

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County
The Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2022-000371

RECEIVED

Oct 10 2024

S.C. SUPREME COURT

IN THE MATTER OF THE CARE AND TREATMENT
OF SHAWN TORLIF DAILY,

Respondent.

APPENDIX

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.	i
RECORD ON APPEAL VOL. 1.	1
RECORD ON APPEAL VOL. 2.	536
FINAL BRIEF OF APPELLANT	574
FINAL BRIEF OF RESPONDENT	596
OPINION NO. 6061	633
STATE’S PETITION FOR REHEARING.....	641
ORDER DENYING PETITION FOR REHEARING.....	657

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

APPELLANT

APPELLATE CASE NO. 2022-000371

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

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

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 14-16, 2021	1
MOTION TO SUPPRESS	6
TESTIMONY (IN CAMERA)	
EMILY GOTTFRIED	
Direct Examination by Mr. Runyan.....	17
Cross-Examination by Mr. Thompson.....	49
Re-Direct Examination by Mr. Runyan.....	66
Re-Cross Examination by Mr. Thompson	70
JURY ROLL CALL	76
JURY QUALIFICATIONS	96
JURY SELECTION	131
PRETRIAL MOTIONS	138
RULING BY THE COURT DENYING MOTION TO SUPPRESS.....	139
OPENING REMARKS BY THE COURT	144
OPENING STATEMENT BY MR. RUNYAN	153
OPENING STATEMENT BY MR. THOMPSON	164
TESTIMONY	
EMILY GOTTFRIED	
Direct Examination by Mr. Runyan.....	169
Cross-Examination by Mr. Thompson.....	265
Re-Direct Examination by Mr. Runyan.....	285
STATE RESTS	294
MOTION FOR A DIRECTED VERDICT	295
RULING BY THE COURT.....	297

TESTIMONY CONTINUED

CHRISTOPHER GILLEN	
Direct Examination by Mr. Thompson	299
Cross-Examination by Ms. Shaw.....	302
Direct Examination by Mr. Thompson	315
Cross-Examination by Ms. Shaw.....	321
Re-Direct Examination by Mr. Thompson	341
CAROLYN DAILY	
Direct Examination by Mr. Thompson	346
Cross-Examination by Ms. Shaw.....	350
RESPONDENT RESTS.....	351
RENEWED MOTION FOR A DIRECTED VERDICT	353
RULING BY THE COURT.....	353
CLOSING ARGUMENT BY MR. RUNYAN.....	356
CLOSING ARGUMENT BY MR. THOMPSON.....	372
REBUTTAL ARGUMENT BY MR. RUNYAN	385
CHARGE ON THE LAW	390
VERDICT	405
MOTION TO SUPPRESS TESTIMONY RELATED TO PPG TESTING AND RESULTS FILED DECEMBER 29, 2021	
	410
STATE’S MEMORANDUM IN OPPOSITION TO MOTION TO SUPPRESS TESTIMONY RELATED PPG TESTING AND RESULTS FILED MARCH 10, 2022	
	416
PETITION PURSUANT TO THE SVP ACT AND EXHIBITS	433
ORDER OF COMMITMENT	520
STATE’S EXHIBIT NOS. 1-3 (SENTENCE SHEETS)	521
CERTIFICATE OF COUNSEL	530

State of South Carolina	)	
	)	
County of Spartanburg	)	
State of South Carolina,	)	2019-CP-42-03230
	)	
Plaintiff,	)	
	)	
v.	)	In the Matter of the
	)	Care and Treatment of
Shawn Torlif Daily,	)	Shawn Torlif Daily
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

Dates: March 14, 2022 - March 16, 2022

Time: 9:33 a.m., March 14, 2022

Location: Spartanburg County Courthouse

180 Magnolia Street

Spartanburg, SC 29306

Reported by
Amber Payne, CVR

APPEARANCES

Presiding: The Honorable R. Keith Kelly

For the Plaintiff: Christopher S. Runyan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Suzanne J. Shaw, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

For the Defendant: Don A. Thompson, Esq.
Seventh Circuit Public
Defender's Office
107 Smithwood Court
Simpsonville, SC 29681

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness

Exhibits.....5

Pretrial Motions.....6, 142

Recross Examination by Mr. Thompson.....74

Direct Examination by Mr. Runyan.....173

Redirect Examination by Mr. Thompson.....345

INDEX (CONTINUED):

(DW) CAROLYN DAILY:	
Direct Examination by Mr. Thompson.....	350
Cross-Examination by Ms. Shaw.....	354
Closing Argument by Mr. Runyan.....	360
Closing Argument by Mr. Thompson.....	376
Rebuttal Argument by Mr. Runyan.....	389
Charge on the Law by the Court.....	394
Verdict of the Jury.....	409
Certificate of the Court Reporter.....	414

EXHIBITS

NO.	DESCRIPTION	PAGE NO.

