any member of our jury panel who has
23 served as a member of the Dorchester County grand jury during
24 the past several years? If so, please stand. I find no one
25 standing.

1 We now move to jury exemptions. State law provides for
2 several exemptions for your jury service. An exemption does
3 not mean that you are not qualified to serve. It simply means
4 that you have the right to say, I choose not to serve. Here's
5 the first exemption.

6 Those of you who are 65 years of age or older may be
7 exempted from your jury service. Those of you who are 65
8 years or older represent a pool of terrific talent for jury
9 service. We want you to serve, but if you wish to be excused,
10 you have an exemption and you can be excused, so I ask, do we
11 have any members of our jury panel who are 65 years old or
12 older and you wish to be exempted from your jury service? If
13 so, please stand. I find no one standing.

14 Another exemption concerns prior jury service. You will
15 recall a moment ago, I asked if there was any member of our
16 jury panel who had served in 2022 because that disqualifies a
17 juror from service in the same calendar year. However, prior
18 jury service also gives rise to an exemption because no juror
19 is required to serve more often than once every three calendar
20 years in a court of record.

21 So I ask, do we have any members of our jury panel who
22 has served as a member of the jury in a court of record during
23 the calendar years 2021 or 2020 and do you wish to be exempted
24 from your jury service? If so, please stand at this time.
25 And I find no one standing.

1 Now, do we have any members of our jury panel who have
2 served as a member of the grand jury in the last five years?
3 That's one of those things, if you did it, you would know it.
4 Have you served as a member of the grand jury in the last five
5 years? If so, please stand. And I find no one standing.

6 Now, our next exemption deals with those of you who have
7 small children. Please listen very carefully because this
8 exemption has several parts and each and every part must apply
9 to you, for you to be exempted on this basis.

10 You may be exempted from your jury service if you have a
11 small child or children under seven years old -- six years old
12 and younger, and you have the legal custody of that child or
13 children, and you are the principle caregiver of that child or
14 children, and you are unable -- you are unable and do not have
15 adequate childcare for that child or children while you
16 perform your jury duty.

17 And if this exemption applies to you and you need to
18 exercise this exemption, please stand at this time. And I
19 find no one standing.

20 Our next exemption deals with those of you who may be
21 attending school or working in some capacity with a school.
22 You may be exempted from your jury service if you are a full-
23 time student, school teacher, school principal, school
24 crossing guard, or if you're employed in any other school
25 related function and if you were to serve this week, your

1 school responsibilities and your juror responsibilities would
2 conflict.

3 Let me share with you that in the event that you need to
4 exercise this exemption, which is perfectly fine, we're going
5 to transfer your service to a term of court at which time your
6 school responsibilities and your juror responsibilities will
7 not conflict.

8 If this applies to you and you need to exercise this
9 exemption, please stand at this time. And I find no one
10 standing.

11 Now, do we have any member of our jury panel -- and I
12 think the answer to this is no, but I ask it in an abundance
13 of precaution. Do we have any member of our jury panel who is
14 employed as a guard with the Department of Corrections at a
15 penitentiary? If so, please stand because state law says you
16 are going to be exempted. And I find no one standing.

17 Do we have any members of our jury panel who is the
18 primary caregiver of a severely disabled person or for someone
19 who is 65 years or older and the person with whom you care
20 will not be appropriately cared for if you are required to
21 perform your jury duty?

22 If this exemption applies to you and you need to exercise
23 this exemption, please stand at this time. And I find no one
24 standing.

25 Now, ladies and gentlemen, do we have any member of our

1 jury panel who performed services for a business or commercial
2 enterprise -- everybody's ears just went up, and who's
3 services are so essential to the enterprise -- well, the same
4 people's ears are up, but here's the kicker. That the
5 enterprise must close -- not should close, but must close if
6 you are required to perform your jury duty.

7 If this exemption applies to you and you need to exercise
8 this exemption, please stand at this time. And I find no one
9 standing.

10 Ladies and gentlemen, that concludes the statutory list
11 of qualifications and exemptions for your jury duty. It may
12 be that you are qualified and no exemption applies to you, but
13 jury service in this particular week would constitute an
14 extreme and compelling circumstance for you.

15 Now, for those of you that this week would constitute an
16 undue hardship and extreme and compelling circumstance for
17 you, I can transfer your service from this term of court to
18 another term of court if you have not been previously
19 transferred.

20 Let me give you some examples. I don't want you missing
21 your doctor's appointment. If you have a doctor's appointment
22 this week, let me know and go transfer your service. You may
23 have a loved one who has some sort of medical treatment
24 ongoing this week. I don't want your loved one not to have
25 you be present. I'm going to transfer your service.

1 It may be that you have inventory at your place of
2 employment once a year and you're in charge of it and this is
3 the week. I would transfer your service for that as well. It
4 may be that the tickets to Tahiti are on the fridge at home
5 and you are supposed to leave Wednesday afternoon at 2.

6 Ladies and gentlemen, you better have a big old suitcase
7 because we all want to go with you, especially our clerk of
8 court, and she packs light. So it may be something joyous.
9 It doesn't have to be weighty and heavy duty. It can be
10 something like a holiday. I certainly don't want you to miss
11 your holiday, but you know, you'll need to approach and we can
12 chat about the need for a transfer.

13 Now, ladies and gentlemen, in just a moment, those of you
14 who need to approach to disclose information or seek a
15 transfer, I'm going to ask you to come forward in just a
16 moment, but before I do that, I'm going to very briefly go
17 over your qualifications again.

18 You must be a citizen of the United States. You must be
19 a citizen and resident of Dorchester County. You must have a
20 sixth grade education or its equivalent. You must be able to
21 read, write, speak, and understand the English language.

22 You must not have been convicted of a crime punishable by
23 imprisonment for more than a year unless your civil rights
24 have been restored by pardon or amnesty. You must be able
25 physically and mentally to render efficient jury service.

1 You must not have served on jury duty during 2022 in a
2 court of record. You must not be clerk, deputy clerk of
3 court, constable sheriff, or other commission law enforcement.

4 You must not have served on the grand jury in the last
5 several years, and I think I may have already said, you must
6 not have served on a jury during 2022.

7 Now, if any of these qualifications concerns you or if
8 you have a question about these qualifications or exemptions
9 and how they may apply to you in your particular circumstance,
10 or if you need to disclose information in response to a
11 question that I have asked, or if you need to just get
12 transferred to another term of court, please come forward at
13 this time.

14 And no one is coming -- come on forward. All right. Oh,
15 and the dam has broken.

16 THE BAILIFF: Juror 84.

17 THE COURT: Hello. Good morning. Yes, ma'am?

18 JUROR NO. 84: I would like to seek a transfer. I'm
19 self-employed and it's the holiday season and I'm super busy.

20 THE COURT: Okay. And your employee (indiscernible)?

21 JUROR NO. 84: Uh-huh.

22 THE COURT: And this is a very busy time of the year for
23 you. If you were here instead of in your business, would you
24 be distracted if you were on a jury?

25 JUROR NO. 84: Yes.

1 THE COURT: Okay. Do you think you would be concerned
2 about the fact you were here and not there?

3 JUROR NO. 84: Yes.

4 THE COURT: Okay. Very well. Pick another week. Right
5 over here. Yeah, I'm going to transfer her.

6 THE BAILIFF: Number 186.

7 THE COURT: Yes, sir. Good morning.

8 JUROR NO. 186: Good morning. I just don't feel
9 comfortable in judging or --

10 THE COURT: Why is that?

11 JUROR NO. 186: I have anxiety. I have anxiety real bad,
12 and --

13 THE COURT: You have anxiety bad? Are you into treatment
14 for that?

15 JUROR NO. 186: Yes, ma'am. I take medication for it.

16 THE COURT: You take medication for that? Okay. And
17 you're nervous as you stand here today?

18 JUROR NO. 186: Yes, ma'am.

19 THE COURT: Yeah, your hands are shaking. All right.
20 Well, I will excuse you on that basis and thank you for
21 sharing that with us.

22 JUROR NO. 186: All right.

23 THE COURT: All right? Excused.

24 THE BAILIFF: 148.

25 THE COURT: Good morning.

1 JUROR NO. 148: Good morning. I start a new job tomorrow
2 and I have to pay rent, and so I can't -- I'm going to ask to
3 be transferred.

4 THE COURT: Okay. You're starting with UPS tomorrow; is
5 that right?

6 JUROR NO. 148: That's correct.

7 THE COURT: And do they know that you are supposed to be
8 here today?

9 JUROR NO. 148: No, because I got the job two days ago.

10 THE COURT: Two days ago?

11 JUROR NO. 148: Uh-huh.

12 THE COURT: All right.

13 JUROR NO. 148: And they put me to start tomorrow.

14 THE COURT: Okay. All right. I will transfer you on
15 that basis. You pick another week, now.

16 JUROR NO. 148: Thank you very much.

17 THE COURT: And let them know. Thank you. Transferred.

18 THE BAILIFF: Number 117.

19 THE COURT: Yes?

20 JUROR NO. 117: I'm contracted with the Charleston
21 Symphony and I'm playing this week and I can't be
22 (indiscernible) I have a rehearsal, because it's a contracting
23 job.

24 THE COURT: I got you.

25 JUROR NO. 117: But --

1 THE COURT: Charleston Symphony?

2 JUROR NO. 117: Yeah, it's on Thursday and Friday of the
3 week. I know it's at the end of the week.

4 THE COURT: When's rehearsal?

5 JUROR NO. 117: It's at 5.

6 THE COURT: Today?

7 JUROR NO. 117: No, Thursday.

8 THE COURT: Your rehearsal is at 5 Thursday?

9 JUROR NO. 117: Yes.

10 THE COURT: All right.

11 JUROR NO. 117: And I'm not (indiscernible) Friday.

12 THE COURT: Okay. So let me ask you this question.

13 Could you serve Monday, Tuesday, and Wednesday, and not
14 Thursday or Friday?

15 JUROR NO. 117: Yes, I can do that, but I just wanted to
16 let you know.

17 THE COURT: Will you remind me of that so I do not forget
18 and I'll ask you to serve for our first trial, but just remind
19 me --

20 JUROR NO. 117: Okay.

21 THE COURT: -- and I won't seat you on our second, okay?

22 JUROR NO. 117: Okay.

23 THE COURT: Thank you. She's (indiscernible). Okay.
24 Yes.

25 THE BAILIFF: Number 164.

1 THE COURT: Good morning.

2 JUROR NO. 164: Good morning, Your Honor.

3 THE COURT: Yeah?

4 JUROR NO. 164: I'm self-employed.

5 THE COURT: Yes.

6 JUROR NO. 164: And I have about ten guys on the job site
7 costing me about 2,500 dollars a day. I'm pretty much the guy
8 that's got to run everything.

9 THE COURT: Yeah.

10 JUROR NO. 164: And I was sick about three weeks. I got
11 a follow-up doctor appointment tomorrow, if you can kind of --

12 THE COURT: Oh, you've got a couple of -- you need to be
13 transferred so you can -- if I transferred you, would --
14 again, it would work with the doctor's appointment. If I
15 transferred you, though, would you be able to get your crew
16 going somehow for the week or is that still going to be a
17 problem?

18 JUROR NO. 164: If you can kind of, like, schedule me
19 for, like, a month from now from (indiscernible).

20 THE COURT: Well, I can let you pick the week. How about
21 that? You can plan. You can take --

22 JUROR NO. 164: Can you put it in January somewhere?

23 THE COURT: Yes.

24 JUROR NO. 164: Okay, that would be great.

25 THE COURT: You can do that?

1 JUROR NO. 164: Yeah, that would be fine. That gives me
2 enough time.

3 THE COURT: You pick the week.

4 JUROR NO. 164: Thank you.

5 THE COURT: All right. Transferred. Yes.

6 THE BAILIFF: Number 68.

7 THE COURT: Hello. Good morning.

8 JUROR NO. 68: Good morning. I have a six year old that
9 goes to school. She don't have (indiscernible) at the school
10 and she gets out at 2:30.

11 THE COURT: She gets out at -- and what is your normal
12 work schedule?

13 JUROR NO. 68: I work from 7 to 5:30.

14 THE COURT: 7 to -- and what do you do with her in the
15 afternoon?

16 JUROR NO. 68: She has (indiscernible).

17 THE COURT: How wonderful. By June, she's going to be a
18 straight A student.

19 JUROR NO. 68: Yes.

20 THE COURT: That is wonderful. All right. So she has
21 tutoring and she has tutoring in the afternoon that goes until
22 5:30?

23 JUROR NO. 68: Yes. Yeah, 3:35 to 4:45.

24 THE COURT: And who picks her up at 4:45?

25 JUROR NO. 68: I do.

1 THE COURT: But I thought you said you work until 5:30?

2 JUROR NO. 68: Yes, I work -- I do childcare at home.

3 I'm self-employed and yeah.

4 THE COURT: Okay. So your normal schedule is that you
5 normally pick her up?

6 JUROR NO. 68: Yes.

7 THE COURT: At 4:30, 4:35?

8 JUROR NO. 68: I pick her up from the school bus and then
9 I drop her off to the library.

10 THE COURT: Oh, okay. All right. And who looks -- I'm
11 so curious. Who looks after the kid house when you go to pick
12 her up?

13 JUROR NO. 68: No, I do, but I take them with me.

14 THE COURT: You take them --

15 JUROR NO. 68: Yes. They drop them off at my house.

16 THE COURT: That's wonderful. You sound like Momma
17 (indiscernible) with all these little ones. All right. And
18 that's -- I mean, that is your schedule and that's the way you
19 live your life. How old is she?

20 JUROR NO. 68: She's six.

21 THE COURT: She's six? Let me tell you. Yes, it's
22 appropriate that you be excused, but let me tell you. I got
23 some bad news for you. Blink your eyes, she's going to be 34.
24 Thanks for being here today. I appreciate it.

25 JUROR NO. 68: You're welcome.

1 THE COURT: And you're excused on that basis.

2 JUROR NO. 68: Okay.

3 THE COURT: Thanks so much. All right.

4 THE BAILIFF: That's our last one.

5 THE COURT: Yes. Ladies and gentlemen, at this point, we
6 take a very short break. I'd like to keep it very short, and
7 I'm going to meet very quickly with the attorneys. I'm going
8 to ask you to be back at a quarter until 12 in your seats,
9 ready to hear a short nonargumentative statement of the facts,
10 and then I'm going to tell you about our first case, and
11 hopefully, we can get two juries qualified, but right now,
12 let's take a very short break and I will see you at a quarter
13 until -- what time does it say on your clock? My clock says
14 it's --

15 THE JURY: 11:35.

16 THE COURT: Yeah, I think they're together. They are
17 matching at least. It's a great day, then. I'll see you in
18 about ten minutes. Thank you, and Counsel, let me see my --
19 let's talk about our voir dire on the first case.

20 (Recess.)

21 THE COURT: This week is captioned or entitled, in re:
22 care and treatment of Perry Gustus Phillips. "In re" means
23 regarding, if you will. Ladies and gentlemen, this case is in
24 the matter of the care and treatment of Perry Gustus Phillips.
25 The Respondent, Mr. Phillips, has been convicted of sexually

1 violent offenses and has served his prison sentences.

2 In this action, the State of South Carolina seeks the
3 civil commitment of Mr. Phillips for long-term treatment, for
4 long-term treatment.

5 Now, ladies and gentlemen, do any of you know or think
6 you may know or have you heard or think you may have heard
7 anything about this matter? If so, please stand at this time.

8 And I find no one standing. Now, ladies and gentlemen,
9 the State is represented by the attorney general, and the
10 assistant attorney general who is present with us and will be
11 representing the State is Ms. Susanne Shaw, and this is Ms.
12 Shaw, and ladies and gentlemen -- thank you so much, Ms. Shaw.

13 Are you related by blood and marriage or acquainted
14 with -- let me define acquainted with. When I use that term,
15 I intend a very general definition of acquainted with because
16 I am trying to find whether or not you know anyone of whom I
17 will be speaking, and your relationship may be very limited.

18 For example, maybe you went to school with someone who
19 I'll be asking you about 20 years ago. You haven't seen or
20 thought about that person in 20 years, but you know you went
21 to school with them. Well, believe it or not, that
22 relationship will be encompassed within my definition of
23 acquainted with, and you'd stand and say, well, 20 years ago,
24 I went to school with that person, and that would be a
25 response.

1 It may be that you simply work at the same location with
2 someone that I will be mentioning to you and maybe waved at
3 each other across the parking lot before. Believe it or not,
4 as limited as that relationship is, it would be encompassed
5 within my definition of acquainted with. I'm trying to find
6 out if you have any connection with these folks I'll be asking
7 you about, do you have any connection with them.

8 So please keep that definition in mind. So with that,
9 I'll ask again. Are you related by blood or marriage or
10 acquainted with Ms. Susanne Shaw? If so, please stand at this
11 time. I find no one standing.

12 Ladies and gentlemen, are you related by blood and
13 marriage or acquainted with anyone in the South Carolina
14 attorney general's office? If so, please stand at this time.
15 For your informational purposes, the attorney general's name
16 is Alan Wilson if that's of assistance to you, but please
17 stand if you are related by blood or marriage or acquainted
18 with anyone who works in the South Carolina attorney general's
19 office? I find no one standing.

20 Now, ladies and gentlemen, please allow me to introduce
21 you to Mr. Perry Gustus Phillips. Thank you, Mr. Phillips.
22 Are you related by blood there -- thank you, Mr. Phillips, and
23 you may be seated. Are you related by blood or marriage or
24 acquainted with Mr. Perry Gustus Phillips? If so, please
25 stand at this time.

1 And I find no one standing. Now, ladies and gentlemen,
2 Mr. Phillips is represented by Mr. James Falk, and this is Mr.
3 Falk. Ladies and gentlemen, are you related by blood,
4 marriage, or acquainted with, or have you or any member of
5 your immediate family, to your knowledge, ever been
6 represented by Mr. James Falk? If so, please stand.

7 Yes, ma'am, your number?

8 JUROR NO. 108: 108.

9 THE COURT: And tell me -- you, a member of your family,
10 or how do you know Mr. Falk?

11 JUROR NO. 108: Mr. Falk represented my now ex-husband in
12 our divorce case.

13 THE COURT: Got you. And he's, like, no, I remember
14 that. And as a result of that representation -- and you may
15 be seated, Mr. Falk. Thank you. Might that, could that, in
16 any regard, interfere with your ability to be completely fair
17 and impartial to the State as well as to Mr. Phillips? That
18 has to be yes or no.

19 JUROR NO. 108: It would not interfere.

20 THE COURT: Thank you. Please stay with us. Anyone
21 else? And I'm sorry, your number?

22 JUROR NO. 108: 108.

23 THE COURT: 108. Thank you. Now, ladies and gentlemen,
24 in a moment, I'm going to be reading to you the potential
25 witnesses in this case. My question as to each of these

1 potential witnesses is, are you related by blood, a marriage,
2 or acquainted with any or either of these witnesses?

3 Ladies and gentlemen, are you related by blood or
4 marriage or acquainted with, have you or any member of your
5 immediate family, to your knowledge, ever been treated by Dr.
6 Rachel Carter, PhD? Dr. Rachel Carter, PhD. If so, please
7 stand. I find no one standing.

8 And are you related by blood or marriage or acquainted
9 with Mr. Julius Stewart? Mr. Stewart may be in the courtroom.
10 I'd like you to be able to -- there he is. If you all can
11 turn around? There's Mr. Stewart. Thank you so much, Mr.
12 Stewart, and you may be seated.

13 Are you related by blood or marriage or acquainted with
14 Mr. Julius Stewart? If so, please stand. And I find no one
15 standing.

16 Now, ladies and gentlemen, I have additional questions to
17 ask of you. Ladies and gentlemen, I'm going to ask two
18 questions together. Don't respond to either until I've asked
19 both, and I'm going to have you approach if you need to
20 respond.

21 Question number 1. Have you or any member of your
22 immediate family or close personal friend -- and let me tell
23 you who this close personal friend is. This close personal
24 friend is somebody that is so close to you that you probably
25 like this person better than you like, like, one of your

1 siblings. That's how close this person is. You cannot
2 discern an emotional difference between this close personal
3 friend and a family member, so that's the reason I ask close
4 personal friend.

5 Have you or any member of your immediate family or close
6 personal friend ever been charged with or the victim of a
7 sexual offense? Charged with or the victim of a sexual
8 offense. That's question number 1. Question number 2 is,
9 have you or any member of your immediate family or close
10 personal friend received any training or experience in the
11 fields of psychiatry, psychology, or the law? Psychiatry,
12 psychology, or the law?

13 If you need to respond to either of those questions, I'm
14 going to ask you to please approach.

15 (Pause.)

16 THE COURT: Oh, and let me just speak to everyone at the
17 same time. I need enough volume for me to hear you and our
18 court reporter. I intentionally do not want your other jurors
19 to hear you, so just keep that in mind, and you're --

20 JUROR NO. 106: 106.

21 THE COURT: 106. Yes, sir?

22 JUROR NO. 106: Yeah, my son is being convicted of a
23 sexual crime.

24 THE COURT: Okay. And as a result of that, could that
25 interfere with your ability to be completely fair and

1 impartial both to the State as well as to Mr. Phillips?

2 JUROR NO. 106: No.

3 THE COURT: No? Can you set that experience aside and
4 make up your mind based only on what you hear in court while
5 court is in session?

6 JUROR NO. 106: Yes.

7 THE COURT: Stay with us, please. Just one second.

8 JUROR NO. 203: 203.

9 THE COURT: Yes. Hi, yes.

10 JUROR NO. 203: Yes, undergraduate degree in psychology.

11 THE COURT: All right.

12 JUROR NO. 203: And then I had a close personal friend
13 back home years ago that was -- his mother was raped.

14 THE COURT: And as a result of that occurrence, might
15 that could that interfere with your ability to be completely
16 fair and impartial to the State as well as to Mr. Phillips?

17 JUROR NO. 203: It should not.

18 THE COURT: Should not? Thank you, sir. Please stay
19 with us. Close personal friend.

20 THE BAILIFF: 178.

21 THE COURT: I'm sorry. I missed --

22 THE BAILIFF: 178.

23 THE COURT: Okay, thank you.

24 JUROR NO. 178: Yes to both questions.

25 THE COURT: Okay.

1 JUROR NO. 178: I was assaulted.

2 THE COURT: Okay.

3 JUROR NO. 178: And two, I have a degree in criminology
4 with a minor in psychology.

5 THE COURT: Got you. Now, let me ask this question. As
6 a result of those qualifications, those experiences, might
7 they, together, separately, interfere with your ability to be
8 completely fair and impartial both to the State as well as to
9 Mr. Phillips?

10 JUROR NO. 178: No, ma'am. I'm able to differentiate.

11 THE COURT: And can you set those experiences aside and
12 make up your mind based upon what you hear in the court while
13 court is in session?

14 JUROR NO. 178: Yes, ma'am.

15 THE COURT: Thank you so much. Stay with us.

16 THE BAILIFF: 200.

17 THE COURT: Hi. Yes, ma'am?

18 JUROR NO. 200: My brother was arrested but the charges
19 were dropped.

20 THE COURT: Okay.

21 JUROR NO. 200: For child molesting.

22 THE COURT: How long ago did that occur?

23 JUROR NO. 200: It's been more than 20 years.

24 THE COURT: Oh, okay. As a result of your brother having
25 the experience of that, might that, could that interfere with

1 your ability to be completely fair and impartial to the State,
2 as well as to Mr. Phillips?

3 JUROR NO. 200: Absolutely not.

4 THE COURT: Thank you so much. Please stay with us.

5 THE BAILIFF: 81.

6 THE COURT: Might know something about the law?

7 JUROR NO. 81: Yes, ma'am.

8 THE COURT: 81. Okay.

9 JUROR NO. 81: (Indiscernible).

10 THE COURT: Different case. Yeah, not a problem. Yeah,
11 you do. All right. Thank you.

12 THE BAILIFF: 182.

13 THE COURT: Yes, sir. Hi. Good morning.

14 JUROR NO. 182: My wife was assaulted.

15 THE COURT: How long ago?

16 JUROR NO. 182: Oh, it was, like, 20 or 30 years ago.

17 THE COURT: Okay. As a result of her having experienced
18 that, might that, could that --

19 JUROR NO. 182: It could.

20 THE COURT: It could? Thank you so much for your candor.
21 Stay with me, and I'm going to ask that you be so kind as
22 to -- I know I have an abundance of caution. Don't talk about
23 that with the other jurors.

24 JUROR NO. 182: Yes, ma'am.

25 THE COURT: Thank you so much. Please stay with us just

1 a little bit.

2 THE BAILIFF: 31.

3 THE COURT: Yes, hi.

4 JUROR NO. 31: So my undergraduate degree is in
5 psychology and I have gone through trauma informed training
6 because the caregivers that I serve often are raising children
7 who have been sexually molested.

8 THE COURT: Got it. As a result of that training and
9 that -- both accounts, both your schooling as well as your
10 training, do you believe that that training and that schooling
11 could, in any regard, interfere with your ability to know
12 what -- to be fair and impartial to the State, as well as to
13 Mr. Phillips?

14 JUROR NO. 31: I'd like to say no, but it's hard to --

15 THE COURT: Okay. Well, let me tell you. Let me just
16 explain it to you like this. If you are a juror, you have to
17 make up your mind based solely on what you know in court while
18 court is in session. You have to be able to analyze what
19 you're hearing and consider what you're hearing in court while
20 court is in session. Can you do that?

21 JUROR NO. 31: Yes.

22 THE COURT: Okay. All right. Very well. Please stay
23 with us.

24 JUROR NO. 31: It's difficult because of my job.

25 THE COURT: 31. She's in. Yes.

1 THE BAILIFF: 42.

2 THE COURT: Hello.

3 JUROR NO. 42: Hello.

4 THE COURT: Yes?

5 JUROR NO. 42: So yes, a close personal friend of a rape
6 survivor.

7 THE COURT: Okay. All right. Was that recent, sometime
8 in the past? Sometime in the past. As a result of your close
9 friend's experience, might that, could that interfere with
10 your ability to be completely fair and impartial about this to
11 the State as well as to Mr. Phillips?

12 JUROR NO. 42: Honestly, I think it would depend on the
13 specifics of what we're trying to choose between in terms of
14 what options we're being given in terms of consequences.

15 THE COURT: Okay. Well, as I spoke earlier, this
16 gentleman has served his time. The question is -- this jury
17 will have to make a determination whether or not he meets the
18 definition of a sexually violent predator, and it's pretty
19 straightforward, and the State is seeking long-term treatment.
20 It's a civil commitment.

21 JUROR NO. 42: Inpatient, outpatient?

22 THE COURT: Yes. It's inpatient.

23 JUROR NO. 42: Inpatient?

24 THE COURT: Yes.

25 JUROR NO. 42: And versus no treatment?

1 THE COURT: No. That's not for the -- it's not for the
2 jury to make a determination. The jury will determine whether
3 or not he meets the definition of a sexually violent predator.

4 JUROR NO. 42: Okay. Probably. It's honestly --

5 THE COURT: What does that mean? Probably not?

6 JUROR NO. 42: I'm probably impartial.

7 THE COURT: Very well. I'm going to ask you not to
8 discuss this matter with your fellow jurors, but don't leave,
9 okay?

10 JUROR NO. 42: But don't what?

11 THE COURT: Don't leave yet.

12 JUROR NO. 42: Okay.

13 THE COURT: But don't discuss this.

14 JUROR NO. 42: Sure, sure. I understand. Thank you.

15 THE COURT: She's out. Set her aside. 42 is out.

16 THE BAILIFF: 134.

17 THE COURT: 34.

18 THE BAILIFF: 134.

19 THE COURT: 134. Thank you. Yes, sir.

20 JUROR NO. 134: Hello.

21 THE COURT: Yeah.

22 JUROR NO. 134: My grandfather was charged with sexual
23 assault of his sister and my cousin.

24 THE COURT: And how long ago are we talking about?

25 JUROR NO. 134: 15 years.

1 THE COURT: 15 years ago. As a result of that
2 experience, might that, could that interfere with your ability
3 to be completely fair and impartial?

4 JUROR NO. 134: No.

5 THE COURT: Can you set that experience aside and make up
6 your mind based solely on what you hear in court while court
7 is in session, being completely fair and impartial to the
8 State as well as to Mr. Phillips? All right. Thank you, sir.
9 Please stay with us.

10 THE BAILIFF: 24.

11 THE COURT: Good morning. Yes, ma'am?

12 JUROR NO. 24: Your second question was training in
13 psychiatry and psychology or the law, correct?

14 THE COURT: Yes.

15 JUROR NO. 24: My brother in law is an attorney in
16 Columbia.

17 THE COURT: All right.

18 JUROR NO. 24: Yeah.

19 THE COURT: Thank you. Please stay with us.

20 JUROR NO. 24: Okay.

21 THE COURT: He's over there.

22 THE BAILIFF: 184.

23 THE COURT: Yes.

24 JUROR NO. 184: Okay. So I just tell you why, I guess,
25 right?

1 THE COURT: First of all, which question would you be
2 (indiscernible)?

3 JUROR NO. 184: The sexual assault one.

4 THE COURT: Okay. All right. You or a member of your
5 family or a close person?

6 JUROR NO. 184: Myself.

7 THE COURT: All right.

8 JUROR NO. 184: My best friend.

9 THE COURT: Yes.

10 JUROR NO. 184: And my fiancé's father's a registered sex
11 offender.

12 THE COURT: All right. Okay. As a result of those
13 experiences, do you believe that you can set those experiences
14 aside, make up your mind based only on what you hear in court
15 while court is in session, setting all of that aside?

16 JUROR NO. 184: I think so.

17 THE COURT: All right. And what you will have to do is
18 make up your mind only based solely on what you hear in court
19 while court is in session. Do you believe you can do that?

20 JUROR NO. 184: Yes.

21 THE COURT: Yes? All right. Very well. Please stay
22 with us.

23 JUROR NO. 184: All right. Thank you.

24 THE COURT: She's in.

25 THE BAILIFF: 151.

1 THE COURT: Yes, sir?

2 JUROR NO. 151: Hello, Your Honor.

3 THE COURT: Yes, hi.

4 JUROR NO. 151: As part of my undergraduate degree in
5 political science, I did a roughly six month internship with a
6 general practice attorney in Abbeville, South Carolina, and
7 took a semester of constitutional law.

8 THE COURT: Oh, wonderful. Thank you. Thank you for
9 that information. Please stay with us.

10 JUROR NO. 151: Okay.

11 THE BAILIFF: 168.

12 THE COURT: Good morning. Yes.

13 JUROR NO. 168: I studied about a year and a half of
14 psychology in college, but I worked as an investigator with
15 the (indiscernible) --

16 THE COURT: Yes.

17 JUROR NO. 168: -- security agency for people who are
18 undergoing background investigations for security clearances,
19 so I generally received on the job training in psychology,
20 body language, the law.

21 THE COURT: Yes.

22 JUROR NO. 168: I also interviewed persons who may have
23 had incidents in the past relating to sexual offenses and so
24 forth.

25 THE COURT: Got it. As a result of your training, your

1 experience, and your occupation, do you believe that that
2 would interfere with your ability to be completely fair and
3 impartial to the State and to Mr. Phillips, and just be
4 absolutely clear --

5 JUROR NO. 168: It may.

6 THE COURT: It may?

7 JUROR NO. 168: It may.

8 THE COURT: You think that would interfere with your
9 ability to listen to the evidence and make up your mind based
10 on what you hear in court while court is in session, be
11 unaffected by those things?

12 JUROR NO. 168: Well, my job is all about gathering
13 facts. I have no (indiscernible) with the decision making
14 factor, so --

15 THE COURT: Yes.

16 JUROR NO. 168: -- based on that, I don't think so.

17 THE COURT: Okay.

18 JUROR NO. 168: I think I'm --

19 THE COURT: You think it would be -- okay.

20 JUROR NO. 168: It would be (indiscernible).

21 THE COURT: I'm going to ask you to please sit this one
22 out, but don't leave me.

23 JUROR NO. 168: Okay.

24 THE COURT: 168 is out.

25 THE BAILIFF: 172.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR NO. 172: Hi, how are you?

3 THE COURT: I'm well.

4 PROSPECTIVE JUROR NO. 172: I'm not sure how relevant
5 this is, but as far as the second question --

6 THE COURT: Mm-hmm.

7 PROSPECTIVE JUROR NO. 172: -- the law --

8 THE COURT: Yes.

9 PROSPECTIVE JUROR NO. 172: -- I was the intern at the
10 district attorney's office in Richmond County in Staten
11 Island, New York --

12 THE COURT: Thank you. Thank you.

13 PROSPECTIVE JUROR NO. 172: -- working the appeals
14 department.

15 THE COURT: Great. Thank you so much for that
16 information.

17 PROSPECTIVE JUROR NO. 172: Yep. Thank you. Appreciate
18 it.

19 THE BAILIFF: 22.

20 THE COURT: 22. Yes, sir.

21 PROSPECTIVE JUROR NO. 22: Hello.

22 THE COURT: Hi. Yes?

23 PROSPECTIVE JUROR NO. 22: So as a child, my best friend
24 and another friend of mine were molested by a church member.
25 And I was in association with them at the same time.

1 THE COURT: Mm-hmm.

2 PROSPECTIVE JUROR NO. 22: It didn't happen to me --

3 THE COURT: Yeah.

4 PROSPECTIVE JUROR NO. 22: -- but it happened to them.

5 THE COURT: Okay. All right. Is a result of those
6 experiences, do you believe that they might or they could
7 interfere with your ability to be completely fair and
8 impartial to the State and to Mr. Phillips?

9 PROSPECTIVE JUROR NO. 22: No.

10 THE COURT: Can you set those experiences completely
11 aside and make up your mind based solely on what you hear in
12 Court --

13 PROSPECTIVE JUROR NO. 22: Yes.

14 THE COURT: -- when it's in session? Yes?

15 PROSPECTIVE JUROR NO. 22: Yes.

16 THE COURT: Please stay with us.

17 PROSPECTIVE JUROR NO. 22: All right.

18 THE COURT: He's stay.

19 UNIDENTIFIED SPEAKER: Thought he said he was not a
20 victim?

21 THE COURT: He said he was not a victim but his
22 friends -- best friend was. Yes.

23 THE BAILIFF: 15.

24 THE COURT: Which one, this guy? Yes?

25 PROSPECTIVE JUROR NO. 15: All right. I've got something

1 for both questions.

2 THE COURT: Sure.

3 PROSPECTIVE JUROR NO. 15: Okay. My sister's
4 granddaughter was sexually assaulted by her grandfather. And
5 then, I'm not sure if that's close family or not, but --

6 THE COURT: Yes, it is.

7 PROSPECTIVE JUROR NO. 15: Okay. And then, my daughter-
8 in-law is in the field of psychology --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 15: -- with the VA.

11 THE COURT: With the VA?

12 PROSPECTIVE JUROR NO. 15: Mm-hmm.

13 THE COURT: As a result of -- well, I'm more conce -- I'm
14 not as concerned with the fact that your daughter -- with the
15 VA --

16 PROSPECTIVE JUROR NO. 15: Okay.

17 THE COURT: -- person. With regards to the child having
18 been sexually assaulted, do you believe that that might or
19 that could interfere with your ability to be completely fair
20 and impartial to the State as well as to Mr. Phillips?

21 PROSPECTIVE JUROR NO. 15: I don't think it would
22 interfere.

23 THE COURT: All right. In other words, can you make up
24 your mind based solely -- based only on what you hear with
25 Court -- while Court is in session?

1 PROSPECTIVE JUROR NO. 15: Yes.

2 THE COURT: Thank you. Please stay with us.

3 PROSPECTIVE JUROR NO. 15: Okay.

4 THE COURT: Staying.

5 THE BAILIFF: 54.

6 THE COURT: Good morning.

7 PROSPECTIVE JUROR NO. 54: Good morning.

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR NO. 54: My wife has a PHD in
10 psychology and my church has a professional counseling center.

11 THE COURT: Got you, got you.

12 PROSPECTIVE JUROR NO. 54: So --

13 THE COURT: Very well. Thank you for that information.

14 PROSPECTIVE JUROR NO. 54: You're welcome.

15 THE COURT: You can't -- do you want me to ask that
16 question?

17 MR. FAULK: Yeah fine.

18 THE COURT: Yeah? Yes. That was a yeah?

19 MR. FAULK: I'm sorry. Yes, Your Honor.

20 THE COURT: Thanks.

21 Hi, I just have a follow-up.

22 PROSPECTIVE JUROR NO. 54: Yes, ma'am?

23 THE COURT: And they should've ask before you walked all
24 the way by.

25 PROSPECTIVE JUROR NO. 54: No problem.

1 THE COURT: Did you get a little exercise?

2 PROSPECTIVE JUROR NO. 54: Yes, ma'am.

3 THE COURT: Now, do you treat offenders and/or victims of
4 sexual assault?

5 PROSPECTIVE JUROR NO. 54: You know, like, as far as the
6 counseling center goes --

7 THE COURT: Yeah.

8 PROSPECTIVE JUROR NO. 54: -- I have no idea who they
9 treat.

10 THE COURT: Got you.

11 PROSPECTIVE JUROR NO. 54: With -- that's all separate
12 and private.

13 THE COURT: Okay. Good.

14 PROSPECTIVE JUROR NO.: Personally, know my -- my
15 personal work is mainly with the people when there's a crisis
16 in their life, but not --

17 THE COURT: Okay. In other words, if it -- if it is
18 occurring, it'll be --

19 PROSPECTIVE JUROR NO.: Marriage and family counseling
20 and that kind of thing.

21 THE COURT: Got you. And if that was ongoing it would be
22 they would know, you would know?

23 PROSPECTIVE JUROR NO. 54: Oh of course, yeah.

24 THE COURT: Okay. Thank you.

25 PROSPECTIVE JUROR NO. 54: You're welcome.

1 THE COURT: Please stay with us. Can you all hear me if
2 I stay down here?

3 JURORS: Yes.

4 THE COURT: And if my voice drops, and sometimes it does,
5 y'all let -- somebody raise your hand. I'll give more power
6 bell; I'll give you more volume. All right.

7 Now -- all right. I'm going to ask three questions. I'm
8 going to ask three questions. I don't want you to respond to
9 any until I ask all three. The first question is, other than
10 if you happen to have already mentioned to me that --
11 regarding whether or not a family member or you, close special
12 friend was a victim of a sexual assault -- if you've already
13 responded, you don't have to respond again but this question
14 is a little more general -- have you or any member of your
15 immediate family or close, personal friend been charged with
16 or the victim of a violent crime? That's question number 1.

17 Question number 2, have you or any member of your
18 immediate family or close, personal friend to your knowledge
19 been the victim of or charged with a home invasion?

20 Number 3, are you someone who has ever worked for or been
21 connected with a court-appointed advocacy program, a social
22 services agency, a guardian ad litem program, a foster care
23 program or any other entity either private or governmental
24 that investigates or counsels victims of sexual assault?

25 If you need to respond to any of those questions, three,

1 please come forward at this time. Yeah, come on.

2 THE BAILIFF: 168.

3 THE COURT: 168?

4 THE BAILIFF: 168.

5 THE COURT: Got it. Yes, ma'am?

6 PROSPECTIVE JUROR NO. 168: Hi, again. Yes, I do

7 investigate persons who have been committed --

8 THE COURT: Okay. You've already been excused, so --

9 PROSPECTIVE JUROR NO. 168: Okay

10 THE COURT: I'm so sorry. You do not need to go forward.

11 PROSPECTIVE JUROR NO. 168: Oh okay. (Indiscernible).

12 THE COURT: You're out, yes.

13 PROSPECTIVE JUROR NO. 168: Okay. Thanks.

14 THE COURT: She's out. (Indiscernible)

15 MS. SHAW: She's out. Oh okay. Yeah she was excused.

16 MS. SHAW: Oh, I thought she said (indiscernible).

17 THE COURT: No.

18 MS. SHAW: Oh okay.

19 THE BAILIFF: 81.

20 THE COURT: Yes?

21 PROSPECTIVE JUROR NO. 81: I represented someone in court

22 and they tried to come back to me and they (indiscernible)

23 come back to me. So I (indiscernible) that he --

24 THE COURT: Okay.

25 PROSPECTIVE JUROR NO. 81: -- died in prison.

1 THE COURT: Okay. There was someone that you
2 represented --

3 PROSPECTIVE JUROR NO. 81: Correct.

4 THE COURT: -- that threatened and was going to be after
5 her, she needed to be notified as a victim that he died in
6 prison?

7 PROSPECTIVE JUROR NO. 81: (Indiscernible).

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

9 Yeah. Joe, she's good.

10 THE BAILIFF: 45.

11 THE COURT: Yes, sir.

12 PROSPECTIVE JUROR NO. 45: How are you?

13 THE COURT: I'm fine.

14 PROSPECTIVE JUROR NO. 45: Two -- two different things.

15 THE COURT: Sure.

16 PROSPECTIVE JUROR NO. 45: The first -- I don't know if
17 this is considered -- but my wife committed suicide.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 45: So I was the victim of that.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 45: I don't know if that is
22 anything of importance.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 45: The second one, before she
25 passed around 2010 timeframe, we were designated as a

1 caretaker by DSS for a 13-year-old girl in our church that had
2 been sexually -- raped.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 45: So --

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 45: -- we took care of her for a
7 very brief period of time, about a month -- month and a half.

8 THE COURT: Okay. Got you. Is a result of either of
9 those experiences separately or together, might they, could
10 they interfere with your ability to be completely fair and
11 impartial to the State as well as Mr. Phillips?

12 PROSPECTIVE JUROR NO. 45: I don't believe so.

13 THE COURT: Okay. In other words, can you make up your
14 mind based solely, based only on what you hear in Court while
15 court is in session?

16 PROSPECTIVE JUROR NO.: Yeah. I believe so. Yes, ma'am.

17 THE COURT: Thank you. Please stay with us.

18 PROSPECTIVE JUROR NO.: Okay. Thank you.

19 THE COURT: He's staying.

20 MS. SHAW: Staying?

21 THE COURT: Yes. Staying.

22 THE BAILIFF: Last one is 54.

23 THE COURT: All right. Yes? Hi.

24 PROSPECTIVE JUROR NO.: I have no personal knowledge but
25 I'm the counselor center deals with this. And I have through

1 the years -- in premarital counseling, I've had to deal with
2 that type of situation.