(State's Exhibits)

1	Sentencing Sheet.....	191
2	Sentencing Sheet.....	191
3	Sentencing Sheet.....	191

(Court's Exhibits)

1	Jury Question #1.....	409

1 some case law searching while we were doing
2 that. So Number 4 is in response to Defense's
3 motions, so let's just get to your motion.

4 MR. THOMPSON: All right. Your Honor, Mr.
5 Daily, who is sitting here with me, he was
6 released from the Department of Corrections --
7 I believe it was in 2020 . . .

8 MR. DAILY: That's right.

9 MR. THOMPSON: In 2020, but he was subject to
10 the Sexual Violent Predator Act. We had the
11 probable cause hearing. There was an
12 evaluation done by the Department of Mental
13 Health. The department of Dr. Gillen from the
14 Department of Mental Health found that he did
15 not need to be involuntarily committed.

16 The State, at that point in time,
17 exercised its right to a second opinion. They
18 got Dr. Gottfried from the Medical University
19 of South Carolina, and her opinion is he does
20 need involuntary. So we're here for a trial
21 on that.

22 What I'm moving to suppress, though, is
23 testimony related to a PPG, and I'm not going
24 to try to pronounce it because I'll just
25 destroy it. It's a test. It's a penile test.

1 And what our argument, Judge -- and we've got
2 several.

3 Number one, we argue that it should not
4 be -- testimony as to the PPG should not be
5 admissible, because it doesn't meet the
6 factors under Jones. I think it was Counsel
7 said that we're now using Rule 702 when it
8 comes to expert testimony in evidence, and
9 they said in -- in counsel that we're now
10 using the Jones standards. And I don't think
11 that it meets the Jones standards.

12 It's particularly in Numbers 3 and 4 of
13 the Jones standards, the ability -- I'm sorry
14 -- the quality control procedures used to
15 ensure reliability and the consistency of the
16 method which recognizes scientific laws and
17 principles or procedures.

18 Secondly, in that regard, Judge, and I
19 probably don't really need to go into it now.
20 I imagine the State will put testimony up;
21 we'll go into it during the testimony. There
22 are several issues under those two that I want
23 to raise as to whether or not it makes it
24 reliable.

25 Next, Judge, we -- the PPG used in this

1 test is not the PPG that everybody else in the
2 world talks about in all the -- the old cases.
3 This is a test that's been developed by Dr.
4 William Burke of Summerville. And in this
5 test, he -- not only has pictures, he uses
6 Real Child Voices. And I would say that
7 there's really -- and I realize that since
8 this started there's been some peer review
9 over the last couple of years, but we would
10 still argue that it doesn't give rise to
11 reliability as a test that's different than
12 everything they've talked about over 20 years,
13 and we would say that there -- there's some
14 issues there.

15 Third, the PPG, actually was originated
16 in Poland, as I understand, to test people who
17 wanted to get out of the military, as draft
18 dodgers. It wasn't used for treatment; it was
19 used to constrict people. But my
20 understanding is now, that the PPG is a good
21 tool used in sex offender treatment, but
22 that's treatment, not evaluation. And my
23 understanding is that the -- secondly, the PPG
24 is used to -- when they go into treatment to
25 get a baseline, then they can use that test

1 again later and determine whether or not the
2 treatment is -- is working. But it's not used
3 to evaluate somebody to predict whether or not
4 that past or future actions are sexually
5 deviant.

6 Also, Judge, I'm -- I'm going to raise
7 the issue that -- and while "Montgomery vs.
8 Montgomery" is an unpublished opinion, and it
9 says there is to be no prejudicial value
10 attached to it. In that opinion, the Court
11 says that if somebody refuses to take the PPG
12 -- and Mr. Daily refused to take it. It came
13 back before Judge Cole. Judge Cole had both
14 sides brief the case, and he eventually issued
15 an order ordering Mr. Daily to take the PPG.
16 At that point in time, our options were
17 twofold: to either take the PPG and comply or
18 to be held in contempt of court by not taking
19 it.

20 "Montgomery vs. Montgomery" is a case
21 where what they -- it was a situation of
22 somebody being held in contempt. In that case
23 they say that the evaluators should try to do
24 the evaluation without the PPG, but if they
25 cannot do it and if it's necessary to do the

1 PPG, then they're to come back to court and go
2 through everything, constitutional issues,
3 legal issues, all that, factual issues, and
4 the judge then decides whether or not the PPG
5 should be administered.

6 We would submit that in this case that
7 did not happen. Like I say, I realize that
8 "Montgomery" is not precedent, but the Court
9 did take the opportunity to set forth those --
10 those -- I won't call them standards or
11 requirements, but what they think should
12 happen, and that's the State Supreme Court.

13 And, lastly, Judge, we would argue that
14 even if none of this is -- is relevant and if
15 that -- the PPG is determined to be admissible
16 -- or determined to be relevant under 401, we
17 would argue that it should be excused as
18 inadmissible under Rule 402, because we would
19 say that the probative value of the testimony
20 is far outweighed by the prejudicial value.

21 And my argument there is simply that I
22 think it would confuse the jury. They may put
23 more weight on this test that may or may not
24 be scientifically reliable, but they may put
25 more weight it than they do other testimony.

1 And, therefore, it would become more
2 prejudicial, and that would be my argument
3 there. In fact, I think there was one case --
4 I -- I'll have to look for it to find it --
5 that actually said something to that effect.
6 That would be our arguments, Judge.
7 THE COURT: Counsel. Yes, sir.
8 MR. RUNYAN: Thank you, Your Honor. I think
9 I'm a little bit -- a little bit out of order.
10 I think Mr. Thompson's first argument dealt --
11 deals with reliability of the PPG and the
12 Jones factors, and we have Dr. Emily Gottfried
13 here to testify to that effect.
14 I do want to skip just ahead a little bit
15 to talk about the -- this argument about
16 Montgomery. As -- as Mr. Thompson says, it's
17 an unpublished opinion. It has no
18 precedential value, but he has brought it up.
19 So I feel like, you know, if the Court
20 believes that, you know, it has some sort of
21 value, I think that I should address the fact
22 that I believe that we've met -- even if you
23 say Montgomery's the law, I believe we've met
24 that, because Montgomery said that if a person
25 -- the doctor has to try to do the test first,

1 and if the person refuses, then come back to
2 court and argue all the constitutional issues
3 and the Court has to make a determination that
4 the test is necessary.

5 Well, that happened in this case. Mr.
6 Daily went down to MUSC, and Dr. Gottfried
7 attempted to perform her assessment. He did
8 not want to take the PPG. She did all sorts
9 of other assessments on him and -- and
10 interviews. He refused to take the PPG. So
11 what we did -- as Mr. Thompson indicated -- we
12 came back to the Court -- and this was during
13 COVID -- and rather than a hearing, Judge Cole
14 asked for briefs on -- on the subject, so we
15 provided briefs upon the constitutional issues
16 and on the PPG. And Judge Cole made the
17 determination -- that's Exhibit D to our
18 motion, and what he said in there is that
19 based on Dr. Gottfried's affidavit, he
20 believed that she would -- it was necessary
21 for her to perform tests like the PPG and that
22 Mr. Daily needed to comply with that. And,
23 indeed, Mr. Daily went back down and complied
24 with those to not be held in contempt.

25 So I think, even if you accept Montgomery

1 as an argument, I think we've met the
2 standards that the Supreme Court set forth in
3 Montgomery.

4 With that, I think, as far as the 403
5 goes, the Supreme Court has said -- you know,
6 they're looking at -- at things that -- when
7 you're looking at 403, the judge has to look
8 at whether or not it's going to rely on --
9 make a decision on an improper basis. It has
10 to be something other than the legitimate
11 probative value of the testimony.

12 And here, the PPG results are not the
13 only thing that Dr. Gottfried relies on.
14 They're one factor in her determination, but
15 they go -- we have a very high burden: beyond
16 a reasonable doubt. And these -- the PPG goes
17 to the factors of her diagnosis of pedophilic
18 disorder; that's one factor in helping her
19 diagnose; it's highly relevant to that.

20 It's highly relevant to her risk to
21 reoffend, which is the second part of the
22 assessment that she has to do, because it
23 shows -- it's one factor that shows his
24 current arousal to prepubescent females. So
25 it's highly relevant to this. It's not -- and

1 we're going to be talking about pedophilia.
2 We're going to be talking about his crimes.
3 We're going to be talking about all the things
4 that he did to his victims, and this is no
5 more -- it's very probative in her diagnosis
6 and her risk assessment. And I don't think
7 that's outweighed by the potential prejudice
8 to him; that would be under the 403 argument.

9 With that, I'd like to call Dr. Emily
10 Gottfried to the stand to discuss the
11 reliability of the PPG.

12 MR. THOMPSON: Your Honor, may I respond just
13 briefly to one thing he said?

14 THE COURT: Yes.

15 MR. THOMPSON: It might narrow what we're
16 looking at.

17 On the Montgomery case, what I'm looking
18 at in Montgomery says that the examiner
19 determines if a PPG test is necessary. It
20 uses the words "determines to be necessary."
21 The affidavit -- and I'm willing to just put
22 her on the stand -- doesn't say that it's
23 necessary, it simply says it's their "standard
24 practice." And that -- that narrows that
25 point to just standard --

1 MR. RUNYAN: Well, that's not -- that's not
2 exactly what it says.

3 MR. THOMPSON: In her affidavit?

4 MR. RUNYAN: It says, "The results of other
5 psychological assessments that have been
6 performed as a part of my evaluation, Mr.
7 Daily indicated evidence of deceptiveness,
8 that he was -- not -- likely not being
9 entirely forthcoming and that his self-report
10 may not be a valid indicator of his sexual
11 arousal, therefore physiological data from the
12 PPG becomes a valuable component in assessing
13 whether Mr. Daily's risk of sexual recidivism
14 and the potential presence of a mental
15 abnormality could lead to him in engaging in
16 future acts of sexual violence."