3 THE COURT: Okay. Would that have an effect on your
4 ability to be fair --

5 PROSPECTIVE JUROR NO.: No, absolutely not.

6 THE COURT: -- fair and impartial?

7 PROSPECTIVE JUROR NO.: Yes, ma'am.

8 THE COURT: (Indiscernible). Thank you. Please stay
9 with us.

10 He's staying.

11 UNIDENTIFIED SPEAKER: (Indiscernible).

12 THE COURT: Yeah.

13 UNIDENTIFIED SPEAKER: Okay.

14 THE COURT: That's right, that's right, that's right.
15 Exactly. So (indiscernible) --

16 UNIDENTIFIED SPEAKER: Yeah, yeah.

17 THE COURT: -- you know what I mean? Yeah.

18 UNIDENTIFIED SPEAKER: I got you. (Indiscernible) --

19 THE COURT: Yeah.

20 All right. Are you or any member of your immediate
21 family, to your knowledge, associated with any crime
22 prevention group or victim's right group or any criminal or
23 law enforcement organization, such as a neighborhood watch,
24 Citizens Against Violent Crime -- that's CAVE -- People
25 Against Rape -- that's PAR -- Rape Crisis Hotline, Darkness to

1 Light, MADD is one -- Mothers Against Drunk Driving -- or any
2 organization such as that? Are you associated with those
3 groups? If so, please stand. I find no one standing. Now,
4 do you or any member of your immediate family work for any law
5 enforcement -- excuse me -- any law enforcement agency?
6 State, federal, city, county? All right.

7 Now, here's what I need. Just stand if that's a -- I'm
8 going to ask you to state your -- your number, whether it's
9 you or a member of your family and what law enforcement
10 agency.

11 We're going to start here. Your number?

12 PROSPECTIVE JUROR NO. 178: 178.

13 THE COURT: Is it you or a member of your family?

14 PROSPECTIVE JUROR NO. 178: My family.

15 THE COURT: And what law enforcement agency?

16 PROSPECTIVE JUROR NO. 178: It's for a police department
17 in Indiana.

18 THE COURT: Thank you so much. And I can't tell whose --

19 PROSPECTIVE JUROR NO.: (Indiscernible).

20 THE COURT: You are? All right. Yes, ma'am? Your
21 number?

22 PROSPECTIVE JUROR NO. 5: I'm number 5. And my nephew
23 (indiscernible).

24 THE COURT: Thank you.

25 PROSPECTIVE JUROR NO. 31: Number 31, my son is a police

1 officer.

2 THE COURT: Where?

3 PROSPECTIVE JUROR NO. 31: Mt. Pleasant.

4 THE COURT: Thank you.

5 PROSPECTIVE JUROR NO. 130: (Indiscernible) 130. I
6 worked (indiscernible) Department of Defense, military police
7 in the (indiscernible).

8 THE COURT: Got it. Thank you.

9 PROSPECTIVE JUROR NO. 45: 45 --

10 THE COURT: Uh-huh.

11 PROSPECTIVE JUROR NO. 45: -- my daughter works as a
12 crime analyst for Mt. Pleasant Police Department.

13 THE COURT: Thank you.

14 PROSPECTIVE JUROR NO. 180: 180. My cousin is Department
15 of Corrections in Virginia.

16 THE COURT: In where?

17 PROSPECTIVE JUROR NO. 180: Virginia.

18 THE COURT: Virginia. Thank you.

19 PROSPECTIVE JUROR NO. 39: I'm 39. My dad is a police
20 officer in North Charleston.

21 THE COURT: For where?

22 PROSPECTIVE JUROR NO. 39: North Charleston.

23 THE COURT: North Charleston? Thank you.

24 All right. Two questions together. Question number 1,
25 any member of our jury panel or member of your immediate

1 family work as an emergency medical tech, volunteer fireperson
2 or in any occupation that can be described as a first
3 responder? That's number one.

4 Number two, have you, any member of your immediate
5 family, or close personal friend ever been subject to a civil
6 commitment proceeding or been voluntarily or involuntarily
7 civilly commissioned? If you need to respond to either one of
8 those questions, I'm going to ask you to please come forward.
9 Come on.

10 Yep. That's why I needed it. Now, you know why I wanted
11 that question.

12 THE BAILIFF: 171.

13 THE COURT: Hi.

14 PROSPECTIVE JUROR NO. 171: Hi.

15 THE COURT: Yes?

16 PROSPECTIVE JUROR NO. 171: My father-in-law is a retired
17 firefighter.

18 THE COURT: Perfect. Thank you.

19 PROSPECTIVE JUROR NO. 171: Okay.

20 THE BAILIFF: 165.

21 THE COURT: Hi. Yes?

22 PROSPECTIVE JUROR NO. 165: My sister-in-law is a
23 dispatcher for Summerville.

24 THE COURT: She's a what now?

25 PROSPECTIVE JUROR NO. 165: Dispatcher for Summerville.

1 THE COURT: Dispatcher. Thank you so much.

2 THE BAILIFF: 177.

3 THE COURT: Dispatch.

4 And that's 1 --

5 THE BAILIFF: 177.

6 THE COURT: Hi.

7 PROSPECTIVE JUROR NO. 177: I'm a registered nurse.

8 THE COURT: Yep. Thank you.

9 THE BAILIFF: 42.

10 THE COURT: I got you. I got you.

11 PROSPECTIVE JUROR NO. 177: Oh okay.

12 THE COURT: You're good.

13 PROSPECTIVE JUROR NO. 177: Thank you.

14 THE COURT: Yeah.

15 42. Y'all got her (indiscernible) out, waiting to be
16 excused.

17 MS. SHAW: Yes.

18 THE COURT: Okay.

19 THE BAILIFF: 104.

20 THE COURT: Hello.

21 PROSPECTIVE JUROR NO. 104: Hi. My father was a
22 volunteer fireman for years but he is deceased now.

23 THE COURT: Thank you for sharing that. 1 and 4,
24 firemen.

25 All right. Two questions together. Have you or any

1 member of your immediate family personally had a recent
2 conversation with the Dorchester County Solicitor's Office or
3 the South Carolina Attorney General's Office?

4 Have you or any member of your immediate family to your
5 knowledge recently had communication with the Dorchester
6 County Solicitors office or the South Carolina Attorney
7 General's Office? If so, please stand.

8 THE BAILIFF: 106.

9 MS. SHAW: 106?

10 THE COURT: Yeah 106.

11 Hello. Yes, sir?

12 PROSPECTIVE JUROR NO. 106: We had a incident with a
13 neighbor that got shot and daughter was killed in their home.
14 And the Solicitors contacted us --

15 THE COURT: About what you knew?

16 PROSPECTIVE JUROR NO. 106: Yeah.

17 THE COURT: Okay. Very well. Would that have an effect
18 on your ability to be fair and impartial the State as well as
19 Mr. Phillips?

20 PROSPECTIVE JUROR NO. 106: Now, no.

21 THE COURT: All right. Thank you, sir.

22 MS. SHAW: Staying?

23 THE COURT: Yeah. Yes staying.

24 Is any member of our jury panel related by blood or
25 marriage to any other member of our jury panel? Or are y'all

1 getting to know each other? Well and by the end of the week,
2 you might learn that you're related. But right now, are you
3 related by blood or marriage? All right. You might claim one
4 another. Wonderful.

5 All right. Ladies and gentlemen, moving right along.
6 All right. This is my last question. It's general and I
7 absolutely, 100 percent mean it to be just as general as it
8 sounds. Do you know any reason why you could not, should not
9 be a juror in this case being ready, willing, and able to
10 listen to the evidence and make up your mind based solely --
11 meaning, based only on what you hear in Court, while court is
12 in session? Being completely unaffected, not affected by
13 matters. And case law talks about matters extraneous, matters
14 outside the court.

15 Let me give you some examples. Oh, why didn't -- I was
16 supposed to tell her this. I should have, I just remembered
17 this. How do I now tell her that I'm supposed to go to Tahiti
18 tomorrow afternoon at 2. Or I just remember something that I
19 really should've disclosed earlier. Or, you know, I've got a
20 particular concern about these issues or anything that you're
21 now thinking about --

22 I don't know, maybe when you stepped out you got a phone
23 call and the Publishers Clearinghouse people outside your
24 house with balloons and a flower and you're like -- are
25 distracted. Is there any reason why you'd have any concern

1 about your ability to be a juror in this case?

2 You must be ready, willing, and able to listen to the
3 evidence and make up your mind based solely on what you hear
4 in Court while Court is in session. If you have any concerns,
5 please come forward at this time.

6 THE BAILIFF: 142.

7 THE COURT: Yes, ma'am?

8 PROSPECTIVE JUROR NO. 142: I just forgot, I have to pick
9 up my cousin today from school at 3:05.

10 THE COURT: Okay. Okay. Yeah. That's -- that
11 absolutely happens and we will be right in the middle of court
12 at 3:05. And there's no one else who can fill that --

13 PROSPECTIVE JUROR NO. 142: No.

14 THE COURT: -- they all count on you being there?

15 PROSPECTIVE JUROR NO. 142: Yeah. And she asked me
16 yesterday and I told her yeah because I didn't know this was,
17 like, a long thing.

18 THE COURT: Yeah.

19 PROSPECTIVE JUROR NO. 142: I've never done it before.

20 THE COURT: Yeah, yeah, yeah, yeah. Absolutely. Well,
21 I'd like to transfer your service, if there's nobody else that
22 can do it.

23 PROSPECTIVE JUROR NO. 142: Yep. That's fine. Sorry.

24 THE COURT: Maybe we --

25 MS. SHAW: Transfer?

1 THE COURT: Yeah.

2 THE BAILIFF: 71.

3 THE COURT: Hi. Yes, ma'am?

4 PROSPECTIVE JUROR NO. 71: I'm just having problems just
5 following everything and understanding everything.

6 THE COURT: You are?

7 PROSPECTIVE JUROR NO. 71: Mm-hmm.

8 THE COURT: Is it because I'm talking too quickly or is
9 it because you're having difficulty hearing? Tell me what I
10 can do.

11 PROSPECTIVE JUROR NO. 71: Just understanding. I know it
12 has to do with sexual offense, correct?

13 THE COURT: It has to do with whether or not this
14 gentlemen has -- when you say definition of a sex defined
15 violator. That's what this jury is going to make a
16 determination.

17 PROSPECTIVE JUROR NO. 71: Okay. I'm just not totally
18 comfortable being here, but if I need to be here, I'll be
19 here.

20 THE COURT: Well -- okay. Let me ask it this way. Do
21 you believe that you can listen to the evidence and make up
22 your mind based solely what you hear here in Court while court
23 is in session as being completely fair and impartial to the
24 State and to Mr. Phillips?

25 PROSPECTIVE JUROR NO. 71: Yes.

1 THE COURT: Okay. That you believe you can do?

2 PROSPECTIVE JUROR NO. 71: Yes, ma'am.

3 THE COURT: Very well. Please stay with us.

4 THE BAILIFF: 174.

5 THE COURT: Hi. Yes, ma'am?

6 PROSPECTIVE JUROR NO. 174: Is there any chance that we
7 run over into next week? I have -- an appointment --

8 THE COURT: That is a wonderful question. No.

9 PROSPECTIVE JUROR NO. 174: No? Okay.

10 THE COURT: No, ma'am. You're good to go.

11 PROSPECTIVE JUROR NO. 174: Thank you.

12 THE COURT: Thank you. That is a good question.

13 All right. I find that our panel is now qualified. Let
14 me tell you what happens next. What happens next is that
15 there's going to be a sheet that is going to be generated.
16 And then, these attorneys need a little bit of time to go look
17 at their information, your wonderful responses that you've
18 been so kind to give, and then we're going to have our final
19 jury selection.

20 And 44 and we're going to have one alternate.

21 MR. FAULK: One alternate.

22 MS. SHAW: Okay.

23 THE COURT: One through 20, that's going to be the jury.

24 MR. FAULK: Yeah, sure.

25 THE COURT: 21, 22, 23 is going to be the alternate.

1 MS. SHAW: (Indiscernible) against 21?

2 THE COURT: 21, 22 -- well, let's do 20.

3 MS. SHAW: Yep.

4 THE COURT: 21, 22, 23.

5 MS. SHAW: Yes.

6 THE COURT: All right. And that'll be our jury.

7 That's going to take a little minute. And they're going
8 to take about seven minutes to take a look and go through
9 their process. When they come back -- sometimes they step
10 out, sometimes they don't --

11 But if they step out, they'll be back in seven minutes
12 after they receive their -- their sheets.

13 The numbers that you're going to hear with the final jury
14 selection are not your juror numbers. Those are not your
15 juror numbers. We take those numbers -- we process those for
16 our final jury selection so that the numbers that you're
17 hearing are not your juror numbers. And then, we're going to
18 seek our jury. So that is what remains for us. Those of you
19 who are not selected to serve on this first jury, I will give
20 you some instruction about how we're going to stay in contact
21 with each other.

22 I am not going to select the second jury, at this time.
23 We'll do that after we furnish -- finish our first case.
24 So -- or after it goes to the jury, we'll figure that as we go
25 along. But I will need -- and I'll give you some instruction

1 about how we're going to stay in contact with each other in
2 just a few moments.

3 All right. You ready?

4 MS. SHAW: No.

5 THE COURT: Just about?

6 MS. SHAW: We need to put a line under 123 and under 20?

7 THE COURT: Yeah but they flourished pretty small --
8 (indiscernible).

9 MR. FAULK: Yep.

10 THE DEPUTY CLERK: Off the record now, ma'am?

11 THE COURT: What?

12 THE DEPUTY CLERK: Would you like me to go off the
13 record?

14 THE COURT: Nope.

15 THE DEPUTY CLERK: Okay.

16 THE COURT: Seven minutes starting now.

17 We going to be at ease for seven minutes. If y'all need
18 to take a comfort break just be back in seven minutes. Seven
19 minutes.

20 (Recess.)

21 THE COURT: For the State and for Mt. Phillips, with the
22 State going first, using the numbers on the left. There will
23 be one each on the alternate. Use numbers 1 through 20,
24 please. And 21, 22, 23 for the alternate.

25 Turning it over to you, Madam Clerk.

1 THE DEPUTY CLERK: Plaintiff strikes?
2 MS. SHAW: The State strikes number 1.
3 THE DEPUTY CLERK: The Defense strikes?
4 MR. FAULK: Number 2.
5 THE DEPUTY CLERK: Number 2. The State strikes?
6 MS. SHAW: Number 19.
7 THE DEPUTY CLERK: Number 19. The Defense strikes?
8 MR. FAULK: Number 5.
9 THE DEPUTY CLERK: Number 5. The State strikes?
10 MS. SHAW: Number 7.
11 THE DEPUTY CLERK: Number 7. The Defense strikes?
12 MR. FAULK: Number 18. The State strikes?
13 MS. SHAW: Number 8. 8.
14 THE DEPUTY CLERK: 8. And the Defense strikes?
15 MR. FAULK: Number 3.
16 THE DEPUTY CLERK: Number 3. And for the alternate, the
17 State strikes?
18 MS. SHAW: Number 23.
19 THE DEPUTY CLERK: Number 23. And the Defense strikes?
20 MR. FAULK: 22.
21 THE DEPUTY CLERK: 26?
22 MR. FAULK: 22.
23 THE DEPUTY CLERK: 22. If you would please check with
24 me. The State strikes number 1, number 19, number 7, and
25 number 8, alternate 23.

1 MS. SHAW: Correct.

2 THE DEPUTY CLERK: All right. The Defense strikes number
3 2, number 5, number 18, number 3 and alternate number 22. Is
4 that right?

5 MR. FAULK: Just let me --

6 THE DEPUTY CLERK: Okay.

7 MR. FAULK: Yes.

8 THE COURT: All right. Are there any matters regarding
9 the qualification or the selection of the jury from the State?

10 MS. SHAW: No, ma'am.

11 THE COURT: On behalf of Mr. Phillips?

12 MR. FAULK: No, Your Honor.

13 THE COURT: Very well. Let us have our jury.

14 THE DEPUTY CLERK: Yes, Your Honor.

15 As I call your name please come forward, bring your
16 personal belongings and sit in the jury box.

17 Juror number 115, Joanne Lewis (phonetic).

18 Juror 174, Deitra Simmons (phonetic).

19 Juror 146, Ian Flether -- Fledger (phonetic).

20 Juror 124, Angel Mendez (phonetic).

21 Juror number 52, Kevin Eddinger (phonetic).

22 Juror 180, Mary Smith (phonetic).

23 Juror 139, Kaylie Owings (phonetic).

24 Juror number 26, Burrows -- Amber Burrows (phonetic).

25 Juror 104, Brenda King (phonetic).

1 Juror 119, Benjamin Mays (phonetic).

2 Juror 135, Palace Golvias (phonetic).

3 And alternate juror number 15, Marcy Degall (phonetic).

4 Juror 50, Marcy Degall.

5 . Oh strike. Juror number -- for the twelfth juror, juror
6 121, Sharon McGlahorn (phonetic).

7 THE COURT: All right. Ladies and gentlemen, those of
8 you who are now in our audience are now known as our remaining
9 jurors.

10 Those of you who are dashing off to work, if you need
11 something for your employer, we'll be happy to get that for
12 you down in the clerk's office, which is located directly
13 below us. Just let them know that you need something for your
14 employer and we'd be happy to get that for you.

15 I'm going to ask you to please call the juror information
16 line after 6:00 this evening, after 6:00 this evening. And
17 your juror information line was in the information that you
18 received. You'll probably be given a card with that
19 downstairs. If not, we can get you a card just let us know
20 that you need one.

21 Who needs a card with the juror information number on it?
22 Anyone? Great. Wonderful. Please call that number after
23 6:00. Do not call it before 6:00 because we need to have the
24 times -- you know, what our schedule's going to be for
25 tomorrow.

1 So having said that, you can call at 6:01, 7:25. If you
2 walking the floor tomorrow morning, give it a call. And
3 please follow whatever the instruction will be. It will
4 probably be one of two things. Number one, when to call back
5 for additional information or when to return to the courthouse
6 for selection of our next jury. Whichever is the message on
7 the recording, I'm going to ask you to please follow that
8 instruction please.

9 Now, I want to thank you for each and every solitary tick
10 of the clock. I can assure you that every moment has been
11 critical and I appreciate that so very much. So thank you for
12 your time today. And I look so forward to seeing you later in
13 the week. If you'll do so for me quietly, you are free to go.

14 (Whereupon, the excused jurors exited the courtroom at
15 2:35 p.m.)

16 THE BAILIFF: Please leave your badges downstairs with
17 security.

18 THE COURT: So ladies and gentlemen, we are going to
19 start this case at 2:00, by 2:00. So do you think you can
20 run, get some lunch, and get back by 2:00?

21 UNIDENTIFIED SPEAKER: I think so.

22 THE COURT: Look, I love doing this. How many people are
23 from the lower part of the county or below the swamp? How
24 many people are above the swamp? Yeah, that's pretty typical.
25 So for those of you that -- you don't have time to get by

1 Summerville and grab lunch and come back. So let me give you
2 the travel log of the culinary opportunities for you in St.
3 George. Pay attention, make sure I don't leave anybody out.
4 Everything say we are growing in St. George. I used to be
5 able to say if it ain't along 78, it don't exist here in St.
6 George. But we now have two exceptions, neither one are open
7 on Monday, sorry. But as you go along highway 78, if you got
8 to 15, you can left and go to the bistro. It's closed on
9 Mondays. You can go right and go to Aunt --

10 THE DEPUTY CLERK: Nannie's.

11 MS. SHAW: Nannie's.

12 THE COURT: -- Nannie's. It's closed on Mondays, too.
13 Sorry. Sorry.

14 UNIDENTIFIED SPEAKER: Oh, okay. (Indiscernible).

15 THE COURT: Yes. Precisely. Now, let me tell you what
16 does lie along highway 78. You have Kentucky Fried Chicken,
17 Georgio's of Beverly Hills -- they have a buffet, they are not
18 closed on Mondays. You have Hardee's on the right, McDonald's
19 on the left. You have Denny's at the truck stop. You have
20 Subway on the left. You have -- you have Skinners and --
21 which is down by I-95.

22 UNIDENTIFIED SPEAKER: Pizza Hut.

23 THE COURT: Who?

24 UNIDENTIFIED SPEAKER: Pizza Hut.

25 THE COURT: Pizza Hut on the left. Now, if you go under

1 the interstate and you're looking up to I-95, one more
2 culinary opportunity and it's the Taco Bell on the left. Now,
3 if you come to the Taco Bell on the left, there are no more
4 culinary opportunities until you get to Orangeburg and you do
5 not have time to go to Orangeburg. So those are your
6 culinary -- oh, and there's a grocery store on the right.

7 Food Lion -- isn't that Food Lion?

8 MS. SHAW: Yeah.

9 THE COURT: On the right. Those are your culinary
10 opportunities. I know, I keep hoping for Chick-fil-A. I
11 think I'm going to be waiting a minute. But they used to come
12 out with a truck but that's been a long time ago. You know,
13 I've always literally thought, you know what I need to do at
14 this point? I need to take off the robe and get me an
15 umbrella and go open up my Chick-fil-A right up on the corner.
16 You know, only because I love it, love it.

17 UNIDENTIFIED SPEAKER: (Indiscernible)?

18 THE COURT: Yes.

19 MR. FAULK: (Indiscernible).

20 THE COURT: In any event, those are your culinary
21 opportunities. I am going to ask that you get your lunch and
22 get back. Now, I do need you to go with your Bailiffs because
23 they'll tell you -- they're going to show you your juror room
24 real quick, then how to come and go. Now, let me just tell
25 you here are the instructions that you need to be aware of.

1 You have very little information and I am aware of that.
2 But each and every time we leave each other, I'm going to give
3 you this instruction. Do not discuss this matter or allow
4 anyone to discuss it with you. The reason for it is this, we
5 know from 200-plus years of trying cases in the United States
6 that when a juror begins to talk about something or a person
7 begins to talk about something, they begin to form opinions
8 about it. There's -- we can't help it. It's the way that we
9 are put together.

10 So the reason I give you the instruction, do not discuss
11 this matter or allow anyone to discuss it with you, is to
12 support your ability to listen open mindedly to everything and
13 make up your mind about nothing until you have heard
14 everything. And that's the reason for it.

15 Now, coming and going from -- from the courtroom. St.
16 George is a very dear town but small. So please be mindful
17 that if you happen to bump into anyone that has anything to do
18 with this case and they do not even say hello to you, they are
19 acting appropriately. In fact, if someone tries to talk to
20 you about this case get their name, if not get a description
21 and report that to me upon your return to the courthouse
22 because no one should be interacting with you about this case.
23 Lawyers are vagarious and they want me to tell jurors, please,
24 please don't think they're being rude if you bump into them
25 and they don't even say hello; they're following my

1 instruction. They know they're not supposed to interact with
2 you. So that's the reason why they would not do that; they
3 aren't being rude. So please keep that in mind.

4 Cell phones, cell phones, cell phones. You cannot have
5 your cell phone with you while you're serving on the jury.
6 I'm going to ask you to leave your cell phone somewhere other
7 than the courthouse. If you are worried about doing that, you
8 must relinquish your cell phone to one of our Bailiffs while
9 you're serving on the jury and they'll take -- they'll secure
10 it. They'll take good care of it and return it to you at the
11 end of the day. And I don't mind telling you what happened.
12 Back in Charleston about six or seven years ago, we had a jury
13 deliberating after a very long trial. Jury reached a point
14 where they just needed to talk about what they had heard, they
15 just needed to deliberate. And somebody had their cell phone
16 and they said that's okay, I'm going to phone a friend. And
17 the entire trial had to be scrapped because they had received
18 information that was not received in Court while court was in
19 session and the entire trial had to be scrapped.

20 About 48 hours later, we'd had a memo that came from our
21 Chief Justice that said no more cell phones with jurors on-
22 site. One person ruined it for everyone. So you cannot have
23 a cell phone with you while you're serving on a jury.

24 And I used to tell jurors leave the cell phone in your
25 car. You could do that today and it would be okay; the heat

1 certainly ain't going to destroy it. But then, the jurists
2 were like do you know how hot it is in my car? You know what
3 that's going to do to my million dollar cell phone? So that's
4 when we started saying, okay, if you have to bring it in with
5 you, you have to -- please give it to one of our bailiffs who
6 will take good care of it.

7 Do not think you can turn it off and put it off in your
8 pocket or your pocketbook because you know the minute you turn
9 it on, it will go off right in the middle of court. So if you
10 need to have it with you just please give it to our Bailiffs
11 and they'll take good care of it while you're serving on the
12 jury.

13 UNIDENTIFIED SPEAKER: Or an Apple watch.

14 THE COURT: I know. Your Apple watch is just going to
15 bug you. Just put your hand on top of it.

16 UNIDENTIFIED SPEAKER: (Indiscernible)

17 THE COURT: That's genius.

18 UNIDENTIFIED SPEAKER: Yeah, I got mine in my truck.

19 THE COURT: Leave it in your truck. I got mine. I have
20 it for both of us. All right. Yeah, because yours might
21 be -- does it independently operate?

22 UNIDENTIFIED SPEAKER: Yeah.

23 THE COURT: Yeah, mine does, too. Why do we do that? Do
24 we not have enough already with the cell phone? I mean, what
25 is up with that? Yeah. That's a -- I've never had a -- 26

1 years I've not had that question. Excellent question. Ding,
2 ding, ding. Leave it away. Yeah. Wonderful question. Thank
3 you so much for that, but yes, leave it somewhere. All right.
4 Have a wonderful lunch. Let's say 2:15, because I've been
5 yammering on for a minute. But not 15 whole minutes. Have a
6 good lunch. I'll see you at 2:15.

7 (Whereupon, the jury exited the courtroom at 1:07 p.m.)

8 All right. Counsel, I will see you at 2 o'clock so we
9 can finish pretrial matters. Because you had one more, right?

10 MS. SHAW: No. We just had to go over the jury charge.
11 There's definitely some in Mr. Faulk's proposals that I cannot
12 agree to because it's not in comport with the statutory
13 language.

14 THE COURT: Oh, okay. We we're going to have to do that
15 before; we can do that soon, right? All right. Well, y'all
16 go get your lunch. I'll see you at 2:15 -- well, come back a
17 couple of minutes earlier and make sure there aren't any
18 problems. I'll come in at about 2:10. Have a good lunch,
19 y'all. Thank you.

20 MS. SHAW: Thank you, Your Honor.

21 (Thereupon, a luncheon recess was taken.)
22
23
24
25

1 A F T E R N O O N S E S S I O N

2 THE COURT: Thank you so much, and please be seated. All
3 right.

4 Anything from the State before we bring the jury out?

5 MS. SHAW: Yes, ma'am. There are two individuals sitting
6 in the back of the courtroom with Mr. Stewart.

7 THE COURT: Uh-huh.

8 MS. SHAW: I believe those are family members of Mr.
9 Phillips. At this point, I have a significant concern because
10 they're trying to talk to him, been back and forth on the bar.
11 And I'm concerned if they're allowed to remain in this
12 courtroom, they're going to immediately run outside and tell
13 Mr. Stewart what was said. It's a sequestration concern that
14 it will be willfully violated by these individuals. So if the
15 Court is not inclined to remove them from the courtroom --
16 which I understand, we have open proceedings -- I would
17 request that there be an admonishment with the potential for a
18 contempt of court charge to them should they violate the
19 Court's order.

20 THE COURT: All right. Very well. If you will just --
21 I'm sure you'll address that with Mr. Faulk, that those
22 folks -- because Mr. Stewart is sequestered that it's a little
23 counterintuitive that they can't tell him what's going on in
24 here because then --

25 MR. FAULK: Right.

1 THE COURT: -- then he's no longer sequestered which
2 would be terrible because then Mr. Stewart couldn't testify
3 and that would -- that would be a terrible thing. So just --
4 I know you'll chat with him about that.

5 MR. FAULK: Yes, Your Honor. One moment please. May I
6 have a moment?

7 THE COURT: Sure. Okay. So anything on behalf of Mr.
8 Phillips?

9 MR. FAULK: I assume the sequestration doesn't start
10 until Dr. Carter testifies; is that correct?

11 THE COURT: I don't know. Just by practice that once we
12 start, we start.

13 MR. FAULK: Okay.

14 MS. SHAW: Yes, Your Honor. That's my understanding of
15 that.

16 MR. FAULK: Okay.

17 THE COURT: All right. Anything further?

18 MR. FAULK: No, Your Honor.

19 THE COURT: Okay. Great. Very well.

20 Let's have the jury, please.

21 (Whereupon, the jury came into open court at
22 approximately 2:18 p.m.)

23 THE COURT: All right. Ladies and gentlemen, I hope you
24 enjoyed your lunch. I am so appreciative that you have made
25 it back. And at this time, I am going to ask you to stand,

1 raise your right hand and be sworn in as the jury in this
2 case.

3 Look at you, girl.

4 (Jury sworn.)

5 THE COURT: Ladies and gentlemen, you are now the jury in
6 this case. What I am now going to do is I'm going to make
7 some preliminary remarks to you. The reason for my doing so
8 is simply so that you may be able to better follow what has
9 happened. In other words, it's going to be my intention to
10 give you a bit of a roadmap to how we're going to be
11 proceeding. Ladies and gentlemen, the first thing that is
12 going to occur is that we're going to call what are called
13 opening statements, opening statements.

14 You're first going to hear from Ms. Shaw on behalf of the
15 State. And then, you're going to hear from Mr. Faulk on
16 behalf of Mr. Phillips. What are opening statements? Well,
17 opening statements are opportunity for each side to introduce
18 to you what they believe the issues are in this case. And
19 once the opening statements are finished, then both sides --
20 each side will have an opportunity to present evidence to you
21 with the State, once again, going first.

22 Once the evidence is presented to you, then the attorneys
23 will return and they will make what are called closing
24 arguments. And those are true arguments. What that means is
25 is that no doubt these attorneys will emphasize certain

1 portions of the evidence and try to get you to agree with
2 their version of the facts -- your version of the facts. Now,
3 ladies and gentlemen, one of the things that I wanted to tell
4 you is that what these attorneys say is so very important.
5 And I urge you to give them your undivided attention but
6 please remember that what the attorneys say is not evidence.
7 The evidence will come from the sworn witnesses in this case
8 and any exhibits which are admitted into evidence.

9 Now, once all of the evidence has been received and the
10 arguments of counsel have been made, then I will explain to
11 you the law applicable to this case. You will then retire to
12 your jury room and here's what you will do. You will find the
13 facts as you find them to be and you will take the law as I
14 give it to you and apply it to those facts. And that is how
15 you will reach your verdict. In other words, you will make
16 the findings of fact by the law as I give it to you, and you
17 will decide whether the State has met its burden of proof.

18 Now, ladies and gentlemen, during the course of this
19 trial, the State has the burden of proving the requirements of
20 the statute that we are about here -- and I will give you more
21 details about that when I give you the concluding
22 instruction -- but the State has the burden of proof. And
23 that burden of proof is by what we call beyond a reasonable
24 doubt. The State must prove beyond a reasonable doubt that
25 the respondent, Mr. Phillip, meets the definition of a

1 sexually violent predator. And I will give you that
2 instruction at the conclusion of the case. And it will be
3 your duty to determine whether the State has met its burden.

4 Now, I do want to make a few additional comments to you
5 before the case begins and I want to talk a little bit about
6 what our roles are, what our duties are in this case. And I
7 want to talk a little bit about objections and what they are
8 and why we have them.

9 First of all, you and I have different duties to perform
10 in this case. You are the finders of fact. No one else but a
11 trial jury can make a findings of fact in the case -- in a
12 trial, just the jury -- only the jury. And so I'm going to
13 ask you as we begin that if I do or say anything regarding the
14 facts, I'm going to ask you please disregard it. Because, you
15 see, our law does not allow me to intimate or indicate to you
16 or have an opinion regarding the facts. I don't have an
17 opinion regarding these facts. That's a matter solely for you
18 to determine. So if I do or say anything and you think that
19 that was a comment on the facts, I will ask you to please
20 disregard whatever that might be because I can assure you I
21 have no intention of communicating anything to you regarding
22 the facts, because that is a matter solely for you to
23 determine.

24 I don't have an opinion regarding the facts. That is
25 your duty to determine the facts in this case. I will also

1 tell you that with the same emphasis, the law that makes you
2 the finder of the facts make me the judge of the law. And the
3 judge -- the law is given to you by me, is the only law that
4 you may consider. And if you have a preconceived idea about
5 what the law is or what it ought to be, I want you to meet
6 with your legislator a couple of weeks from now, next week.
7 But for our system to work correctly you must accept and apply
8 the law exactly as I stated to you.

9 Now, ladies and gentlemen, now I want to talk about our
10 procedure because I want you to understand what has happened.
11 You know as in sports or business or any other structured
12 activity -- and a trial is a structured activity -- both sides
13 must obey certain rules when presenting evidence and these
14 rules have a definite purpose. Their purpose is to ensure
15 that the information you receive is the most trustworthy and
16 reliable information that is available. So the rules of
17 evidence dictate that if these attorneys believe that there is
18 a possible violation of the rules and it is occurring, it is
19 their duty to call that possible violation of the rules of the
20 evidence to my attention as a judge of this trial.

21 Whether evidence is admissible at all or not is a matter
22 of law. But once admitted, whether you agree with it, what
23 weight you give to it is a matter solely for you to determine.
24 Now, the way that that's going to happen -- the way that the
25 attorneys will raise a possible violation of the rules to my

1 attention is that they will say objection, and they'll stand
2 and say objection. And you know, if you've been paying close
3 attention it might be a little jolt. That is their duty to do
4 that. And I will rule on it in one of three ways.

5 First, if I know what they're talking about I'll be able
6 to make a determination just upon them saying objection. They
7 may say objection, hearsay, one word or two, and I'll be able
8 to rule on it. If I sustain the objection, what that means is
9 is that I don't believe that this piece of evidence can be
10 received in that form or fashion and I concur. If I overrule
11 the objection, that means what is being offered can be
12 received; I do not believe that there is a violation of the
13 rules of evidence.

14 Now, it's very important that you not hold an attorney's
15 objection against that attorney's client because that's their
16 duty. They have a duty to do that.

17 Now, if -- if I need to hear a word or two from the
18 attorneys you'll see me ask them to approach. And this what's
19 going -- this is what will happen when that happens. You'll
20 go to the beach. Can you sort of hear the ocean? No? So --
21 and yes, I'm letting you all have the white noise because I
22 don't want you to hear what I'm saying. Why wouldn't I want
23 you to hear what I'm saying? I'll tell you. Because as I
24 speak that word or two with the lawyers, I wouldn't want
25 anything that I might say to them in ruling or getting

1 information to allow me to rule in the admissibility of
2 evidence to be perceived by you as a comment on the facts.
3 That's exactly what I'm trying to hide from you.

4 Now, there may come a time -- and I will keep it just as
5 limited as I possibly can -- when I need to ask you to step to
6 your jury room, and that's because I need to hear a little bit
7 more and, again, I do that as few times as necessary. It just
8 lets me do what I need to do and not be perceived by you as
9 making comment on the fact. It's just letting me do my job --
10 let me fulfill my duty. So that's -- but that's what's going
11 on with objections and the way that I will be ruling on
12 objections.

13 Now, ladies and gentlemen, oftentimes, oftentimes and
14 reasonably so jurors want to know about notetaking. And I
15 will tell you that notetaking is a -- is a continuing topic of
16 conversation for judges. And the debate goes like this, well,
17 if one juror has a note and another juror doesn't have a note,
18 too much influence can be put on the note. I got it in
19 writing. So that's one of the criticism with notetaking.

20 Another criticism is, as you look down to take this
21 wonderful note, scintillating note, you'll miss something as
22 it comes from the witnessing. Those are the criticisms of
23 notes.

24 The supports from notes is I'm a notetaker, it helps me
25 concentrate, or it allows me to be able to refresh my

1 recollection to allow me to deliberate. And that's my
2 problem. After 26 years, I think that both arguments are
3 really, really good.

4 So this is where I've come down, if trials are expected
5 to be a relatively short duration, I ask that jurors not take
6 notes. And just trust in memories, pay close attention, and
7 not take notes. If trials are going to be a more extensive
8 duration we have pencils and pads and pens and afford the
9 ability for jurors to take notes. Because I get concerned
10 that it's going to be longer and they're going to need to be
11 able to -- what did you hear three days ago, four days ago?
12 Because I am informed that this matter is to be a relatively
13 short duration, I'm going to ask you to please pay the closest
14 of attention and not take notes.

15 Now, I have commented on the expected duration of this
16 trial. But I really want you all to know, I, in no way,
17 demean the importance of this case. It is of the utmost
18 importance to our system, to these parties. I just didn't
19 want you to worry about my instruction not to take notes.

20 Now, there will be one of your number who is your
21 presiding juror, presiding juror, presiding juror. I just
22 want you to know -- I hate to tell you -- but oftentimes
23 jurors, the fact that you got the chair, it ends up being the
24 number one thing or that qualifies a person for presiding
25 juror. What I'm going to do is I'm going to ask you all to

1 select your own presiding juror. And when that person has
2 been selected to take this --

3 Look at you rocking back. You're bad.

4 -- to take this seat and keep this seat throughout the
5 rest of the trial, I need to know who your presiding juror is.
6 So when that person is selected you can tell me. You can put
7 it in a note and hand it to me, or hand it to our bailiff or
8 hand it -- to me, when you return to the courtroom. Or you
9 can just keep the seat and see if I'm smart enough to figure
10 it out. Any one of those three are perfectly fine. I just
11 need to be sure that you all -- please select the presiding
12 juror before we conclude the trial and to take this seat and
13 keep this seat throughout the balance of the trial.

14 You are our alternate. Will you keep that seat for me?
15 So I can keep up with you as our alternate.

16 Any one of those three are perfectly fine. I just need
17 to be sure that you all please select your presiding juror
18 before we conclude the trial. And to take this seat and keep
19 this seat throughout the balance of the trial.

20 You are our alternate. Will you keep that seat for me so
21 I can keep up with you as an alternate.

22 Now, I'm going to ask a favor of you, and it's going to
23 be tough because it's raining outside and it's after lunch,
24 but I need your help. But I've got to tell you a story so it
25 will make sense to you. When I was a little girl, and we

1 would go to services. I was -- I had two brothers. I was
2 always the one that had to sit next to my mom, because if
3 anybody's going to cut up, it's going to be me. Well, my
4 momma, inevitably at some point, would be like this. I
5 thought she was sleeping, so if she's just going to sleep, it
6 was time for me to cut up.

7 Well, inevitably, that hand would come over and I'd get
8 pinched, and that was just a precursor of things to come
9 later. Obviously, she was my mother. I couldn't tell if my
10 momma was sleeping or not, or whether she was contemplating.
11 So I've got to ask you a favor: would you please concentrate
12 with your eyes open for me so I can make sure you're not
13 sleeping? Because we just met, and if I can't tell what my
14 momma's doing, I don't have a chance with you guys, and being
15 able to tell if you're concentrating or sleeping. So if
16 you're concentrating and if you would do that with your eyes
17 open, I would be very, very grateful. So you might be --
18 might probably would be concentrating with your eyes closed,
19 but I wouldn't know. So please help me in that regard.

20 Now, ladies and gentlemen, I want you to understand that
21 the findings of fact by a trial jury are the findings of fact
22 for all time. The findings of fact made by a trial jury, if
23 they are subject to error, then that error remains -- all
24 except the most extraordinary circumstance. Which means it is
25 your duty to pay attention to these witnesses, to listen -- of

1 course to their lawyers, and to the Court. Do not let your
2 thoughts wander, but give the strictest attention to these
3 matters so at the conclusion of all the evidence and the
4 arguments of counsel and my charge on the law, you will be in
5 a position to determine what the true facts are. And to
6 determine whether the State has met it's burden of proof.
7 Ladies and gentlemen, in order to preserve everyone's rights
8 it is necessary that I ask these attorneys if there are any
9 additions or exceptions.

10 On behalf of the State?

11 MS. SHAW: No ma'am.

12 THE COURT: On behalf of Mr. Phillips?

13 MR. FALK: No, Your Honor.

14 THE COURT: Thank you so much. At this time, please draw
15 close as we listen to the opening statements.

16 Ms. Shaw?

17 OPENING

18 MS. SHAW: Thank you, Your Honor. Good afternoon ladies
19 and gentlemen. I was previously introduced to you. My name
20 is Suzanne Shaw. I am an Assistant Attorney General for the
21 state of South Carolina, and every time I try a case with
22 Judge Goodstein, she steals my fire. So I'm going to make
23 this a little bit shorter than my normal opening, but I do ask
24 that you just give me your attention for a couple minutes. So
25 these types of cases -- I'm going to apologize to you first

1 and foremost. They're very hard to hear. You're going to
2 hear some very ugly facts; you're going to hear some very
3 unpleasant stories.

4 And I'm sorry you are going to have to listen to that,
5 but it's essential. And it's essential that you pay very
6 close attention because what you're here to do today is not
7 your typical civil case. You may -- when you got your jury
8 summons, you may have thought you were going to be asked to
9 sit on a car wreck, (indiscernible) something like that. This
10 is very different, and it involves fundamental constitutional
11 rights. So your attention and your close observation of the
12 facts as you hear them is so important.

13 The other thing I'm going to apologize to you for is my
14 low voice. I'm naturally a very soft-spoken person. When I'm
15 on my feet, I try to keep my voice up, but if at any point you
16 cannot hear me or if you don't understand something I said,
17 just raise your hand, get the judge's attention. She will
18 make me repeat myself. I'd be more than happy to do it. It's
19 never a problem.

20 So this matter is a civil commitment trial, brought under
21 the Sexually Violent Predator Act. It's not a very well-known
22 statute, but that statute has a very specific and very
23 important purpose. And it was enacted by our legislature to
24 identify an extremely small and also extremely dangerous group
25 of sexual offenders so that they may be civilly committed for

1 long-term controlled care treatment at a secure facility. And
2 the way it works is -- it's fairly simple, it's kind of a long
3 process, and I'll shorten that for you. And so what it -- the
4 way it works is that when an individual is coming up on their
5 max-out date, they are reviewed. And eventually we end up in
6 a situation where they are evaluated by a DNH psychologist.
7 It is a comprehensive psychosexual evaluation. The
8 psychologist then prepares a report, and we go from there.