17 That's what Judge Cole based his finding
18 of necessity on in his order.

19 MR. THOMPSON: I still argue that's not
20 necessity. She -- and I am willing to do that
21 on the stand during her testimony.

22 THE COURT: Okay. Doctor, come up and be
23 sworn, please.

24 We don't have a clerk, do we? Okay.

25 (WHEREUPON, the witness was sworn.)

1 VOIR DIRE OF DR. EMILY GOTTFRIED

2 MR. RUNYAN: Now, Your Honor, we'll be
3 offering Dr. Gottfried as an expert in
4 forensic psychology and as an expert in the --
5 in penile plethysmography.

6 THE COURT REPORTER: I'm sorry. (To Mr.
7 Runyan) Can you say that word, again?

8 MR. RUNYAN: Penile plethysmography.

9 THE COURT: Here you go.

10 MR. RUNYAN: Dr. Gottfried will have to spell
11 it for you.

12 THE COURT: I -- I got you right here. I
13 gotcha.

14 MR. RUNYAN: Do you want me to qualify her,
15 or . . .

16 THE COURT REPORTER: (To the Judge) Thank
17 you, sir.

18 MR. THOMPSON: We'll -- we'll stipulate, yes.

19 MR. RUNYAN: -- for the purposes of this --

20 THE COURT: For the purposes of this
21 hearing --

22 MR. THOMPSON: For the purposes of this
23 hearing, we'll stipulate.

24 THE COURT: -- she's stipulated as an expert
25 for purposes of this hearing.

1 MR. RUNYAN: Thank you.

2 THE COURT: (To the Law Clerk) We don't have
3 a clerk?

4 THE LAW CLERK: No. We don't, but I can -- I
5 could ask -- email --

6 THE COURT: She -- Chris messaged and told
7 them we need somebody.

8 All right. Doctor, if you would -- well,
9 let me get -- got it?

10 THE COURT REPORTER: Yes. Thank you, sir.

11 THE COURT: Doctor, if you'd tell us on the
12 record who you are and spell your last name
13 for Madam Court Reporter, please?

14 THE WITNESS: Sure. Dr. Emily Gottfried.
15 It's G-o-t-t-f-r-i-e-d.

16 THE COURT: Thank you. Counsel?

17 MR. RUNYAN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. RUNYAN:

20 Q Good afternoon, Dr. Gottfried. Could you tell
21 us -- tell the Court where you're employed?

22 A Yes. I work at the Medical University of South
23 Carolina in Charleston.

24 Q And what is your current job and title?

25 A I am an Associate Professor of Psychiatry and

1 Behavioral Sciences, and I'm the director of the
2 Sexual Behaviors Clinic and Lab at MUSC within
3 psychiatry.

4 Q And what are your duties as part of your job?

5 A I conduct, primarily, forensic evaluations. So I
6 do competency to stand trial, criminal
7 responsibility, and then as the director of our
8 Sexual Behaviors Clinic and Lab, I oversee the
9 whole clinic. I do all the administrative duties
10 associated with that, and I do evaluations of
11 sexual behavior for multiple referral sources.

12 Q Are you a member of any professional associations
13 or research collaborations or both?

14 A Yes.

15 Q And what are they?

16 A Numerous. Let see. So I'm on the executive
17 committee for the Association of the Treatment of
18 Sexual Abusers, so that's our national organization
19 for this type of work. I'm the chair of the
20 research committee, so I sit on the board for that
21 as a voting member. I'm the president-elect of APA
22 Division 12, which is clinical psychology, and it's
23 specifically the assessment section. So, you know,
24 administering tests, doing assessments within
25 clinical psychology, I'm the president-elect of

1 that. I'm a member of the South Carolina
2 Association for the Treatment of Sexual Abusers, a
3 member of American Psychological Association,
4 American Academy of Forensic Sciences, Society for
5 Personality Assessment, so just a number of
6 professional organizations. And then I -- I do a
7 lot of research. I collaborate with people in
8 other labs, other countries, and I'm part of an
9 international standardization research group for
10 penile plethysmography, or PPG.

11 Q Have you -- have you published any peer -- peer-
12 review articles?

13 A Yes.

14 Q And have you presented at conferences?

15 A Yes.

16 Q And which of those -- any of those have been
17 specific to the PPG?

18 A So I have about 36 peer-reviewed publications or
19 book chapters in peer-reviewed scholarly books. It
20 got presented, probably, over 60 times at
21 professional conferences. I also give a lot of
22 trainings and webinar presentations to other
23 universities, nationally and internationally. So
24 of those publications, probably -- probably, at
25 least four or five of my peer-review publications

1 are related to the PPG; and then I presented on it
2 at national professional conferences extensively,
3 probably, maybe ten, 12 times.

4 Q Okay. How many PPGs have you requested in your
5 career, both private and for the SVP program?

6 A Let's see. I've ordered over 50, and that's for,
7 probably, about 52, that's for evaluations pursuant
8 to the Sexually Violent Predator Act, but, also,
9 private pretrial cases. I have a contract with the
10 U.S. Federal Probation for people convicted of
11 sexual offenses, so I ordered those licensing board
12 evaluations.

13 Q How did -- how did you become involved in this
14 case?

15 A Your office requested a second opinion, or an
16 independent evaluation of Mr. Daily for a -- a
17 precommitment evaluation pursuant to the Sexually
18 Violent Predator Act.

19 Q How many SVP precommitment evaluations have you
20 performed as a part of your duties?

21 A Let's see. For precommitment, specifically, I've
22 performed 23.

23 Q Have you done some for annual reviews, as well?

24 A Yes.

25 Q What's that number? Do you know?

1 A It's 15.

2 Q Fifteen? So total about 38?

3 A Thirty-eight --

4 Q Okay.

5 A -- correct.

6 Q And now what does your comprehensive evaluation

7 consist of?

8 A Well, consistent with the best practices in the

9 field, I do a comprehensive evaluation, so that

10 includes using data from multiple sources. So I do

11 a clinical interview with the examinee, I review

12 all of the collateral information, so mental health

13 records, medical records, records from detention

14 centers, prison. And then I connect a battery of

15 assessment measures, both ones that the examinee

16 takes themselves on the computer; they answer

17 questions. I do physiological measures of sexual

18 arousal. I score them on clinician rated

19 assessment measures, or I'm looking for risk

20 factors and other factors to help guide my -- my

21 expert clinical opinion. Let's see. Yeah. So

22 multiple tests, kind of doing multimethod to get as

23 much data as I can.

24 Q Now, are you specifically trained in the PPG?

25 A I am.

1 Q And what certifications do you have as a result of
2 that training?

3 A I am a Limestone -- that's the company that makes
4 the PPG. I'm a certified clinical analyst for the
5 PPG.

6 Q And what did the training consist of?

7 A So it's -- you do classroom -- they've kind of
8 moved to more online. So you review, you know, all
9 of the literature on the PPG, kind of go through
10 the history, the background, and then it's a --
11 it's been a while now -- two or three day, all day,
12 training where you're actually administering PPGs
13 and interpreting them in real time. And then
14 before you can get certified by Limestone
15 Technologies, you have to submit PPGs that you've
16 completed for them to -- to make sure that you've
17 accurately scored them.

18 Q Now, what -- specifically, what -- you're the
19 director, you testified, of the Sexual Behaviors
20 Clinic and Lab, what certification does the SBCL
21 have regarding the PPG?

22 A So our Sexual Behaviors Clinic and Lab has a -- it
23 has been certified as both a clinical and a
24 research laboratory, and the research certification
25 is the highest level possible.

1 Q Now, why -- why is the PPG a part of -- or why
2 would -- why would a PPG be necessary to do? Why
3 is it a part of your test that you do that you
4 mentioned?

5 A So it's one data point, but the reason that it's
6 important -- is all my data points, is for a couple
7 of reasons. So we know that sexual arousal to
8 nonconsensual or abusive stimuli is strongly
9 predictive of sexual recidivism. So we know that,
10 for example, somebody who offended against children
11 and they have sexual arousal to children, that
12 makes them higher risk.

13 Additionally, during these evaluations it
14 would be expected, reasonably so, that people are
15 not going to be necessarily a hundred percent
16 forthcoming. So, you know, it's your nature to
17 kind of protect yourself, not talk about things
18 that cause you shame, could get you civilly
19 committed. So we expect that people are not going
20 to be a hundred percent forthcoming about what
21 they're aroused by. So we need objective ways to
22 look at this, and so this is a multimethod
23 assessment. So not only am I asking them what
24 they're sexually aroused by, I'm giving them
25 computer generated measures that have sexual

1 history questionnaires, and then I'm also looking
2 in the lab, specifically at the time of my
3 evaluation on that date, what they were aroused by.

4 Q So, briefly, I -- I think we -- just briefly tell
5 us what is the PPG.

6 A So penile plethysmography is a physiological
7 measure of male sexual arousal. The person is
8 sitting in a private room by themselves. They have
9 what's called a "strain gauge" that they put on
10 their penis themselves. They are covered up in a
11 private room, and then they are presented with a
12 variety of both sexual and neutral stimuli. And so
13 we're looking at their arousal both to consenting
14 adults in the stimuli, comparing that to the,
15 quote, "deviant" stuff, so the nonconsensual or
16 abusive stimuli.