9 So -- and I need to emphasize this to you even more than
10 that's how we do things. It's that we're not here to punish
11 Mr. Phillips. Mr. Phillips has been convicted of multiple
12 violent crimes, including sexual crimes. He's paid his debt
13 to society. We are not a punitive statute; this is strictly
14 civil. We are seeking to get him the treatment that he needs
15 so that he may one day hopefully rejoin society as a safe
16 individual who is not likely to reoffend in a sexual way.
17 So -- but you will probably not like him by the end of the
18 trial. That's okay, that's to be expected. But what you
19 can't do is let that personal dislike based on his criminal
20 history influence your judgement. You need to carefully
21 consider the evidence you hear to determine whether he meets
22 criteria as a sexually violent predator and make your decision
23 based on those facts, okay?

24 All right, so why do we do this. Well, since Mr.
25 Phillips has maxed out his prison sentence, he has a

1 fundamental liberty interest under our constitution in his
2 freedom. And the State may not infringe upon that absent
3 appropriate due process. That's why you are so important,
4 because you're here to ensure that he gets it. And that's
5 extremely important because his liberty interest will be
6 affected if he is committed.

7 So why do we have the particular standard that Judge
8 Goodstein already told you about. We're a civil case, but we
9 have a criminal standard: It's beyond a reasonable doubt.
10 Well, we've all watched law and order, you know what that
11 burden is. The reason we do it is because of that fundamental
12 constitutional liberty interest. He must have his due
13 process, and he must have it fairly in a court of law.

14 Now, so how do we do these types of cases? Well, there's
15 three things I have to prove to you. First, is that Mr.
16 Phillips has been convicted of what is statutorily defined as
17 a sexually violent offense, but certain types of offenses.
18 Not every sexual offense qualifies as a sexually violent
19 offense. And so, first and foremost, the individual must have
20 a qualifying offense. This is information you will be
21 provided. You will have this in the jury room with you. I
22 encourage you to read it. This is his affidavit, sentencing
23 sheet, and indictments. So I encourage you to carefully
24 consider that and the information contained within that. And
25 I would submit to you, by virtue of these records, we have

1 proven that Mr. Phillips, indeed, has been convicted of a
2 sexually violence before we get to any of these substantive
3 testimony.

4 Second thing that I have to prove to you is that Mr.
5 Phillips has a qualifying mental abnormality or personality
6 disorder that makes it likely he will reoffend in a sexual
7 way. We don't care if Mr. Phillips is going to go out and rob
8 a bank tomorrow. We care if Mr. Phillips is going to out and
9 sexually assault someone if he is released. And that's where
10 you have to keep your focus. Not is he going to commit a
11 future criminal offense; is it going to be sexual.

12 So the last thing is that is he likely to reoffend, and
13 that is something that we have to assess through actuarial
14 assessments and naturally risk assessments, which you will
15 hear in the testimony that you're going to receive in
16 hopefully about ten minutes. So how do I prove that, well Dr.
17 Carter (phonetic), of the DMH conducted the psychosexual
18 evaluation of Mr. Phillips. She will be testifying for you
19 today as to her interview, her records review, her findings,
20 and her ultimate conclusion as to whether he meets criteria.
21 That will be the only witness from the State, so like Judge
22 said, this will be a relatively short trial. And so what did
23 she diagnose Mr. Phillips with? Well, she diagnosed him with
24 antisocial personality disorder, and she will explain to you
25 how this is relevant to his sexual offending, and how that, in

1 combination with the actuarial risk assessment, makes it
2 likely that he is going to reoffend. So with that said, I
3 will ask you to pay close attention to Dr. Carter and any
4 other witnesses, and to judge fairly and impartially in this
5 matter. Thank you.

6 THE COURT: Thank you.

7 Mr. Falk?

8 OPENING

9 MR. FALK: I don't have really much to say at this point.
10 I'll probably have more to say at the end of this case. There
11 are a couple of things I just want you all to keep in mind as
12 you're going forward here. And one of the things, and I think
13 the State highlighted it, it that this is not a place for us
14 to determine whether or not Mr. Phillips has had an adequate
15 punishment. The whole issue here is whether or not he suffers
16 from a mental abnormality or personality defect. And that
17 because of that personality defect, it is not safe for him to
18 be released.

19 And when you've got a case, and sometimes it's going
20 to -- some of these cases will be really easy because, you
21 know, the personality defect or the mental abnormality might
22 be something that everybody's going to sort of understand.
23 Unfortunately there are some people who are attracted to
24 children, and that's a personality disorder, and that's really
25 easy to understand. And -- but this is a situation where he

1 has an antisocial personality disorder, at least that's what
2 the diagnosis is.

3 There's no -- I don't believe we're going to hear any
4 diagnosis (indiscernible) some type of sexual dysfunction.
5 He's got an antisocial personality disorder. So now it's
6 really going to be upon you to decide whether or not, you
7 know -- if he just has a history of some criminal conduct, or
8 if he has some type of personality disorder. And I always
9 like to try and compare, or want you all to think about what
10 I'm talking about here is that, you know, somebody could go
11 into a grocery store and steal a loaf of bread. And everybody
12 would agree that that's criminal conduct if you steal a loaf
13 of bread.

14 Now, there could be a lot of reason why you stole the
15 loaf of bread, and that's really what I'm talking about here.
16 If you stole the loaf of bread just because you didn't have
17 enough money in your pocket and you wanted to half some bread,
18 that's criminal conduct. But there is a group of people out
19 there, and I don't know how many, I think this is an analogy
20 that you all could maybe get your arms around. There's a
21 group of people out there that enjoys stealing stuff. They
22 have -- they get a charge out of stealing stuff, out of trying
23 to get away with something.

24 And that's what you're going to really have to separate
25 here, because you're going to have to decide that his conduct

1 is because of a personality disorder. You're going to have to
2 decide that he's the kleptomaniac that enjoys stealing bread,
3 as opposed to the person who stole bread for different
4 reasons.

5 This case, I really need you all to sort of wait until
6 the very end, and there's no question that you're going to
7 hear some testimony from Dr. Carter, and I mean my client has
8 a criminal past. But I also want you to keep in mind that
9 your issue today is whether or not today, December 5th -- yeah
10 this is 2022, he's a sexually violent predator. So then
11 you've got to really consider how important is it of conduct
12 that happened 25 years ago, 15 years ago. Because I think
13 you're going to hear a lot testimony from the State about
14 stuff that happened a long time ago. But the question for you
15 all today is -- to consider is -- is he a sexually violent
16 predatory today.

17 And there, I think the focus has to really be on, you
18 know, you're going to hear stuff about past conduct, and
19 you're going to have the opportunity to weigh that for
20 whatever kind of importance you think it has. But just think
21 about, you know, holding somebody accountable for acts that he
22 did 25 years ago, and how that meaningful that is, to talk
23 about his personality disorder as evidence of acts that
24 happened last week. So at the end of the day, you really
25 just, you know, you're going to hear some bad stuff, and might

1 start to form an opinion about my client.

2 But I need you to wait until the end of the day,
3 tomorrow, whenever this case -- whenever you all get this
4 case. And to think about whether or not the State really has
5 convinced you that my client fits into that very small
6 category. I think this was the State's words, "people who
7 have committed a sexual offense". It is a very small group of
8 those that are extremely violent, that they need to be
9 confined. Because that's what the issue is. If you find my
10 client guilty today, that's going to have an impact on my
11 client, and whether or not he's going to go home.

12 MS. SHAW: Your Honor, objection. I apologize Mr. Folk,
13 can we have a sidebar?

14 THE COURT: Sure. Okay. It's not a criminal case,
15 cannot be found guilty.

16 MR. FALK: (Indiscernible).

17 THE COURT: Just to -- I'll correct, yeah. I'll just
18 correct it and go from there, thanks. Yes.

19 Mr. Falk misspoke. This is not about finding somebody
20 guilty or not guilty, that's not what we're about. He just
21 simply misspoke. You may proceed Mr. Falk.

22 MR. FALK: What I should have said is that at the end of
23 the day, you find that my client meets the definition of a
24 sexually violent predator. Then that decision is going to
25 have a huge impact on where my client goes tomorrow, where my

1 client goes for a period of time, and you know, he's going to
2 be going to a secure facility. So he's not going to be going
3 to some kind of State mental health hospital. He's going to
4 be going to a secure facility. So that's why there's a lot at
5 stake in this trial, even though this is going to go
6 relatively quickly. That's why it'll be hard for you to sort
7 of separate some of the bad stuff that you might have heard
8 about what my client did years in the past. And separate
9 that, and just really make a fair decision today as to where
10 my client should go tomorrow, thank you.

11 THE COURT: All right, call your first witness please,
12 ma'am.

13 MS. SHAW: Thank you, Your Honor. The State calls Dr.
14 Rachel Carter of the Department of Mental Health.

15 DIRECT EXAMINATION

16 BY MS. SHAW:

17 Q Dr. Carter, by whom and in what capacity are you
18 employed?

19 A I'm employed by the South Carolina Department of Mental
20 Health, Forensic Evaluation Service. I'm a Psychologist 1
21 there, that's my formal title. My position involves
22 conducting forensic evaluations.

23 Q In order to be employed in this capacity, are you
24 required to have a certain education background and
25 experience?

1 A Yes, I am.

2 Q Can you please discuss where you did your undergraduate
3 work, and what degree you obtained?

4 A Yes. I completed my Bachelor of Science degree at the
5 University of Iowa.

6 Q And how about your graduate?

7 A I completed a Master of Science degree in clinical
8 psychology at the University of North Texas, as well as a
9 Doctorate of Philosophy, or PhD in clinical psychology at the
10 University of North Texas.

11 Q And after you obtained your PhD, did you pursue further
12 specialized training.

13 A Yes, I did.

14 Q Can you please discuss that?

15 A Yes. So as a clinical psychologist I'm trained to
16 diagnose, assess, treat mental disorders, but in order to
17 specialize further in forensic psychology I sought a variety
18 of special training experiences during my graduate education
19 as well as beyond. So some of those involved -- during
20 graduate school I completed forensic -- courses in forensic
21 assessment, I completed research practicum with forensic
22 populations, and conducted forensic clinical research. I also
23 received forensic training in a federal women's prison in
24 Texas, and conducted court ordered evaluations for juveniles
25 who were detained in a detention center.

1 In addition to that, I completed an internship at the largest
2 forensic hospital in the country. It's called Patton State
3 Hospital. It's in Southern California. And there, I received
4 additional training, like it's essentially -- the internship
5 here is like an on-the-job training year. So I completed that
6 at that forensic hospital, and then after earning my degree,
7 completed an additional training -- year of training as a
8 post-doctoral fellow. That's something that's optional. This
9 fellowship was specifically designed to focus on forensic
10 assessment and other work with forensic populations. So
11 there's a large focus on risk-assessment, as well as other
12 types of forensic evaluations like assessing malingering or
13 competency to stand trial.

14 And then during my current position at the Forensic Evaluation
15 Service, I've continued to attend trainings, conferences,
16 workshops on forensic assessment topics, and other topics that
17 are relevant to my work. And am involved in a variety of
18 activities that's relevant to my specialization.

19 Q And you also train the younger fellows, isn't that
20 correct?

21 A That's right. My department has it's own psychology
22 fellowship. It's been up and running for the last several
23 years, and I've had the opportunity to provide direct
24 supervision to six fellows who have come through that formal
25 training program for forensics.

1 Q Perfect, thank you. And you're required to have a
2 license to practice psychology in the state of South Carolina,
3 correct?

4 A Yes, I am.

5 Q And you possess one?

6 A I do.

7 Q And when were you licensed?

8 A I was licensed in September of 2018.

9 Q And since then you have been continuously working on
10 psychosexual evaluation forensic services with the DMH?

11 A That's right.

12 Q Thank you. And so do you have any studies, publications,
13 articles, or other research that you have published?

14 A Yes. I've coauthored six peer-reviewed journal articles.
15 And the peer-reviewed part just means that other professionals
16 in my field, before those articles were allowed to be
17 published -- that research was allowed to be published, they
18 had to review and approve and critique it. And so I have six
19 of those publications.

20 Q Okay, thank you. And have you ever been a presenter at
21 professional development seminars, or symposia?

22 A Yes, I have. I've presented a number of times at both
23 regional and national conferences.

24 Q And are you a member of any professional organizations
25 specifically related to forensics or sexual abusers?

1 A Yes. I'm currently, and have been a member of two
2 organizations that fall within that category. One is the
3 association of the treatment and prevention of sexual abuse,
4 and that's a multidisciplinary international organization that
5 really -- that connects people who work with and evaluate
6 sexual offenders to the most recent research, and for
7 consultation purposes. I'm also a member of the American
8 Psychology Law Society. That organization is -- branches off
9 the American Psychological Association, and is again a
10 multidisciplinary group of psychologists, psychiatrists,
11 lawyers that really strive to understand how psychology can
12 help with understanding legal issues.

13 Q And so how long have you been performing sex-offender
14 specific evaluations?

15 A I mean, I've had -- my first experience was about six
16 years ago. So throughout that time I've been involved in
17 those type of experiences.

18 Q Okay. And approximately how many evaluations do you do
19 per year, if you know?

20 A About -- let's see -- it varies, but I would say around
21 maybe 30, approximately to 40.

22 Q And there are two different types of sex-offender
23 evaluations that you do, correct? You got in-patient
24 evaluations and then pre-commitment evaluations?

25 A That's correct.

1 Q Okay, can you explain the difference?

2 A Sure. So a pre-commitment evaluation is one like we're
3 here for today where the Court is wondering whether a person
4 meets criteria as an SVP. The in-patient evaluations are
5 conducted after somebody has been committed for -- to the
6 program for, or as an SVP, excuse me. And so that's a
7 different question at that point.

8 Q Okay, so you're asking two different questions?

9 A Mm-hmm.

10 Q Okay. Approximately how many in-patient reviews have you
11 done?

12 A Approximately 103.

13 Q And how many pre-commitment evaluations?

14 A I've done six pre-commitment evaluations.

15 Q Okay. And in terms of your percentages for recommending
16 admission to the SVP program or not recommending, do you know
17 what percentage you do and do not recommend.

18 A Yes.

19 MR. FALK: Your Honor, may I approach? I think she's
20 starting to bolster a witness.

21 MS. SHAW: No. I'm just asking what she has recommended.
22 She has done six of them.

23 THE COURT: I sustain the objection.

24 MS. SHAW: Okay, no problem, Your Honor. I'll move on.

25 Q And have you been qualified as an expert in the state of

1 South Carolina?

2 A Yes, I have.

3 Q How many times?

4 A Eight to ten times.

5 Q Okay. And Your Honor, based on that foundation, I would
6 like to offer Dr. Carter as an expert in both forensic and
7 clinical psychology, as well as an expert in sex offender
8 evaluations.

9 MR. FALK: Objection.

10 THE COURT: Very well.

11 MS. SHAW: Thank you, Your Honor.

12 THE COURT: All right. Let me explain to the jury what
13 that means. Ladies and gentlemen, normally under our rules of
14 evidence, a witness is not allowed to testify regarding their
15 opinions or the reason for those opinions. But there is an
16 exception, when by virtue of someone's knowledge or training
17 or experience or education they have become an expert in some
18 field, and they may testify regarding their opinions within
19 that field of expertise. And they may give the reasons for
20 those opinions. I'll give you another -- or additional
21 instruction when I give you the concluding instruction, but
22 the reason for expert testimony is to help you understand the
23 evidence. And when we talk about expert testimony, we'll talk
24 about the fact that it's given again for the purpose of
25 helping you understand the evidence, and not for the purpose

1 of controlling your judgement.

2 All right, you may proceed.

3 MS. SHAW: Thank you, Your Honor.

4 Q Dr. Carter, are you familiar with Perry Phillips?

5 A Yes, I am.

6 Q Did you meet with him?

7 A Yes, I did.

8 Q Can you identify him please?

9 A He's the gentleman sitting next to Mr. Folk.

10 Q Thank you. So how are you familiar with Mr. Phillips?

11 A In July of this year, 2022, the Forensic Evaluation
12 Service referred -- received an order for an evaluation of Mr.
13 Phillips. And I'm one of several psychologists in my
14 department who conducts these precommitment evaluations. I
15 was assigned to conduct Mr. Phillips pre-commitment
16 evaluation.

17 Q Okay, so can you tell the jury: what is your process and
18 procedure for conducting a pre-commitment evaluation?

19 A Sure. So the purpose of these evaluations is to really
20 understand what was contributing to the sexual offending
21 behavior, and to conduct an assessment of risk for future
22 sexual offending. And so in order to get information relevant
23 to that, I will review records -- available record that I
24 have, I'll request records. Criminal history records, mental
25 health records if they're available, institutional records are

1 some common ones that I'll review.

2 I also conduct an interview of the respondent, Mr.
3 Phillips in this case, and ask him a variety of questions to
4 try to gather information for the evaluation. I may determine
5 whether there is additional psychological testing or other
6 tests that need to be administered, and administer those as
7 part of the evaluation, and then I may contact other people
8 who may know Mr. Phillips for additional information about his
9 functioning or behavior. And at the end of that process of
10 information gathering I will score a risk assessment measures,
11 in this case I used the Static-99R and the Violence Risk Scale
12 - Sexual Offense Version or VRSSO.

13 Q Thank you. And can you just discuss a little bit about
14 what the VRSSO entails, what it allows you to do, and your
15 training of that particular -- or the use of that particular
16 instrument?

17 A Sure. Well, I'll start with my training on the use of
18 the instrument. So this is a risk-assessment tool that allows
19 for the systematic structured evaluation of what we refer to
20 as dynamic risk factors. These are risk factors specific to
21 sexual reoffending, or recidivism. So whether a person is
22 likely to be charged with or convicted of a sexual offense in
23 the future, and the dynamic piece just means that these risk
24 factors can be changed or addressed either through treatment
25 or changes in environment, things like that.

1 Now, in -- I believe it was December of last year, of
2 2021, I -- myself and others in my department went through a
3 training provided by one of the developers of the VRSSO where
4 we were guided through and informed of the research supporting
5 the use of the instrument and did practice cases and all of
6 that, in order to become comfortable with it's use and use it
7 properly. And this tool, in addition to the Static-99, using
8 tools like this is really important for these types of high
9 stakes evaluations because it will help, you know, ensure --
10 helps to ensure that we are getting an accurate assessment of
11 risk for future offense.

12 Q And VRSSO allows you to create a bit more of a
13 personalized risk assessment, is that correct?

14 A That's right. So we -- it allows you to identify areas,
15 risk-relevant problems that are -- identify which ones are
16 most relevant to the individual that you're assessing, and
17 ones that aren't as relevant. So the items are scored on a
18 four-point scale. Given score 0,1,2, or 3. Scores of 2 or 3
19 indicate those particular risk factors are relevant to the
20 specific individual's sexual offense history and are at areas
21 of treatment need -- or need to be addressed, rather, in order
22 to reduce that particular individual's risk for sexual
23 recidivism.

24 Q Okay. So discuss what the question is that you actually
25 have to answer in the pre-commitment evaluation.

1 A Yeah. So the question that I'm asked to answer is
2 whether the respondent, Mr. Phillips in this case has a mental
3 abnormality or personality disorder that makes him likely to
4 engage in acts of sexual violence.

5 Q And so in this particular case, you did your records
6 review, you also met with Mr. Phillips?

7 A That's right.

8 Q How many time did you meet with him?

9 A I met with him on two occasions.

10 Q Okay. Do you know how many hours total you spent with
11 him.

12 A I'm going to refer back to my report. In total, I met
13 with him for -- a test of math -- it looks like about 13 and a
14 half hours.

15 Q Would you say that was a long interview process, or
16 relatively short?

17 A It is -- I mean, it's a longer -- of all of the
18 evaluations -- types of evaluations that I do, these are the
19 longest interviews that I conduct. But for pre-commitment
20 evaluations, I've several interviews that have lasted about
21 that long.

22 Q Now, if you wouldn't mind, can you go through the
23 information you received regarding Mr. Phillip's criminal
24 history and background?

25 A Yes. So I received -- well, I requested the National

1 Crime Information Center Criminal History record, and was able
2 to review that. So that's a compilation from, at a national
3 level, of all of the criminal history in multiple states. In
4 this case, Mr. Phillips only had criminal -- had only been
5 arrested in South Carolina. I also received -- or also
6 reviewed the South Carolina Public Index. That's a publicly
7 available record system for criminal history, records, or
8 information that's available online. And then I received the
9 arrest warrants, indictments, sentencing sheets, incident
10 reports, victim statements, really any -- lots of
11 documentation for the arrests that Mr. Phillips has had for
12 convictions, et cetera.

13 Q And does Mr. Phillips have any sexual offenses in his
14 criminal history?

15 A He does.

16 Q Approximately how many?

17 A He has been charged with five --

18 MR. FALK: Objection, Your Honor. I think this goes to
19 relevance under 403, and I mean, we're going to talk about
20 what we were talking about before. I am trying to preserve my
21 objection.

22 THE COURT: Sure. Ladies and gentlemen, I'm going to ask
23 you to step to your jury room. Do not discuss this matter or
24 allow anyone to discuss it with you, and we'll be with you
25 shortly.

1 All right, okay. Yes?

2 MR. FALK: I think she was going to start talking about
3 sexual offenses that he was charged with, as opposed to
4 offenses of which he had been convicted. I know one of those
5 offenses is he was charged in 2004 on a sex offense, and was
6 not convicted on that. And I would certainly have issue with
7 her repeating that information to the jury. I think we have
8 an issue whether or not it is -- whether it's hearsay
9 evidence, whether it's hearsay that goes beyond the scope
10 permitted for an expert to testify to under 703, and then
11 whether or not it meets the balancing standard under 403.
12 It's whether or not it's more prejudicial than probative.

13 THE COURT: Got you. But we got to which one's we're
14 talking about. First of all convicted --

15 MS. SHAW: Your Honor, can you --

16 THE COURT: -- charged, and then whether or not she was
17 going to testify on any conduct that was not charged.

18 MS. SHAW: Per Your Honor's prior ruling: the only
19 discussion of the 2004 offense, which I would add is the only
20 sexual offense for which he wasn't convicted, even though he
21 was charged with CS in the 1st. She is only going to discuss
22 that that was a sexual charge in the context of a home
23 invasion; that's it. Because he was convicted of other
24 violent offenses in relation to that, just not that particular
25 charge.

1 THE COURT: Was that the charge that was dismissed, based
2 on your understanding, dismissed in consideration for the plea
3 to other matters --

4 MS. SHAW: (Indiscernible).

5 THE COURT: Okay. And does it have relevance for her
6 opinion?

7 MS. SHAW: It does in terms of that he was charged with
8 it while in the context of committing a violent offense for
9 which he was convicted. And that's the relevance because it
10 adds to the antisocial personality disorder.

11 THE COURT: And is that the type of evidence that is
12 considered by individuals within her profession.

13 MS. SHAW: I would proffer to the Court that absolutely
14 it is, but it should certainly be testified to by expert,
15 that's what she would intent to --

16 THE COURT: Okay. Let her do that, and then I'll let you
17 cross-examine because I want you to be able to preserve it.

18 MR. FALK: Can I just make another point?

19 THE COURT: Sure.

20 MR. FALK: Without knowing exactly why the case was --
21 under this case especially. Knowing why it was
22 (indiscernible). And I'm going to call on a solicitor,
23 because, Your Honor, under the facts in this case, it was four
24 people who were wearing masks went into a house. Testimony
25 from the victim was she was sexually assaulted by two of them.

1 I don't know which two of them were, and it's my understanding
2 none of them were identified. Now, of course, as we know
3 under the criminal law, hand of one, hand of all. You know,
4 if he's there with the group he's labeled with everything
5 there, but responsibility under hand of one, hand of all being
6 one of four people and being the actual person who sexually
7 actually assaulted the person I think are two different
8 issues. And without being able to know what the extent of his
9 involvement in the kidnapping and the sexual assault, I think
10 it's highly -- first of all, I think it's speculative to know
11 why it was dismissed.

12 THE COURT: Well I don't know. That's why I asked them
13 to step out, so I can hear it.

14 MS. SHAW: We're not going to go into why it was
15 dismissed. It's just that he was charged.

16 THE COURT: Okay. Let me hear that testimony.

17 MS. SHAW: I'm sorry.

18 THE COURT: I need to hear it, so I can rule on it. Why
19 is it relevant?

20 MS. SHAW: Would Your Honor like me to do a proffer?

21 THE COURT: Yeah.

22 BY MS. SHAW:

23 Q Dr. Carter, the 2004 home invasion accusation. Did you
24 consider that as part of your calculus in determining whether
25 Mr. Phillips suffers from antisocial personality disorder.

1 A Well, it was -- I considered the entirety of the
2 situation, where that charge stemmed from. The -- which also
3 involved armed robbery, burglary, et cetera. When considering
4 the diagnosis, I think the sexual charge was more relevant to
5 the risk assessment.

6 Q And can you just explain to the judge why it would be
7 more relevant to the actuarial assessment than it would be to
8 the initial records review?

9 A Yes. The risk assessment measures, particularly the
10 Static-99R includes an item where you need to indicate how
11 many prior sexual offenses -- charges, specifically charges or
12 convictions that the individual had. And that's taking into
13 consideration then in the scoring of that instrument. And so
14 given the information that I had, and that he was in fact
15 charged with that sexual offense, that was taken into account
16 for that risk assessment tool.

17 MS. SHAW: Okay. Would Your Honor like additional
18 testimony or?

19 THE COURT: No. Cross-examine on that issue.

20 CROSS-EXAMINATION

21 BY MR. FALK:

22 Q You read the police report, is that correct?

23 A That's right.

24 Q And you saw that two of the people were responsible for
25 the assault, is that correct?

1 A There were two people identified I think -- or not,
2 excuse me, not identified. But there were two specific
3 incidents that were believed to have taken place by two
4 different people, plus a third person had fondled a breast as
5 well.

6 Q Well, you say that, but then wasn't there information
7 there that backtracked when they were talking about that third
8 person. Wasn't there a line in the report where they just
9 said it was actually just two people.

10 A There was a document that said there were two people.
11 The victim's statement, herself, she indicated that there were
12 three -- or she alleged there were three people.

13 Q In a situation where she was being assaulted by people
14 who were all wearing masks?

15 A Correct. She could not specifically --

16 Q She obviously could have made a mistake?

17 A She could not specifically identify anybody.

18 Q So the only reason why this is important to your
19 diagnosis, and to your testimony is because it relates to how
20 you scored him on the Static?

21 A As far as the sexual offense goes, that's where it comes
22 into play the most, yes.

23 Q Okay. How important is an assault -- would you agree
24 that, as far as whether or not it's an indication of a
25 paraphilia or some type of personality disorder, it's only

1 relevant if it did, in fact, occur? Would you agree with
2 that?

3 A Yes.

4 Q Okay. And we don't know whether it occurred, is that
5 correct?

6 A Correct.

7 Q Okay. And it could have been other people there who
8 could have been responsible for it, is that correct?

9 A That's right.

10 Q And are you aware that in South Carolina, if three people
11 are sort of -- or four people are in a situation, that
12 everybody can get charged under a theory of hand of one, hand
13 of all? Are you aware of that?

14 A Yes.

15 Q So four people can get charged with sexual assault,
16 although only maybe one or two of them maybe actually
17 committed the conduct that would fit the definition of
18 battery, is that correct?

19 A Yeah. There was some missing information in the record
20 about why Mr. Phillips was charged, why the other codefendant
21 in that case was charged, and why the other two were not.
22 There was missing information about that, and so I don't know
23 why they were charged. But that was -- I did find that
24 interesting that he was charged when others were not. But it
25 was hard to know what to make of it, also.

1 MR. FALK: All right. I believe I have no further
2 questions on cross.

3 MS. SHAW: I have one or two questions of direct, if
4 that's all right.

5 THE COURT: Okay, all right.

6 REDIRECT EXAMINATION

7 BY MS. SHAW:

8 Q Dr. Carter, do you remember reading some codefendant
9 statements in the police records related to that offense?

10 A I do.

11 Q And do you recall reading about the statement of one
12 particular codefendant which specifically implicated Mr.
13 Phillips and another one of the -- another one of the four?

14 A I don't specifically remember that, but I do have the
15 record with me. I could reference it.

16 MS. SHAW: Your Honor, if she needs to refresh her
17 recollection, I would very much like for her to do so.
18 Because it's my recollection that that is what happened, is
19 that Mr. Phillips was, for lack of a better word, ratted out
20 by one of his codefendants.

21 THE COURT: I -- yeah. If she needs -- you can show her
22 the (indiscernible) book if she needs it to refresh. I don't
23 care.

24 Q Dr. Carter, if you wouldn't mind just taking a look at
25 those records, I'd appreciate it.

1 A Sure.

2 Q It would help if (indiscernible).

3 (Pause.)

4 THE COURT: And Counsel, while she's refreshing her
5 recollection, come in.

6 (Whereupon, a bench conference was held off the record in
7 the presence of the jury, but out of the hearing of the
8 jury.)

9 THE COURT: Okay. Your witness (indiscernible) the back
10 door was ear on the door. And apparently, Becky saw him, and
11 (indiscernible). Okay. I'm not going to --

12 MR. FALK: He has (indiscernible).

13 THE COURT: Your client -- putting his ear to the door.
14 Yeah.

15 MR. FALK: (Indiscernible).

16 THE COURT: I'm not going to let him testify if he keeps
17 doing that. I mean, this is not a place for games.

18 MS. SHAW: Thank you.

19 THE COURT: Uh-huh. And (indiscernible). Okay? He
20 can't leave. Okay?

21 (Thereupon, counsel returned to counsel tables and the
22 following ensued:)

23 (Open court.)

24 MR. FALK: Your Honor, we have a whole other whodunnit
25 going on. He says it wasn't him. It was somebody else who

1 came to the door, and that wherever -- his comment, whoever
2 with the badge came outside, yelled at him can't go to the
3 door. He said, it wasn't me. It was her. And then he saw
4 the lady wearing the black. That was the person. So I do not
5 think my client did it. He knows he can.

6 THE COURT: Thank you, Mr. Falk, for delivering that
7 message. I appreciate that.

8 (Pause.)

9 BY MS. SHAW:

10 Q Dr. Carter, have you had a chance to refresh your
11 recollection?

12 A I reviewed the statement made by Herman Lee Butler
13 (phonetic) which was the -- one of the defendants who was
14 involved in the incident. He spoke with law enforcement about
15 the incident.

16 Q And was the information he gave law enforcement
17 consistent with incriminating Mr. Phillips and committing that
18 sexual assault?

19 A Not -- not that I saw in this -- in this document. He
20 specifically implicates a man he refers to as Carlos. I
21 looked through my -- I'm trying to understand this
22 information. I believe he's reference Carlos Gist (phonetic)
23 who was charged and convicted of the sexual offense against
24 the -- the adult female in this case. He -- he discusses PJ
25 who, I believe, is Mr. Phillips but does not indicate that he

1 saw -- saw him with the woman in --

2 Q My recollection of that statement may be a little
3 different. Maybe I looked at a different document. But
4 regardless, he was charged with it in connection with a
5 violent robbery. And so the charge, at a minimum, should come
6 in. And we won't discuss the allegations (indiscernible).

7 THE COURT: Okay. Here's what we're going to do. I'm
8 not going to allow this particular one in. And let me be
9 clear why. I'm really doing it under 403 analysis because
10 it's not coming in to show a sexual offense. It's coming in
11 to show antisocial behavior, and so it's just adding
12 additional charges to that event, as I understand it, to show
13 that he has antisocial personality. And that ought to be
14 evident, perhaps, by the convictions.

15 And I have not heard that this is the critical turning
16 point why she believes he has an antisocial personality, and
17 because of the closeness of that this happens to be a sexual
18 offense that he's charged with -- because it is a sexual
19 offense and he is not convicted, but he's charged --

20 A Remember, Your Honor, it had to be taken into account for
21 the scoring of the actual (indiscernible) incident. So --

22 Q Well, you didn't ask, is it going -- I mean, you ask her
23 about that, but I don't have any basis why this one is
24 different. And my concern is that it is of a sexual nature.
25 So --

1 A Your Honor, I've got four other sexually-based
2 allegations --

3 THE COURT: I know.

4 MS. SHAW: -- including my (indiscernible) --

5 THE COURT: I know.

6 MS. SHAW: -- so if 14 will be excluded, I do understand.

7 THE COURT: Yeah.

8 MS. SHAW: I can't say I consent, but I do understand.

9 THE COURT: I'm with you. So this one, under a 403
10 analysis, ought be excluded. And the reason ought be excluded
11 in mind is because if it was assault, I'd feel differently
12 about it, I think. But I think the 403 analysis, I'm
13 concerned about it.

14 MR. FALK: Thank you, Your Honor.

15 THE COURT: Yes. All right. Let me have the jury back.

16 MR. FALK: Your Honor, before the jury comes in, I want
17 to see whether or not the court reporter can hear me well
18 without -- without this mic on at all because I'm -- I'm
19 concerned.

20 THE COURT: I understand your concern. I got it. I
21 don't think she can because I think that that microphone has
22 to be on for it to feed into the system. And it is a defect
23 for the system, and I am so sorry. I have to do it too. I
24 have to hold it.

25 MR. FALK: Yes, it's the attorney-client.

1 THE COURT: I know. You know what? Am I correct that it
2 won't pick up -- the system won't pick up Mr. Falk otherwise?

3 THE COURT REPORTER: It's not really picking you up at
4 all.

5 MR. FALK: So I guess --

6 THE COURT: If it's not picking him up at all, then you
7 don't need it.

8 THE COURT REPORTER: He's very soft-spoken.

9 MR. FALK: I guess I don't understand if -- we just have
10 another second, just so I understand, I just might come
11 around. So when would anyone see that because you're typing a
12 transcript -- you're not typing a transcript of what I'm
13 saying here, right?

14 THE COURT REPORTER: No.

15 MR. FALK: You're only typing what's coming from there?

16 THE COURT REPORTER: Yes.

17 MR. FALK: And this -- the numbers and that, that's just
18 kind of like a back-up record?

19 THE COURT REPORTER: This is the record. If you were to
20 request a transcript, it would come from the (indiscernible).

21 MR. FALK: Okay. But would it pick up a conversation, I
22 was having with him? Would it be --

23 THE COURT REPORTER: Yes.

24 MR. FALK: Wow.

25 THE COURT REPORTER: But it --

1 MR. FALK: Okay.

2 THE COURT REPORTER: I will -- I always, as a practice,
3 push the button.

4 MR. FALK: All right. Thank you.

5 THE COURT REPORTER: Um-hum.

6 THE COURT: Do I have to push it too?

7 THE COURT REPORTER: No, ma'am.

8 THE COURT: Just he pushes it?

9 THE COURT REPORTER: Right, correct.

10 MR. FALK: I'm just not used to it. You know, this new-
11 fangled stuff.

12 THE COURT: Okay. Well, I was noticing that last week,
13 and I was in Greenwood last week, that the digital -- it just
14 doesn't pick up folks unless they're actually speaking into
15 the mic. So and maybe your client can just help us too.

16 MR. FALK: Thank you, Your Honor.

17 UNIDENTIFIED SPEAKER: (Indiscernible).

18 MR. FALK: Yes.

19 UNIDENTIFIED SPEAKER: I'll see if (indiscernible).

20 MR. FALK: Fair enough.

21 THE BAILIFF: Ready?

22 THE COURT: Yeah, I'm ready. I'm ready, ready. Yes.

23 (Pause.)

24 (Whereupon, the jury came into open court at
25 approximately 3:30 p.m.)

1 UNIDENTIFIED SPEAKER: Ma'am, this is what I ran into
2 yesterday.

3 THE COURT: Got you. I got it. That's all. I did it.
4 (Pause.)

5 THE COURT: All right. Yes, ma'am?

6 MS. SHAW: Thank you, Your Honor.

7 THE COURT: Yes.

8 RESUMED DIRECT EXAMINATION

9 BY MS. SHAW:

10 Q So Dr. Carter, tell me what -- tell me -- sorry, Judge.
11 All right. Dr. Carter, how many sexual offenses Mr. Phillips
12 has been convicted of?

13 A Yes. He has been convicted of four sexually motivated
14 offenses.

15 Q Okay. And how many sexually violent offenses has he been
16 convicted of?

17 A He has been convicted of one sexually violent offense.

18 Q Okay. And what was the date of that conviction, if you
19 recall?

20 A He was convicted of the -- of criminal sexual conduct,
21 third degree, on June 7th -- I'm so sorry. That is incorrect.

22 MS. SHAW: Actually, Your Honor, may I approach the
23 witness?

24 THE COURT: Yes.

25 Q Dr. Carter, these are the sentencing documents of the

1 prior conviction. Can you please identify them, please?

2 A Yes. The first piece of paper is the sentencing -- the
3 sentence sheet for the Court of General Sessions of Dorchester
4 County. It's dated 6/7/21.

5 Q Okay. So he was convicted of a sexually violent offense
6 in 2021?

7 A That's correct.

8 Q Okay. And that is his most recent sexual offense?

9 A That is correct.

10 Q Okay. Can you please discuss the details of that
11 particular offense?

12 A Yes. So this particular offense occurred in January of
13 2018. Mr. Phillips was about -- he was 44 years old at the
14 time, and he sexually assaulted a 15 year-old female who is
15 the daughter of the woman he was dating. He was charged with
16 and pleaded guilty to criminal sexual conduct, third degree,
17 and sentenced to ten years of incarceration suspended to three
18 years of incarceration with five years of probation.

19 The nature of the offense involved his -- going to the
20 victim's house at -- during the 7:00 hour on a school day.
21 Mr. Phillips had volunteered to take the victim and her sister
22 to school that day. This is something that he had not done
23 before. He entered the victim's room, laid down on her --

24 MR. FALK: Objection, Your Honor. We're getting some
25 hearsay testimony in here that must be coming from police

1 reports, and I would -- I think it's hearsay, and I think it's
2 more -- I think it's another 403 problem.

3 MS. SHAW: Your Honor, this is information that she
4 reasonably relied upon in the formation of her opinion as to
5 his sexually violent predator status as well as the antisocial
6 personality disorder. The details of this offense --

7 THE COURT: If that is the foundation, I do not have it.

8 MS. SHAW: We're happy to lay it.

9 Q In assessing individuals as potential sexually violent
10 predators, you consider the facts of their underlying sexual
11 offenses; is that correct?

12 A Yes, if you have them. That's correct.

13 Q Okay. And how are those facts relevant to your
14 personal -- to your direct inquiry into whether this
15 individual has a personality disorder or paraphilia?

16 A Well, as I mentioned, part of what I -- what I understand
17 the purpose of these evaluations to be is to really understand
18 what contributed to the sexual offending. And then what's
19 more specific to these evaluations, I'm trying to understand
20 if there, in fact, was in mental disorder, personality
21 disorder that contributed to the offending.

22 So the only way to really understand that is if I -- is
23 to assess the facts of the case. So I get that information
24 from -- you know, I'm taking into consideration not just
25 information from police reports and other legal records, but

1 also information provided by -- by the respondent himself and
2 other sources if available. But this -- given that Mr.
3 Phillips pleaded guilty to this -- this offense, and it -- you
4 know, the information I'm providing here was documented in the
5 police records as what happened from the victim's perspective.

6 Q Okay. How are those details important to your inquiry?
7 What will it tell you about an individual's psychological
8 functioning?

9 A Yeah. So these -- this speaks to some of the -- the
10 reasons for the -- like, the sexual motives. It allows the --
11 it allows me to infer from the behavior. So not just -- you
12 know, only knowing that somebody was convicted of a sexual
13 offense doesn't tell me anything about whether they would meet
14 criteria for a mental disorder or not. It's -- it's the
15 details about how -- what they were doing, what they were
16 saying, how they were thinking if that -- if I can get that
17 kind of information, how they were feeling, what -- what kind
18 of other circumstances were going on at the time, how the
19 individual, you know, got to a point where they were engaging
20 in sexually offending behavior.

21 All of that's going to be -- help me determine whether
22 there are certain criteria for mental disorders that are --
23 that are met. If that kind of fits into that, it's going to
24 help me understand their risk for a sexual recidivism and,
25 kind of, what issues need to be addressed in order to mitigate

1 that risk for future recidivism.

2 Q Okay. And is this type of reliance on specific facts of
3 sexual offenses, is it generally accepted in your field of
4 practice and standard practice for this type of evaluation?

5 A Yes, absolutely. And really, the risk assessment tools,
6 if we're focusing more on that aspect of it, you know, they
7 really help us keep focused on aspects of functioning that
8 research, based on large numbers of people who have had
9 sexually offenses and have been monitored for periods of time
10 after those sexual offenses for whether they recidivate or
11 not, you know, they're -- that's where some of these risk
12 factors that I'll be talking a lot about today, that's where
13 it's coming from.

14 So it's -- by using the tools and focusing on those
15 research-identified risk factors, I'm able to see, again --
16 use the facts of the case and other information that I have
17 about the details surrounding the sexual offending to
18 understand if those kinds of issues were present for Mr.
19 Phillips, in particular.

20 Q Thank you.

21 MS. SHAW: Your Honor, I believe that's an adequate
22 foundation for the introduction of the details of the most
23 recent and other sexual --

24 THE COURT: I understand.

25 Yes, sir?

1 MR. FALK: Your Honor, can I be heard at the bench?

2 THE COURT: Sure.

3 (Whereupon, a bench conference was held off the record in
4 the presence of the jury, but out of the hearing of the
5 jury.)

6 (Pause.)

7 THE COURT: Yeah. And her risk assessment.

8 MR. FALK: (Indiscernible).

9 THE COURT: No. You've said this, this, this, and this.

10 And how does this --

11 MR. FALK: (Indiscernible).

12 THE COURT: I don't care about that. It's from police
13 reports from him. She's already testified. She just
14 testified to that. Conversations with him, details that she's
15 gleaned from the police report.

16 MR. FALK: I don't know where she was going with that.

17 THE COURT: Yeah. I understand. Yep.

18 MR. FALK: (Indiscernible).

19 THE COURT: It could be for him. I don't know.

20 (Pause.)

21 THE COURT: Can, worms. Yeah. As opposed to? All
22 right. Please, you may proceed. Thank you. Mm-hmm.

23 (Thereupon, counsel returned to counsel tables and the
24 following ensued:)

25 (Open court.)

1 MS. SHAW: Thank you, Your Honor.

2 BY MS. SHAW:

3 Q Dr. Carter, one thing I will ask you to do is when you're
4 reciting facts regarding Mr. Phillips' sexually offending
5 behaviors, please limit those facts that you recite to the
6 actual acts and conduct complained of that contributed to your
7 diagnosis and risk assessment, okay?

8 A Okay.

9 Q All right. Thank you. So let's go back to this most
10 recent offense, the criminal sexual conduct, third degree,
11 from 2021. Can you please describe what additional details
12 you found particularly relevant to your inquiry into this
13 particular offense? And we'll go into the other ones in a
14 moment.

15 A Yes. So I found it relevant that he -- Mr. Phillips had
16 arranged to come to the home of the victim without her mother
17 present and once there, he entered her room where she was
18 alone still in her nightclothes. And he approached her, got
19 close to her, laid down on the bed with her. And then I found
20 it relevant that he initiated a sexual -- a discussion about
21 her sexual history with her and began engaging in sexual
22 behavior toward her including pressing his groin against her
23 body, touching her on her upper thighs, buttocks, and breast,
24 forcing a kiss upon her, putting his mouth on her breast and
25 stomach, fondling her groin area without penetration.

1 And then throughout the incident, there were reports
2 that -- she reported that she was crying, showing signs that
3 she was uninterested in the sexual contact and interactions --
4 nature of the interactions. And yet, there -- he persisted,
5 at that time, pulled her to him, told her he wanted to be with
6 her, and indicated, at least twice, that he could make her
7 feel good sexually.

8 Once these -- once he became aware that the boyfriend of
9 the victim was in the home and had called the police, was
10 begging not to -- the victim not to tell of the incidents,
11 wanting to keep them private, but also still privately telling
12 her that he wanted to be with her.

13 Q And did he display any reaction that was significant to
14 you when the police did arrive?

15 A Yes. He -- once the police arrived, they tried to have a
16 discussion with the victim -- at that point, the alleged
17 victim -- about what had happened. And Mr. Phillips kept
18 trying -- the police report indicates he kept trying to come
19 in and enter the room where they were talking and had to be
20 repeatedly told to -- you know, to give them privacy.

21 Q Okay. So what does that indicate to you in terms of the
22 initial risk to recidivate, at least based on that
23 information?

24 A So I mean, this -- this tells me that there's some sexual
25 preoccupation, thinking, fantasizing about the victim, that

1 he -- you know, that he's involved with the victim's mother,
2 and yet he is pursuing sexual contact with the victim.

3 Q And did the age of the victim have any relevance to you?

4 A Yes. This -- the age of this victim is -- she's actually
5 similar in age to a prior victim and I'll talk about in a few
6 minutes. And -- and so this -- this was a situation where he
7 had already gotten in trouble in the past for forcing a sexual
8 conduct -- contact on a juvenile. And this was another
9 incident that was, you know, similar in some ways,
10 particularly the juvenile's age.

11 Q Okay. And that first incident, when was it?

12 A That was in 1994. He was 20 years old at the time of
13 that incident. Or excuse-me, 20 years old.

14 Q My math skills are not wonderful, but from 2017 to 1994,
15 that's more than 20 years? Almost 20 years?

16 A Yes.

17 Q Okay. So let's discuss that first offense. Can you tell
18 me the relevant details of that offense, and how they factored
19 into your assessment?

20 A Yes. So this offense occurred in August, 1994. As I
21 said, Mr. Phillips was 20 years old. The victim of that
22 incident -- of that offense was 14 years old. This was a
23 friend -- a friend's sister -- a friend of his sister, younger
24 sister. On the date of the offense, Mr. Phillips showed up to
25 her -- the victim's house. She was home alone. This was

1 sometime after school. He said he needed to use the phone.

2 She told him that she did not want him to use the phone,
3 but he did anyways, so ignored her -- her -- what she had told
4 him about that. He then used force to restrain her and remove
5 her pants. And then he forced sexual intercourse on the
6 victim, and she reported she was screaming during the assault
7 and also fighting back, which is relevant given that -- you
8 know, that those kinds of, again, very overt indications that
9 there is no interest in the sexual encounter, that he's
10 persisting in his sexual behavior despite that.

11 Q Despite clear indications of non-consent?

12 A Correct.

13 Q Okay. And do you recall what he was charged with in
14 that offense?

15 A He was initially arrested on charges of criminal sexual
16 conduct, first degree and burglary, second degree. But he was
17 indicated only on a charge of criminal sexual conduct with a
18 minor second degree.

19 Q What was the actual conviction?

20 A The actual conviction was contributing to the delinquency
21 of a minor. It appears that the data was a bit inconsistent,
22 but it appears that that was a -- part of a negotiated plea
23 deal.

24 Q But you have no direct knowledge of that?

25 A Correct.

1 Q And that is not relevant to your inquiry?

2 A Correct.

3 Q Okay. Now, let's talk about his, technically, second-
4 known sexual offense, but it would be the third one we've
5 discussed today. And I'll share with you, that was March 29th
6 of '99. Do you have that information available to you?

7 A Yes, I do.

8 Q Okay. So let's discuss that. Tell me about that
9 offense.

10 A Sure. So this offense is different from the others that
11 we -- that I've discussed so far. Mr. Phillips was 25 years
12 old. He approached an adult female stranger who -- while she
13 was at a drug store and fondled her buttocks. Specifically,
14 it's indicated that he was -- he touched the victim in an
15 inappropriate manner in that area of her body. And he did
16 that on two occasions in that short time period.

17 Q And what was he charged with in that offense?

18 A He was charged with assault and battery of a high and
19 aggravated nature.

20 Q Okay. Do you know what he was convicted of?

21 A He was convicted of the same.

22 Q Okay. And what about this victim being a complete
23 stranger is relevant to your inquiry?

24 A So part of the -- what's identified as -- in the static
25 risk factors are stranger victims because most sexual assaults

1 actually occur between people who are acquainted with one
2 another. And so when there's a stranger victim, if somebody's
3 willing to engage in sexually assaultive behavior toward them,
4 that has been shown to -- as statistically predictive of
5 increased risk.

6 Q Okay. And during your interview, Mr. Phillips actually
7 admitted to this offense; is that correct?

8 A That's correct.

9 Q Okay. And was there anything else significant about this
10 particular one that factored into your risk assessment
11 overall -- the actuarial risk assessment?

12 A No. I mean, he -- there was -- like, the circumstances
13 surrounding the offense. I mean, he talked a little bit about
14 how substance use was -- was a factor for him in that offense.
15 And when substances are part of the sexual offending behavior,
16 they can -- you know, that can be a risk -- a risk-relevant
17 issue that needs to be addressed, then, to reduce future risk.

18 Q Let's take a little segway real quick. Mr. Phillips, in
19 fact, stated to you that he blamed alcohol and drug use for
20 most of his offenses, correct?

21 A He did put somewhat of an emphasis on the substance use,
22 yes.

23 Q And in your experienced and based on your knowledge, is
24 substance abuse a precipitator or is it going to cause someone
25 to offend in a sexual way?

1 A It's not going to cause somebody. Now, it -- it can --
2 you know, of course, substance use, alcohol use can have a
3 disinhibiting kind of effect, but there's going to be factors,
4 other personality factors or situational factors that are
5 going to contribute to that -- that offending. Now, I
6 suppose, if somebody had, you know, one sexual offense. They
7 were, you know, just kind of completely intoxicated or very
8 heavily intoxicated at the time and sexually offended and
9 never had any other history, you could maybe argue that there
10 was a more direct relationship there. But typically, that's
11 not -- that's not what we're seeing.

12 Q So would it be fair to characterize substance abuse as
13 adding fuel to an existing fire in a case similar to Mr.
14 Phillips?

15 A Yes. That would be a fair characterization.

16 Q Okay. Thank you. Now, let's get back to his other
17 stranger offense from June of 1999. Can you discuss that one
18 and how it was relevant to your inquiry?

19 A Yes. So this offense occurred in June of '99, so this
20 was just several months out of -- after that incident that
21 occurred in the drug store.

22 Q I'm going to ask you, are you aware of whether Mr.
23 Phillips had pending charges for the March 1999 incident at
24 the time he committed the second one?

25 A Yes. I'm aware of that, and he did. He -- those charges

1 had not been settled.

2 Q Okay.

3 A Kind of coincidentally, it was right around the time of
4 the June incident that he was formally indicted for that March
5 offense.

6 Q Okay. What does an offender having pending charges at
7 the time they reoffend in a sexual way -- why is that
8 important to your inquiry, if at all?

9 A Yeah, it is important because the -- particularly, with
10 the -- well, with any of the risk assessment tools, I mean,
11 we're really thinking about if somebody is detected for a
12 sexual offending behavior -- so in this case, he was
13 confronted by the victim, police were called, law enforcement
14 came, they arrested him, they detained him. And then he
15 continued to engage in similar behavior.

16 He was actually on -- it's my understanding he was on a
17 work-release program through the detention center, so that
18 just means that he's allowed to leave the detention center to
19 go to work during the day, and then he would have to return to
20 the detention center that evening, you know, and stay
21 overnight. So he was on a work-release program while -- or at
22 the time of that June 1999 offense.

23 And so this is all relevant because, you know, when we're
24 thinking of -- like, that then makes this another prior
25 offense which, again -- or which the more times people are

1 willing to engage in sexually offending behavior after they've
2 already had some sort of sanction or punishment or detection,
3 that's -- that, too, will affect their risk for sexual
4 recidivism.

5 Q And is there any sort of indication that there may be a
6 lack of volitional control, and is that part of the patterns
7 you look for in conduct over time?

8 A It is part of what I'm looking for. And specifically,
9 for these precommitment evaluations, that is part of -- part
10 of the question if there's some volitional impairment. And
11 yes, if he is engaging in that behavior again after
12 sanction -- in this case, it was pretty quickly after
13 sanction, then that is -- that is an indicator of volitional
14 impairment.

15 Q Meaning that he can't control his behavior?

16 A That he has serious difficulty doing that, correct.

17 Q Okay. Now, so we've gone through four sexual offenses
18 from 1994 through 2018. Does Mr. Phillips have any other
19 criminal offense history, either violent or nonviolent, and if
20 so, can you please discuss that?

21 A Yes. He does have additional criminal history. Mr.
22 Phillips was first -- well, he was arrest -- has been arrested
23 approximately 27 times for incidents involving different types
24 of conduct. Some of -- the rest were related to alleged
25 violent behavior, probation violation, substance-related

1 offenses, driving offenses. He told me his first arrest
2 occurred when he was 15 or 16 years old. I didn't have
3 official records that corroborated that.

4 His criminal history records that I had showed he was
5 first arrested at age 19. There was really only one period
6 from the time that he was 19 to the time he was incarcerated
7 for those most recent sexual offense that he went longer than
8 a year without having any kind of contact with law
9 enforcement. He has 18 non-sexual convictions. These
10 include -- you know, there's multiple convictions for his
11 possessing illegal substances and for driving offenses, like
12 driving under suspension.

13 He has two convictions that are related to his fleeing
14 from law enforcement and two that are related to his
15 involvement in an armed robbery.

16 Q And how does that factor into your assessment of whether
17 there's a personality disorder or paraphilia that would be
18 relevant to this inquiry?

19 A So a person's -- you know, even though I am -- this
20 evaluation is focused on sexual recidivism, in order to assess
21 diagnosis, I am wanting to get a picture of the person's
22 overall functioning. And so I want to look at the criminal
23 history to try to understand, you know, if they're able to
24 learn from contact with law enforcement, if they're responding
25 to -- you know, kind of have a socially normative

1 relationship, so to speak, with the -- with laws and rules and
2 able to follow those, abide by rules, if they are, you know,
3 having caring relationships and not harming other people,
4 like, all of that information is going to be relevant to
5 diagnosis for these evaluations.

6 Q Okay. And let's talk about Mr. -- since we're on the
7 topic, let's talk about Mr. Phillips' juvenile behavior.

8 A Okay.

9 Q Is that important to your inquiry when you're trying to
10 figure out if someone has a personality disorder?

11 A Yes, it is.

12 Q Okay. How is it relevant?

13 A Personality disorders, by definition, are -- you know,
14 are longstanding, pervasive, inflexible patterns of
15 functioning. And so, that really -- there should be some
16 signs of them emerging in these -- this adolescent period.
17 And so for -- you know, for a personality disorder like
18 antisocial personality, in particular, there does need to be
19 some evidence that there's conduct -- serious conduct problems
20 prior to age 15. And so -- so that, like with other
21 personality disorders, you know, I'm needing to understand
22 what things were looking like at the period.

23 Q Okay. And with respect to Mr. Phillips, what did you
24 find out about his juvenile history by his own report as well
25 as your own inquiry into the records?

1 A So I -- I discovered that he -- he did have some conduct-
2 related problems prior to age 15. In particular, he talked
3 about shoplifting. He talked about some instances of truancy
4 where he's a young juvenile skipping full days of school. He
5 also talked about getting in repeated fights at school, and
6 that was corroborated by collateral informant as well.

7 Q Okay. Specifically, by family members you spoke to?

8 A By a longtime friend of his, yes.

9 Q Okay. Thank you. So did you -- you inquired into Mr.
10 Phillips' substance abuse history we just discussed a moment
11 ago, correct?

12 A That's right.

13 Q Okay. And did you find any evidence that he has a
14 substance use disorder?

15 A Yes, I did.

16 Q Okay. And what is that, and why did you come to that
17 conclusion?

18 A He had -- he endorsed regular use of alcohol, cannabis,
19 and cocaine at various points in his life. But he -- he -- in
20 asking him further questions, it became clear that he had a
21 pattern of problematic use specific to alcohol and cocaine.
22 And -- and so, really, when we're considering substance use
23 disorders, there needs to be evidence that -- that there's --
24 there's a long list of criteria. But the important piece is
25 that this pattern of substance use is actually causing either

1 distress or impairment for the person. And that was a case
2 for both Mr. Phillips' alcohol use and cocaine use.

3 Q And what did Mr. Phillips specifically describe to you
4 about his use and whether it contributed or did not
5 contributed to his offending?

6 A Well, he talked about, in particular, in the mid- to
7 late-'90s, having -- struggling with issues related to his use
8 of cocaine. So he was having difficulty controlling his use.
9 He was craving the substance. He was having a lot of negative
10 thoughts about himself related to his use, and so he wasn't --
11 he was really ashamed of it. Didn't want to be -- didn't want
12 to feel like he needed it like that. And he talked about --
13 for the March 1999 offense, talked about, kind of, being in
14 that cycle at that time and -- and attributed some of his
15 behavior around that time to wanting to get help for this --
16 this cocaine use problem that he had.

17 Q Specifically, he said he wanted to get locked up again?

18 A That's right. He was viewing his -- seeing his going to
19 jail as the way that he could get help.

20 Q Why is that attitude that in order for me to get clean, I
21 have to go back to jail, why is that risky?

22 A Well, I mean, it kind of speaks to difficulties with
23 problem-solving and working through issues. I mean, if he --
24 and especially, considering how he is trying -- you know, how
25 he was reportedly trying to get back to -- to jail through

1 engaging in sexually offending behavior, is -- is problematic.

2 I will note, though, that he did participate in an
3 evaluation. It was right around the time he was -- or right
4 before he was convicted and sentenced for these -- these two
5 assault and battery of high and aggravated nature. And he was
6 not, at that point -- he was indicating some substance use
7 problems for that March offense, but he wasn't saying the same
8 types of things that he said to me at that point.

9 One notable discrepancy is he told that -- that evaluator
10 in year 2000 that at the time of the June 1999 incident, he
11 was sober. When -- when I met with him, he reported the
12 opposite information. He said he was -- had again used
13 cocaine when he was out on the work release and -- and was,
14 you know, again, still struggling with that.

15 Q And so let's go to your actual interview with Mr.
16 Phillips. Were his accounts of these four different sex
17 offenses consistent with what was contained in the records?

18 A The accounts of the two 1999, some aspects of -- like, of
19 the actual incidents, he agreed that that reflected what
20 happened. But as far as the 1994 and the 2018 offenses, he
21 said none of those facts were true.

22 Q So he disputed those facts?

23 A That's correct.

24 Q Okay. And you discussed many things with Mr. Phillips
25 during your interview, correct?

1 A That's right.

2 Q Okay. And in your opinion, was he forthcoming with you?
3 Was he considered a reliable historian?

4 A When it came to his sexual offending history, he did not
5 strike me as a reliable historian. He did state to me that he
6 intended to be truthful and honest with me, and I think that
7 there -- there were other aspects of his, kind of, functioning
8 that he appeared forthcoming about.

9 Q But not that particular aspect?

10 A Correct.

11 Q Okay. Now, while Mr. -- Mr. Phillips has been in and out
12 of prison, basically, his entire adult life. Based on your
13 record and the information you've received, has he spent any
14 time in SCDC, which is also South Carolina Department of
15 Corrections?

16 A Yes, he has.

17 Q Okay. And how was his behavior when he was in the
18 Department of Corrections custody? Was it good behavior, bad
19 behavior, somewhere in between?

20 A It depended on the incarceration period. So during his
21 first period of incarceration, he was institutionally
22 convicted of seven disciplinary infractions or rule
23 violations. That was -- that first period was in 1996 to
24 1997.

25 Q And how was his conduct after then?

1 A He had two kind of brief periods in SCDC after that. He
2 didn't receive any rule violations or infractions during
3 those. However, during this longest period of incarceration
4 in SCDC which was from 2006 to 2014, he was infracted for 14
5 rule violations.

6 Q And approximately how many of those rule violations were
7 sexual in nature?

8 A There were -- I think he was charged -- he was charged
9 with six. He was institutionally convicted of five sexually-
10 related rule violations.

11 Q Okay. And can you please briefly give the facts of those
12 violations and how they relate to your assessment of risk and
13 whether there's a personality disorder present?

14 A Yes. So institutional behavior is going to matter for
15 this evaluation because it -- it kind of speaks to how the
16 person is able to function or control their behavior when
17 they're in a controlled setting, a structured, confined
18 settling where there's lots of eyes on them. There's, you
19 know, strict rules and structure. So it gives an impression
20 about how they're able to function in a different -- a very
21 different type of environment than -- than a community living
22 environment.

23 And so when there is this sexual misconduct, similar to
24 other types of sexual offending behavior, I'm wanting to
25 understand what was at the heart of that and -- and why that

1 was occurring. And for Mr. Phillips, I mean, it -- he -- it
2 really reflected kind of a disregard for the individuals he
3 was specifically masturbating in front of, showing his
4 genitals to staff members. Sometimes, this was taking place
5 in the hallway. Sometimes, he was -- this was when -- like,
6 when he was waiting in the medication line to get his
7 medication.

8 He -- there was an incident where he, kind of, touched
9 the leg of a nursing staff. This was also happening in a
10 detention center as well. There was about nine incidents that
11 were cited in records I received from the Al Cannon Detention
12 Center. So all of that and kind of taking into account, it
13 kind of speaks to his sexual thinking and kind of urges, and
14 how he's able to control those and manage them in that
15 environment and how much he's really interpreting others'
16 behaviors, too, which he -- you know, I think he talked during
17 the interview about being or thinking that some of the women
18 that he was showing his -- his genitals to were interested in
19 that -- would be interested in that kind of behavior.

20 Q During your interview with Mr. Phillips, did he describe
21 his sexual behaviors as an addiction?

22 A He did describe his behavior -- his sexual behaviors as
23 an addiction.

24 Q Okay. Can you give some context, understanding our
25 pretrial rulings, to that statement?

1 A Yes. So he was -- you know, there have been times that
2 he was involved in -- in relationships. And even after the --
3 after the -- he was released from that long period of
4 incarceration in December of 2014, he became involved in a
5 committed relationship. And after -- basically, throughout
6 his adult life, however, he has sought sexual encounters
7 outside of his relationships, and that was the context in
8 which he made --

9 MR. FALK: Objection, Your Honor. May we approach?

10 THE COURT: Okay.

11 (Whereupon, a bench conference was held off the record in
12 the presence of the jury, but out of the hearing of the
13 jury.)

14 (Thereupon, counsel returned to counsel tables and the
15 following ensued:)

16 (Open court.)

17 THE COURT: Uh-huh. You may proceed.

18 MS. SHAW: Thank you.

19 BY MS. SHAW:

20 Q So Dr. Carter, with an individual that self-reports that
21 his own sexual behavior is an addiction, what does that mean
22 to you? How does that factor into your judgment and your
23 overall analysis?

24 A That tells me something about how they're relating to
25 their own sexual thinking and urges. And so he's -- through

1 that statement, I mean, he's identifying that there are --
2 that he's had some strong urges to engage in sexual behavior
3 with other people that have been difficult for him to control.

4 Q Okay. And specifically, do you recall one incident of
5 when he exposed himself in prison in a DAODAS class? It's
6 D-A-O-D-A-S. Do you recall reading about that?

7 A Yes, I do.

8 Q Can you please discuss the details of that and why it's
9 relevant to your inquiry?

10 A Yes. So this is -- it's my understanding that this was a
11 class that was for substance abuse-related or, you know,
12 psycho-education, something like that, for relating to
13 substance abuse that Mr. Phillips was enrolled in while in a
14 detention center. And there was an incident report indicating
15 that he, while in the class, removed himself from the
16 classroom to use the restroom -- or that's what -- that's what
17 was documented -- and returned to the classroom after that.
18 And I'm just finding my notation to make sure I get this
19 right.

20 Okay. Okay. When he returned to the classroom, he took
21 a seat in the rear of the classroom. And it's -- the document
22 indicates at the time, the teacher witnessed him pull down his
23 pant and grope himself. He was then retained after the class
24 and removed -- ultimately, removed from the program after
25 that.

1 Q Okay. Does that tell you anything about his ability to
2 control himself or willingness to?

3 A Yeah. I mean, it -- it's, kind of, reflective of these
4 other incidents. Although, you know, this is a situation
5 where he can -- he would clearly be -- is around other people.
6 There would be witnesses to his behavior. The teacher -- you
7 know, an authority figure did not deter -- he did not
8 experience any deterrence even those circumstances, continued
9 to engage in that behavior which is similar to the behavior he
10 engaged in at other points during his detainment and
11 incarceration.

12 Q Okay. Now, as part of your interview process, you asked
13 Mr. Phillips for his own assessment of his risk and his sex
14 drive, right?

15 A Yes.

16 Q And what did he report to you about how risky he thinks
17 he is and what he thinks, or would like you to believe his sex
18 drive is?

19 A Well, he acknowledged that in the past his sex drive was
20 high, particularly in the '90s when he was in his twenties or
21 so. But he said his current sex drive was very low. Which
22 was inconsistent with some of the other information that he
23 had told me. And then he also believed that he would not, you
24 know, be at risk for sexual offending in the future.

25 Q And he expressed an interest to you in Japanese bondage,

1 isn't that correct?

2 A He did mention that -- that was something that was
3 interesting to him, that had recently become interesting --
4 interesting to him.

5 Q And he expressed a desire to pursue this form of bondage
6 if he were released, right?

7 A He said he was interested in taking a class about it.

8 Q Thank you. Now, while Mr. Phillips has been imprisoned
9 or did detention centers, has he had any sex offender specific
10 treatment?

11 A No, he has not.

12 Q Okay. And why is this important to your inquiry?

13 A Well, part of it is -- you know, there are -- he has had
14 multiple instances where he's engaged in sexual offending
15 behavior, and you know, that they're -- and so, you know,
16 whether he is -- he himself is understanding some of the
17 reasons for that and is wanting to address some of those
18 reasons, is taken into consideration.

19 Q Okay. Now, based on the available document -- and
20 actually, I'll ask you one other question. In your field, is
21 an assessment of the likelihood for future behavior based on
22 just past behavior or a variety of other factors?

23 A Can you ask that question again?

24 Q Sure. In your field doing sex offender evaluations, what
25 is the best predictor of future behavior? Is it past

1 behavior, is it actuarial risk, is it the whole complex; what
2 is it?

3 A I mean, there's -- past behavior is an extremely
4 informative aspect of -- of the risk assessment in general.
5 So like, just to give an example. If, you know, if I was
6 somebody who never was -- has never sped on -- on the highway,
7 you know, you would -- it would be really hard to know if I
8 would ever do that -- engage in that behavior again. But if
9 there's behavior that somebody has engaged in before, then
10 that's going to make them more likely to engage in that
11 behavior again.

12 And so that doesn't mean necessarily that they will, but
13 that is an important consideration. And taking into account
14 for the risk assessment instruments. Now, there are also
15 other aspects of functioning that are -- have been associated
16 with a likelihood -- a person's likelihood to sexually
17 reoffend. So of course, we're considering the whole picture
18 of the person, specific -- you know, focusing on those
19 relevant pieces of functioning to sexually recidivism, as
20 determined by the research.

21 Q Okay. And so based upon your knowledge and education,
22 your interview with Mr. Phillips, your records review, were
23 you able to come to any diagnostic conclusions regarding Mr.
24 Phillips?

25 A Yes, I was.

1 Q Okay. And what diagnostics -- well, first of all, what
2 did you consider when you were assessing Mr. Phillips, in
3 terms of a personality disorder or paraphilic, which did you
4 consider?

5 A For these evaluations, I want to consider both types of
6 disorders as well as anything else that might be relevant.
7 But for Mr. Phillips, there was evidence of personality
8 disorder. There was not evidence of paraphilic disorders.

9 Q And what personality disorder did you consider or
10 personality disorders, if you considered more than one?

11 A I considered whether Mr. Phillips met criteria for
12 antisocial personality disorder.

13 Q And do you happen to have your DSM-5 with you?

14 A I do.

15 Q And can you explain to the Jury what the DSM-5 is?

16 A Yes. So it's -- the technical name is Diagnostic --
17 Diagnostic Manual of -- Statistical and -- okay. Wow.
18 Diagnostic and Statistical Manual of Mental Disorders, there
19 we go. And this is its fifth edition of the text revision.
20 This is a compilation of psychiatric disorders that -- that
21 was put together by the American Psychiatric Association.
22 It's used as a guide for clinicians to diagnose the -- a
23 variety of mental disorders.

24 Q And is antisocial personality disorder one of the listed
25 disorders in the DSM?

1 A Yes, it is.

2 Q Okay. Can you please flip to that so we can go over the
3 criteria?

4 A Sure.

5 Q So let's start with the initial criteria, and if you
6 could just tell the Jury what those are and how they relate to
7 Mr. Phillips?

8 A Sure. So the -- so there are four main areas that --
9 things that need to be met in order to have a diagnosis for
10 antisocial personality disorder. The first is a pervasive
11 pattern of disregard for and violation of the rights of
12 others, that occurs since age 15 years old and is indicated by
13 three or more of the seven identified criteria. So I'm going
14 to go through each of the criteria and indicate which ones
15 apply and how they apply to Mr. Phillips.

16 So first is a failure to conform to social norms with
17 respect to lawful behaviors, as indicated by a repeatedly
18 performing acts that are grounds for arrest. So Mr. Phillips
19 has had, as we discussed, four sexually motivated offences.
20 He's had many arrests for nonsexual offenses. He sold illicit
21 drugs for a living and had at least two probation revocations.
22 He's had many institutional infractions, that involved his
23 failing to follow directives; assaultive behavior and sexually
24 offensive behavior. And so it's my opinion, that he meets
25 that criteria.

1 Q And what other criteria do you believe applied to him of
2 the seven, if not all of them?

3 A Yes. So another one listed here is the impulsivity or
4 failure to plan ahead. I believe this applies to Mr.
5 Phillips, because he has had marked difficulty considering the
6 consequences of his actions. This is illustrated by some of
7 his recurrent engagement in the same types of offending
8 behavior, even though he's repeatedly sanctioned. He's also
9 had difficulty establishing a routine, following-through with
10 plans. This was, you know, indicated by reports from his
11 significant other, his wife, who I talked to.

12 Also -- he also conveyed that or during the evaluation,
13 he conveyed that he was thinking about and making plans to
14 start his own business, after his release from prison. But
15 nobody that I talked to seemed to know anything about this.
16 And it appeared to me that he wasn't fully committed to this
17 plan, had a few different other ideas. Bless you. His wife
18 described him as impatient as well, so those are some examples
19 of how I think this impulsivity fits for him.

20 Q Okay.

21 A And then in addition to that, the third criterion is
22 irresponsibility, which I believe also applies to Mr.
23 Phillips. He has had difficulties maintaining consistent
24 employment. Has had problems fulfilling financial
25 obligations, specifically, keeping up with child support

1 payments. He's been repeatedly arrested for driving under
2 suspension. Hasn't consistently attended some of the classes
3 that he needed to -- or that he said were important for him to
4 take during his current incarceration, specifically, the
5 Alcoholics Anonymous support group.

6 Q And with the violations and revocations of his probation
7 also be relevant to that factor?

8 A Yes. Because he -- those were some of the details were
9 related to his revocations suggest that he wasn't meeting with
10 his probation officer and not -- you know, that also suggests
11 irresponsible behavior and not kind of, keeping up with the
12 requirements of that. All right.

13 The fourth criterion that he meets is the lack of
14 remorse, as indicated by being indifferent to or rationalizing
15 having hurt, mistreated or stolen from another. In discussing
16 Mr. Phillips' criminal history with him, he was seldom taking
17 responsibility for the behavior. Even, you know, there was
18 some assaultive behavior that he wasn't convicted of, but he
19 admitted that that did in fact -- like, he did participate in,
20 where somebody was -- from police reports, seriously injured.
21 He again, like admitted that yeah, he was involved in that.
22 But wasn't seen, like he essentially justified the actions --
23 his actions at the time.

24 You know, even when -- this is important because as --
25 you know, I think we all have had experiences where, you know,

1 we acted in a manner that we were -- that's regretful, right,
2 common human experience but, you know. And maybe -- but maybe
3 at the time we were thinking about it in a certain way and
4 thinking that, yeah that was the right thing to do, but then
5 over time, you kind of gain perspective and have a shift in
6 how you're thinking about something. I wasn't seeing that
7 in -- with Mr. Phillips. He was still kind of stuff in
8 this -- this view of that -- the things -- even the things
9 that he did, that -- where there was some harm to other
10 people, including that 1994 sexual offense -- most recent
11 sexual offense, he was denying that, minimizing the impact,
12 making accusations about the victims being dishonest. Which
13 suggests that there was a lack of remorse there. And also,
14 kind of as we talk about shifting blame to some of the
15 substance abuse rather than taking responsibility for it.

16 Q Mr. Phillips, in fact, believes he's the victim; is that
17 correct?

18 A There was a feel that he -- that he was the victim of --
19 of a lot of the circumstances of his -- some of his criminal
20 activity.

21 Q So blaming others, not taking responsibility, not
22 expressing any sort of emotional remorse, this is all relevant
23 to your formulation for antisocial?

24 A Yes.

25 Q Okay. Do any of the other criteria apply to Mr.

1 Phillips?

2 A Yes. He -- he has a history of this recklessness,
3 aggressiveness, which are each by themselves criteria for
4 antisocial personality disorder. So the criterion for
5 recklessness -- it specifically says reckless disregard for
6 safety or -- of self or others. You know, an example that
7 comes to mind for that, is that he was, you know, during his
8 drug dealing, there was period that he stopped but then
9 returned back to that behavior, was staying and you know,
10 continuing to engage in that and have firearms in the home
11 even with children there. So there's just, kind of this
12 disregard for -- for the safety of individuals and that -- at
13 that point, this is reflected in sexual offending as well.

14 And then the -- there's irritability or and
15 aggressiveness, as indicated by repeated physical fights or
16 assaults. This too and the -- in the past has applied --
17 present in many recent incidents of physical aggression but
18 that was certainly something that -- that applied longer ago.

19 Q Okay. And so one question. We discussed conduct
20 disorder before age 15. And you said you found evidence of
21 that. Does the DSM require a diagnosis at that point, or does
22 it just have to be that there's evidence that this individual
23 was engaging in unlawful behaviors as a juvenile?

24 A The DSM specifically said -- says that there is evidence
25 of conduct disorder with onset before age 15 years. It does

1 not indicate that a diagnosis needed -- of conduct disorder
2 needed to have been made, just that there was evidence of it.

3 MS. SHAW: And -- Your Honor, can we just take a brief
4 sidebar?

5 THE COURT: Yes.

6 MS. SHAW: Thank you.

7 (Whereupon, a bench conference was held off the record in
8 the presence of the jury, but out of the hearing of the
9 jury.)

10 THE COURT: Yeah.

11 All right. Yeah.

12 Ladies and gentlemen, that little sidebar just let me
13 know that this was a good stopping place. And we'll pick it
14 up in the morning. And the reason that works pretty well, is
15 that lets me give you your first evening instruction, which
16 takes a little bit longer. And so it works out pretty well.

17 Ladies and gentlemen, do not discuss this matter or allow
18 anyone to discuss it with you. You're going to be going home,
19 and no doubt there's going to be someone curious about what
20 you -- where you've been and what you have been up to. And I
21 do not expect you to go home and have whoever in your life can
22 say, so what'd you do today? I can't tell you.

23 That's not going to bode particularly well. So we need
24 to talk about it. Yes, you can say, remember that jury
25 summons; I had to go to St. George. I went. I've been

1 selected to serve on a jury. And then everybody wants to know
2 what kind of case is it. You can say it is a civil matter as
3 opposed to a criminal matter. And then, here's the next thing
4 you got to tell them, the judge has told me that I cannot
5 discuss this matter or allow anyone to discuss it with me, and
6 that would include you. Let them get upset with me. Don't
7 let them get upset with you. Put it on me, not you.

8 And I will share with you, that when you have been
9 discharged from your service on this jury, you will be at
10 liberty to talk about this case, and will actually,
11 specifically discuss that. But for this evening, I'm going to
12 ask you, please do not discuss this matter or allow anyone to
13 discuss it with you, because you will be -- to make up your
14 mind. And remember, it is critical that you are able to
15 listen open-mindedly to everything, so I'm going to please,
16 ask you to be mindful of that.

17 Remember the admission of your cell phone on -- but if it
18 follows you into the courthouse tomorrow, just remember to
19 please give it to our bailiff.

20 Now, does anybody work at night? Anybody got to work at
21 night?

22 Not tonight. Not tonight. Oh, good. Thank you for
23 that.

24 Now, when you call in, and they say, blah, blah, blah,
25 blah. If they do that, who do you put it on?

1 MR. FALK: On the Judge.

2 THE COURT: Thank you.

3 Judge's order, right? And if you got any questions,
4 she's excited to talk to you in the morning. Just get me a
5 name and a phone number, okay? Don't want -- let them be
6 upset with me. I just don't want them upset with you.

7 MR. FALK: (Indiscernible).

8 THE COURT: Well, it didn't bother me one bit.

9 So anyone else -- and the reason is obviously clear. You
10 cannot be expected to work all night and give the kind of
11 attention to these matters that you all have been giving to
12 these matters. You can't do it, it's not fair to you, and
13 it's not fair to the litigants either. So please be mindful
14 of that for me.

15 Now, we're going to start in the morning at 9:30. And we
16 will continue tomorrow just as we have done today. Oh, and
17 no -- I got a lot of young people in our jury. For those of
18 you who are not the younger group, no Columbo. Remember
19 Columbo? No Columbo -- (indiscernible). No Columbo.

20 For those of you who are like, who is that and why do we
21 care? For those of you who don't know about Columbo, he was
22 an investigator, and he was kind of goofy acting. And he
23 like, squeaky shoes, and he would sort of stumble into
24 information. You cannot do any Columbo. You cannot go to the
25 internet -- we can find out anything and everything just

1 about, on the internet. But you cannot, you cannot go to the
2 internet. Don't even research a definition. You must receive
3 all of the information from which you will make up your mind,
4 here in court, while court is in session. Because we've got
5 to be able to control the information that you receive. We
6 have to do justice for everyone. So please, be mindful of
7 that.

8 So if your fingers are wanting to do the walking, just
9 bring them back, don't let them do that.

10 Now, biscuits or donuts? Can we do biscuits or donuts,
11 or just biscuits?

12 Is it biscuits and donuts, or just donuts, or biscuits?

13 MS. SHAW: (Indiscernible).

14 THE COURT: It's just biscuits.

15 Okay. Everybody cool with biscuits? So just when you
16 have your little bowl of Wheaties in the morning, have about a
17 half a bowl. Because we'll have biscuits for you in the
18 morning. 9:30. 9:30. I so look forward to seeing you.

19 Now, let me just say to you that, since we have so many
20 people coming from Summerville, I do know that there is some
21 construction on the road. So just if you get to be the lucky
22 group that gets to stop and all of a sudden the South Carolina
23 Department of Transportations decides that now is when we're
24 going to move the culvert. I don't know what that means.
25 Don't worry, no worries. Just get here, toot sweet, just come

1 and proceed. But don't anybody get a stomach upset because
2 you get behind in the public transportation in the middle of
3 (indiscernible).

4 But in my experience, they don't really -- I think
5 they've been working on Highway 78 for the last 12 years, I
6 really do.

7 MR. FALK: Ever since we've been paying taxes, ma'am.

8 THE COURT: Last 12 years. But this time, it seems to be
9 that the stop is taking about three and a half to four
10 minutes, I think you'll be fine. Unless tomorrow's the day
11 that culverts are being moved, and it is what it is. Just
12 take -- be prudent and we will see you in the morning at 9:30.
13 I thank you so much for today.

14 Everybody clear, do not discuss this matter with anybody
15 or let anybody discuss it with you, right?

16 (Whereupon, the jury exited the courtroom at 4:40 p.m.)

17 Have a great evening.

18 Yep. Tell them.

19 MR. FALK: I am.

20 THE COURT: Tell them.

21 And of course, I know I don't need to tell you, I know
22 you know. But in the abundance of precaution, do not discuss
23 your testimony with anyone unless (indiscernible).

24 Thank you so much.

25 All right. Anything before we take our leave?

1 MS. SHAW: Not from the State, Your Honor.

2 MR. FALK: No, Your Honor.

3 THE COURT: Thank you. I'll see you all in the morning,
4 9:30.

5 MS. SHAW: Thank you, Judge.

6 THE COURT: Thank you.

7 (End of Transcript of Record)

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CERTIFICATE OF PROOFREADER

State of South Carolina)
)
County of Dorchester)

I, HEIDI GARDNER, a court-approved proofreader, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Dorchester
County, South Carolina, on the 5th day of December, 2022.

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

May 5, 2023



Heidi Gardner, CDLT-167
Proofreader

1 State of South Carolina)
2 County of Richland) Court of General Sessions
2022CP1800791

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4 In The Matter of the Care and) Transcript of Record
Treatment of Perry Gustus)
Phillips)

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December 6, 2022
Richland, South Carolina

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B E F O R E:

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The Honorable Brooks P. Goldsmith, Judge; and a jury.

10

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

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Susanne Shaw, Attorney
Attorney for the State

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James Falk, Attorney
Attorney for the Defendant

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Heidi Gardner
Proofreader

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1	<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Rachel Carter			
4	Ms. Shaw	8		54
5	Mr. Falk		26, 39	63
6	Julius Stewart			
7	Mr. Falk	9		
8	Ms. Shaw		73	
9	Perry Gustus Phillips			
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13	Closing argument by Ms. Shaw			117
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MR. FALK: Your Honor, I realize that I made a mistake when I was preparing my voir dire. And what I usually do in these cases is to include the victim's names and ask people whether they know them.

And I just asked the Court whether or not we could voir dire the jury to see whether or not any of them know the victim in these cases. Obviously, with their presence here in the courtroom, I wouldn't want the jury to reach a verdict based on something other than facts.

MS. SHAW: Your Honor, the State would most strenuously object to any voir dire after the jury has been both picked, seated, and sworn.

And furthermore, it would be an implication of the victim's privacy. She is entitled to be here, she is a registered victim, she's here with Victim's Services, and it would be absolutely inappropriate to be disclosing her name, particularly when she was a minor when the offense was committed, to the jury.

So absolutely not. State will not consent to that, and we will strongly oppose.

THE COURT: The jury was certainly voir dired and if we had had a list of victims, I would have entertained asking, certainly, them at that point. The jury's seated. I'm not inclined to voir dire them because otherwise, I'm going to

1 open the floodgate that every morning we're going to come up
2 with something else to ask them. I'm just not going to do
3 that. So I respectfully deny your request, but I note your
4 exception thereto.

5 MR. FALK: Your Honor, I'm just -- for the record, I
6 would say that it's the first prong of Strickland, and we'll
7 see if it's the second prong of Strickland. But in light of
8 the fact that after Chapman (phonetic), Mr. Phillips would
9 have a right to file an ineffective assistance counsel
10 argument if it does -- I'm just saying.

11 THE COURT: Well, I --

12 MR. FALK: I'm just saying on the record that it's my
13 mistake, and I certainly can see that I should have done it,
14 and it fell below the standard.

15 THE COURT: Well, interestingly enough, I don't -- it
16 would be very difficult to know how I would have come about it
17 and whether or not I would have done that. Because I would
18 presume I would of have the same objection with regards to the
19 victims, and probably -- or likely, perhaps, if I'd done
20 anything, I don't know that I would have isolated one victim.
21 But I wouldn't, perhaps -- you have been met with the
22 possibility of having to put down every victim in every one of
23 the charges that we're going to be presenting to this jury,
24 and that would have been very difficult, I think, from a
25 strategic standpoint, because all of a sudden, you're giving

1 all these names of all these people who are not called, and I
2 think that would -- I think that would potentially also had
3 made -- would have caused you to have to make a strategic
4 analysis of whether or not that's something you wanted to
5 bring out as the jury would be voir dired.

6 As I understand, this person is present, is a member of
7 the public, and she is not being called as a witness, so I
8 think it is unlikely that her presence would have an effect.
9 And if, obviously, any of the jurors see her present and ask a
10 question, I'm going to pass that along.

11 MR. FALK: Thank you.

12 THE COURT: Absolutely. All right. Yeah, anything
13 further?

14 MS. SHAW: Still working on getting a VPN established. I
15 need Marie (phonetic) back.

16 This is our Victim's Services coordinator. She's far
17 more tech savvy than I am.

18 THE COURT: Oh, that's great. That's great. That's
19 wonderful.

20 (Pause.)

21 THE COURT: All right. Anything from the State before we
22 bring our jury out?

23 MS. SHAW: No, ma'am.

24 THE COURT: Great. And from the defendant, Mr. Falk?

25 MR. FALK: No, Your Honor.

1 THE COURT: All right. Thank you.

2 (Whereupon, the jury came into open court at
3 approximately 10:02 a.m.)

4 THE COURT: Good morning, ladies and gentlemen. Good
5 morning, good morning, good morning.

6 JURORS IN UNISON: Good morning.

7 THE COURT: Everybody get your biscuits?

8 JURORS IN UNISON: Yes.

9 THE COURT: Y'all got any leftovers?

10 UNIDENTIFIED SPEAKER: (Indiscernible).

11 THE COURT: I know. Well, let me just tell you, I'm
12 still trying to get over Thanksgiving, so I'm on -- water and
13 saltines is what I need for about three weeks.