17 And so we're looking to see if they have a
18 greater or equal level of arousal to the deviant
19 stimuli as they do to the consenting adults. And
20 we're also comparing -- and so when I say
21 "comparing," we're looking at changes in the
22 circumference of the penis. So we're looking at
23 being engorged, having an erection. And so we're -
24 - we're comparing each trial within themselves to
25 the other trials of the consenting adults and then

1 the neutral stimuli, which are nonsexual.

2 Q So I think you've answered the next question, how
3 it works. Has the PPG been subject to peer review?

4 A It has.

5 Q And you -- roughly, I mean, over the years, how
6 many times has the PPG been reviewed?

7 A I mean, it -- it really was used widely since 1950
8 when it was developed in Czechoslovakia, and so
9 it's been subject -- I would say at least a
10 hundred, but it's not just the sexual offending
11 literature, it's general sexual literature, as
12 well. So looking at things like erectile
13 dysfunction, general sexual wellbeing and health,
14 so over a hundred.

15 Q Now, what quality controls does the SBCL employ?

16 A So we use a couple different quality controls which
17 is how we get the research the highest level of
18 standardization -- or excuse me -- certification
19 for our lab. So, first of all, everybody who is
20 involved in PPG testing is certified. So the
21 technician who administers it, the person who
22 interprets it, everybody has been clinically
23 certified to do that part of the evaluation.

24 When we administer a PPG, the strain gauge
25 that we use in this test is calibrated three times,

1 so you can't even start a PPG test on the computer
2 until you make sure that that gauge is perfectly
3 calibrated.

4 We use countermeasures to help make sure it's
5 a valid administration. So what that means is we
6 are measuring the person's respirations, so we're
7 also seeing are they holding their breath. They're
8 sitting on a pad that is measuring their movement,
9 so if they sneeze and that moves the -- the penile
10 gauge, we can see that that was from the sneeze and
11 not from arousal. There are many ways that you
12 would be able to see that, but that's another
13 thing.

14 We want to try to make sure that they're
15 paying attention; that's important. So we have
16 them press a number on keypad, that's in the chair
17 next to them, whenever the stimuli that they're
18 listening to becomes either sexual or violent. And
19 then, intermittently, the technician will ask the
20 examinee to briefly describe the scenario they just
21 heard, so trying to make sure that they're paying
22 attention and listening to the test.

23 Q Now, there's been some -- you're familiar with the
24 Ninth Circuit opinion, "U.S. v. Weber"?

25 A Yes.

1 Q There's been some misinformation, I would say, that
2 seemed to suggest that -- I'll just ask you.

3 Is a person required to arouse themselves
4 sexually; are they required to masturbate before
5 the PPG?

6 A No. Definitely not. So I don't know -- I -- I
7 think that because this has been cited before,
8 maybe at some point this is how it was done. But
9 as long as I've been doing these and all the
10 literature that I've read, they're not allowed to
11 touch themselves during the test. So the gauge is
12 really sensitive and you could see if somebody was,
13 you know, touching their penis or touching the
14 gauge, that would immediately show up on the test.

15 So we also want to see what arouses them; we
16 don't want them to stimulate themselves. And if
17 they -- if they were touching their penis, that
18 would invalidate the test. So, definitely, we
19 don't have them do that.

20 Q Could you tell us what -- what a "cut score" is?

21 A Yes. So all tests -- any test that you give, in
22 really any field, you have to determine what makes
23 that test significant. So, for example, a COVID
24 test, how much of a virus present is going to be
25 the cut score to say this person has -- has COVID?

1 So really nothing is a yes or a no. So it's
2 determining what is the proper place to cut that
3 test for the score.

4 Q So what's the difference internationally? I know
5 you've talked about standardization.

6 Internationally, what's the difference
7 internationally in standardization and -- and talk
8 a little bit about the cut scores internationally.

9 A Sure. So there are some differences
10 internationally from how we do penile
11 plethysmography in the United States. The biggest
12 difference is that in the United States we have no
13 federal or medical exemption to our federal child
14 pornography laws. So nothing that they're
15 listening to or seeing contains child pornography,
16 that would be against the law; we have no medical
17 exemption. But most of the other countries that do
18 use PPG, they can show some aspect of child
19 pornography. Typically, I work closely with
20 colleagues in Canada. They use still images of
21 nude children with their faces blurred out, but
22 that would be considered child pornography.

23 Also, in Canada they use a much less
24 conservative cut score. So for them to say, "Okay.
25 This is arousal on the PPG," it is much lower of a

1 score than what we use.