14 All right. Ladies and gentlemen, at this time, we will
15 continue with the State's case.

16 Ms. Shaw?

17 MS. SHAW: Yes, ma'am. State is ready. Thank you.

18 THE COURT: Yes.

19 MS. SHAW: Morning, everyone.

20 JURORS IN UNISON: Morning.

21 MS. SHAW: I appreciate that you didn't feast too much on
22 the biscuits so no food comes this morning.

23 But again, if I at all speak too low or you can't hear me
24 or you don't understand something I say, just get our judge's
25 attention, and she'll make me repeat it.

1 THE COURT: Like right now. I'm already worried.

2 MS. SHAW: I'm sorry. All right.

3 RESUMED DIRECT EXAMINATION

4 BY MS. SHAW:

5 Q Dr. Carter, good morning.

6 A Good morning.

7 Q So before we go into the second part of your assessment,
8 I'd just like to do a very brief recap of yesterday's
9 discussion. Because I realized there was something I forgot
10 to ask you to talk about. We discussed the 1994 offense
11 against a 14-year-old female. Do you recall that?

12 A Yes.

13 Q And we discussed the 1999 March offense against an adult
14 stranger at a pharmacy. Do you recall that?

15 A Yes.

16 Q Okay. And we began to talk about the second 1999 offense
17 against a stranger in a public place, and I forgot to ask you
18 what the details of that were and why they were relevant to
19 your inquiry. So can you please tell the jury that?

20 A Yes. The June 1999 sexual offense involved Mr. Phillips
21 approaching an adult female stranger in a grocery store. At
22 the time, he -- the indictment indicates that he did grab his
23 genital area and then grabbed the victim on her hips near her
24 buttocks at that -- during that incident. The incident
25 reports indicate that he, again, while on work release from

1 the detention center, had approached, followed her, made
2 obscene gestures toward her, and then touched the hips of her
3 when she bent down to pick up an item off the ground.

4 And again, that incident is relevant in -- to consider as
5 part of the overall assessment because, well, one, there are
6 several similarities between that incident and the incident
7 that occurred several months prior with the woman in the --
8 the stranger in the drugstore. And so it had occurred after
9 he had already been arrested for that similar offense.

10 Q So at the time he committed the June offense, he was
11 already aware that the conduct that he engaged in was illegal?

12 A That's correct.

13 Q Okay. And he was aware he was being charged as far as
14 you know?

15 A Yes, that's right.

16 Q Okay. Why is that offending while you know you've
17 already been charged for something identical particularly
18 relevant to your inquiry in terms of impulsivity and emotional
19 and volitional control over his behavior? Why is that
20 important?

21 A It can be relevant to the clinical diagnostic assessment.
22 In the case of Mr. Phillips, it is reflective of some
23 impulsive decision making, some difficulty controlling sexual
24 urges that he was experiencing at the time, and both of those
25 aspects of functioning are relevant to his antisocial

1 personality disorder. They're also relevant to -- some of
2 these offense dynamics are also relevant to the risk for
3 sexual recidivism as sexually offending strangers, as I
4 mentioned, and having prior sexual is predicative of future
5 reoffending.

6 Q Okay. Thank you. So on to the second part of your
7 evaluation -- actually, is there anything else you feel is
8 important to add that I may not have covered for the jury in
9 terms of your initial interview, records review, and
10 diagnostic assessment of Mr. Phillips?

11 A Not that I can think of at this time.

12 Q Okay. So tell me what a risk assessment is and why you
13 use it in these types of evaluations.

14 A A risk assessment is a consideration of the contributing
15 factors to a person's behavior; in this case, their sexual
16 offending behavior. And a risk assessment involves using
17 particular measures or assessing whether these risk factors
18 that have been identified as relevant to future sexual
19 offending, how they apply to the particular individual.

20 Using these risk assessments tools or evaluating these
21 risk factors is standard practice within the field, and
22 they -- it is common for these SVP evaluations as well.

23 Q Okay. And in this case, which instruments did you use to
24 conduct your risk assessment?

25 A I used the Static-99R and the Violence Risk Scale-Sexual

1 Offense version, shorthand as VRS-SO.

2 Q We've already discussed the VRS-SO briefly, and we'll go
3 back into that in a little bit. I'd like you to tell me what
4 the Static-99R is, what it looks for, what it assesses, how
5 it's scored, and how Mr. Phillips was scored on this
6 particular measure.

7 A The Static-99R is the most commonly used risk assessment
8 tool in SVP evaluations and in sexual risk assessments in
9 general. It is -- it consists of nine items. Each of the
10 items on that can be thought of as a static risk factor, so
11 these are factors statistically predictive of sexual
12 reoffending that are typically unchangeable and reflect
13 aspects of the person's history. So they could be victim
14 characteristics, like the stranger victim; and other aspects
15 of the individual's personal history, so whether they had
16 lived with a romantic partner for a period of two years or
17 longer.

18 Q Okay. And what specifically did you take into account
19 when scoring Mr. Phillips' Static? And before we go into
20 that, what is the range of possible scores for a Static-99?

21 A Sure. The Static scores range from -3 to 12, and what I
22 took into account for the scoring of the Static is the
23 official criminal history records. Those are really critical
24 for the scoring of this assessment measure. Only several of
25 the items are able to be scored on other types of information,

1 like self-report information about victim characteristics or
2 their having lived with a romantic partner. The rest, you
3 have to have that official criminal history record. So court
4 records, police incident reports, the National Crime
5 Information Center criminal history record, things of that
6 sort.

7 Q Okay. You had all of that information relative to Mr.
8 Phillips, right?

9 A That's correct.

10 Q Okay. Were you able to score him on the Static?

11 A Yes, I was.

12 Q Okay. And what score did he get?

13 A He got a score of 6 on the Static-99R.

14 Q Okay. And can you tell the jury a little bit about what
15 that score means, what risk category he falls into, and what
16 the percentage likelihood just based on the Static is for
17 recidivism?

18 A Yeah. So the Static-99R allows me to get information
19 about his relative risk for sexual reoffending, and that means
20 his risk relative to other sexually -- other people who have
21 had a sexual charge or conviction in their history. So based
22 on -- so from with a score of 6, I was able to understand that
23 he is falling in the well above-average risk category relative
24 to other people who have had sexual charges. So that means
25 that he is in the risk category that's well above-average

1 likelihood that he's going to engage in a future sexual act --
2 sexually offensive act.

3 Q So to be clear, it's that his risk is well above-average
4 compared to other sex offenders --

5 A That's correct.

6 Q -- not the general population.

7 A That's correct.

8 Q Okay. So let's go into what that generally means. What
9 is the -- and are there any sort of percentage likelihoods to
10 reoffend associated with a particular risk level?

11 A So the -- what that means is that somebody with that kind
12 of history is likely to have a lot of risk-management needs,
13 and I'll talk more about that when we get into the VRS-SO.
14 But it also signifies that -- when working with sex offenders,
15 you're kind of thinking about what we need to manage that
16 behavior based on a risk-needs responsivity model, and when
17 somebody is in that well above-average range, that's
18 signifying a high level of need for manage -- in order to
19 successfully manage that behavior to prevent future sexual
20 offending.

21 And then to speak to the other question with regard to
22 the percentage or risk estimate related to that score. So
23 this is what -- the Static-99 gives us this other information
24 called absolutely recidivism rates. And so what that means is
25 that for people with particular scores, we have information

1 about how many -- or the percentage of those who will -- or
2 have gone on to have another sexual charge or conviction.

3 And so for people with a score of six like Mr. Phillips,
4 what we see is that the scores associated with a absolute
5 recidivism rate of 40 -- or excuse me, 25 percent, strictly
6 based on the Static-99R. And there is a -- none of these risk
7 assessments are perfect in their measurement, so there is --
8 there can always be error introduced, and that's consistent
9 with all psychological measures and really any test that we're
10 giving. Even if you go to the medical doctor, it's not going
11 to be perfect.

12 But what the research has shown is that we can put, kind
13 of, a band of confidence around that percentage rate, and I
14 can say with 95 percent confident that his true risk for
15 recidivism based on that Static-99R score falls between 21.5
16 and 28.9 percent.

17 Q And that's considerably higher than your average sex
18 offender?

19 A That's correct.

20 Q So with the Statics, though, can you put -- can you give
21 the jury, sort of, a real-world example of how they could look
22 at what the Static actually looks for? Because they can --
23 the Static can actually reflect a higher or lower actual risk,
24 correct?

25 A That's right.

1 Q Okay. So can you provide, maybe, a real-world example to
2 make it a little easier to grasp?

3 A Sure. So the Static-99R and VRS-SO actually are both
4 actuarial risk-assessment tools. So a common example -- a
5 maybe more relatable example of how actuarial tools work is if
6 you think about how everyone is required to have car
7 insurance, but everybody -- but people may pay different rates
8 based on certain factors and their history, right? So one
9 person might pay 50 dollars a month for car insurance; another
10 person might pay 100 dollars a month for car insurance. But
11 that rate is going to be dependent on how likely they are for
12 the insurance company to have to pay out. You know, if there
13 was a car accident or some other serious incident related to
14 the vehicle.

15 So some of the historical factors they might look at
16 would be a person's age, and there's really nothing a person
17 can control about that, so that would be considered a static
18 factor. Other things might be number of past car accidents
19 they've been in or number of tickets that they've gotten when
20 they -- you know, for speeding or reckless driving. Those
21 kinds of things, insurance companies might take into account
22 when trying to figure out, is this somebody who is going to
23 have a high risk for getting into a car accident and might
24 need to be paying a little bit more into the pool, or are they
25 at low risk for a car accident and need to pay a little bit

1 less and we're not too worried about them.

2 And so that's similar to how this risk assessment tool
3 works. We're, kind of, identifying what, you know, in terms
4 of risk for sexually violent behavior or sexually offensive
5 behavior, how likely they are to engage on that based on these
6 historical factors.

7 Q Okay. And so knowing that the static is just one tool in
8 your arsenal, what other measures or other tools would you
9 consider using in a case like this?

10 A So it's standard practice and really best practice is to
11 consider not only static factors, which I mentioned are these
12 fixed aspects of a person's history, but also dynamic risk
13 factors. And so I'd want to -- so it's also important to take
14 into account to assess for dynamic risk factors, which are
15 changeable factors which can be addressed and, you know,
16 effectively -- issues that you can -- that you can address and
17 manage to effectively reduce the risk.

18 So another -- one other measure for dynamic risk factors
19 is the VRS-SO.

20 Q Okay. And so we've already discussed what it is and how
21 it's used. How is it applicable in Mr. Phillips' case? What
22 did you find when you conducted that test?

23 A So the -- what I found is that there were a number of --
24 so the -- well, let me back up a minute. The VRS-SO does have
25 17 dynamic risk factors. There's research conducted that --

1 on, kind of, how those factors related to one another, and
2 what that research showed is that the factors that are grouped
3 together. Most of them group together in three categories.
4 These categories are sexual deviants, criminality, and
5 treatment responsivity; and then there were two additional
6 risk factors that stood up by themselves.

7 And what I found is that Mr. Phillips had risk management
8 needs on all categories; most of them fell in the criminality
9 and treatment responsivity categories.

10 Q Okay. So let's go into the sexual deviants category.
11 Can you tell me what the risk factors are in that category,
12 which ones apply to Mr. Phillips, and how you came to that
13 conclusion?

14 A Yes. As to that -- so that category reflects risk
15 factors related to how the individual is thinking about sex,
16 about their behavior, about their interest -- sexual
17 interests. There are five dynamic risk factors that fall into
18 that risk category. They're called sexually deviant
19 lifestyle, sexual compulsivity, offense planning, sexual
20 offending cycle, and deviant sexual preference.

21 I found that four out of five of those risk factors
22 applied to Mr. Phillips. Two were considered -- excuse me,
23 were considered risk management needs for him, meaning that
24 they were -- I was rating them as applying to him at a score
25 of either 2 or 3.

1 Q Okay. And so that means if there are risk management
2 needs, this is something that he needs to be managed; this not
3 something he can manage on his own, something he needs
4 treatment for?

5 A This is something -- it's something that needs to be
6 managed, yes; that there needs to be some kind of intervention
7 or change in environment or something that needs to be
8 addressed to effectively reduce that risk.

9 Q And how about the criminality portion?

10 A The criminality category is made up of six risk factors
11 that are related to general criminality, so these include
12 criminal personality. So thinking of things like lack of
13 remorse, empathy, deficits, lying, superficial charm;
14 characteristics like that.

15 Another risk factor in that category is interpersonal
16 aggression; there's also substance abuse; community support,
17 or, really, lack of it; impulsivity; and problems with
18 compliance with community supervision.

19 Q How many did you find of these six factors that applied
20 to Mr. Phillips?

21 A All six of those factors apply to Mr. Phillips to some
22 degree.

23 Q Okay. And is that consistent with his diagnosis of
24 antisocial personality disorder?

25 A While I do think of the risk factors as different --

1 separate from personality disorder, like a clinical diagnosis,
2 meaning that not all people with risk factors in that category
3 would necessarily have a personality disorder or other
4 clinical diagnosis. These risk factors do overlap some with
5 those criteria, and for Mr. Phillips, I -- that is where the
6 personality disorder most prominently intersects with his risk
7 for sexual recidivism, yes.

8 Q Okay. And treatment responsivity, that's also another
9 factor?

10 A That's right.

11 Q And were you able to give Mr. Phillips a score in this
12 factor?

13 A I was, yes. There is one item on this -- so this factor
14 broadly refers to how well a person is likely to learn and
15 respond positively to treatment for sexual offending problems.
16 There's one item of the four in that category that is
17 specifically related to a person's compliance with sex
18 offender treatment. Because Mr. Phillips has not had sex
19 offender treatment ever before, I was unable to rate that
20 item, so it was omitted. But I did rate him on the additional
21 three items in that category, and he -- and each of those
22 three were considered risk management needs.

23 Q Okay. And can you tell me what those -- or actually,
24 tell the jury what those three were?

25 A Yes. So one was cognitive distortion. So this item

1 refers to patterns of thinking that facilitate sexual
2 offending behavior or thinking errors that might lead somebody
3 to engage in that kind of behavior.

4 Also insight, he has deficits in that area. And what
5 that's referring to is how well a person is understanding
6 their reasons for sexual offending, and Mr. Phillips has a
7 poor understanding at this time of that.

8 And then the final risk factor is release to high-risk
9 situation. In this item, I'm thinking about how similar or
10 different from the prior types of release situations their
11 currently release situation will be, and how close that --
12 those circumstances look to when he engaged in sexual
13 offending behavior before. And in this case, the situation
14 does not look markedly different from when he was engaging in
15 sexual offending behavior.

16 Q So based on what Mr. Phillips told you, is it your
17 understanding that he plans to go right back to the
18 environment he was living in before he was released -- or
19 before he was convicted of the most recent offense?

20 A That's right.

21 Q Why is that relevant to your inquiry, and why is it
22 problematic?

23 A I mean, it is, kind of, we're thinking about, what does
24 this person need to manage themselves effectively after
25 release. And when -- and so there is a big discussion on the

1 future plans and what that life will look like. And what I'm
2 wanting to understand is if they're thinking about some of the
3 issues and trying to make changes that will address some of
4 the issues that led to their past offending behavior.

5 And for Mr. Phillips, he was essentially planning to
6 return to the same kind of environment, the same relationship
7 with his wife, which -- and even though he had some plans to
8 be transparent with her, to address issues related to
9 substance use, and maintain sobriety, there was not
10 indication -- there was not good indication that there had
11 been behavioral change related to those issues.

12 You know, some things it is hard to change when you're in
13 a prison environment. There's not, you know -- you can't
14 really see, I guess -- test how well you're going to function
15 in the community after that. But even the things that he was
16 talking about changes -- changing, which aren't, you know --
17 that are -- those things aren't unrelated to some of those
18 VRS-SO risk factors that I talked about.

19 You know, like, they were -- in other words, they're good
20 ideas, but he would have an opportunity to, in a prison
21 environment, to be transparent with his wife. He talked with
22 her on a daily basis, sometimes multiple times a day. I mean,
23 he told me he was transparent with her about things, but it
24 became clear in our discussion and my -- some of the
25 collateral interviews that I conducted, that there was this,

1 kind of, lifelong pattern of, you know, withholding
2 information from other people, particularly when he was
3 struggling.

4 And so when that -- that kind of issue is, you know --
5 does raise concern for me, and I am thinking about that when
6 considering a person's risk. Because if they're not able, you
7 know, to comfortably confide in somebody who they're close to
8 or who they have a lot of contact with about their problems,
9 then that just, it can create stress, which he said is related
10 to the offending and I think is in some ways; and just, kind
11 of, snowball the issues there. And so that's what I was
12 seeing in this case.

13 Also the plans for sobriety, he talked about
14 opportunities to attend Alcoholics Anonymous -- I may have
15 mentioned this yesterday -- while in the prison setting, have
16 everyone asking about how often he was attending. He conveyed
17 that he was really going when he felt like it, which was just
18 a portion of the time. And so even within a structured
19 environment where, you know, there aren't -- there's going to
20 be a lot -- he has a lot less choices about how he can spend
21 his time, he was not choosing to spend his time or committing
22 to that fully, even within that structured environment. I
23 think it would even be harder for him to do that after the
24 release.

25 Q And you did diagnose him with substance abuse disorders?

1 A That's right.

2 Q I may have asked you this already, and if I did and
3 forgot, I apologize. What were the substance abuse disorders
4 you diagnosed him with?

5 A Alcohol use disorder is one and then cocaine use
6 disorder. I think the alcohol use disorder is the one that
7 seems to be -- that's maybe of most concern for me at this
8 point given that, you know, he was really struggling with
9 those -- with alcohol-related issues just prior to his current
10 incarceration.

11 Q Okay. Now let's circle back to the VRS-SO. So there's
12 two final factors that you considered in your calculus using
13 that instrument. What were they?

14 A They were emotional control and intimacy deficits. So
15 those are the two factors that didn't -- that didn't align
16 with the other groupings of factors, so they stood alone. So
17 still contribute to overall risk but don't fall into one of
18 these categories.

19 Q Did you find that either one of these factors applied to
20 Mr. Phillips?

21 A Yes, I did. I found that both were risk management
22 needs.

23 Q Now, so using the Static and the VRS-SO, what is the
24 purpose of using those two particular instruments together?

25 A So one significant advantage and part of the reason I

1 recently changed my practice was because -- is that you can
2 statistically combine the scores of these measures to get an
3 overall risk estimate.

4 Q And that risk estimate is far more tailored to the
5 individual's treatment needs and responsivity and overall risk
6 management issues; is that correct?

7 A It's based on the scores from both instruments. Which,
8 you know, the higher the scores on the individual items, the
9 higher the overall score, and then that's going to reflect in
10 the overall risk estimate.

11 Q And in your overall risk estimate, taking into account
12 the Static as well as the VRS-SO, what did you conclude was
13 Mr. Phillips' individualized overall risk assessment?

14 A So his risk -- absolute risk estimate for sexual
15 recidivism was 40.9 percent. That confidence intervals of
16 how -- accounting for that error, the risk estimate range is
17 from 34.4 percent to 47.7 percent. And that -- that's over
18 the course of a ten-year period, what would be the expected
19 likelihood of him having another sexual charge or conviction.

20 Q So when you were interviewing Mr. Phillips, did you ask
21 him if he had any plans on how not to sexually reoffend if he
22 were rereleased to the community?

23 A Mr. -- I did, and Mr. Phillips was more concerned about
24 being accused of a sexual offense than actually engaging in a
25 sexually offending behavior. So we did have some discussion

1 around, yes, his -- getting another charge; however, he was
2 thinking about it as, I might get charged, but it's going to
3 be for bogus reasons.

4 Q And so bearing that in mind with your final calculus, are
5 there risk categories using -- that you can equate the
6 combined score to?

7 A Yes. So the -- that absolute recidivism rate is
8 associated with, again, that well above average risk category.

9 Q So taking into account all of the information you
10 received, the interview, the Static, the VRS-SO, and your own
11 knowledge and education, did you make any conclusions about
12 whether Mr. Phillips presents a risk of reoffense at this
13 time?

14 A Yes, I did.

15 Q And what was that conclusion?

16 A I concluded that he was likely to engage in acts of
17 future -- of sexual violence.

18 Q And do you believe that this personality disorder, anti-
19 social, affects his volitional control to the extent that he's
20 predisposed to commit sexually violent offense?

21 A Yes.

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

24 A Yes, I do.

25 Q And one other question. Static and the VRS, those are

1 all commonly used in your field and within regular and
2 accepted standards of practice?

3 A Yes, they are.

4 Q Now, do you believe that this predisposition that Mr.
5 Phillips has poses a menace to the health and safety of others
6 if he is not civilly committed for long-term control and
7 treatment?

8 A Yes, I do.

9 Q And did you draw all of your conclusions regarding Mr.
10 Phillips to a reasonable degree of psychological certainty?

11 A Yes, I did.

12 MS. SHAW: Thank you, Dr. Carter. Please answer any
13 questions Mr. Falk has.

14 THE COURT: Cross examination?

15 CROSS-EXAMINATION

16 BY MR. FALK:

17 Q Dr. Carter, I just have a lot of paper here. Can you
18 hear me if I talk to you from here?

19 A Yes, I can.

20 Q This good? All right. Dr. Carter, when the State was
21 offering you as an expert in the field, she went over some of
22 the -- some of your background.

23 A That's right.

24 Q And you prepared a CV -- like, a resume. And is the one
25 from September 2022 the current one?

1 A Yes, it is.

2 Q Okay.

3 MS. SHAW: Your Honor, before we go into this too much,
4 I'd like a side bar, please.

5 THE COURT: Okay.

6 MS. SHAW: Thank you.

7 (Sealed bench conference.)

8 Q Dr. Carter, when the State was discussion your
9 qualifications, you were asked some questions about
10 publications that you published, correct?

11 A That's right.

12 Q Okay. Are any of those publications that you published
13 related to sex offender evaluations or sex offenders in
14 general?

15 A They're not.

16 Q And I think she also asked you about professional
17 presentations; is that correct?

18 A That's right.

19 Q Did you give any special presentations that were
20 specifically related to sex offender evaluations?

21 A No, I have not.

22 Q Okay. And while you have been at the Department of
23 Mental Health, have you -- do exclusively evaluations related
24 to sex offenders, or have you also been doing other types of
25 evaluations?

1 A I've been doing other types of evaluations in addition to
2 those sexually violent predator evaluations.

3 Q So if there was a case of a competency to stand trial in
4 a criminal trial, that'd be another type of evaluation that
5 DMS might do?

6 A That's correct, and I've done those evaluations, yes.

7 Q So your time at Department of Mental Health, it's not
8 been devoted specifically to evaluations related to the sex
9 and violent predator program; is that accurate?

10 A Yes, that's accurate that it hasn't solely been doing
11 those. A lot of my time is spent doing these types of
12 evaluations.

13 Q And forensics, what is forensics? When we talk about
14 forensic psychology, what does that mean?

15 A So it's really the application of psychological science
16 to legal concepts or legal issues.

17 Q Okay. So in order to be qualified in that area, you have
18 some familiarity with, you know, relevant criminal laws?

19 A Yes. Part of my post talked --

20 MS. SHAW: Your Honor -- Judge, we're getting a little
21 far off field here. This is not a criminal case; we're not
22 discussing criminal matters, we're discussing very specific
23 subset of evaluation.

24 THE COURT: And Jay, let me just -- let me have you
25 approach. Because I need to hear it again because I was

1 mashing my ear, Mr. Falk, and all of a sudden I turned away to
2 try to increase your microphone.

3 (Sealed bench conference.)

4 Q Is exposing somebody -- if somebody were to expose
5 themselves, is that considered a sexually violent offense?

6 A The --

7 Q Under the statute.

8 A Under the SVP Act, the charge most likely to be
9 associated with that would be indecent exposure, and that is
10 not a sexually violent offense as defined by the SVP Act.

11 Q Thank you. Now, people who commit a sexually violent
12 event under the statute, is everyone who commits a sexually
13 violent offense a sexually violent predator?

14 A No, they're not.

15 Q Okay. I believe the State in it's opening argument said
16 that this is -- that these proceedings right here are
17 preserved for a small percentage of those people. Is that
18 your understanding?

19 A That's my understanding based on the reading of the
20 statute, yes.

21 Q I've heard it is the worst of the worst. Is that an
22 accurate --

23 A I wouldn't put it that way, but the statute, I think -- I
24 believe uses language like an extremely dangerous group of
25 individuals.

1 Q Now, when you conducted your evaluation, you did not find
2 any paraphilia disorders; is that correct?

3 A That's correct.

4 Q And just so the jury has an understanding, would you mind
5 looking -- you have your DSM-5 up there?

6 A I do.

7 Q On page 685.

8 A I might have a slightly newer version. There was
9 recently the text revision that was published, but I -- so I'm
10 not sure how -- if the pages --

11 Q Well, how about I show you my -- I show you pages from
12 the old version?

13 A Okay.

14 Q And tell me whether or not that's the similar language in
15 the new one.

16 A Sure.

17 MS. SHAW: Your Honor, I just would like to make sure
18 that the old version and the new version are identical. There
19 are a number of changes in the new --

20 MR. FALK: Well, that's just what I asked.

21 MS. SHAW: Well, that's the point. I need to know --
22 it's the standard definition.

23 A What section?

24 Q Just when they talk about paraphilia disorders.

25 A Okay.

1 MR. FALK: Your Honor, can I approach the witness?

2 THE COURT: You can.

3 Q In the old version on page 685, there were three
4 paragraphs. The third paragraph, sort of, defines paraphilia.

5 A Yes.

6 Q Can you read -- so under the new version, can you read
7 what that definition is?

8 A Yes. It says: "The term paraphilia denotes any intense
9 and persistent sexual interest other than sexual interest in
10 genital stimulation or preparatory fondling with phenotypically
11 normal, physically mature, consenting human partners".

12 Do you want me to go on?

13 Q No, that's fine. What's phenotypically normal mean?

14 A So phenotypically -- a phenotype is basically, like, in
15 medical literature, is -- represents the -- or is a -- the
16 expression of a gene. And so, you know, this language is a
17 bit difficult to decipher, but I think the spirit of it is
18 that it's getting at what's -- what would be common -- like, a
19 common expression or normal expression of --

20 Q So, I mean, is it, for paraphilia -- would it be safe to
21 say that's a, you know, an interest in an abnormal, you
22 know -- bad in connotation. So an abnormal sexual inference?

23 A Yeah. I mean, I think that specific term, the
24 "phenotypically normal," that's getting at -- that's, like,
25 somebody who has an appearance that is exceptional, is

1 different, than most, I guess.

2 Q And so if you have a paraphilia, that is somebody who is,
3 sort of, their sex drive is -- it tends to persist an interest
4 in abnormal sex; is that fair?

5 A The -- and it could be -- and so in an abnormal
6 appearance. Usually -- well, paraphilic disorders will take
7 place -- or could be diagnosed when there's a sexual interest
8 in either a target or a type of activity that is abnormal. So
9 the -- like, for instance, a common -- I mean, one of perhaps
10 the more well-known paraphilic disorders just to a lay person
11 would be a pedophilic disorder, and that would be a sexual
12 interest and attraction to pre-pubescent children. So the
13 target of the sexual interest is abnormal.

14 Q And you did not find that here; is that correct?

15 A Correct.

16 Q And isn't it -- you said that you've done a lot of
17 evaluations?

18 A That's right.

19 Q Would it be safe to say that another type of paraphilia
20 that comes up in these situations that's from my understanding
21 since the DSM for TR up until now. The State has said
22 different things -- whether or not it's non-specified, non-
23 consent biased aphelia and so forth -- I don't know if you
24 want to, sort of -- an interest in -- sort of, an interest in
25 rape. An interest in imposing themselves on somebody else.

1 Nonconsensual sex is their intense desire?

2 A Yes.

3 Q Okay. And as far as that personality disorder, whether
4 or not we're going to call it paraphilic disorder non consent
5 or biased aphelia, you did not find that here either?

6 A That's right. I did not find evidence to suggest that he
7 had an intense and recurrent interest specifically in those
8 nonconsensual aspects.

9 Like, people with that kind of diagnosis will have --
10 will be specifically aroused to the indicators that the person
11 is not interested in sex. I did not find that for Mr.
12 Phillips.

13 Q Okay. And so he doesn't have any abnormal -- you said he
14 has a personality disorder, and that's -- upon which you
15 support your conclusion that he needs to be in the program,
16 correct?

17 A That's correct.

18 Q I'm going to come back around to the personality disorder
19 in a little bit, but I want to ask you some other questions.

20 So when you were preparing your report, did you
21 contact -- you said you contacted probation and parole; is
22 that correct?

23 A Yes, I did.

24 Q And it's your understanding -- what's your understanding
25 of the terms of his probation?

1 A I was -- I understanding that he is to be on probation
2 for a period of five years.

3 Q In your report, do you know any specific terms while he's
4 on probation?

5 MS. SHAW: Objection, Your Honor. Sidebar.

6 THE COURT: Okay.

7 (Sealed bench conference.)

8 THE COURT: Let's take our morning break. Ladies and
9 gentlemen, we're going to take a morning break. Please step
10 to your jury room. Do not discuss this matter, do not allow
11 anyone to discuss it with you. This is a matter that I'm
12 going to take up, but it's a good time for your morning break.
13 We're going to be about -- probably about 15 minutes because
14 once we finish the motion, I'm going to take my morning break.

15 (Whereupon, the jury exited the courtroom at 10:56 a.m.)

16 THE COURT: All right. It's your motion, so you begin.

17 MS. SHAW: Yes, Your Honor. Thank you. The question Mr.
18 Falk just asked Dr. Carter is an attempt to open a door into
19 discussing what treatment options may be available to Mr.
20 Falk's client on an outpatient basis. By allowing him to
21 proceed down that avenue, which I already objected to in my
22 second motion in limine, that would open the door for the jury
23 to consider things that are inappropriate to consider.

24 At this point, the question they need to ask is, does he
25 have a mental abnormality or personality disorder and is he

1 likely to reoffend; not what kind of treatment, where
2 treatment would be, what kind of probation he would have.
3 None of that should come in because it would confuse them, it
4 would mislead them, and it would most likely lead to a
5 situation where we have jurors considering inappropriate facts
6 which are not relevant to the ultimate questions.

7 THE COURT: Well, let me ask you this question. There
8 was a part in the direct examination where you asked Dr.
9 Carter about -- essentially, did you have any discussions
10 about treatment in the community. Do you remember that line
11 of questioning.

12 MS. SHAW: I asked her if he had ever had sex offender
13 treatment, and she said no. That was I recall asking her.

14 THE COURT: No, that was in the Department of
15 Corrections, and she said, no. And then there was this line
16 of questioning. We may need to go back and take a look at it,
17 because my notes -- of course, I'm not taking it down
18 verbatim. We had some discussions about treatment in the
19 community. He was not concerned about treatment, he was
20 concerned about new charges that could be brought --

21 MS. SHAW: Oh, that was when we were talking --

22 THE COURT: Let me finish. And that -- but if the new
23 charges were brought, that they would be bogus. And so
24 there's this whole conversation about discussions about
25 treatment in the community.

1 A question that I have: Was the door open for Mr. Falk
2 to now ask, are you aware that there is a condition of his
3 probation which will last -- because you already said it lasts
4 five years. Do you understand that it includes treatment?

5 MS. SHAW: Your Honor, most respectfully, I do not
6 believe that I opened the door --

7 THE COURT: Okay.

8 MS. SHAW: -- for that question because the question
9 you're specifically referring to was in the context of me
10 asking Dr. Carter whether Mr. Phillips had expressed any plan
11 not to reoffend to her. And, obviously, it's known now that
12 probation was a factor.

13 But in his evaluation with her, he basically considered
14 his probation and any treatment in that regard; he just wanted
15 to go back out into the community. That was the purpose and
16 direction of that question. It's not to discuss what
17 treatment he might get, whether he would comply, or whether he
18 even knows about. Basically, did he tell her about planning
19 not to reoffend. And her response, I believe -- and I would
20 love to look at the transcript to make sure I'm remembering
21 correctly -- was that he didn't consider treatment a priority,
22 and that was that. I wasn't asking about treatment, I was
23 asking about, did he have a plan not to reoffend, and
24 treatment necessarily would be part of that, and then that was
25 the response.

1 So no, I most respectfully do not believe that I opened
2 the door.

3 THE COURT: Okay.

4 MR. FALK: Your Honor, looking at her report, I think the
5 Court -- I looked at her report, not necessarily her testimony.
6 At this point, her report asked him about treatment, and he
7 says, yes, I would get treatment. I mean, that's a quote on
8 her report. I can find it -- the page. And so I can ask her
9 whether or not he said he would get treatment.

10 What I'm saying is that he's -- well, let me back up. In
11 her opening statement -- if you listen to her opening
12 statement, she says, look, we just want to get this guy some
13 treatment.

14 MS. SHAW: Because that is the purpose of the statute.
15 It's not to punish these offenders. It's to get them into a
16 secure environment where they can be offered treatment. If he
17 wants to say, no, I don't want to do treatment if he's in the
18 program, he's perfectly allowed to do that. And my
19 representation during opening, which is merely argument which
20 underscored the purpose of the statute, I would submit is
21 absolutely not opening any sort of door to the discussion of
22 treatment which, we already know, based on the caselaw, is
23 totally irrelevant.

24 THE COURT: Let me look at my notes, y'all. Hold on a
25 sec for me.

1 The argument -- the quote from the opening was, the State
2 wants to get him the help he needs. It was the State, and
3 that's what you were referring to, Mr. Falk.

4 Coupling that with this information that has come out
5 that he's more interested -- he's not interested in treatment,
6 that he's interested in whether or not there are going to be
7 any bogus, new charges, according to him, that that is what
8 his concern is, I am going to allow you to ask that question.
9 And that's a little bit different than I did pretrial. I
10 don't think it's for this jury. That's not the question that
11 the jury is going to be answering, but in the interest of
12 fairness, I think you ought to be able to ask that question.
13 We're not going to get into it extensively, and I note the
14 exception from the State.

15 MS. SHAW: It would be an exception and request for a
16 limitation that if there is any question outside of that one
17 that Mr. Falk just identified, that it goes no further.

18 THE COURT: Well, you know, you'll just have to object
19 again if he does it again.

20 Okay, got it?

21 MR. FALK: So before the jury comes back in, I'm going to
22 ask whether or not she's aware that one of the terms of his
23 probation is that he gets sex offender treatment.

24 THE COURT: Yeah. Yes, yes, yes.

25 MR. FALK: Or while on probation.

1 THE COURT: Yes.

2 MR. FALK: Thank you.

3 THE COURT: Yes. Got it. Let's take a break. Let's
4 take a quick break to -- we'll take, I don't know, five, seven
5 minutes.

6 (Recess.)

7 (Whereupon, the jury came into open court at
8 approximately 11:31 a.m.)

9 THE COURT: All right. Ladies and gentlemen, we will
10 continue with the State's case and the cross examination of
11 Dr. Carter.

12 Mr. Falk?

13 RESUMED CROSS-EXAMINATION

14 BY MR. FALK:

15 Q Dr. Carter, I think the last question I asked you was,
16 were you aware of any other conditions of probation?

17 A Yes.

18 Q And what were those?

19 A So the general counsel from the Department of Probation,
20 Parole, and Pardon services informed me that Mr. Phillips
21 would be subjected to the standard condition of probation as
22 well as additional conditions for sexual offenders. He did
23 provide me with a list of what those conditions are. I don't
24 have that list with me, but I'm aware that part of it
25 includes -- part of the conditions include that he not have

1 contact with the victim, that he complete sex offender
2 treatment, and that he has no unsupervised contact with minor
3 children.

4 Q So sex offender treatment would be a condition of
5 probation?

6 A That's my understanding.

7 Q Thank you.

8 MR. FALK: May I approach the witness?

9 THE COURT: Yes.

10 Q Dr. Carter, in your -- you had received some materials
11 from Mr. Phillips, is that correct?

12 A That's right.

13 Q All right. And I think in your report you talked about
14 some certificates that your received?

15 A That's right.

16 Q That piece of paper I handed you there, did he hand you
17 that as well?

18 A I don't remember if I specifically saw this piece of
19 paper.

20 Q Okay. So you don't recall having received it?

21 A I may have received it, but I don't specifically remember
22 it -- this piece of paper.

23 MR. FALK: Your Honor, may I approach? May I approach?

24 THE COURT: Yes.

25 (Sealed bench conference.)

1 Q Dr. Carter, (indiscernible).

2 A Okay.

3 Q Are you aware of whether or not the Department of
4 Probation and Parole does any type of -- are you aware of
5 whether or not the Department of Probation and Parole does any
6 type of recidivism assessment?

7 MS. SHAW: Objection, Your Honor. This is going way
8 beyond the scope of directive. While I understand we're a no-
9 compel state, she would not know that. This is outside of the
10 scope of her evaluation, and she wouldn't have that
11 information.

12 THE COURT: Then if she does not, she can say so.
13 Overruled.

14 Q Are you aware of whether or not the Department of
15 Probation and Parole does an assessment for recidivism?

16 A I'm not aware of that. No, I don't have that
17 information. I do want to mentioned that I did, in my
18 materials that I brought for this testimony, find that exact
19 piece of paper you handed to me, so I did -- did see it, did
20 get it a copy of it, I have it here now.

21 Q Thank you. So you do recall having seen the piece of
22 paper?

23 A Yes.

24 Q Okay. Can you tell me what it proports to be?

25 A It says it's a South Carolina Department of Corrections

1 initial ICC review --

2 MS. SHAW: Your honor --

3 A -- case plan summary.

4 THE COURT: Yes?

5 MS. SHAW: This is an uncertified document. I'm just
6 being presented with it for the first time. Having her read
7 directly from it, I mean, is --

8 THE COURT: She can't publish a document that is not in
9 evidence.

10 Q Fair enough. Did you -- in the course of doing an --
11 part of your evaluation process is going to cover whether or
12 not somebody is a risk to reoffend; is that correct?

13 A A risk to sexually reoffend, yes.

14 Q Okay. Did you received any information from the
15 Department of Correction regarding what they thought the risk
16 of reoffence was?

17 A Not specific to the question that I was trying to answer
18 for the purpose of this evaluation.

19 Q For general purpose now, did you receive any information
20 from the Department of Correction?

21 A From his --

22 Q I'm sorry, not the Department of Corrections, from the
23 Department of -- did you receive any information that you --
24 indirectly from the Department of Probation Enforcement?

25 A No.

1 MS. SHAW: Your Honor, I'm just not sure what the
2 question was. Can Mr. Falk rephrase that?

3 THE COURT: She was -- she did and answered it. Another
4 question.

5 Q Did you receive any information regarding his likelihood
6 to commit another crime on probation?

7 A No.

8 Q But you did receive that piece of paper?

9 A This piece of paper was in the materials that Mr.
10 Phillips provided to me. I don't know, you know -- I did look
11 at it. I look at everything that anybody wants to present to
12 me to be considered for the evaluation. There is a line on
13 the paper that says "current recidivism risk level". It says
14 "low". Current classification level, it says "medium" --

15 MS. SHAW: Objection.

16 THE COURT: Sustained.

17 MS. SHAW: Can I get a side bar, Your Honor, please?

18 THE COURT: Yeah.

19 (Sealed bench conference.)

20 Q So you had given him a definition -- you had given him a
21 diagnosis of antisocial personality disorder; is that correct?

22 A That's correct.

23 Q And I'm going to show you a section from the DSM-5, and I
24 just want to see if there's similar language in the new DSM.

25 MR. FALK: May I approach?

1 THE COURT: You may.

2 Q So I've showed you a section from page 663 of the DSM-5
3 and you've found similar language in -- what's the DSM that
4 you're working from?

5 A This is a DSM 5th Edition Text Revision.

6 Q Okay. So it's not the same, there's more information in
7 that one?

8 A Correct. It's an updated version of the DSM-5.

9 Q Okay. And so is that same language in the DSM-5 text
10 revision?

11 A That -- in that particular paragraph that you showed me,
12 yes, it's the same.

13 Q And just for the record, what page number is it on?

14 A That's on page 752.

15 Q Okay. And is sort of the crux of that paragraph the idea
16 that your job, really, is to separate somebody who just has a
17 pattern of criminal conduct versus somebody who actually has a
18 personality disorder; is that far?

19 A Yes.

20 Q Because the goal is then to, sort of, differentiate a
21 person who just has criminal conduct versus somebody who has a
22 personality disorder or mental abnormality; is that correct?

23 A It's important to understand some of the motivations for
24 the criminal behavior and some of the issues contributing to
25 that engagement in the behavior.

1 Q Is it sort of like -- I don't think you were here for my
2 opening, but I made a comment in my opening that is somebody
3 stole something -- stole some food, they may be motivated
4 because they were hungry, and that's criminal behavior; or
5 they may be motivated because they like to steal, and that's
6 more of a mental abnormality; is that --

7 A Yeah, that analogy works.

8 Q Okay. So that's, kind of, what we're trying to --
9 whether or not -- what the underlying motivations are?

10 A Correct.

11 Q Now, we're going to try this one more time.

12 MS. SHAW: I'm going to object, Your Honor. Can I get a
13 side bar?

14 (Sealed bench conference.)

15 Q All right. So I'm trying to make sure that we're still
16 talking about concurrent.

17 A Okay.

18 Q And so what I'm going to show you, the paragraph is on
19 page 661 of the DSM-5, and I want to know if this is still
20 considered (indiscernible).

21 A It's slightly different.

22 Q Then can you read what's in that paragraph there?

23 A Sure.

24 Q And just so we, sort of, have a little foundation here.

25 You're going to read a section from the DSM-5, and it

1 generally talks about the development and course of antisocial
2 personality disorder.

3 MS. SHAW: Your Honor, is Mr. Falk testifying or asking a
4 question?

5 THE COURT: He just asked the --

6 MR. FALK: I was just trying to --

7 THE COURT: He asked a question, she's going to read the
8 part of it. I guess, then, once she's read it, she'll say do
9 you disagree or agree with that. Yes?

10 A It says, "Antisocial personality disorder has a chronic
11 course but may become less evident or remit as the individual
12 grows older, often by age 40. Although this remission tends
13 to be particularly evidence with respect to engaging in
14 criminal behavior, there is likely to be a decrease in the
15 full spectrum in anti-social behaviors and substance use. By
16 definition, antisocial personality disorder" -- or excuse me
17 "anti-social personality cannot be diagnosed before age 18".

18 Q So is it fair to say that according to the DSM-5, or the
19 DSM -- oh, again, can you tell me the page number and the TR
20 that you read from?

21 A Yes. That's from page 750.

22 Q 750?

23 A That's correct.

24 Q Okay. And so is it fair to say that according to the
25 DSM-5, there's an understanding that anti-social behavior

1 tends to mellow over time; is that fair?

2 A Research does support that, yes, some aspects of
3 antisocial personality disorder characteristics can improve
4 over time.

5 Q And specifically, does that say criminal aspect --
6 criminal conduct tends to?

7 A This says that -- this is particular -- "the remission
8 tends to particularly be evidence with respect to engaging in
9 criminal behavior".

10 Q Okay. Thank you.

11 Now, there was a lot of discussion about the Static-99,
12 and when -- so when you're grading somebody on the Static, are
13 there, like, judgement calls that you have to make?

14 A There is some clinical judgement required for the Static-
15 99R; however, the -- there is also a pretty -- I mean, a very
16 detailed manual on how to score even though it's only ten
17 items, there's a lot of instruction on how to score it so as
18 to improve the reliability of the scoring.

19 Q So are a lot of the question just encounters with law
20 enforcement or how old he is?

21 A That's right.

22 Q And actually, when you talk about how old somebody is on
23 the DSM-5, does that -- did that effect the score as somebody
24 gets older?

25 A For the Static-99R?

1 Q Yes.

2 A Yes. So the Static-99R does take into account that as
3 individuals age, there are less instances of sexual
4 recidivism. So for Mr. Phillips, for instance, because he is
5 over the age of 40, he actually had a point subtracted from
6 his overall static score due -- to take into account that
7 finding.

8 Q And that finding is that sexual recidivism tends to go --
9 decrease with age?

10 A That's correct.

11 Q And when you get to 60, is there another decrease?

12 A That's right. The score then for individuals who are 60
13 or older decreases by 3 points at that point, again, to
14 account for that affect.

15 Q And again, the scoring on that is -- although there is a
16 manual to -- because you have to interpret some stuff. But
17 it's pretty, kind of, binary or pretty cut and dry.

18 A There are lots of things that are spelled out very
19 specifically, yes.

20 Q All right, so now the other test you gave, the VRSO (sic)
21 is that correct?

22 A VRS-SO.

23 Q How many of those have you used before?

24 A Let's see. How many times have I scored that instrument?

25 Q Because I thought in your testimony you said you -- and I

1 may have misunderstood your testimony. I thought your
2 testimony was you just started using this.

3 A Within the last year I started using it. I was trained
4 on its use about a year ago and have been using it since.
5 Let's see, I think I've completed -- I've probably completed
6 the scoring on about ten.

7 Q Now, let me ask you this. I got the impression from your
8 earlier testimony that there was certain, like, categories?

9 A Yes.

10 Q And you rated whether or not the appropriate
11 characteristic on a one to four basis.

12 A Zero to three. But yes, a four-point scale.

13 Q Now, in order to rate that, is that based almost
14 exclusively on your clinical judgement?

15 A There is -- there is -- so yes and no. There's a
16 structured approach to scoring the items. There is a manual
17 that provides information about what a score of zero means.
18 Well, it provides an overall definition or operationalization
19 of the item, so what the item is getting at. Then it gives
20 examples of what a score of zero would look like, and it gives
21 examples of what a score of three would look like. And then
22 for scores of one and two, it is more -- it's more -- there's
23 less information about what those items look like. So there
24 is -- there's certainly clinical judgement that comes into
25 play here about whether -- or to what degree each risk factor

1 applies to the individual, but there's also that guidance
2 that's offered in that manual for the VRS-SO.

3 Q You may not know this, I'm not -- can you just give us an
4 example again of, like, one of the categories?

5 A Yeah. So sexual deviance is one of the categories.

6 Q Okay. And so -- and then you just pick between zero --
7 you're deciding whether or not it's present? Like, "yes" or
8 "no" it's present?

9 A So zero would mean that it's not at all present; three
10 would mean -- and again, there's specific examples for each
11 item. But three would mean that it's highly relevant and --
12 relevant to the individual's sexual offending history and
13 present for the individual; and then a two would be, it's
14 slightly less relevant; one would be it's maybe historically
15 present, but not a current issue or, you know, is more
16 distally related to the sexually offending.

17 Q It sounds from your testimony -- and I won't put words in
18 your mouth. It sounds like there is a bit more subjectivity
19 in scoring the VSR than in the Static-99R.

20 A It is true that the Static-99R has outlined or has
21 provided more detailed instructions on how to handle
22 information in a person's criminal history record. I mean,
23 there's so many different types of situations that come up,
24 and the Static-99R manual has -- or coding rules has, you
25 know, offered input on a lot of those issues whereas the VRS-

1 SO, there is less -- you know, there's guidance, but yes,
2 there's less information about how to handle, you know, I
3 guess, individual -- like, case-specific types of situations.

4 But that's also why I will consult -- and I really do
5 routinely consult with my colleagues who are using this
6 instrument. And I've consulted on occasion, not in this case
7 in particular, but with the -- one of the developers whose
8 made himself available; a researcher in Canada.

9 Q Is this a relatively new test, then?

10 A No. He -- VRS-SO came about in, I believe, it was around
11 2007. So I mean, it's newish, but it has been around for over
12 a decade. And, you know, over -- there's a recent article --
13 or a article published, I think, in 2020, that surveyed
14 individuals who conduct sexual offender risk assessments.
15 They were surveyed in 2017, it just usually takes about a
16 couple of years for the research to get published. But even
17 at that point, they were showing an increase of the people --
18 the evaluators who were using the VRS-SO, so it's slowly
19 becoming more used in this field.

20 Q When you are making your risk assessment, you are really
21 saying that somebody with his score fits into a group of
22 people who do this at a particular rate; is that accurate?

23 A There's some instruction in the Static-99R manual that --
24 that encourages practitioners to describe it in that way. I
25 think there are other schools of thought on that issue. I

1 mean, what we're saying is that individuals -- Mr. Phillips
2 shares characteristics of individuals who have sexually
3 reoffended, so it is reasonable to indicate that his risk is
4 represented by the risk estimate that, you know -- that these
5 tools, kind of, help calculate, which is that 40.9 percent.

6 Q All right. But I think you testified that age can have
7 an impact -- based on how you score the Static-99, age can
8 have an impact on sexual recidivism?

9 A That's correct.

10 Q And I think your testimony was that based on antisocial
11 personality disorder, maybe the general recidivism
12 criminalities tends to decrease with age; is that correct?

13 A That's right.

14 Q Okay. So when you were comparing Mr. Phillips to a
15 group, what age are the people in the groups?

16 A There's a range of ages. I mean, I can pull up -- I have
17 some of that information if you'd like. Let's see.

18 The four samples that were used to validate the VRS-SO
19 calculator that was used to statistically combine the scores
20 from the Static-99R and VRS-SO, the ages -- the average age
21 for all of those samples combined, which equaled a total of
22 913 individuals, was 38.2 with a standard deviation of 11.2,
23 which means, you know, most of those -- most of the people in
24 the group were between ages -- like, between -- in their late
25 20s and late 40s.

1 Q And can you tell me the same for the age in the group
2 that you made the comparison with in the Static-99R?

3 A It looks like the -- at least some of these, the samples
4 used it looks like were around 42 years old with a standard
5 deviation of 13, so maybe a slightly older on average by a
6 couple of years, but similar in age.

7 Q And is any of it controlled about whether the people in
8 those groups are on any form of supervised release?

9 A For the -- so the way that these statistics are
10 calculated and estimates were generated were based on real-
11 life people who had a history of sexual offending, were
12 released out into the community, and then were followed for
13 five or ten years. And so they came up with actual recidivism
14 rates and then used the information then to come up with these
15 estimated risk values for different scores.

16 So the -- I know the -- on the VRS-SO in particular,
17 there were individuals who were in high-intensity treatment
18 programs that were included in the samples, but there were
19 actually -- there were also low and medium-risk individuals.
20 So it was a pretty diverse group of individuals in terms of
21 how, you know -- how much treatment they were getting and --
22 or had gotten before they were released and followed.

23 Q Yeah. But I'm talking about while I'm released if they
24 had any type of -- any type of supervision while I'm --

25 MS. SHAW: Objection, Your Honor. Asked and answered.

1 She said she wasn't sure and she gave the information.

2 THE COURT: Let me hear the question.

3 Q Based on her answer, I thought she -- I asked of the
4 groups that this comparison is made to, whether or not that
5 included or controlled for people who were on any type of
6 community supervision.

7 A I'm not sure.

8 Q Fair enough. And when you're doing the Static, you're
9 looking at, like, a five-year and ten-year window; is that
10 correct?

11 A That's correct.

12 Q Okay. I have no further question.

13 THE COURT: All right. Redirect?

14 MS. SHAW: Yes, Your Honor. Thank you.

15 REDIRECT EXAMINATION

16 BY MS. SHAW:

17 Q All right. Now, you were asked to discuss a document
18 earlier.

19 MS. SHAW: Your Honor, may I approach?

20 THE COURT: You may.

21 MS. SHAW: Thank you.

22 Q Now, you read some of that document. And that was
23 something only provided to you by Mr. Phillips, right?

24 A That's correct.

25 Q Okay. You don't know where that document came from?

1 A It says -- it has the heading of South Carolina
2 Department of Corrections, but I don't know -- other -- so no,
3 I don't know where the document --

4 Q You don't know where he got it from?

5 A Correct.

6 Q Okay. And do you know who signed off on that document?

7 A I know what it says, but I don't -- I'm not familiar with
8 the person.

9 Q And what's the date on that?

10 A 11/23/21.

11 Q Which is well over a year ago and well before you did
12 your evaluation?

13 A That's correct.

14 Q And you did take that into account once Mr. Phillips gave
15 it to you, right?

16 A Like I said, I look at everything the respondent gives to
17 me.

18 Q And your conclusion was not affected by that document?

19 A That's right.

20 Q Okay. So Ms. Falk (sic) has made several references to
21 individuals stealing because they're hungry and have a need
22 for it versus stealing because they like to steal. Do you
23 recall that?

24 A Yes.

25 Q Okay. In Mr. Phillips' case, he has a 24-year, roughly,

1 criminal history. Does that bespeak someone who is committing
2 criminal acts because he has to or because that's part of who
3 he is?

4 A Mr. Phillips' criminal behaviors is, in my opinion, more
5 related to some of his underlying personality characteristics.
6 I mean, he is somebody who -- like, he wants to -- he displays
7 some, like, arrogance or -- you know, he wants to be, kind of,
8 on top. So maybe dominant, kind of, attitudes. And so he
9 found that -- and he doesn't have a lot of those -- he is
10 unrestrained in his willingness to engage in illegal activity.
11 Like, for him it doesn't matter as much, as long as he's able
12 to get what he wants.

13 Q That's almost a hallmark of anti-social personalities?

14 A Correct.

15 Q And is it true that while Mr. -- well, during certain
16 periods when Mr. Phillips was committing sexual offenses, he
17 had multiple cooperative sexual partners in addition to his
18 victims; isn't that correct?

19 A That is correct, yes.

20 Q Does that bespeak someone who is committing sex crimes
21 out of a necessity or someone who simply enjoys committing
22 crimes of sexual nature?

23 A I mean, that, I think -- it speaks to a serious problem
24 with his sexual behavior that is -- that is, I think, his
25 acting on some of those strong urges he has is disinhibited by

1 his personality characteristics. So that's where that link,
2 kind of, comes together.

3 And, you know, it's not -- somebody can potentially have
4 a -- or can absolutely have a high sex drive and want to
5 engage in sexual activity with a lot of people, and that is
6 completely appropriate; however, you know, unless that
7 behavior becomes sexually offensive. And so -- and that is,
8 kind of, a different manifestation, then, of this, kind of,
9 promiscuity high sex drive.

10 Q And the promiscuity itself is not an issue?

11 A Correct.

12 Q It's the criminality and criminal behaviors associated
13 with that high sex drive that are the problems?

14 A Correct.

15 Q Okay. Thank you for clarifying that. Now, you were also
16 asked by Mr. Falk to read a portion of the DSM related to the
17 possibility that anti-social behaviors, attitudes, and offense
18 behaviors specifically tend to decrease over time. Do you
19 recall that?

20 A Yes.

21 Q All right. And is that accurate for every individual who
22 has been diagnosed with antisocial personality disorder?

23 A I mean, it -- the trend in -- or what the research shows
24 is that that is the general progression, but of course, we
25 have to take individual differences into account. And I note

1 even in my report that there has been some improvement Mr.
2 Phillips' behavior, particularly after that -- his release
3 from that long period of incarceration in December 2014. After
4 that, his behavior looks better than it did before, and yet he
5 still was convicted of a sexual offense and other non sexual
6 offenses.

7 Q And in fact his most recent offense and most recent
8 conviction is for his sexually violent offense?

9 A And that's correct.

10 Q So is there any evidence that would suggest that these
11 behaviors in Mr. Phillips' will end or these attitudes are
12 decreasing or abating over time?

13 A I think there's some good evidence to suggest that
14 they're still persisting in a lot of ways and there hasn't
15 been, kind of, some substantial change to those -- some of the
16 personality features that are associated with that.

17 Q Now, you were also asked about the Static-99, whether
18 it's, you know, based strictly on judgement calls or whether
19 there's a more structured approach to scoring it. And you
20 discussed -- you were asked about and discussed that there
21 were points that do get taken off as an individual ages when
22 can accommodate that potential for reduction in criminal
23 behavior. And how many points did you take off of Mr.
24 Phillips' Static?

25 A I took off 1 point of his overall score.

1 Q And so if Mr. Phillips did not get the benefit of that
2 point, he would have gotten a seven on the Static?

3 A That's correct.

4 Q And what risk range does that score fall into?

5 A That also falls into that well above-average risk
6 category.

7 Q And do you happen to have the estimated rates of
8 recidivism for a seven available that you could tell the jury?

9 MR. FALK: Objection, Your Honor. Relevance.

10 MS. SHAW: Side bar?

11 (Sealed bench conference.)

12 Q Sorry about that, Dr. Carter. So do you happen to have
13 those numbers handy?

14 A I do.

15 Q Okay. And so if Mr. Phillips had not already been given
16 credit for one point off due to his age, what would his
17 estimated recidivism rate be?

18 A With the Static-99 alone, it would be in ten tears, a
19 score of seven is associated with a 32.5 percent risk
20 estimate.

21 Q And that's considerably higher than what he was actually
22 given?

23 A Yes. With the score of six, it was 25 percent -- it
24 dropped to 25 percent.

25 Q And so when you were going through the VRS-SO, you were

1 asked several specific questions about the scales -- the four-
2 point scales. I'm not going to ask you to go through each
3 factor, but could you please tell the jury what particular
4 scales you scored Mr. Phillips a three or a four on, which
5 were identified treatment needs -- or I'm sorry, identified
6 intervention needs.

7 A Yes. The -- so it is a -- it's a four-point scale, but
8 the risk management, it is scored on zero, one, two, or three.
9 So I think you're asking about the two highest ratings, right?
10 The two and the three on sexual compulsivity, criminal
11 personality, cognitive distortions, emotional control,
12 insight, substance abuse, community support, release to high-
13 risk situations, sexual offending cycle, impulsivity,
14 compliance with community supervision, and intimacy deficits.
15 All of those are risk factors for rated as either a two or a
16 three, indicating risk-management needs.

17 Q Okay. Thank you. And you were also asked about the age
18 groups in the actuarial assessments and whether they were
19 consistent with an individual of Mr. Phillips' age. And I
20 believe you just said the average age for the VRS-SO was 38.2
21 and for the Static it was slightly older. So would you say in
22 your judgement that these sample groups accurately --

23 MR. FALK: Object to leading.

24 MS. SHAW: I'm asking her a question. She's going to
25 answer it --

1 THE COURT: Yeah. Don't answer the question until I've
2 heard it. All right. Let me hear the question.

3 Q Okay. These particular age groups that are the sample
4 populations on which these two instruments are based, would
5 you say they accurately reflect an individual of Mr. Phillips'
6 age or not?

7 MR. FALK: No objection.

8 THE COURT: Very well.

9 A Yes, they do accurately reflect Mr. -- individuals of Mr.
10 Phillips' age.

11 Q So you did not have any concerns that your risk estimates
12 were either too high or too low based on that factor?

13 A Correct.

14 Q Okay. Thank you.

15 MS. SHAW: Your Honor, I have nothing further, but I
16 would request permission to enter my exhibits that Dr. Carter
17 previously identified as State's 1.

18 THE COURT: Let me see what that was. Let me see what
19 you're talking about.

20 MS. SHAW: Thank you. May I approach?

21 THE COURT: Sure.

22 (Whereupon, a bench conference was held off the record in
23 the presence of the jury, but out of the hearing of the
24 jury.)

25 THE COURT: Okay. So --

1 MS. SHAW: I can definitely (indiscernible).

2 THE COURT: Yeah, that's fine, and the -- the indictment
3 needs to go. The sensing sheet ought to go. Permanent
4 restraining order doesn't need to go. And the arrest warrant
5 doesn't need to go.

6 MS. SHAW: Okay. (Indiscernible).

7 (Thereupon, counsel returned to counsel tables and the
8 following ensued:)

9 (Open court.)

10 MR. FALK: And Your Honor, just note my objection.

11 THE COURT: Yes.

12 MS. SHAW: Your Honor, may I approach the witness again?

13 THE COURT: Thank you.

14 BY MS. SHAW:

15 Q I know you previously identified these. Could you just
16 please identify them again?

17 A Yes. The first document is a sentence sheet from the
18 Court of General Sessions in Dorchester County. It's dated
19 6/7/2021. The next document is an indictment from the Court
20 of General Sessions in Dorchester County as well. It is --
21 let's see. It's dated, oh, February 27th, 2020.

22 Q All right.

23 MS. SHAW: Your Honor, at this time I'd request it be
24 admitted into evidence pursuant to the hearsay exception, the
25 business records and also self-authenticating court documents.

1 THE COURT: All right. Over the objection of the
2 respondent, of Mr. Phillips, they're admitted.

3 MS. SHAW: Thanks, Your Honor.

4 THE COURT: Uh-huh.

5 MS. SHAW: I have nothing further for the witness.

6 All right, recross?

7 RECROSS-EXAMINATION

8 BY MR. FALK:

9 Q On this famous piece of paper, you had -- you said you
10 didn't know if he signed it -- you didn't know if he signed
11 the piece of paper; is that correct?

12 A I don't know who the person is, correct.

13 Q When you saw the -- you looked at some police reports
14 though too, did you not?

15 A Yes. I looked at --

16 Q I mean, and those documents, you didn't know who signed
17 those as well?

18 A That's correct.

19 Q Okay. And did you try and follow up as far as
20 contacting?

21 A No, I did not.

22 MR. FALK: No further questions.

23 THE COURT: All right. Very well. Is this witness free
24 to leave? Any objection?

25 MR. FALK: No objection.

1 MS. SHAW: No, Your Honor.

2 THE COURT: Good.

3 MS. SHAW: I would reserve -- if Mr. Falk still intends
4 to call the -- his second witness, Mr. Phillip's brother, I
5 would reserve the right to recall my witness on rebuttal.

6 THE COURT: All right. Well, you're still on subpoena.
7 All right, call your next witness, please.

8 MS. SHAW: Your Honor, we are finished. State rests.

9 STATE RESTS

10 THE COURT: All right. All right, ladies and gentlemen,
11 you have now received the evidence and heard the testimony
12 which you will from the state -- in the state's case and chief
13 that signifies to me that there are matters that I must take
14 up outside your presence. If you'll please step to your jury
15 room. Do not discuss this matter or allow anyone to discuss
16 it with you, and we'll be with you relatively shortly, I
17 believe.

18 (Whereupon, the jury exited the courtroom at 12:19 p.m.)

19 THE COURT: Motions? Any motions?

20 MS. SHAW: Your Honor, can I just -- I'll make the motion
21 to preserve the record, but can I hold it for the end after I
22 put on my (indiscernible)?

23 THE COURT: Yes. Well, that would be the motion -- that
24 would be the motion with directed verdict at that point. This
25 would be the motion of involuntary nonsuit with prejudice.

1 MR. FALK: So Your Honor, I'm making a motion for
2 involuntary nonsuit with prejudice.

3 THE COURT: Respectfully denied. There's evidence on
4 each element of the statute that would allow it to proceed to
5 the jury, so we shall see then. You want to take a little
6 break before you begin?

7 MR. FALK: Actually, Your Honor --

8 THE COURT: Uh-huh.

9 MR. FALK: -- would I be entitled to call Dr. Carter to
10 the stand on direct?

11 THE COURT: Isn't that you've already cross-examined her?

12 MR. FALK: It's something I forgot to cross-examine her
13 on.

14 MS. SHAW: Your Honor, I would object to that. She's
15 under my subpoena. She's my witness. Mr. Falk had more than
16 adequate opportunity to cross and recross. I would submit
17 that she's done, and Mr. Falk cannot call her as his own
18 witness at this point. I will take a look. Let's take a
19 little break. Let me consider that.

20 MR. FALK: Thank you.

21 THE COURT: All right.

22 (Recess.)

23 THE COURT: What I'm concerned about is that they don't
24 know not to just keep him out there (indiscernible).

25 MR. FALK: Should I knock on the door?

1 THE COURT: Yeah. That's probably the quickest way to
2 let him know. When he's ready, we're ready.

3 Yes. Yes, ma'am?

4 MS. SHAW: Oh, I'm sorry, Your Honor. The other argument
5 I have relating to Mr. Falk's request to call Dr. Carter is
6 that not only was I not provided with any indication before
7 right now that he was going to ask to call her, which I'm
8 entitled to notice. He did not provide a subpoena. He did
9 not otherwise disclose any intent. And so this is more of the
10 same that we have concerns with, so thank you.

11 THE COURT: It's my understanding that's been withdrawn.
12 And are you ready to proceed?

13 MR. FALK: Your Honor, at the beginning -- because we're
14 getting to this issue here with my witness -- and Ms. Shaw
15 is -- Ms. Shaw has concerns about the relevance of this
16 testimony. And I think you said I could call Dr. Carter as
17 a -- that we could proffer her testimony to see if it was
18 relevant, and would that not be appropriate now?

19 THE COURT: You meant the brother?

20 MR. FALK: The brother.

21 THE COURT: You want to call the brother, see -- and
22 proffer testimony. You ready? You want to do that now?

23 MR. FALK: Yeah, I want --

24 THE COURT: Yes.

25 MR. FALK: -- to do that now.

1 THE COURT: Sure, sure. Very well. Sure.

2 MR. FALK: Are you wanting to do that and send them to
3 lunch?

4 THE COURT: That's what I'm deciding. Yeah, I think that
5 probably makes sense is to let them go to lunch and ask them
6 to be back. Yeah, I'll ask them to be back. It's effectively
7 12:30. Be back at 2. That'll give us enough time, I think.

8 Yes, ma'am, let me have the jury.

9 (Whereupon, the jury came into open court at
10 approximately 12:25 p.m.)

11 THE COURT: Ladies and gentlemen, given where we are --
12 okay, I'm trying to look over at so many monitors. Given
13 where we are, this probably is a good time for us to take our
14 lunch break, your lunch break. And so I'm going to send you
15 to lunch with the same admonitions. Do not discuss this
16 matter or allow anyone to discuss it with you. Remember the
17 admonition regarding your cell phones. And of course, if you
18 happen to see anyone who's associated with the trial and they
19 don't even say hello, please don't be offended, but know that
20 they are not supposed to interact with you because you're
21 serving on the jury. In fact, should someone try to interact
22 with you, get their name, if not, a description, and please
23 report that to me upon your return.

24 Ladies and gentlemen, we're going to start back at 2
25 o'clock, 2 o'clock, and have a great lunch. I'll see you

1 then. Everybody's got the -- oh, wait a minute, I need to
2 tell you Bistro's (phonetic) open, and Manny's (phonetic) is
3 open. And how about the restaurant on the right? It's not
4 open until Wednesday, right? The Mexican restaurant.

5 UNIDENTIFIED SPEAKER: They're open.

6 THE COURT: They're open?

7 UNIDENTIFIED SPEAKER: Uh-huh.

8 THE COURT: Oh, everything is open. Enjoy.

9 (Whereupon, the jury exited the courtroom at 12:27 p.m.)

10 THE COURT: All right. Yes, sir.

11 MR. FALK: At this time, we would proffer the testimony
12 of Julius Stewart (phonetic).

13 THE COURT: You have to go get him.

14 MR. FALK: Well, there's no bailiff in here. I'm sorry.
15 Oh, Mr. Stewart, please take the stand.

16 THE COURT: Yes, sir. Come along, please, sir. Be
17 sworn.

18 MR. STEWART: Thank you.

19 THE CLERK: Please raise your right hand, and say your
20 whole name for the record.

21 MR. STEWART: Julius (Indiscernible) Stewart.

22 JULIUS STEWART, after being duly sworn, testified as
23 follows:

24 THE COURT: Thank you, Mr. Stewart. Would you spell your
25 last name for us?

1 THE WITNESS: S-T-E-W-A-R-T.

2 THE COURT: That's what (indiscernible). Thank you.

3 Your witness.

4 MR. FALK: By of explanation, what's going on for this --
5 my witness and my client, this is -- we are proffering your
6 testimony right now. And then the state -- and then the judge
7 is going to determine whether or not you can repeat your
8 testimony before the jury.

9 THE WITNESS: Understood.

10 MR. FALK: Is that accurate?

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 VOIR DIRECT WEXAMINATION

14 BY MR. FALK:

15 Q Mr. Stewart, are you related to Perry Phillips?

16 A I am.

17 Q How are you related?

18 A He is my youngest brother.

19 Q Let's go back. What is your name?

20 A My name is Julius Leeroy Stewart.

21 Q And Julius is J-U-L-I-U-S?

22 A J-U-L-I-U-S.

23 Q And you already spelled your last name?

24 A Correct.

25 Q Okay. And where do you live?

1 A I live in Powder Springs, Georgia, Atlanta Metro area.

2 Q Okay. And you are related to Mr. Phillips?

3 A Perry Phillips by blood, yes.

4 Q Okay. Have you been in contact with him recently?

5 A I -- I have. I've had few telephone calls.

6 Q All right. I don't want you tell me what he said. I
7 just want --

8 A Got you.

9 Q So you've been in contact with him? Have you discussed
10 with him any plans -- now, what do you do for a living?

11 A I am a metal recycler. I have -- I own a small business,
12 waste collection and metal recycling for the last five years.

13 Q And who works with you?

14 A I -- I use day labor every now and then, but the majority
15 of the time it's myself.

16 Q Okay. Have you had any discussions with him about him
17 working for you?

18 A I have. I offered him the possibility of relocating
19 to -- to Georgia and working with me because I -- the business
20 is -- is profitable, and I -- I need help.

21 Q Have you thought about where he might live if he went
22 down there?

23 A Absolutely. I -- I -- I've got two grown daughters.
24 They're both living on their own, so it's just my wife and I,
25 and he would have -- he -- as long as he wanted to he could

1 live with us.

2 Q Okay. And where do you -- and all right, so tell me
3 about your neighborhood.

4 A I lived in a HOA in Powder Springs, Georgia, three-
5 bedroom, two car garage, typical neighborhood.

6 Q Okay. So what ages are the people in the apartment
7 community?

8 A It -- it's -- I -- I'm not --

9 Q You said it's an HOA. I assumed it was an apartment.

10 A No, it's a home, a homeowner's association.

11 Q Oh, okay, okay. What are the ages of the other people in
12 the homeowner's association?

13 A In my home?

14 Q Uh-huh. Oh, no, no, I'm just trying to see --

15 A The average age is about -- about 55.

16 Q Okay.

17 A About 55. It's a older community.

18 Q Okay. And so if he were released and his probation were
19 transferred, he could come down and live with you?

20 A Absolutely.

21 Q And you said you live with your wife?

22 A Yes.

23 Q Does she know about this?

24 A We've discussed it a few times. We've been married 30
25 years. Typical husband wife conversations.

1 Q And do you know the stuff that your brother's been
2 charged with?

3 A I'm -- I'm not 100 percent informed about it, but I -- I
4 have a general idea, yes.

5 Q He's got charges of assaulting. He pled guilty to
6 criminal sexual conduct in the third degree?

7 A I'm aware of that.

8 Q That was his most recent charge?

9 A Correct.

10 Q So you're aware of the most recent --

11 A I'm aware of the most recent charge, yes.

12 Q And then did you know he had charges back in '94 and '99?

13 A I -- I knew he had charges. I didn't ask him. We didn't
14 discuss what it was. I just know he's served time for it --

15 Q Okay.

16 A -- and that's it.

17 Q So you knew he did a pretty good stint?

18 A Yes, yes. We -- we -- we're close. As I said, I -- I --
19 you know, we rarely see each other often, but I've had
20 multiple telephone conversations with him.

21 MR. FALK: Your Honor, I may elaborate more in front of
22 the jury, but that's basically my testimony is he'd have a
23 place to stay and a place to work.

24 THE COURT: All right, all right. Do you need to cross
25 him?

1 MS. SHAW: I'd like to.

2 THE COURT: Sure.

3 MS. SHAW: Thank you.

4 CROSS-EXAMINATION

5 BY MS. SHAW:

6 Q Mr. Stewart, I understand you're here. You want to
7 support your brother, right?

8 A Correct.

9 Q Okay. Are you aware that your brother raped a 14 year
10 old in 1994 and was convicted of that?

11 A I'm not.

12 Q Okay. Are you aware that in 1999 while he was on work
13 release that he grabbed two different stranger women in a
14 grocery store and in a pharmacy?

15 A I'm not.

16 Q And do you know the details of what he did to the most
17 recent victim? And I understand you're aware of the charge,
18 but do you know how old she was?

19 A I do not.

20 Q Okay. Do you know what he did to her?

21 A I do not.

22 Q He's never confided that in you?

23 A No.

24 Q Now that you know that history that he's got four
25 convictions for sexual charges, do you feel that your wife

1 would be safe in the home with him?

2 A I do.

3 Q And are you still willing to provide him a home to go
4 knowing that criminal history?

5 A Absolutely, simply because he's out of the State of South
6 Carolina, and I don't think he would jeopardize my home, my
7 business, or my wife's security, or my two daughters. I
8 honestly do not.

9 Q If I told you his most recent victim from 2018 was 15 at
10 the time, does that concern you at all?

11 A As a father, it concerns me. Yes.

12 Q All right. So how many times have you seen your brother
13 prior to today in the last 10 years?

14 A In the last 10 years, he -- he was -- I -- I don't
15 remember exactly when he was released, but I'd say four, five
16 times in the last 10 years.

17 Q So four to five times you've seen him in --

18 A In a social environment, yes.

19 Q And how many times have you spoken to him in total in the
20 last 10 years?

21 A Dozens.

22 Q When do you usually talk to him?

23 A Usually around the holidays, birthday, my mother's
24 birthday, his birthday, my birthday, our daughter's birthday,
25 just --

1 Q What do you do? Do you call the prison or wherever he's
2 been incarcerated?

3 A When he was incarcerated, he would -- I would accept
4 collect calls, but as -- if I'm remembering correctly, in the
5 last 10 years, he's -- he was out for a period of years, so we
6 would see each other on social occasions.

7 Q So when he was in the community, you would occasionally
8 see each other?

9 A I'd come to him, or he'd come to me. Yes.

10 Q All right. Now, while he was out in the community in
11 '94, '99, and in 2018, did you have any idea he was committing
12 these types of sexual offenses?

13 A I honestly did not.

14 Q Okay. And your brother's a grown man right?

15 A Yes.

16 Q He can make his own decisions?

17 A Yes.

18 Q If he were to come live with you, is there any way you
19 could control what he ultimately does with himself?

20 A With himself?

21 Q Yeah.

22 A I -- I'd state some stipulations. I -- I'd leave it to
23 him to respect my wishes, but I could control what happens in
24 my house.

25 Q Okay. But you can't control him?

1 A I can't control him, no.

2 MS. SHAW: Okay. Thank you, Mr. Stewart. I appreciate
3 that.

4 THE WITNESS: Thank you.

5 THE COURT: Redirect?

6 MR. FALK: None, Your Honor.

7 MS. SHAW: Your Honor, at time, the state would move to
8 bar this witness from testifying. He has no direct knowledge
9 of --

10 THE COURT: Well, just hold on second.

11 Thank you, so much, Mr. Stewart. Yeah, I'm going to --
12 I'm going to put you --

13 THE WITNESS: Back out?

14 THE COURT: -- back out in the sequestration.

15 THE WITNESS: Back out south?

16 THE COURT: Yeah. You know, just for informational
17 purposes, we're not going to start back until 2 if you want to
18 go grab some lunch, unless, of course, Mr. Falk needs you.

19 THE WITNESS: I'll wait for my mother. Thank you.

20 THE COURT: Oh, okay, great. Thank you, Mr. Stewart.

21 THE WITNESS: Uh-huh.

22 THE COURT: Yes, ma'am.

23 MS. SHAW: Thank you, Your Honor. At this point in time,
24 the state would move to bar Mr. Stewart from testifying. He
25 has no direct knowledge of this offender's behaviors. He has

1 no knowledge of his sexual crimes. He admits he can't control
2 him. All he can do is offer him a place to stay if his
3 probation can be transferred to Georgia. That is not an issue
4 that this jury needs to consider. It could potentially
5 confuse them and prejudice them against the state since he
6 does have supportive family, which is certainly a positive and
7 can be a protective factor.

8 In this situation, unfortunately, the family itself
9 doesn't even know the full extent of his criminal behavior,
10 and so the testimony would not be relevant to anything this
11 court or this jury needs to decide. It would also be
12 needlessly cumulative and wasteful of the Court's time.

13 THE COURT: All right. Yes, sir?

14 MR. FALK: I thought I recall testimony from Dr. Carter
15 when she was talking about the -- some of the protective
16 factors or dynamic risk factors. They were talking about his
17 plans for the future, and I think you said that they weren't
18 realistic, and I think in order to maybe rebut that testimony
19 that she had about his plans for the future, I think it's
20 relevant.

21 MS. SHAW: Your Honor, she didn't say the plans weren't
22 realistic. She just --

23 THE COURT: Let me ask a couple of questions. First of
24 all, what matter which is of consequence to this litigation
25 does Mr. Stewart's testimony make more probable or less

1 probable? And again, that is what this jury has to determine.

2 MR. FALK: Dr. Carter spent four pages of a report
3 talking about, you know, community support and plans for the
4 future.

5 THE COURT: That's in the report. The report has not
6 been --

7 MR. FALK: That's correct.

8 THE COURT: And would not be given to the jury. What she
9 testified to was that when they -- as I understand, the way
10 that that colloquy went, there was a question by Ms. Shaw.
11 What was his plan to keep himself from reoffending, and that
12 prompted from Dr. Carter information essentially that he
13 wasn't concerned about treatment, that he was concerned about
14 new charges that would be filed, and of course, they would be
15 bogus. And that's pretty much where that went -- that
16 testimony went.

17 And then there was the request to ask about, well, do you
18 know that he is scheduled to receive treatment on probation?
19 And so it was my determination based on her -- based on the
20 examination of Dr. Carter that you were entitled at that point
21 to show to the jury that there was some treatment that he
22 would be receiving? It just seemed to me in the -- just in
23 fairness to allow you to cross examine. And that really was
24 to meet -- if the door wasn't open, the cracking of the door.

25 Now, now, the issue that is before this jury is whether

1 or not the defendant meets the definition of a sexually
2 violent predator. And so while I understand that might have
3 been in the report, in her report, it is not before the jury.
4 Those are the issues that -- the information that's before the
5 jury is what I've just talked about. So I don't understand
6 what information, what relevant information that Mr. Stewart
7 has that would be of assistance to the jury.

8 Essentially, as I understand his testimony, yeah, he
9 could come live with him if he wished. He could come work for
10 him if he wished. He doesn't offer any kind of treatment.
11 He's not talking about any kind of treatment. He's not
12 talking about anything other than (indiscernible) and do the
13 recycling business, assuming that his probation could be
14 transferred.

15 I don't know that -- I don't know that that's any
16 testimony that would be relevant. I'm a little bit concerned.
17 Let me just add this. I'm a little bit concerned that the
18 State did not have Mr. Stewart's name. But then I don't think
19 the state sent interrogatories, right?

20 MS. SHAW: No, Your Honor. We --

21 THE COURT: So I'm not so worried about it.

22 MS. SHAW: -- were advised late -- I think late last week
23 that Mr. Stewart would be called. We were able to run a
24 background check on him. There's no concerns about that.
25 It's strictly the relevance of his testimony.

1 THE COURT: Yeah. Okay. I do assess my concern. I just
2 don't know what -- I just don't know what testimony he offers
3 that would make the issues before this jury more probable or
4 less probable. Let me ask you this question. Can you point
5 me to any case law when we've talked about the case law where
6 it talks about this kind of evidence being relevant now in a
7 trial under the statute?

8 MR. FALK: (Indiscernible). I think she talked about --
9 I think in her -- let me just -- again, I think she talked
10 about some of his, you know, recklessness, failure to plan,
11 impulsivity when she was --

12 THE COURT: Uh-huh.

13 MR. FALK: -- going through some of those factors. And I
14 just think that, you know, a plan in place sort of is a
15 response to that. That's why I think it is -- I think it is
16 relevant. And I understand it's your call, and I'm just
17 saying I think it's, you know --

18 THE COURT: Is there any case law that has this type of
19 evidence, Ms. Shaw?

20 MS. SHAW: Not unless it's criminal, which would not be
21 applicable and there's nothing under --

22 THE COURT: No. I'm talking about strictly under the
23 statute.

24 MS. SHAW: No, Your Honor. Not to my knowledge.

25 MR. FALK: And I would also call out due process right to

1 make a defense on a case in a situation where -- I mean, a
2 complete defense of due process right to make a complete
3 defense on a -- in a matter that could result in a significant
4 deprivation of liberty.

5 THE COURT: I'm looking for something that makes it
6 relevant, Mr. Falk. I really am. You know?

7 MR. FALK: (Indiscernible).

8 THE COURT: You know, I really -- I truly am looking for
9 just -- for information that would make it relevant. It would
10 be certainly relevant in a sentencing without a doubt. That
11 testimony would certainly be received if we were talking about
12 a sentencing.

13 But what we're talking about is whether or not Mr.
14 Phillips meets the definition of a sexually violent predator,
15 and I am not seeing that. But I have until 2 o'clock, so I
16 will be looking for that just to be absolutely certain that
17 I'm comfortable with it. You know, I'm not inclined to
18 exclude a witness if I can find -- you need to probably look
19 as well to see if you can find some case law where this type
20 of evidence was admitted. If you can't find it in South
21 Carolina, look in Kansas because unlike Dorothy, we think
22 we're in Kansas.

23 MR. FALK: Can I put the proof in through my client? How
24 about his plans for the future?

25 THE COURT: I understand he's at -- well, that's -- that

1 very well may be a wasp of a different color if you will
2 because she testified regarding what his concerns were. Isn't
3 he's entitled to say what his concerns are with regards to
4 entering the community? I think so.

5 MR. FALK: Okay. And that's fine (indiscernible), you
6 know, we -- I'll still look for case law.

7 THE COURT: Look for case law. I'm going to be looking
8 for case law, and we'll see -- we'll get back together about
9 10 until 2. Oh, and the charge. I've got the charge. I've
10 tried to -- I so wanted to recreate what we did in August, but
11 I just don't -- I don't think I'm going to be able to do that,
12 but I'm still looking for that too. I've got a little bit of
13 time to continue to do that.

14 MS. SHAW: I'll see if I can get that document to pull
15 up, Your Honor.

16 THE COURT: That'd be great. Yeah. Oh, yeah.

17 MS. SHAW: I'll work on it.

18 THE COURT: I'm going to ask Mr. Falk. Mr. Falk, would
19 you be objectionable -- let me just say this. If you're
20 signing onto the DCC Guest, if that's what you're using for
21 internet, it's through the county, and they are wonky. It is
22 a wonky internet. And it'll -- it will not let you go places
23 that you normally would. Would you object if Ms. Shaw goes on
24 my iPad hotspot just for access to internet to see if she
25 can --

1 MR. FALK: No. I mean, I don't -- I mean, I can get on
2 the internet from the --

3 THE COURT: She can get on the internet. The problem is
4 is that that's Dorchester County, and it will block you.

5 MR. FALK: (Indiscernible).

6 THE COURT: And it's pretty random. In other words, I
7 can get on three websites I can get on yesterday that involve
8 different matters for work I'm doing that I can't get on
9 today, and it truly is fairly random.

10 MS. SHAW: Well, the problem actually is not the
11 internet.

12 THE COURT: Uh-huh.

13 MS. SHAW: It's our VPN connectivity to our internal data
14 management server.

15 THE COURT: Oh, I can't help you with that.

16 MS. SHAW: Yeah, I can't help me with that either.

17 THE COURT: I can't help you with that. That I can't
18 help you with.

19 MS. SHAW: If I get on a less spotty wireless connection
20 or if I can hardwire into something --

21 THE COURT: Yeah. You got cords. You should have cords
22 if not. The clerk's office is -- y'all go ahead. I'm sorry.

23 MS. SHAW: No.

24 UNIDENTIFIED SPEAKER: Could you possibly just lay it
25 under the desk or something? I think there's maybe --

1 MS. SHAW: The blue cord?

2 UNIDENTIFIED SPEAKER: -- a blue cord down there just
3 laying.

4 THE COURT: Congratulations. How are your knees? All
5 right, all right. We'll take breaks so folks can go get
6 lunch. I'll be back.

7 And James, if you get (indiscernible) that would be
8 awesome.

9 MS. SHAW: Do my best, Judge.

10 THE COURT: Yeah. And show it -- of course, I know
11 you'll give to Mr. Falk.

12 MS. SHAW: Oh, absolutely.

13 THE COURT: That would be awesome.

14 (Thereupon, a luncheon recess was taken.)
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A F T E R N O O N S E S S I O N

THE COURT: And Mr. Falk, have you been able to find any cases tried pursuant to 44-48-10 et seq like the proposed testimony that would be from Mr. Stewart?

MR. STEWART: I have not, Your Honor.

THE COURT: Right.