2 Q What score do you use?

3 A We use a cut score of 5 millimeters of change.

4 Q And you said Canada uses --

5 A They use 1 or 1.5 millimeters.

6 Q Well, what is -- what is the American -- sorry --

7 the Association for Treatment of Sexual Abusers?

8 A That is the national organization for this type of

9 work. So they -- their membership includes

10 clinicians, researchers; they just started a new

11 category where probation officers can be a part of

12 it. But it really is the -- not governing body,

13 but like they develop standards and their own

14 ethics and things like that for professionals who

15 specialize in abusive sexual behavior.

16 Q And what are the -- you call it "ATSA," right?

17 A Yes.

18 Q Okay. What are the ATSA Practice -- what are ATSA

19 Practice Guidelines?

20 A So ATSA will task their executive board to form

21 committees of experts to develop best practices in

22 the field. So they'll publish guidelines that will

23 have to do with the assessment and treatment of men

24 who sexually abuse; they do separate ones for

25 juveniles.

1 Q Now, what does the ATSA Practice Guidelines say
2 about -- state about the PPG?

3 A Well, so the ATSA guidelines discuss PPG in -- in
4 multiple places. Let's see. So on Page 26 of the
5 guidelines -- let's see -- the title is, "The Use
6 of PPG, Viewing Time to Support Information
7 Gathering for Assessments." And so it says,
8 "Members recognize that research-supported
9 assessment methods such as PPG may be useful for
10 obtaining objective behavioral data about the
11 client that may not be readily established through
12 other assessment means; exploring the reliability
13 of client self-report and exploring potential
14 changes, progress relative to treatment and other
15 case management goals and objectives."

16 And then they -- and they go on. And then in
17 another section -- let's see -- they describe what
18 PPG is. I mean, so, basically, ATSA supports the
19 responsible use of penile plethysmography. They
20 stress the value of it, but, also, caution the
21 ethics, so you would never use PPG or any test as
22 the sole data point. And so that's really what the
23 guidelines discuss, that this might be useful
24 information. This is an objective measure that has
25 been standardized. It's empirically supported, but

1 you wouldn't want to administer a PPG in the
2 absence of any other data and then, you know, make
3 determinations or opinions about risk or diagnosis
4 or what the person has done or will do.

5 Q So, in other words, an evaluator just can't
6 administer a PPG and give an opinion?

7 A That's correct. So you need a lot of context, too.
8 So you might have somebody in the course of a child
9 custody dispute where there are allegations against
10 one of the parents. They're referred for an
11 evaluation. There's no arrest. There's nothing
12 indicating that the father has offended against the
13 children. And so if there was arousal there, the
14 best that you could say it's possible that this
15 person has a disorder related to sexual arousal to
16 children, but the PPG doesn't tell you anything
17 about what they have done. So it doesn't tell you
18 that they have offended against someone, that they
19 will do it; that's not how it works. It really
20 just looks at arousal.

21 Q Now, are you familiar with -- are you familiar with
22 this book?

23 A Yes.

24 Q Do you have it with you?

25 A I don't.

1 Q Okay. I'll give it to you.

2 MR. RUNYAN: May I approach, Your Honor?

3 THE COURT: Sure.

4 DIRECT EXAMINATION CONTINUES

5 BY MR. RUNYAN:

6 Q Could you tell the Court what this book is?

7 A Yes. This is the "Diagnostic and Statistical
8 Manual of Mental Disorders," or the DSM-5; it's in
9 its fifth edition. It's published by the American
10 Psychiatric Association, and the latest version was
11 published in 2013.

12 Q I'm sorry. 2013?

13 A Yes.

14 Q Okay. And is this book considered authoritative in
15 the field of forensic psychology and psychiatry?

16 A Yes.

17 Q And it's utilized to?

18 A It has all of the diagnostic criterias for all
19 psychiatric conditions that are recognized by the
20 American Psychiatric Association.

21 Q So this is a book that experts in your field use to
22 diagnose mental abnormalities and personality
23 disorders and --

24 A Correct.

25 Q Okay. I'll ask you, if you wouldn't mind, on Page

1 686 of the DSM-5, could you just read the portion
2 that's highlighted there?

3 A Yes. So this is Page 686 of the DSM under the
4 "Paraphilic Disorders" section. And it says, "The
5 most widely applicable" -- excuse me -- "framework
6 for assessing the strength of a paraphilia itself
7 is one in which examinees' paraphilic sexual
8 fantasies, urges, or behaviors are evaluated in
9 relation to their normophilic sexual interests and
10 behaviors. In a clinical interview or on self-
11 administered questionnaires, examinees can be asked
12 whether their -- their paraphilic sexual fantasies,
13 urges, or behaviors are weaker than, approximately
14 equal to, or stronger than their normophilic sexual
15 interest and behaviors. This same type of
16 comparison can be, and usually is, employed in
17 psychophysiological measures of sexual interest,
18 such as penile plethysmography in males or viewing
19 time in males and females."