Ms. Shaw?

MS. SHAW: Your Honor, I have not found any either.

THE COURT: And I have the -- my research did not indicate any, but I did review again 44-48-100 that says the court or jury must determine whether beyond a reasonable doubt the person's a sexually violent predator. And that's the determination. It's got to be unanimous, and then all things flow from that.

So the fact that when Mr. Phillips is finished, either whenever this jury concludes its deliberations with the determination he is not a sexually violent predator or when he has concluded treatment. Then it's wonderful he can go live with his brother. But I do not believe that it has any relevant that I can ascertain. Therefore, I just don't believe that the testimony's relevant and would certainly note your exception, Mr. Falk. Will you be calling witnesses? Will Mr. --

MR. FALK: Oh, yeah, I --

THE COURT: -- Phillips be --

MR. FALK: -- call my client, yes.

THE COURT: Wonderful. Okay.

MR. FALK: Your Honor, can I go and tell him he can come in then?

THE COURT: Yes, please, please.

MR. FALK: And there's another thing. I just want to make sure the record reflects as far as the State's Exhibit 1. My objection was --

THE COURT: Sure.

MR. FALK: -- that it was coming in redirect testimony.

THE COURT: Thank you.

MR. FALK: And it was not the other objection on hearsay and relevance.

THE COURT: Got (sic). Thank you so much. All right. Anything before we bring jury out?

MS. SHAW: No, Your Honor.

THE COURT: All right.

MR. FALK: No.

THE COURT: Let's have the jury.

(Pause.)

(Whereupon, the jury came into open court at approximately 2:16 p.m.)

THE COURT: God bless you. All right, ladies and gentlemen, I hope you had a wonderful lunch. At this time, we will turn to the respondent, Mr. Folk.

Call your first witness.

MR. FALK: At this time, I'd like to call Ms. Phillips to the stand.

THE COURT: Yes.

THE CLERK: You can please raise your right hand (indiscernible).

MR. PHILLIPS: (Indiscernible).

PERRY GUSTUS PHILLIPS, after being duly sworn, testified as follows:

THE COURT: You can be seated, Mr. Phillips. And when you're seated, I'm going to ask you to state your full name for our record.

THE WITNESS: Perry Phillips.

THE COURT: And Mr. Phillips, they're going to get some water for you. And they're doing that now. If you need more, you just let us know. All right, Mr. Falk, your witness.

MR. FALK: Can the court reporter hear because I could -- could you hear?

THE WITNESS: Okay. Can you hear me now? (Indiscernible).

MR. FALK: Just say something.

THE WITNESS: Perry Phillips.

MR. FALK: Ok, Mr. Phillips.

THE COURT: Can everybody hear him okay?

THE WITNESS: (Indiscernible) hear me.

1 THE COURT: Great. And just raise your hand if y'all
2 having trouble hearing. Thank you.

3 DIRECT EXAMINATION

4 BY MR. FALK:

5 Q Mr. Phillips, why don't you tell us a little bit about
6 yourself? Where did you grow up?

7 A Charleston, South Carolina.

8 Q How long (indiscernible) -- how long did you live in
9 Charleston?

10 A Since 1983.

11 Q What part of town did you live in?

12 A Between West Ashley and Hollywood.

13 Q Okay. So sort of on the far side?

14 A Yes, sir.

15 Q Going out towards Hollywood out 17?

16 A Yes, sir.

17 Q And how many people are in the house with you?

18 A Me, my mom, my brothers.

19 THE COURT: Got to speak up a little --

20 THE WITNESS: So five.

21 THE COURT: -- bit for us.

22 THE WITNESS: Five people.

23 BY MS. SHAW:

24 Q Five people, okay.

25 A Uh-huh.

1 Q So did you come from a relatively big family?

2 A Yes.

3 Q Okay. And that's your mother here today, right?

4 A Yes, sir.

5 Q And who else is there?

6 A My brother and my wife.

7 Q Okay. So how far did you go in school?

8 A I got my GED, so --

9 Q Did you get your GED at the Department of Corrections
10 or --

11 A No, no. I came out of high school and 11th grade, and I
12 tested out, got my GED in 1992.

13 Q And what kind of places did you work at?

14 A I started -- my first job was grocery store.

15 Q We're having hard time hearing.

16 A Can you hear me? Can you hear me now?

17 Q Yeah.

18 THE COURT: Well, that's wonderful.

19 THE WITNESS: Okay.

20 BY MR. FALK:

21 Q Yeah.

22 A My first job was at a grocery store and fast food, and
23 from there I went into construction later on in life.

24 Q What kind of construction do you do?

25 A Concrete and infrastructure. I'm a carpenter.

1 Q Okay. That sort of leads me into something. So you
2 obviously spent a good bit of time into Department of
3 Corrections; is that fair to say?

4 A I have.

5 Q Okay. So when you're at the Department of Corrections,
6 what kind of stuff do you do? I mean, how did you occupy your
7 time when you were there?

8 A Learning trades and just attending different classes.

9 Q Specifically, what trades did you learn?

10 A Plumbing. I did plumbing and brick masonry.

11 Q Okay. And then do you also do carpentry work?

12 A Yes, I do.

13 Q And so do you work for yourself when you were on the
14 outside, or did you work for -- were you kind of a helper for
15 somebody else?

16 A I had a few side jobs for myself, but yeah, basically
17 worked for a superintendent contractor.

18 Q Okay. And what did y'all build?

19 A Everything. I did a air traffic control tower, the
20 colosseum, bridge work. My latest most recent big project was
21 the Port Lou Terminal (phonetic) and the Port Hugh Leatherman
22 Terminal.

23 Q Oh, oh.

24 A So yeah, yeah.

25 Q How old are you right now?

1 A 49.

2 Q Okay. What kind of health are you in? I mean, I -- the
3 only reason I'm asking is construction's kind of a hard job.

4 A I'm in okay health.

5 Q Okay. So if you got -- you could go back and do
6 construction work now?

7 A Yeah, light work.

8 Q While you were in the Department of Corrections, did you
9 have -- all right, so you took some classes on construction.
10 Did you also take any type of classes, sort of work on your
11 personality? Did you take any --

12 A Yes, yes.

13 Q Why don't you tell me about those?

14 A Anger management. I did some anger management and
15 cognitive behavioral. I did corrective thinking and character
16 development. Just different things, lot of different things.

17 Q So what kind of stuff (indiscernible) --

18 A Lot of different things.

19 Q What kind of stuff do you learn with those kind of
20 classes?

21 A Controlling your thoughts, breathing, you know,
22 meditation. A lot of it was faith-based. So biblical,
23 depending on God.

24 Q Is there a problem with drugs on the inside at prison?

25 A No.

1 Q But are they there?

2 A They're -- oh, with me or --

3 Q Well, A, are there drugs in prison?

4 A Yes, yes.

5 Q Oh. And when you were in prison, were you taking any
6 kind of AA classes or NA classes?

7 A I did.

8 Q You heard Dr. Carter's testimony that -- about your
9 attendance there. Did you not have regular attendance at the
10 NA classes?

11 A With the AA classes it was slotted at the same time as my
12 masonry class, so I would have to miss some days in order to
13 attend.

14 Q I see. So when you were 20 and 25 -- I mean, why don't
15 you describe for the jury how you've changed from when you
16 were 25 years old or even 30 years old?

17 A The person I was in my 20s and 30s was wild, immature,
18 reckless, and didn't have a vision or much respect.

19 Q Did you say much respect?

20 A Right.

21 Q Okay.

22 A Right.

23 Q Were you kind of living in the -- were you in the streets
24 as they say?

25 A All the time, yeah.

1 Q What kind of stuff?

2 A Selling -- selling drugs and just running with thugs.

3 That's what I did. That was my life.

4 Q So was that the group that you grew up with?

5 A Yeah.

6 Q And that's the crowd on West Ashley?

7 A Little bit, mostly Hollywood.

8 Q Okay. Why do you think you're different now?

9 A The things I went through, the things that I've seen and
10 experienced starting with basically the loss of my nephew. My
11 nephew was murdered, and I feel like he tried to emulate my
12 lifestyle, and so it just forced me to open my eyes and look
13 at what I showed him. Like why does that -- why these things
14 would happen and what went wrong in my life, what he saw going
15 with me that he looked up to.

16 I was his uncle, you know, and we were really close, so I
17 was in prison when he was murdered and I had to deal with this
18 because I felt like if I wasn't in prison, he wouldn't be dead
19 because of -- he would have had me to call on, and I could
20 help him out of this situation. And that was a big change
21 right then, like instantly. Like, I knew.

22 Q Like, when does this happen? When did --

23 A I can't remember. 2008, I think. 2008.

24 Q Okay.

25 A So I didn't want to be that person anymore because I

1 felt -- I really didn't realize the person that I was until
2 this happened. So I wanted to change that. I didn't want
3 to -- I got my own sons, you know, and he was more like a --
4 my first son or my -- or my little brother, my little brother.

5 And I didn't want to influence anybody else like that.
6 I didn't want my sons to feel like everything dad do is good,
7 you know, and stay in the streets or be in the streets or
8 whatever, you know, because I had my oldest boy at the time
9 following doing, you know, almost the same path. He was
10 reaching that age. So it caused me to look at myself and what
11 I was projecting to them, and I changed.

12 Q So you have children. What ages are your kids?

13 A 28, 23, 22, 17.

14 Q What part of town do they live in?

15 A Two in Hollywood, one in Charlotte, North Carolina, and
16 my daughter's in Seattle, Washington. Well, not Seattle, but
17 somewhere out there.

18 Q So the children -- your children that are living in
19 Hollywood, what ages are those?

20 A 17 and 22.

21 Q Okay. So now when you were -- you've kind of got a
22 couple of second changes along the way. You got some
23 probation -- and you got some probation violations along the
24 way, did you not?

25 A Yeah.

1 Q So why? Do you have an explanation?

2 A Like I said, I was reckless. I really didn't consider
3 much. I would not show up sometime. If I'm smoking weed,
4 I -- I don't want to, you know, have a dirty urine. You know,
5 so I wouldn't go, or I'll go and I have dirty urine. And
6 that's basically where my violations came from, having dirty
7 urine.

8 Q When was the last time you had weed?

9 A I don't know. 2020, 2021, something.

10 Q How about cocaine, or crack, or --

11 A It's been a while.

12 Q So what is your plan? I mean, obviously -- well, I mean,
13 I would suggest that selling drugs in the street's not a good
14 deal way to have money now going forward. So kind of what is
15 your plan?

16 A I've been working -- I've been away from drugs for since
17 2004. When I came home in 2014, I wasn't selling drugs. I
18 worked -- like I said, I worked construction. So I have heavy
19 equipment operator, so I have -- I operate heavy equipment,
20 and I do concrete infrastructure, and I make good money doing
21 it. So I continue to do that. I have business plans for my
22 own hardscape landscape company.

23 Q That's kind of what I was getting to. Tell me about this
24 business plan that you've been working on.

25 A Well, it's landscaping, hardscaping mostly. I want to do

1 outdoor living spaces and the help of my wife. I have a lot
2 of equipment. I already have most of the equipment already.
3 I'm just still -- I'm still working on the plan for -- as far
4 as paper -- paperwise, but it's -- it's --

5 Q Well, that's (indiscernible) --

6 A -- I live in Charleston, South Carolina. It's -- it's
7 not -- it's not a hard thing to get upstarted.

8 Q But when you say you're working on the plan, what do you
9 mean? You're trying to find the money? You're trying to find
10 the location? What?

11 A Yeah, the plan as far as I'm being -- with me being
12 locked up, I don't have all the information that I need to put
13 together a proposal to get the money from the bank. So once I
14 get out, I could put that together, but as far as everything
15 else, I -- I -- I'm pretty ready to go.

16 Q Okay.

17 A Like, the entire time I've been locked up, I've ordered
18 books. Like, every other month I order a new book, you know,
19 just to help me with my design and in my, you know, everything
20 I need to know as far as flowers, and trees, and whatnot, you
21 know? So I'm prepared.

22 Q So those are the kind -- you're not getting -- you're not
23 reading novels? You're reading --

24 A No, I don't read novels.

25 Q How to books?

1 A Right.

2 Q Okay. You said you took some courses in anger management
3 and said that you'd -- did you take any courses that sort of
4 help you identify harm that was done to your victims?

5 A Just a little -- a little. I -- I didn't take a course,
6 but I came across a book. It was a book out of
7 classification. It's victim impact something. Deal with
8 victim impact. And I flipped through it a few times. Any
9 chance I got to go in there and look at it, I -- I looked at
10 it.

11 Q You had the opportunity to talk to your victims from,
12 like, '95 and '99, what would you want them to know about you,
13 how you've changed?

14 A I would want them to see the change. You know, I -- I've
15 talked to -- I have -- when I went to court, I did apologize,
16 and I would apologize again. And to my latest victim, I would
17 apologize to them too, you know, because when you do things,
18 you're not aware of the outcome or the consequence or
19 whatever. Or you're not thinking about it. And it does
20 affect their lives, and I didn't mean to hurt anybody or
21 affect their lives in any sort of way. You know, like --

22 Q You appreciate that you significantly hurt these people?

23 A I do. I understand that.

24 Q So what's your understanding about your probation? I
25 mean, so have you talked -- you haven't talked to a probation

1 officer yet, right? Did they come into SCDC?

2 A No.

3 Q Okay.

4 A No.

5 Q Do they come in to screen you, or interview you, or
6 anything? I really don't know how the process works.

7 A No, not screen.

8 Q Okay. What are you going to do? Do you understand what
9 your conditions are during -- when you're on probation?

10 A Well, yeah, and I -- like I said, the person I was then
11 I'm not now, so I can complete a probation now. I can do
12 whatever courses they need me to take, whatever treatment I
13 need to do. Like, I've -- I've already looked into treatment.
14 When I talked to Dr. Carter, I've talked to her, and I told
15 her when I -- when we had the assessment, like, I'm willing to
16 do any and everything, you know, when I get out of here.

17 And I looked at MUSC. I looked at Long Point (phonetic).
18 I looked at Atlas Group (phonetic). Like, they all offer
19 treatment, and you know, I'm ready to go.

20 Q And you understand that you're going to have to have sex
21 offender treatment?

22 A Right, right. That was court-ordered. Yeah.

23 Q Did they ever ask -- did they offer to you while you were
24 in --

25 A No.

1 Q Okay.

2 A No.

3 Q This is really going to be your first chance to --

4 A Right.

5 Q Right.

6 A Right.

7 Q Is there anything else you want to tell this jury?

8 Because I think I'm about done.

9 A I just want to reiterate that I'm not the same person
10 that I was. These -- the -- this sexually violent predator is
11 not who I am. I was 20 years old when this all started, and I
12 feel like they -- what -- what was being presented is a
13 compilation of my crimes from being 20 years old to now. And
14 that doesn't give a spotlight on who I am today. It's dealing
15 with crimes and what I've done backwards, you know, back then,
16 not who I am today.

17 And given a chance, none of this will ever be a problem
18 again. I have support. I've started -- I live different now.
19 I -- I don't have this image that I have to present to
20 anybody. I'm not trying to be this big shot. I'm not trying
21 to be a gangster. I'm not -- I'm -- I'm not that person. I
22 have a wife. I have a daughter. I have a mother that I need
23 to be there for, and I've been doing that.

24 And being treated while I'm on probation, while I'm
25 living my life would probably be better than me being locked

1 away in a controlled facility. So they call it a controlled
2 facility where we have -- again, it's still you're locked up.
3 So you go through the same thing, the same cycle. I'll be
4 going through the same cycle of having to thaw out and
5 readjust.

6 Q Let me ask you something, because when you're talking
7 about having to be, like, the big man, what's it like going to
8 prison when you're 25 years old?

9 A It's mixed emotions there. It's -- it's no one way I
10 could do describe going to prison at any age.

11 Q But as far as do you have to be tough when you're there?

12 A You deal with a lot of competition. You deal with a lot
13 of fear. You deal -- it's everybody -- everybody is -- it's
14 dog eat dog all the time, you know what I mean? You can't
15 sleep sometime. You -- sometime you can't eat, you know what
16 I mean? And you got to learn -- you got to learn to avoid
17 situations sometimes. And sometimes, they're hard to avoid.
18 You know, you've got somebody that might wake up with an
19 attitude and mad at the world and then they jug at you, you
20 know what I mean, and you can't even avoid that. It's -- it's
21 difficult.

22 Q You have to defend yourself when you're there?

23 A Yeah.

24 Q Is that part of being the big man?

25 A That's part of being any man in prison.

1 Q Okay. Fair enough.

2 MR. FALK: I don't think I have any more questions.

3 Please answer any questions Ms. Shaw have.

4 THE WITNESS: Okay.

5 THE COURT: Cross-examination?

6 MS. SHAW: Yes, Your Honor. Thank you.

7 THE COURT: Yes.

8 CROSS-EXAMINATION

9 BY MS. SHAW:

10 Q All right. Mr. Phillips, can you hear me?

11 A I can hear you.

12 Q Okay. If you can't hear me or you don't understand a
13 question, just by all means, please tell me, okay?

14 A Okay.

15 Q So you indicated that while you've been in SCDC -- well,
16 actually, approximately how many years of your adult life have
17 you spent in either jail or SCDC?

18 A I estimate 13, 14 maybe.

19 Q And you said in SCDC, you learned trades. You learned
20 plumbing, masonry, carpentry.

21 A I didn't learn carpentry in prison.

22 Q You're right. I'm sorry. That you had that construction
23 experience on the outside.

24 A I picked it up when I came home.

25 Q Yet you told Dr. Carter that your primary source of

1 income while you were in the community was dealing drugs;
2 isn't that true?

3 A No.

4 Q You didn't say that?

5 A No. I said -- what I said was when I was younger,
6 before -- before 2014 is what I said. That was my --

7 Q But you did say that your primary --

8 A Before --

9 Q -- source of income --

10 A Yes.

11 Q -- was dealing drugs?

12 A Yes.

13 Q Okay. And 49 now, right?

14 A Okay.

15 Q Yes?

16 A Yes.

17 Q And you indicated you took anger management classes, as
18 well as cognitive behavioral therapy while you were in SCDC?

19 A Yes.

20 Q Okay. I'm going to show you a document. It is attached
21 to the petition.

22 MS. SHAW: Mr. Falk, do you want to see it?

23 MR. FALK: Yes, please.

24 MS. SHAW: Program services. It's Exhibit B. It says
25 SCDC. Your Honor, may I approach?

1 THE COURT: You may.

2 Q Can you read me what that says at the very top?

3 A Offender Management System. What did you say?

4 Q At the top.

5 THE COURT: Yeah, can you be a little louder voice,
6 please, sir?

7 THE WITNESS: South Carolina -- SCDC Offender Management
8 System Program Services summary.

9 Q And I'll represent to you, that is SCDC's documentation
10 regarding the programs that you did while you have been in
11 their custody. Can you tell me anywhere that that says you
12 did cognitive behavior therapy?

13 A It's online. It's on the tablets.

14 Q No. Can you tell me where that document says that?

15 A I can't.

16 Q Okay. Can you tell me where it says you did anger
17 management?

18 A I can't.

19 Q Okay.

20 A I can show you where it's at, if you want to log onto it.
21 It's on the tablet. We have tablets. Every inmates get a
22 tablet, and on the tablet -- and on the tablet, there are
23 programs that you take for yourself. If you want to take the
24 course, you take the course.

25 Q And so despite SCDC not having any record of you having

1 done that, you're insisting you did do that?

2 A Yes. I am.

3 Q Okay. Now you also said that there was a masonry class
4 that conflicted with your alcohol and drug rehabilitation?

5 A I didn't say it conflicted. I said that they slotted it
6 at the same time. I wasn't ordered to go to alcohol and drug.
7 When I went to alcohol and drug, that was on my own voluntary
8 thing because I know I have an alcohol issue, so I went to the
9 course -- to the AA meeting whenever I felt I could get there,
10 whenever my masonry teacher would say I'll give you a pass for
11 the day.

12 Q And in fact, from the year 2000 up until just June of
13 this last year, excuse me, you've done alcohol and drug
14 orientation no less than five times. Is that accurate?

15 A Say it again?

16 Q Between 2000 and 2021, you in fact have done alcohol and
17 drug orientation five different times; is that correct? If
18 you'd like to look at this document, I'll be happy to show it
19 to you.

20 A Maybe what you seeing might says that, but no, I did a
21 little more. I did probably a lot more than that.

22 Q Okay. All right. And you would like for this jury to
23 believe that you are a changed man?

24 A I would.

25 Q Okay. So let's go -- and you said that your nephew's

1 murder was what really inspired you to change. That was 2008,
2 right?

3 A Okay.

4 Q That's what you said --

5 A Right.

6 Q -- is that correct?

7 A Right.

8 Q Is that accurate?

9 A Yes.

10 Q Okay. So let's talk about your criminal offense history
11 since 2008. Not only have you been convicted for a 2018
12 offense in 2021 for a sexual offense, but you've also got a
13 variety of other charges including harassment, sexual assault,
14 public drunk conviction --

15 MR. FALK: Objection, Your Honor.

16 A I don't have any of that. No. I don't.

17 THE COURT: Just a second. Just a second, sir. Yeah,
18 you want to come up?

19 (Whereupon, a bench conference was held off the record in
20 the presence of the jury, but out of the hearing of the
21 jury.)

22 MS. SHAW: I'm sorry.

23 MR. FALK: I'm waiting (indiscernible).

24 MS. SHAW: (Indiscernible).

25 MR. FALK: But she has nothing from (indiscernible).

1 THE COURT: Well, she (indiscernible). Hold on. Hold
2 on. Hold on. She is impeaching him on all his comments.
3 That is a jury question. And (indiscernible) has opened the
4 door when he says I have changed my (indiscernible).

5 MR. FALK: But the (indiscernible) conviction has gotten
6 thrown out. Being charged is not the same as having done it.

7 THE COURT: Well, how about (indiscernible) but is that
8 not your cross-examination on would you agree his
9 (indiscernible) changed person?

10 MR. FALK: Especially if he (indiscernible). He doesn't
11 (indiscernible) certainly was charged, but (indiscernible).

12 THE COURT: Yeah. I think it's (indiscernible) for the
13 record. Okay. You may proceed.

14 MS. SHAW: Thank you, Your Honor.

15 THE COURT: Uh-huh.

16 (Thereupon, counsel returned to counsel tables and the
17 following ensued:)

18 (Open court.)

19 BY MS. SHAW:

20 Q All right. So Mr. Phillips, you would expect this jury
21 to believe that you're a changed man, but you have been
22 charged and/or convicted of numerous offenses since 2008;
23 isn't that true?

24 A I've been charged and convicted of one charge since 2002.

25 Q So are you denying that you were convicted of public

1 drunk in 2019 and given a fine?

2 A No.

3 Q You do not deny that?

4 A No. I forgot about that.

5 THE COURT: I'm sorry. You need to speak up, sir. I'm
6 sorry.

7 A I forgot about that. And in speaking, I was thinking --
8 I was thinking of felony charges. You know, like serious
9 charges. I did -- I did come out a bar drunk one night and
10 got arrested for public drunk. You know, I walked out of a
11 bar. I was drunk.

12 Q I don't need to go into the details of that. I just need
13 to know if you're going to admit that it actually happened.

14 A It happened.

15 Q Okay. Do you remember being charged with sex offender
16 registry violation?

17 A I -- I missed the report.

18 Q Okay. Do you remember being charged with driving under
19 suspension in 2021?

20 A I've had it.

21 Q Okay. Do you remember being investigated for a sexual
22 assault in 2017?

23 A Investigated, yeah.

24 Q Okay. Do you remember being investigated for a
25 harassment charge against a female --

1 A No.

2 Q -- friend of yours in 2020?

3 A No. I was not investigated. And at least if I was, I
4 was under -- I didn't know.

5 Q So you don't remember case number 20-00113 out of
6 Dorchester County for harassment?

7 A No. I didn't find out about that until I got what you
8 got.

9 Q So you don't remember --

10 A Or I wasn't --

11 Q -- a woman name [K] (phonetic)?

12 A What I'm saying to you now is that --

13 Q I'm asking if you remember a woman named [K].

14 A I was never -- the officers -- I was never approached by
15 law enforcement. She made a -- a statement maybe, but I never
16 was approached by law enforcement about anything dealing with
17 [K].

18 Q All right. But you say you're such a changed person, yet
19 you keep incurring criminal charges; isn't that true?

20 A I'm a changed person.

21 Q Yes or no, sir, you keep getting criminal charges, and
22 your most recent one is convicted in 2021?

23 A What type of charges are we talking about?

24 Q Sir, I'm asking the questions. So yes or no?

25 A I've had charges.

1 Q Thank you. Now you've indicated you will do whatever if
2 you are released to probation? You'll do whatever they say;
3 is that correct?

4 A Right.

5 Q But you don't have such a good history with probation, do
6 you? In fact, you violated --

7 A When was the last time I had a problem with probation?

8 Q Well, in fact, you've been revoked and violated at least
9 twice; isn't that true?

10 A When?

11 Q Okay. But you claimed that it was in or as a result of
12 dirty urines, right?

13 A Yes. Something like that.

14 Q Well, would you like me to remind you that as part of
15 your 2006 conviction, you were sentenced to a violation of
16 probation as well as the burglary second degree, armed robbery
17 with a deadly weapon, and possession of crack? Do you recall
18 that?

19 A Okay. I do.

20 Q So is it still your claim that you were violated as a
21 result of positive urine screen rather than incurring new and
22 very serious criminal charges? Is that what you're asking
23 this jury to believe?

24 A No. I'm not asking the jury to believe that.

25 Q Good. So you've never had sex offender treatment before,

1 right?

2 A No. I haven't.

3 Q Okay. And you said it was not offered where you were
4 incarcerated at SCDC?

5 A It was not.

6 Q Do you know where it was offered?

7 A No.

8 Q Okay. Where were you incarcerated?

9 A Trenton.

10 Q Trenton. Okay. And you said that you were 20 years when
11 these offenses first started happening, right?

12 A Yeah.

13 Q I think that was one of the last things you said. Now
14 you've got a wife and a mom and a daughter, and you need to
15 get out and take of them, right?

16 A Right.

17 Q And throughout your entire adult life, I mean, you've
18 been with your wife for many years, correct?

19 A Right.

20 Q You had a wife and a mother and a daughter for the past
21 20 years, and it's now that you expect us to believe that
22 you've changed so it's safe and you won't sexually reoffend
23 without having any treatment?

24 A I didn't say without treatment.

25 Q Okay. But given your history of probation violations --

1 well, I'll withdraw that.

2 MS. SHAW: I have nothing further, Your Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. FALK:

6 Q Did you take any vocational education when you were
7 there?

8 A I did.

9 Q Okay. Was that reflected on that sheet that --

10 A No.

11 Q -- Ms. Shaw was showing you?

12 A I don't know. I didn't -- I didn't -- I don't know.

13 Q Can you tell me what Pathways is?

14 A That's the online -- online classes that I was taking.

15 Q Okay. And how does that work?

16 A They have a long list of courses, different courses for
17 you to choose from. Whichever ones you wanted, you just click
18 on it, and they give you a lesson plan -- they give you
19 lessons. As you progress, you go to the next one. You go to
20 the next one. You go to the next one. So --

21 Q And do they generate then certifications when you
22 complete them?

23 A They do.

24 Q So did you complete anger management?

25 A I did.

1 Q Do you know when you completed it?

2 A June. Sometime in June, maybe. Maybe in -- I don't
3 know. It might have been in November. I'm not sure.

4 Q If I show you something to refresh your memory?

5 A Sure.

6 MS. SHAW: Your Honor, I have to object to this. This is
7 a digital exhibit. I've never been provided with any sort of
8 information related to that or the other documents Mr. Falk
9 I'm presuming going to show his client. So at this point,
10 unless I have a fair and full opportunity to see what he's
11 going to try and introduce, I would object to all of these
12 documents.

13 THE COURT: So let me see them.

14 MR. FALK: And it was not (indiscernible).

15 THE COURT: (Indiscernible) you can't -- well, if you
16 don't intend to put it into evidence. If you do intend to put
17 it into evidence, we'll have (indiscernible). Absolutely.
18 You can refresh his recollection with that.

19 Q If I show you -- let me just see if this will help you
20 refresh your memory as to when you completed anger management.

21 A June.

22 Q When?

23 A June 9th.

24 Q June of what year?

25 A 2021.

1 Q Okay. And did Pathways also offer an anger management
2 and cognitive behavioral therapy class?

3 A Yes.

4 Q And did you also take that one?

5 A Yes.

6 Q When did you complete that?

7 A I can't remember. I can't -- I think it was June, around
8 the same time. It probably was the next one.

9 Q Okay. So there are classes that you were taking while
10 you were at SCDC. What are the tablets that you were talking
11 about?

12 A It's the tablet. It's just like --

13 Q Who provides it?

14 A SCDC.

15 Q And how can you use them? Can you get online with them?

16 A Well, they have apps that are already preloaded. You
17 can't just surf the web and do what you want to do.

18 Q But that's how you can take an online class?

19 A Right.

20 Q And so you took a lot of online classes? So you took
21 these online classes on the tablet?

22 A Right.

23 Q Okay. How did you take the -- how did you do the
24 vocational education? Is that online?

25 A It's hands on.

1 Q Okay. And where was that offered?

2 A At Trenton.

3 Q Okay.

4 A SCDC.

5 Q All right. When was the last time you had your probation
6 revoked? How old were you?

7 A 2004.

8 Q Okay.

9 A Thirty-one.

10 MR. FALK: No further questions.

11 THE COURT: Recross?

12 MS. SHAW: Yes, Your Honor. Unfortunately, I'm going to
13 have to pull out another document because --

14 THE COURT: That's okay.

15 MS. SHAW: Your Honor, I'll withdraw that question.

16 THE COURT: Okay. Anything further?

17 MR. FALK: No, Your Honor.

18 THE COURT: I was -- okay. Got it. Anything further
19 from the State?

20 MS. SHAW: No, Your Honor. I'll just reserve for
21 argument.

22 THE COURT: All right. Very well. All right. All
23 right, Mr. Phillips. You can come on back down to Mr. Falk
24 and your table.

25 Call your next witness, please.

1 MR. FALK: I have no further witnesses.

2 THE COURT: All right. Very well. Ladies and
3 gentlemen -- I should ask, will be there any rebuttal?

4 MS. SHAW: No, Your Honor.

5 THE COURT: All right.

6 You've now received the witnesses and the evidence which
7 you will in this case. What remains for us are the arguments
8 of counsel and my charge or instruction on the law. Ladies
9 and gentlemen, now that we have reached this point, that
10 signifies to me that I must take up matters outside of your
11 presence, so I'm going to ask you to please step to your jury
12 room. Remember, you have not heard the arguments of counsel
13 nor my charge on the law. You are not prepared to deliberate,
14 so please do not discuss this matter or allow anyone to
15 discuss it with you. We'll be probably 20 minutes. Enjoy
16 your break. Y'all got snacks back there, right? Y'all got
17 some sugar, like, Tootsie Rolls, right? Yeah.

18 (Whereupon, the jury exited the courtroom at 3:00 p.m.)

19 THE COURT: On behalf of the State, motions?

20 MS. SHAW: Your Honor, at this time, State does not have
21 any motions. I was just going to ask the Court if the
22 document that I circulated earlier is the correct one we were
23 looking for.

24 THE COURT: I don't know. I just sent for it.

25 MS. SHAW: Sorry, Your Honor.

1 THE COURT: Not a -- no, thank you for sending it.

2 Motions?

3 MR. FALK: Your Honor, we would make a motion for a
4 directed verdict at this time, and I'd also like to renew all
5 my other motions made during the course of this brief trial.

6 THE COURT: All right. Thank you so much. There
7 certainly is evidence presented from which this jury could
8 reach a verdict. There is evidence on each and every element
9 of 44, 48, 10 et seq. It's for this jury to determine whether
10 the State has met its burden of proof beyond a reasonable
11 doubt that the defendant is a sexually violent predator, so I
12 will respectfully deny your motion, noting your exception
13 thereto.

14 Now what I'd like to do is proceed to argument and
15 charge, and hopefully I have the charge that -- and we won't
16 have to change it very much, but we'll see. So y'all want to
17 step back in chambers really quick?

18 Mr. Phillips, we're going to take a break. And then
19 hopefully, we'll have something we can use.

20 (Recess.)

21 THE COURT: All right. All right. Anything before we
22 bring the jury out?

23 MS. SHAW: No, ma'am.

24 MR. FALK: No, Your Honor.

25 THE COURT: All right. Jury, please, ma'am.

1 (Whereupon, the jury came into open court at
2 approximately 3:41 p.m.)

3 THE COURT: All right, ladies and gentlemen. Let me tell
4 you how we're going to be proceeding. You're first going to
5 hear from Ms. Shaw in her closing argument on behalf of the
6 State. You are then going to hear from Mr. Falk and his
7 closing argument on behalf of Mr. Phillips. And then you are
8 going to hear a rebuttal argument by Ms. Shaw.

9 Once the closing arguments are finished, there's going to
10 be a very short break, which will be self-explanatory when we
11 reach that point, and then I'm going to deliver the
12 instruction or the charge on the law to you. There'll be
13 another very short break, which I'll explain to you, and then
14 you're going to receive this case for your deliberations.

15 Ladies and gentlemen, at this time, I'm going to ask you
16 to please draw close as we listen to the closing arguments.

17 | Ms. Shaw?

18 MS. SHAW: Thank you, Your Honor.

19 THE COURT: Yes.

20	CLOSING

21 MS. SHAW: All right, ladies and gentlemen. It's come
22 down to it. This is one of the last time you will have to
23 listen to me, and I'm not going to belabor a lot of facts.
24 You have been listening very attentively, and this has been a
25 relatively short trial. But I am going to go through some

1 things, just to remind you of, before you begin your
2 deliberations.

3 So as you know, we're here under the sexually violent
4 predator law, and I have to prove three items to you beyond a
5 reasonable doubt. The first is that Mr. Phillips has been
6 convicted of a sexually violent offense. In 2021, just last
7 year, he was convicted of criminal sexual conduct, third
8 degree. The judge will instruct you on that, but I would
9 submit to you that that is a proof beyond a reasonable doubt
10 with the documents you will have that he in fact has been
11 convicted of a sexually violent offense.

12 The second element I need to prove to you is whether he
13 has a mental abnormality or personality disorder which makes
14 it likely that he will sexually reoffend. And that is where
15 your good judgment comes in. You've heard from Dr. Carter,
16 and you heard from Mr. Phillips. And Dr. Carter's undisputed
17 and neutral testimony indicated that Mr. Phillips has an
18 extremely long criminal history.

19 He began his sexual offending in 1994 with his first 14-
20 year-old victim who he did rape, and he pled guilty to that.
21 But he was convicted of contributing to the delinquency of a
22 minor, not a sexually violent offense.

23 His next set of sexual offenses, which have been
24 interspersed with both violent and nonviolent criminal
25 behavior occurred in 1999. They occurred three months apart

1 and were both adult female victim strangers. This in and of
2 itself is extremely important because it shows that in a
3 public place, both of these events occurred in a grocery store
4 or a pharmacy, public places, he does not care. If he wants
5 to do something, he's going to go up and grab a complete
6 stranger, and he did it twice, after having been sanctioned
7 and after knowing he was already being charged for the first
8 touching. But he did it again.

9 He can't control himself. He described to Dr. Carter
10 that his behavior at that point was like an addiction. That
11 suggests that he has no control over his sexual impulses.

12 And that has been borne out by his history because most
13 recently, he's been convicted of sexually assaulting another
14 15-year-old female. This was his first victim and his most
15 recent victim, and this offense was convicted just over a year
16 ago.

17 So the sexual behaviors have not changed over time. They
18 have not improved. The criminal behaviors have not changed
19 over time. They have not improved. When you heard Mr.
20 Phillips testify regarding that he's a changed person, he said
21 the death of his nephew in 2008 precipitated that. What did
22 you hear on cross-examination? He's been charged with no less
23 than five offenses since then, and he's been convicted of at
24 least two, public drunk and the CSC. Mr. Phillips hasn't
25 changed.

1 And so what is the personality disorder? It's antisocial
2 personality disorder. There are many, many overlapping
3 symptoms and behaviors that are associated both with sexual
4 recidivation, as well as this particular personality disorder.
5 Complete lack of respect for authority. You saw that today.
6 Complete disregard for the safety of other people. His recent
7 driving under suspension charge, public drunk, this is
8 disregard for his own safety as well as other people's.

9 You see institutional infractions. He had approximately
10 30 disciplinary offenses while he was in SCDC, six of which
11 were sexual, and one of which occurred in a domestic abuser's
12 class, DAO DS, I believe that's what it is. And he was kicked
13 out of that class for groping himself in public in front of
14 the instructor.

15 This is the level of lack of control that this individual
16 is demonstrating, has demonstrated, and will continue to
17 demonstrate if he is not confined for long-term control and
18 treatment.

19 So Mr. Falk in his opening said to you that you have to
20 consider how old some of the behavior is. In fact, I believe
21 his statement was we're talking about conduct that occurred 20
22 years ago. Well, he's right in a way. The 1994 offense
23 occurred approximately 28 years ago, and it is almost
24 identical to the 2018 offense for which he was convicted last
25 year. Not changed. And while that older offense may

1 certainly be a bit less relevant to the current offense
2 pattern, it's still there. Same age victim, same demographic,
3 same type of behaviors.

4 So with that, she was able to diagnose antisocial
5 personality disorder. And that is the relevant personality
6 disorder that we now have to assess whether he is in fact
7 likely to reoffend in a sexual way. Because not everyone with
8 antisocial personality order is likely to be a sexual offender
9 or is likely to offend sexually again. Not everyone, and like
10 I said at the very beginning, it's an extremely small and
11 extraordinary dangerous class of sex offender.

12 So we have the diagnosis. Now we have to assess risk.
13 And the way Dr. Carter did that was by performing the
14 actuarial risk assessments. You heard that he scored a 6 on
15 the Static-99, and that his overall risk assessment and
16 likelihood for total recidivation based on that, as well as
17 the VRSSO, which took into account all of the dynamic risk
18 factors, approximately 17 of which, and you heard Dr. Carter
19 testify about them. Most of the dynamic risk factors are both
20 active and treatment needs. So he's got 17 approximately risk
21 factors that are present in his daily functioning and daily
22 presentation which have been untreated.

23 And if he is released to the community, while he would be
24 under probation, we know what his history is with probation.
25 He's been violated multiple times, and he's been revoked and

1 sent back to prison twice because he did not comply. He would
2 have you believe that that was because of a positive urine
3 screen. The facts of the matter are not that. He incurred
4 new, very serious criminal charges in the 2004 violation,
5 which was the one that he would be most recently aware of.
6 However, he was convicted of that in 2006. So his history in
7 terms of compliance with probation, in terms of remaining
8 offense free in the community, and in terms of basically
9 doing what he is supposed to do, if he is not in a controlled
10 situation, is bad.

11 I have no reason to believe that Dr. Carter would in any
12 way make a mistake, and frankly, the history itself speaks for
13 itself. This man has repeatedly and consistently offended
14 over time, and the most recent offense is the sexually violent
15 offense. So his behavior hasn't been slowing down or getting
16 better as he would have you believe. It's actually been
17 getting worse.

18 And so based on that, and obviously, with the actuarial
19 risk, this individual's ten-year likelihood to reoffend is
20 almost 41 percent. That is extraordinarily high because he's
21 not being compared to normal everyday people. He's being
22 compared to other sex offenders. That's important because his
23 risk is demonstrably higher than other sex offenders, and so I
24 believe that that makes it likely that he is going to reoffend
25 if he is not confined to a secure facility so we can get him

1 the treatment that he does need.

2 It's already been ordered that he has to do treatment.
3 You will see it in the sentencing sheet. The question is
4 where. And if you find that he has both the antisocial
5 personality disorder and you believe he's likely to reoffend,
6 the State would be entitled a verdict of yes, he is a sexually
7 violent predator, and he will be committed for long-term
8 control, care, and treatment.

9 So with that said, I ask you to very carefully consider
10 the evidence you've heard, carefully consider the documents
11 you will read, and render a verdict in the State's favor.
12 Thank you.

13 THE COURT: Thank you. Mr. Falk?

14 MR. FALK: May it please the Court?

15 THE COURT: Yes, sir.

16 CLOSING

17 MR. FALK: As we have been talking, this program is for
18 the worst of the worst. Now there's no question that my
19 client has a long criminal history, 27-year criminal history.
20 If that's what the State says, I'm not going to do the math on
21 that. But that's fine. But you know, you don't put somebody
22 in sex offender treatment because they committed a robbery,
23 and you don't put somebody in sex offender treatment because
24 they're selling drugs.

25 So you know, the pattern of sexual offending, he's got

1 two charges when he was 25 and under, and then there's a 20-
2 year gap, and then there's the charge in 2018. Now just sort
3 of hold onto that for a minute.

4 As Dr. Carter was saying, there are people out there who
5 have a paraphilia, and she acknowledged that that's a
6 persistent and intense interest in abnormal sex. I think
7 that's sort of what we agreed to. She had a longer
8 definition, but she accepted that. So that's somebody who's
9 driven, has a sexual drive, for abnormal sex.

10 And she talked about that that would be people who are
11 driven to have sexual contact with children, like prepubescent
12 children, or somebody who really only gets their sexual
13 gratification from having nonconsensual sex with people. She
14 discussed those, and we discussed those two diagnoses that we
15 see in these kinds of cases. And one is, she talked about a
16 pedophilic disorder, and the other one, she talked about a
17 biastophilia, which is sort of the rape disorder, if you have
18 it.

19 But she doesn't think he's got either of those. There's
20 no proof in the record that he has this intense and persistent
21 interest in antisocial behavior. I mean, he's got a criminal
22 record. He's got a criminal record that's probably affected
23 in significant part by some drug addiction that's happened
24 along the way or just drug use along the way.

25 But I think we have to consider whether or not you're

1 going to put somebody like this with this 20-year gap in
2 charges in this program with the worst of the worst. And we
3 know he is not a pedophile, nor is he somebody who is this
4 predatory rapist that's out there.

5 And I always think it's hard with these kind of cases
6 where you've got somebody that they're saying they have
7 antisocial personality disorder. Magnified it a 100 times,
8 but what it means is he's just kind of a jerk. Kind of does
9 what he wants and he's just kind of a jerk. Somebody with
10 antisocial personality is probably not going to be a good
11 person to be your best friend. I mean, they're jerks, but
12 they're not necessarily sexual predators.

13 And Dr. Carter sort of endorsed my comment that I made
14 at the beginning that in these kind of cases, as hard as it is
15 because you're going to want to -- I mean, you're going to be
16 mad at my client. But you've got to separate what is a mental
17 health issue and what is a pattern of criminal conduct. And
18 that's what I was talking about before. And that's what she
19 says you have to look into the motivations behind it. Are you
20 the person that likes to steal because they enjoy stealing, or
21 are you the person that steals for other reasons?

22 I think it's very difficult to try and attribute this
23 mental health disorder for somebody who just has this history
24 of criminal offenses. I mean, and a lot of his charges were
25 drug related, and he did have some violent charges in there.

1 But none of which require sex offender treatment.

2 And I do think you can take him at his word about the
3 change. I guess he says it's about 2008. And the State
4 certainly made a big point of the fact that he was arrested
5 for drunk in public and he was arrested for DUS and that he
6 was arrested for the charge in 2018 and was sentenced. But
7 all the other stuff, that was really kind of behind him, and a
8 lot of disciplinary infractions at the Department of
9 Corrections were sort of in the prior sentences.

10 You have to remember, there's a charge in '95 when he was
11 20 years old, and there's the two charges in '99 when he was
12 25 years old. And then there's a 20-year gap for this current
13 charge and why we're here today. I'm not sure if that's a
14 pattern or not. That's really going to be your decision.

15 But you have to also remember because your job here today
16 is not to impose an additional penalty. The people in the
17 courtroom in 2021 or whenever he was sentenced, he was given a
18 sentence. He was given what was thought to be an appropriate
19 criminal sentence. So he's paid the price. He has done what
20 he is responsible to do as far as paying back society. He's
21 done his sentence. So I mean, if you all are mad at the fact
22 that he did this in 2018, I get that you're mad, but you can't
23 say that he's a sexually violent predator just because you're
24 mad at him for that. You have to rely on the fact that you
25 think that there is some kind of real mental health disorder

1 that's driving this conduct. Again, is there that persistent
2 and intense drive? Is this some kind of abnormal sexual
3 behavior?

4 When the State started their closing argument, I think
5 one of the first things she said was we all just want to get
6 him the help that he needs. I think that's what she said in
7 the opening argument. He's going to get sexual offender
8 treatment. He did not get it while he was at the Department
9 of Corrections, but he's going to get sex offender treatment.

10 He's going be on probation for five years. And I think
11 the man that you saw in the witness stand, I think you can
12 appreciate that he is a different person and he does not want
13 to get his probation revoked. I mean, granted he had problems
14 with probation back when he was 20 years old, 25, 30 years
15 old.

16 But I mean, I'm taking him at his word that he's sort of
17 put away the childish toys and is trying to take
18 responsibility and be a man. He feels that the lifestyle that
19 he was living was providing a model for his nephew's
20 lifestyle, and when his nephew died as a result of that
21 lifestyle, he felt awful. Yeah, I just made note to myself
22 right here. I think the last probation violation he has was
23 15 years ago.

24 When you get to these kind of cases and the word
25 diagnosis comes up, and I appreciate that you have to use some

1 kind of word, but diagnosis sometimes sort of leaves me with a
2 connotation that it's like a medical diagnosis. And when you
3 go to your doctor, if you went to your doctor and your arm
4 really hurt, and the doctor took an X-ray of it and they saw
5 that the bones were mismatched, you'd know that your arm hurt
6 because your arm was broken. And they could send that X-ray
7 to a doctor halfway across the world. He could look at that
8 same X-ray and know that that person has a broken arm. Also,
9 all through sort of that type of medical profession, there's
10 all types of tests that they can run that they can confirm
11 their diagnoses.

12 But the diagnosis in this case is really based on a lot
13 of subjective decisions that Dr. Carter is forced to make. I
14 mean, granted, she has the experience. Well, she has some
15 experience in this area. I think she said she's done six of
16 these before, and she's done about 100 of a similar type. But
17 you have to appreciate that there's a lot of subjective
18 guessing in there that you don't find in the medical world.

19 And when you think about a diagnosis, if you came back
20 from the doctor and the doctor said you had diabetes. Well,
21 that's a diagnosis that was based on some kind of medical
22 test. You come back from this doctor and they say you have
23 antisocial personality disorder, that's sort of just not quite
24 the same type of independent corroboration that you would get.
25 Like, there's X-ray. There's no test that's run. The only

1 test that they run is this actuarial survey that they do.

2 We have to think about his risk to reoffend. And to
3 reoffend sexually. Not to reoffend by going and selling drugs
4 tomorrow, but committing a crime of a sexually violent
5 offense. That's what the issue is today. Because the last
6 one before this was 20 years ago.

7 And Dr. Carter acknowledged that if you do have
8 antisocial personality disorder, that is something that kind
9 of mellows out with age. That is something that's going to
10 decline. It's not like have -- it's not like being a
11 pedophile, which is this interest that you're probably going
12 to have the rest of your life. This antisocial personality
13 disorder goes into a decline.

14 And she also acknowledged that when you're looking at
15 this Static-99R, the other test that they run, she
16 acknowledges that that's something else that goes -- the
17 sexually reoffending goes down with age, too. It's already
18 started to show. I mean, she already gave him some credit,
19 and he's going to get more credit when he gets to 60. He's
20 going to have five years of supervised probation between now
21 and when he's 60.

22 Again, regardless of your verdict, he's going to get sex
23 offender treatment. So if you leave here today thinking this
24 man needs sex offender treatment, I think Dr. Carter certainly
25 thinks he needs sex offender treatment, he's going to get sex

1 offender treatment while he's on probation. So I mean, that
2 box is checked.

3 Then the next box you have to check is whether or not you
4 think he's going to commit a sexually violent offense. Not
5 just commit some other crime. That he's going to commit a
6 sexually violent offense. And a pattern of sexual offending
7 with a 20-year gap in it is not exactly a pattern that's going
8 to predict that there's going to be another one right around
9 the corner.

10 Again, your job, as hard as it is, your job is not to try
11 to impose any more punishment on this man. Your job is to
12 decide whether or not he has a mental health problem that he
13 needs mental health type treatment.

14 And again, your job is to determine whether or not he
15 fits in that category, that small category, because Dr. Carter
16 said not everybody who commits a sexually violent offense is a
17 sexually violent predator. And the State talks about it's
18 whether or not that small category. You have to consider
19 whether or not this man's pattern of conduct makes him fit
20 into that category, the worst of the worst.

21 I mean, he's no angel. He's had numerous criminal
22 sentences. He's probably spent a good part of his adult life
23 in prison. He may go back to prison for selling drugs again.
24 I don't know. But that's really not your concern right here.
25 Your concern is whether or not it makes sense to put him in a

1 program to treat sex offenders and that the need to put him in
2 this program is so bad that the sex offender treatment that he
3 would get when he's on probation is not going to be adequate,
4 and he has to have sex offender treatment in a confined
5 facility.

6 I think at the end of the day -- I mean, as I said, it's
7 very hard. At the end of the day, I think you'll find that
8 yes, this guy is probably not somebody you're going to maybe
9 pick as your best friend. But I think you'll also find that
10 he doesn't really have a pattern, a long, continuing pattern
11 of sexual offending that would justify putting him in that
12 category of the worst of the worst. And I think at that
13 point, as hard as it might be for y'all, you're going to have
14 to determine that he does not need to be confined in the
15 sexually violent predator treatment program and that he is not
16 a sexually violent predator. Thank you.

17 THE COURT: Thank you, Mr. Falk.

18 Ms. Shaw?

19 MS. SHAW: Yes, Your Honor. Thank you.

20 THE COURT: Um-hum.

21 CLOSING

22 MS. SHAW: All right, ladies and gentlemen. This is the
23 last time you're going to have to listen to either one of us,
24 and I'm just going to remind you very briefly of a couple of
25 things.

1 In Mr. Falk's closing, he kept referring to there's a 20-
2 year gap between the 1999 sexual offenses and the most recent
3 sexual offense. That's actually not true, ladies and
4 gentlemen. First of all, the offending began in 1994, and he
5 has spent a considerable amount of time in prison. After he
6 was convicted of the armed robbery as well as the revocation
7 of probation in 2006, he spent approximately, I think, eight
8 years in prison. He was released in 2014.

9 So between that time period, what was he doing? He was
10 exposing himself in prison. He was getting himself kicked out
11 of classes that could potentially help him because he was
12 exposing himself in front of other inmates and teachers.
13 That's sexual offending, ladies and gentlemen. It may not be
14 qualified as a sexually violent offense, but it is a sexually
15 motivated offense.

16 And that is what you need to remember is that there's not
17 just this one isolated incident and another isolated incident
18 a couple years ago. There is a very longstanding pattern of
19 various sexual offenses, which include both contact and
20 noncontact. And I would submit to you that that dramatically
21 increases his risk. So the suggestion that he's had good
22 behavior in this context for 20 years is just simply not
23 accurate, and I ask you to just rely on your memories of what
24 you heard.

25 Second, Mr. Falk asserts that psychological evaluations

1 and diagnoses are not the same as medical evaluations and
2 diagnoses. That's also not entirely accurate because the
3 diagnosis of Mr. Phillips is based not only on his historical
4 behaviors and historical presentation as the evaluator was
5 able to glean from all the record. It's based on his current
6 presentation. She interviewed him for approximately 13 hours.
7 That's two full days of interview. She had the opportunity to
8 observe him, hear what he had to say, see his demeanor, assess
9 what he was showing to her. And he did indicate significant
10 deception. He was not honest with her. He was not
11 forthcoming about his sexual offense history. And that is
12 also risk relevant, and it's something for you to consider.
13 This is not some nebulous, oatmeal bowl full of potential
14 diagnoses. There's very, very specific diagnoses that are
15 considered in the context of these evaluations, and antisocial
16 personality disorder is one of them. And based on the
17 history, and I hope you all remember from the DSM, the
18 criteria that go into that diagnosis, he meets criteria. So
19 he's got the mental abnormality.

20 And there is a suggestion again that antisocial
21 personality disorder behaviors mellow with age. I'll just
22 remind you, they haven't with this particular offender. That
23 is the trend in general, but we don't see it with this
24 particular individual, and that's what you have to basis your
25 opinion is what have you heard, seen, and learned in this

1 trial that would make you believe or not believe that he's
2 likely to reoffend.

3 And the assertion of the likelihood of success of
4 treatment is not before you. The only questions you need to
5 answer are do you believe he has the abnormality, and do you
6 think he's likely to reoffend. The nature of treatment,
7 mandatory or not, is irrelevant. So thank you very much.

8 THE COURT: All right. Ladies and gentlemen, that first
9 short break that I mentioned. Just stand up where you are and
10 just get the oxygen moving for a second. So you can listen to
11 me. Didn't that feel good to just stand up when you've been
12 sitting for a minute? Aye, yi yi. And just move around.
13 Seriously, move around. And when you're ready to be seated,
14 be seated. If you want to stand, stand. I do not care. I
15 just need to have your attention for about 15 minutes if you'd
16 be so kind while I deliver the charge or the instruction to
17 you. I'm going to sit simply because I need to, to be able to
18 turn these pieces of paper.

19 CHARGE OF THE COURT

20 THE COURT: Ladies and gentlemen, you have heard the
21 evidence and the arguments of both sides. It is now my duty
22 to explain to you the law applicable to this case. It is your
23 duty to accept and apply the law as I will now state it to
24 you.

25 Ladies and gentlemen, the State of South Carolina has

1 brought this case under what is called the Sexually Violent
2 Predator Act of South Carolina. And the State seeks the civil
3 commitment of Mr. Perry Gustus Phillips, the respondent, for
4 long-term control, care, and treatment in a secure facility
5 administered by the South Carolina Department of Mental
6 Health. This is not a criminal proceeding seeking
7 incarceration, but rather, it is a proceeding seeking civil
8 commitment.

9 The State of South Carolina alleges that the respondent,
10 Mr. Perry Gustus Phillips, is a sexually violent predator
11 under the law. Respondent denies that he is a sexually
12 violent predator, and the burden of proof is therefore on the
13 State and the State only to prove by evidence beyond a
14 reasonable doubt that Mr. Phillips is a sexually violent
15 predator. If the State is unable to meet that burden of proof
16 as to one or more of the elements of this claim, Mr. Phillips
17 is entitled to a finding that he is not a sexually violent
18 predator.

19 Now, during this trial, you and I have had separate
20 duties to perform. As the trial judge, it is my
21 responsibility to preside over the trial, and I have the duty
22 to rule on the admissibility of evidence offered during the
23 progress of this trial.

24 Ladies and gentlemen, you are to consider the testimony
25 which has been presented from this witness stand, together

1 with any exhibits admitted into evidence.

2 Furthermore, I have the additional duty to charge you
3 regarding the applicable law of this case, and in that regard,
4 I am the sole judge of the law of this case. It is your duty
5 to accept and to apply law as I now state it to you.

6 If you have any preconceived ideas as to what the law is
7 or what it ought to be, I urge you make an appointment with
8 your legislator, but for our system to work correctly, you
9 must accept and apply the law exactly as I state it to you.
10 If you have a preconceived idea, you are now by your oath
11 obligated to abandon that preconceived idea because you have
12 taken an oath and sworn to accept the law precisely as I now
13 state it to you.

14 Now, in this trial, you are the sole, the only, the
15 exclusive judge of the facts. Do not infer, please, that I
16 have any opinion about the facts in this case from anything I
17 may have said during the course of this trial in ruling on the
18 admissibility of evidence or otherwise, or from anything that
19 I now say during the course of this charge to you that I have
20 an opinion regarding these facts. I don't have an opinion
21 regarding these facts. That's a matter solely for you to
22 determine. The law doesn't allow me to have an opinion
23 regarding these facts.

24 As jurors, it is your duty alone to determine the effect,
25 value, the weight, and the accuracy of the evidence presented

1 during the course of this trial.

2 Now, ladies and gentlemen, in most cases tried in this
3 case, civil court, the burden of proof is by what we call the
4 greater weight or the preponderance of the evidence. I start
5 there because I need to tell you that even though this is
6 civil court, that is not the applicable burden of proof. The
7 State's burden in this case is greater than that. The State's
8 burden is beyond a reasonable doubt. As I've already stated
9 to you, the State has the burden of proof under the law of
10 this state according to the Sexually Violent Predator statute,
11 and the State must meet its burden of proof beyond a
12 reasonable doubt, and it will be your duty as jurors to
13 determine from the evidence before you whether the State has
14 met its burden.

15 Now, ladies and gentlemen, if the State fails to meet
16 this burden of proof, then you must find that Mr. Phillips is
17 not a sexually violent predator.

18 What then is reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. Proof beyond a reasonable doubt is
21 proof that leaves you firmly convinced that the respondent,
22 Mr. Phillips, is a sexually violent predator. The State has
23 the burden of proof.

24 Ladies and gentlemen, there are very few things in this
25 world that we know with absolute certainty, and in this type

1 of case with this burden of proof, the law does not require
2 proof that overcomes every possible doubt.

3 If, based on your consideration of the evidence, you are
4 firmly convinced that Mr. Phillips is a sexually violent
5 predator, then you must return a verdict for the state finding
6 that he is a sexual violent predator.

7 However, on the other hand, if you think there's a real
8 possibly that he is not a sexually violent predator, you must
9 give him the benefit of the doubt and return a verdict for him
10 that states that he is not a sexually violent predator.

11 Now, ladies and gentlemen, reasonable doubt may arise
12 from the evidence that is in this case or from the lack of
13 evidence in this case. It is up to you, our jury, to
14 determine whether or not a reasonable doubt exists in this
15 case. In other words, whether or not the state has met its
16 burden of proof.

17 Now, there could usually -- and normally two types of
18 evidence which you're presented during a trial. One is called
19 direct evidence. The other's circumstantial evidence. And
20 I'm going to define both for you and give you an example.

21 Direct evidence is testimony by a witness about what the
22 witness personally saw, heard, or did. Circumstantial
23 evidence is indirect evidence. That is, it is proof of one or
24 more facts from which one can find another fact.

25 You are to consider both direct and circumstantial

1 evidence. The law doesn't distinguish between direct and
2 circumstantial evidence. And the law permits you to give
3 equal weight to both, but it up to you to decide how much
4 weight to give any evidence.

5 Now, I'm going to give you an example. Direct evidence.
6 It's February. Cold outside and snow is forecast. You walk
7 outside, and you get hit in the eye with snow. Well, you go
8 back in, and you say it's snowing. I just got hit.

9 And you really are an eyewitness because you got hit in
10 the eye with the snow. That is direct evidence. You know.
11 You saw. You felt the snow. You go in, and you say, it's
12 snowing outside. That is direct evidence.

13 Here's an example of circumstantial evidence: We're in
14 February. Snow's forecast, and it is cold. You look outside,
15 kind of looking forward to maybe a snow day. You look outside
16 before you turn in, and all you see is your poor, pitiful
17 brown, crunchy grass. And you awaken in the morning. Snow
18 covers everything. But the sky is beautiful. It's blue, but
19 it's cold. And the snow covers everything.

20 What do you know? It's February. Snow's forecast. It's
21 cold. When you went to bed, you saw your poor, pitiful,
22 brown, crunchy grass. And when you awoke in the morning, you
23 saw snow everywhere. What do you know through inference?

24 It snowed overnight. You didn't see it snow overnight,
25 but you know it snowed overnight. So when you say it snowed

1 overnight, you are testifying to circumstantial evidence. You
2 know the collateral matters that point the fact to be
3 inferred, which is it snowed overnight. That is
4 circumstantial evidence.

5 Now, I'm now going to talk about the credibility of
6 witnesses. Now, in determining what the facts are in this
7 case, you necessarily must judge the credibility. It simply
8 means the believability of the witnesses. And the value or
9 weight to be given to their testimony.

10 You alone must decide the force, the effect, and the
11 accuracy of the testimony. In making this decision, there are
12 many things you may take into consideration, and these are
13 some examples. And these are examples. This is not an
14 exhaustive list.

15 The appearance and the manner on the stand, the
16 characteristic, often referred to as the demeanor of the
17 witness. Was the witness forthright or hesitant in answering?
18 Was the witness's testimony consistent or inconsistent? What
19 was the ability of the witness to know the facts about which
20 the witness testified?

21 Was there some reason that a witness would want to give
22 testimony which would help or hurt one side or the other? In
23 other words, was the witness biased or prejudiced? Was the
24 testimony of the witness reasonable when considered in all the
25 evidence in the case and in light of your own experience and

1 common sense?

2 Was the testimony of the witness corroborated and made
3 stronger by other testimony and evidence? Or was it made
4 weaker or impeached by other testimony and/or evidence?

5 As jurors please understand that you have a right to
6 believe a small portion of a witness's testimony and discard
7 the larger portion or vice versa. You may believe a witness's
8 testimony in its entirety or you may reject a witness's
9 testimony in its entirety. You may believe the testimony of
10 one witness as opposed -- and against another witness or the
11 other way around.

12 Ladies and gentlemen, of course, we say you don't
13 determine the truth merely by counting the number of witness
14 by each side.

15 Now, ladies and gentlemen, the fact that testimony is not
16 controverted does not mean that you must accept it as valid
17 and undisputed. You still must gauge the credibility of the
18 witness to determine the believability of the facts offered
19 through the testimony.

20 In the exercising your mental processes and attempting to
21 decide the accurately of testimony, the law simply requires
22 that you exercise your good common sense and judgment, your
23 sense of logic and reason, your experiences in life. You
24 apply these attributes to the evidence and then apply the law
25 as I am now stating it to you.

1 One of the things that judges say is you didn't check
2 your common sense and your logic at the courthouse door. It
3 came right on in here with you. And the evidence that you
4 should give the most weight to is that which convinces of its
5 truth regardless of from whom or where it comes.

6 Now, ladies and gentlemen, in this trial you've heard
7 testimony from a witness deemed to be an expert. Our rules of
8 evidence ordinarily do not permit witnesses to testify
9 regarding their opinions or conclusions. An exception to this
10 rule exist for witnesses who are deemed to be expert
11 witnesses.

12 A witnesses who by virtue of their education and
13 experience has become an expert in some art, science, or
14 profession, and they may give an opinion as to the subject the
15 witness claims to be an expert and may also give the reasons,
16 their reasons for the opinion.

17 You should consider any expert opinion given by a witness
18 and like any other evidence, give it the weight you think it
19 deserves. If you decide that an expert witness's opinion is
20 not based on sufficient education and experience or if you
21 decide that the reasons given in support of the opinion are
22 not sound or that the opinion is outweighed by other evidence,
23 you may disregard the opinion entirely.

24 An expert witness's testimony is to be given no greater
25 weight than that of other witnesses simply because the witness

1 is an expert, and you do not have to accept an expert opinion
2 even though it is uncontradicted.

3 Now, ladies and gentlemen, I'm going to talk to you about
4 the elements, the elements that the State must prove beyond a
5 reasonable doubt. Beyond a reasonable doubt. And the State
6 only has that burden.

7 All right. Now, the elements which the State must prove
8 beyond a reasonable doubt are, number one, that the respondent
9 has been convicted of at least one sexually violent offense.

10 Ladies and gentlemen, Mr. Phillips has been convicted of
11 criminal sexual conduct in the third degree. This is a
12 sexually violent offense, and the State has met its burden as
13 to this first element.

14 Number two, the State must prove beyond a reasonable
15 doubt that the respondent, that Mr. Phillips, suffers from a
16 mental abnormality and/or a personality disorder. And that
17 mental abnormality or personality disorder makes him -- makes
18 Mr. Phillips likely to engage in acts of sexual violence if
19 not confined in a secure facility for long-term control care
20 and treatment.

21 Now, ladies and gentlemen, we've talked about the first
22 that he has been convicted of at least one sexually violent
23 offense.

24 Moving on to the second and third elements. Inherent in
25 the second and third elements is that the State must prove

1 beyond a reasonable doubt that the respondent, Mr. Phillips,
2 first has a mental abnormality or personality disorder, and
3 second, that it causes him serious difficulty in controlling
4 his behavior.

5 In other words, the State must prove beyond a reasonable
6 doubt that the individual it seeks to commit, Mr. Phillips,
7 suffers from a mental illness, which he cannot sufficiently
8 control without the structure and care provided by a mental
9 health facility and that that illness renders him likely to
10 commit another sexually violent offense.

11 In order for you to better understand the elements of the
12 State's cause of action, I'm going to define for you some of
13 the terms that I have just used.

14 "Mental abnormality" means a mental condition affecting a
15 person's emotional or volitional capacity -- "volitional"
16 meaning relating to the use of one's will -- that predisposes
17 the person to commit sexually violent offenses.

18 This mental abnormality or personality disorder must
19 cause Mr. Phillips serious difficulty in controlling his
20 sexual behavior. That's number one.

21 Number two, "likely to engage in acts of sexual violence"
22 means the person's propensity, the person's propensity to
23 commit acts of sexual violence is of such degree as to pose a
24 menace to the health and safety of others so that he is
25 dangerous to the public.

1 "A propensity" means an inclination or national tendency
2 to behave in a particular way. It's a tendency to behave in a
3 particular way. That's propensity.

4 Now, again, I remind you that the burden of proof is on
5 the State to prove to your satisfaction beyond a reasonable
6 doubt that the respondent has been convicted of a sexually
7 violent offense, as I've instructed you, and that he also
8 suffers from a mental abnormality or personality disorder that
9 makes him likely to engage in acts of sexual violence if not
10 confined in a secure facility for long-term control, care, and
11 treatment.

12 If the State carries or meets its burden of proof and
13 convinces you beyond a reasonable doubt as to each of these
14 three elements, it is entitled to a finding that Mr. Phillips
15 is a sexual violent predator. If the State does not meet that
16 burden of proof as to any of these elements, the respondent is
17 entitled to a finding that he is not a sexually violent
18 predator.

19 Now, ladies and gentlemen, in just a moment, I'm going to
20 be asking you to step to your jury room.

21 And Mr. Presiding Juror, I need you to stay here with me
22 when the jury leaves me on this next occasion. Okay? Stay
23 right here with me.

24 And I wish to express the hope that each of you will be
25 mindful of the importance of your responsibility. You're not

1 called upon to serve as jurors very often, and the proper
2 performance of your duty requires that each of you free your
3 mind of all improper influences and preconceptions and weigh
4 the merits of this case fairly and without prejudice.

5 As the presiding officer of this court, I am concerned
6 that whatever verdict you find will be the result of you're
7 going into that jury room and confining your considerations to
8 the evidence and to the law that I have just instructed you,
9 weighing it fairly and impartially as I have every confidence
10 you will do.

11 You will make the findings of fact as you find them. You
12 will take the law as I've given to you. You will apply it to
13 those facts, and you will determine whether the State has met
14 its burden of proof. And that's how you reach a verdict.

15 Your verdict in this case cannot be based upon sympathy,
16 passion, compassion, prejudice, emotion, or some other
17 consideration not found in the evidence.

18 And remember, your verdict must be unanimous. Meaning,
19 this must be the verdict of each and every one of you. This
20 is not the verdict of any one of you or the majority. The
21 majority does not rule. This must be the verdict of each and
22 every one of you. Your verdict must be unanimous.

23 Now, I'm going to go over the verdict form. Ladies and
24 gentlemen, before we do that. We've talked about it's
25 unanimous. I've written in here that it's got to be unanimous

1 too. But now you know why my children think I'm a nag. Your
2 verdict must be unanimous.

3 And I have put the two possible verdicts on this piece of
4 paper. One of them is written first, and one of them is
5 written second. There is no hidden meaning in the order in
6 which these matters have been placed on paper. It's just
7 you're going to put two things on a piece paper, and one's got
8 to be first, and the other one's got to be second.

9 I could've just as easily have put one that's second
10 first, and one's that first second. So please there's no
11 hidden meaning so let me give that you disclaimer.

12 I think I can do this for here. Here it is. This top
13 part, if you all -- I hope you can see it. Can you see it? I
14 don't mind coming down there.

15 It's called the caption. It's just like the title of the
16 case. It talks about that we're in the State of South
17 Carolina, the County of Dorchester, and that this matter is
18 the care and treatment of Mr. Perry Gustus Phillips. It's got
19 a case number. You're in the First Judicial Circuit, and then
20 it says verdict form.

21 And then here's the language: "Has the petitioner, the
22 State of South Carolina, proved beyond a reasonable doubt that
23 Perry Gustus Phillips is a sexually violent predator under the
24 South Carolina Sexually Violent Predator Act?" That's the
25 question.

1 Here's the two possible answers: "We, the jury,
2 unanimously answer the question as follows." And there's two
3 possible answers. "Yes, Perry Gustus Phillips is a sexually
4 violent predator; or no, Perry Gustus Phillips is not a
5 sexually violent predator."

6 Madame Presiding Juror, once the jury has deliberated and
7 reached its verdict, you can check it. You can put an X. I
8 like you to put a little check, but I'd like you to circle it
9 too so it's real clear which one of these verdicts was the
10 unanimous verdict of the jury. So if you can just put a check
11 or put whatever, and then put a circle, too, so it's very
12 clear.

13 Now, when you have finished your deliberations, you have
14 filled out the verdict form and dated it -- just for your
15 reference, today is December the 6th, 2022.

16 You know who you are, and you will sign it where it says
17 foreperson. You'll date it. And you'll knock on the door,
18 and you will return to the courtroom, and one of my bailiffs
19 will give it to me. You do not publish the verdict.

20 Now, just some additional instructions, then I'm going to
21 give it to you. In just a moment, I'm going to ask you to
22 step to the jury room with the instruction do not discuss this
23 matter or allow anyone to discuss it with you, and let me tell
24 you why.

25 I'm going to these lawyers when you go to your jury room

1 on this next few moments, and I'm going to ask them two
2 questions: Did I give this jury all of the law that they
3 might need for their deliberations? And did I state it for
4 them correctly?

5 In the event that I need to invite you back out, I've
6 failed to do one of two things: To state the law to you
7 correctly, and I ask you in advance please let me correct my
8 error in your minds. I ask you now. Or I failed to give you
9 all the law that you may need.

10 And if I need to invite you back out for that reason,
11 please don't consider that part of the law with any emphasis.
12 Just know this is my one chance to get this right, to give you
13 all the law that you may need, and to state it for you
14 correctly. And these lawyers will help me know if I have made
15 an error or my instruction needs further.

16 Now, in the event that I do not need to bring you back
17 out, you will be brought the verdict form and the exhibit and
18 an instruction to begin your deliberations.

19 We've been doing this a long time, these bailiffs and I,
20 and they've done that for a very long time. But you might be
21 the very first jury that they forget to specifically say begin
22 your deliberations. Let me just say that you will not have
23 the verdict form and the exhibit unless it's time to begin
24 your deliberations.

25 Now, let me say this: All 12 of you have to be together

1 to deliberate. So if somebody needs to take a comfort break,
2 just stop your deliberations. Let the juror or jurors go take
3 their comfort break, and then reconvene, start your
4 deliberations back up when all 12 of you are together again.

5 Why that rule? Well, it makes perfect sense because if
6 somebody's in the potty with the door closed and you're
7 deliberating, that might be the one bit of ta da, sharing or
8 reason or logic or discussion that was important, and there
9 you've had juror that's missed it. That's the reason we give
10 you that instruction.

11 So please take a comfort break, stop your deliberations,
12 take the comfort break, and then reconvene when all of you are
13 together again. All 12 of you must be together for you to
14 deliberate.

15 Now, ladies and gentlemen, at this time, with the
16 exception of my alternate, I'm going to ask you to please step
17 to your jury room. Do not discuss this matter or allow anyone
18 to discuss it with you.

19 Have you got your jury list? I want to identify him. I
20 don't know where it is.

21 THE DEPUTY CLERK: I got it.

22 THE COURT: You got it? You got it. Oh, wonderful.
23 Yep.

24 (Whereupon, the jury exited the courtroom at 4:37 p.m.)

25 (All jurors are phonetic throughout.)

1 THE COURT: Thank you. All right. You are a Mark E.
2 Duggal?

3 JUROR NUMBER DUGGAL: Yes, ma'am.

4 THE COURT: Mr. Duggal, you've given us so much of your
5 time, I'm going to ask you for another 15 minutes. Once the
6 jury has started its deliberation -- believe it or not, I have
7 actually had cases that, for whatever reason, something
8 happens to one of my jurors, and if you'll stay for just a few
9 minutes, I can stop the deliberations, seat you, and begin
10 them anew and save the trial.

11 So if you'll give me 15 more minutes? Once they start
12 their deliberations, that'd awesome. They're going to take --
13 I'm basically going to put you in our other jury room.

14 But I think that we have some snacks or something in
15 there. If not, just rifle around and see what you can find.
16 They'll take care of you. Thank you, Mr. Duggal.

17 Is the door -- is he out?

18 THE BAILIFF: Yes, ma'am.

19 THE COURT: All right. Exceptions, additions from the
20 State?

21 MS. SHAW: Nothing, Your Honor. Thank you.

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. If you all would be so kind as to
24 come and please put your eyes on the verdict form and the
25 exhibits? And then Ms. Catherine (phonetic) will take them to

1 the jury. And then we will be in recess until we hear from
2 them, the jury.

3 MR. FALK: Are we going to take the name out?

4 MS. SHAW: Yeah. Our minor victim's name is in the
5 indictment --

6 THE COURT: Sure.

7 MS. SHAW: -- so we don't want that to go the jury.

8 THE COURT: Yeah. Joe (phonetic), have we got --

9 (Recess.)

10 THE COURT: All right. It is my understanding that the
11 jury has reached its verdict. Anything from the State before
12 we bring them out?

13 MS. SHAW: No, Your Honor. Thank you.

14 THE COURT: All right. Anything from Mr. Phillips? You
15 all ready?

16 MR. FALK: Oh, yes, Your Honor.

17 THE COURT: Okay. Great. Let's have the jury.

18 (Whereupon, the jury came into open court at
19 approximately 5:17 p.m.)

20 THE COURT: All right. It is my understanding the jury's
21 reached its verdict. If you will pass that to Ms. Eileen
22 (phonetic)?

23 Thank you, Pam (phonetic).

24 All right. Okay. And I find that the verdict is
25 (indiscernible). Can we please publish it?

JURY VERDICT

THE DEPUTY CLERK: In the State of South Carolina, County of Dorchester in the matter of the Care and Treatment of Perry Gustus Phillips, in the Court of Common Pleas, First Judicial Circuit, case number 2022-CP-18-00791, has the petitioner, the State of South Carolina, proved beyond a reasonable doubt that Perry Gustus Phillips is a sexual violent predator under the South Carolina Sexual Violent Predator Act?

We, the jury, unanimously answer the question as follows: Yes, Perry Gustus Phillis is a sexual predator violent -- violent predator, signed by our foreperson, December the 6th of 2022.

THE COURT: Ladies and gentlemen, if this was your verdict in your jury room and continues to be your verdict here in the courtroom, if you would please indicate by raising your right hand?

And let me observe for our record that all of our jurors have their right hands raised. Thank you.

Anything further before we dismiss the jury from the State?

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

THE COURT: All right. From respondent?

MR. FALK: We'd ask to poll the jury.

THE COURT: Poll the jury, yes.

THE DEPUTY CLERK: Juror number 115, Joanna List, was

1 this your verdict in the jury room? Is this still your
2 verdict? And if so indicate by saying I do.

3 JUROR NUMBER 115: I do.

4 THE COURT: Or yes.

5 THE DEPUTY CLERK: Or yes.

6 Juror number 174, (Indiscernible) Simmons --

7 JUROR NUMBER 174: Yes.

8 THE DEPUTY CLERK: This was your verdict in the jury
9 room, and it's still your verdict?

10 JUROR NUMBER 174: Yes.

11 THE DEPUTY CLERK: Thank you.

12 Juror number 146, Ian Zeigler --

13 JUROR NUMBER 146: (Indiscernible).

14 THE DEPUTY CLERK: I'm sorry. Ian Zeigler, is this your
15 verdict in the jury room? Is this still your verdict?

16 JUROR NUMBER 146: Yes.

17 THE DEPUTY CLERK: Thank you.

18 Juror number 124, Sharon Mendez, is this was your verdict
19 in the jury room? Is this still your verdict?

20 JUROR NUMBER 124: (Indiscernible). It is.

21 THE DEPUTY CLERK: Okay. Mr. Mendez, thank you.

22 Number 52, Kevin Ettinger --

23 JUROR NUMBER 52: Edinger.

24 THE DEPUTY CLERK: Is this your verdict in the -- was
25 this your verdict in jury room? Is this still your verdict?

1 JUROR NUMBER 52: Yes.

2 THE DEPUTY CLERK: Thank you.

3 Number 180, Mary Smith, was this your verdict in the jury
4 room? Is this still your verdict?

5 JUROR NUMBER 180: Yes.

6 THE DEPUTY CLERK: Thank you.

7 Juror number 139, Kaylie Owens, was this your verdict in
8 the jury room? Is this still your verdict?

9 JUROR NUMBER 139: Yes.

10 THE DEPUTY CLERK: Thank you.

11 Juror 26, Amber Burrows, was this your verdict in the
12 jury room?

13 JUROR NUMBER 26: Yes.

14 THE DEPUTY CLERK: Is this still your verdict?

15 JUROR NUMBER 26: Yes.

16 THE DEPUTY CLERK: Thank you.

17 Juror number 104, Brenda King, was this your verdict in
18 the jury room? Is this still your verdict?

19 JUROR NUMBER 104: Yes.

20 THE DEPUTY CLERK: Juror number 119, Benjamin Maize, was
21 this your verdict in the jury room? Is this still your
22 verdict?

23 JUROR NUMBER 119: Yes.

24 THE DEPUTY CLERK: Thank you.

25 Juror number 165, Tyler Scalia, was this your verdict in

1 the jury room? Is this still your verdict?

2 JUROR NUMBER 165: Yes.

3 THE DEPUTY CLERK: Thank you.

4 Juror number 121, Sharron McWalhart, was this your
5 verdict in the jury room? Is this still your verdict?

6 JUROR NUMBER 121: Yes.

7 THE DEPUTY CLERK: Thank you.

8 THE COURT: Jury report?

9 THE DEPUTY CLERK: All of the jurors have indicated that
10 that is their verdict in the jury room, and it is still their
11 verdict.

12 THE COURT: And I find that the jury has been polled.

13 Anything further?

14 MR. FALK: No, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, I want to
16 thank you for your service on this jury panel and on this jury.
17 I certainly hope that you have found it interesting. I can
18 assure you your presence has been critical to our system of
19 justice, and I want to thank you for every single solitary
20 tick of the clock that you have been with us.

21 Those of you that need something for your employer --

22 I know we just went down. Did we get one, or did we get
23 a bunch?

24 THE BAILIFF: We have them.

25 THE COURT: We got them. We have those for you, and just

1 let our bailiffs know, and they'll get one for you. We just
2 brought them upstairs because your alternate needed one also.

3 And so ladies and gentlemen, I wanted to report to a
4 little bit of information, very minimum, very minor civics
5 class, but it's important.

6 I want you to understand that, when you show up, when you
7 are here, you have a ripple effect because we had --

8 How many cases on this rosters?

9 THE DEPUTY CLERK: 22.

10 THE COURT: We had 22 cases set for trial on this roster
11 that were ready for trial, going to trial. And the case that
12 was -- the one remaining case on the roster could not try this
13 week, but every other case on this roster was resolved.

14 And I want to thank you for that because your presence is
15 so important not only to this trial, but you have a ripple
16 effect. And the reason for that is because it's almost like
17 the universe shifts for people when they realize they're going
18 to be 12 people, 13 people, who are going to listen to the
19 evidence, listen to everything you have to say and make a
20 determination.

21 Don't know, not part of your family, but here just to
22 make a decision based on the facts and the law. It really has
23 a very good effect on people, and it puts them in a different
24 place that maybe they weren't quite in before.

25 So you've had a wonderful ripple effect, and I want to --

1 I want to thank you for that. I'm very excited about
2 Dorchester County and a little bit -- a little bit probably --
3 I don't know what you would say -- I'm very proud of
4 Dorchester County.

5 You know you here about cases being backlogged and people
6 waiting years and years and years. Not in Dorchester County
7 because we keep up with our numbers very closely on a monthly
8 basis. And as of last month -- and I'm waiting for the
9 numbers this month -- but as of last month, 89 percent of the
10 civil cases that are filed in Dorchester County are resolved
11 inside of 365 days.

12 So our clerk's office does a great job. Our jurors show
13 up. And people that need justice don't have to wait around
14 forever, and so you're the heart and soul of that. And I want
15 to thank you for showing up and being here. It really is so
16 important. And it's important for a good community that
17 there's a place where people can go to address their needs for
18 litigation. And I want to thank you for that.

19 So you're at liberty to talk about this case if you want
20 to. No more instruction, don't talk about it. You can talk
21 about it if you want to. It is up to you.

22 I always folks that I get to work with in this capacity.
23 Should somebody go call you and want to talk about it, and
24 you're like, I don't want to talk about it. If they persist,
25 call the clerks officer. They'll call me. I'll intercede on

1 your behalf. I sure do hope it's not your significant other.
2 But you certainly have a place to reach out.

3 In arguably maybe once in 26 that's happened. It's not
4 going to happen, but the practice of law is an art and not a
5 science. And sometimes lawyers want to say, okay, how can I
6 do this better? Can you help me? Can you give me some
7 pointers?

8 I don't know that that will happen, but if it does,
9 that's probably why somebody's reaching out. If you're
10 comfortable talking about, it's perfectly fine. If you're
11 not, just say, I do want to talk about it. These lawyers
12 aren't going to pressure you to talk about it.

13 So you are not eligible to serve on a jury in a court of
14 record for the balance of 2022, although I think there's only
15 one more term of court.

16 Two more terms? Two weeks. Oh, well.

17 But you have an exemption for 2023 and 2024 should you
18 wish to exercise your exemptions, so please keep that in mind.

19 I used to tell jurors that the check was in the mail, and
20 then Ms. Graham (phonetic), our clerk, who's my friend, said,
21 quit telling them that. You're a judge. You know the check
22 isn't in the mail. The check is not in the mail. But it will
23 be shortly. But our trip to Tahiti, it'll get you to Jedburg.

24 It is a very small token of all that you have given to
25 us, and that is your dear and precious time. And again for

1 each and every moment we are so very grateful, all of us, and
2 I thank you for it.

3 A wonderful jury panel recently so we need to have a
4 little box, a comment box. I got to do that. I'm going to
5 ask for that for Hanukkah. I want a comment box, and we'll
6 put it in the courtroom.

7 If you have any suggestions, I'm so happy to hear them.
8 We want to do this better. We're always looking in how we can
9 do this better, and certainly we want to. And grateful for
10 any comments that you have.

11 And if you -- I've got some things to do in here, but if
12 anybody wants to see me, needs to chat, wants to chat, have
13 questions, whatever, if you'll let our bailiffs know. I don't
14 mind giving you some of my time. Goodness knows, you've given
15 us so much of yours. I don't mind doing that for one moment.

16 And again, thank you so much. Have a very good evening
17 and a good holiday season, and thank you again so much.

18 MR. FALK: Everybody's passing the buck. He just wants
19 to know if he can talk to his mother before they take him out.

20 THE COURT: Gotcha. Gotcha. I'll leave that up to
21 security, and if they can accommodate, that fine.

22 MR. FALK: Come on, Mom.

23 THE DEFENDANT: Come on over here.

24 MS. SHAW: Your Honor, just for the record, the State
25 does not object.

1 THE COURT: It what?

2 MS. SHAW: The State does not object, just for the
3 record.

4 (End of Transcript of Record)

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CERTIFICATE OF PROOFREADER

State of South Carolina)
)
County of Richland)

I, HEIDI GARDNER, a court-approved proofreader, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Richland County,
South Carolina, on the 6th day of December, 2022.

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

May 6, 2023



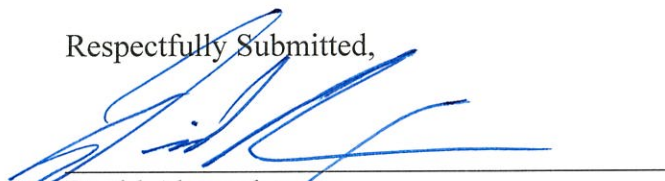
Heidi Gardner, CDLT-167
Proofreader

CERTIFICATE OF COUNSEL FOR APPELLANT

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

RECEIVED**Dec 01 2023****SC Court of Appeals**

Respectfully Submitted,



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 1st day of December, 2023.