20 Q Okay. Thank you, Doctor. And would you just flip
21 to the next tab I have there? I believe it's Page
22 699.

23 Now, can you tell us what section this is in,
24 and -- and read the -- the highlighted area at the
25 bottom?

1 A Yes. So Page 699 is still within "Paraphilic
2 Disorders," but specifically "Pedophilic Disorder."
3 And then the highlighted section says,
4 "Psychophysiological measures of sexual interest
5 may sometimes be useful when an individual's
6 history suggests the possible presence of
7 pedophilic disorder, but the individual denies
8 strong or preferential attraction to children. The
9 most thoroughly researched and longest use of such
10 measures is penile plethysmography, although the
11 sensitivity and specificity of diagnosis may vary
12 from one site to another."

13 MR. RUNYAN: Okay. I don't know if you have a
14 copy of this, Judge, or not? May I approach,
15 Your Honor?

16 The COURT: Sure.

17 DIRECT EXAMINATION CONTINUES

18 BY MR. RUNYAN:

19 Q Doctor, do you recognize this book?

20 A Yes.

21 Q And could you tell the Court what that book is?

22 A Yes. This is "Sexually Violent Predators: A
23 Clinical Science Handbook." It was published in
24 2019, I believe.

25 Q And what is that book? And what is it, a textbook?

1 A It's a professional -- somebody in the field would
2 read this book. It's not guidelines, but chapters
3 written by experts about conducting and treating
4 people, either being assessed for or are determined
5 to be sexually violent predators.

6 Q And what chapter do you believe is important in
7 this book?

8 A Chapter 15.

9 Q Chapter 15. What about Chapter 15 is important?

10 A So Chapter 15 was written by a psychologist, Joseph
11 Plaud, who is an expert in penile plethysmography.
12 He currently practices in Florida, and the title of
13 the chapter is, "The Use of Penile Plethysmography
14 in SVP Assessment and Treatment Decision-Making."

15 THE COURT REPORTER: (To the witness) Excuse
16 me, can you spell Plaud?

17 THE WITNESS: Yes. P-l-a-u-d.

18 THE COURT REPORTER: Thank you.

19 DIRECT EXAMINATION CONTINUES

20 BY MR. RUNYAN:

21 Q And what do you find important about this article
22 by Plaud?

23 A Well, Dr. Plaud discusses that using penile
24 plethysmography is important in both the evaluation
25 and treatment of individuals convicted of sexual

1 offenses and are being considered for civil
2 commitment under Sexually Violent Predator or
3 Sexually Dangerous Person Acts. He noted that
4 because the identification of what he calls
5 "deviant sexual arousal" has been found by several
6 researchers to be a significant predictor of sexual
7 offense recidivism, that penile plethysmography has
8 a role in both diagnosis and treatment decisions.

9 Q Now, is it -- we've talked about these things, ATSA
10 and the DSM-5 and textbooks and peer-reviewed
11 articles, is it your opinion that the PPG is
12 generally accepted in the mental health and medical
13 field?

14 A Yes. I -- I think that most people believe in its
15 use; they might not always use it. It's expensive
16 to administer, but it is generally accepted.

17 Q So what are some issues with the PPG?

18 A So, as I kind of alluded to, standardization is an
19 issue, and really what's driving that is that other
20 countries can do things that other countries can't
21 do. So, for example, my colleagues in Canada have
22 been administering PPGs for at least 30 years, and
23 they have been using the same stimuli for a very
24 long time. That stimuli includes nude children,
25 which we cannot use here in the U.S.

1 And so, when I'm working with this
2 international standardization group that I'm a part
3 of, there's a lot of discussion about them having
4 to change things that they've been using for a long
5 time that works for them just because now, when
6 we're trying to internationally standardize it,
7 they don't want to change their methods, because
8 this is what works for them; they're allowed to use
9 it. So I'd say that's probably the biggest
10 criticism.

11 Another one is that it's been noted that the
12 PPG doesn't always have expected results. And so,
13 for example, it's been noted that somebody who had
14 offenses against children, they don't always show
15 arousal while undergoing a PPG to children. And to
16 me, I don't understand that argument for a couple
17 of different reasons, but the main one is, is that
18 we know that people offend against children for
19 numerous reasons. Arousal to children is only one
20 of them. There are people who sexual offend
21 against children who are not sexually aroused by
22 children, and so you would expect that those people
23 wouldn't be aroused to children on the PPG.

24 Q So, tell us, what is -- what is specificity and
25 sensitivity?

1 A So these are ways of looking, like, how specific
2 and how sensitive the test is. So sensitivity is
3 having a particular condition and the test showing
4 they have this condition. Whereas, specificity is
5 that these people don't have the condition, and the
6 test accurately shows that they don't have it.

7 I like to use a COVID example -- I don't know
8 if it's still relevant -- but if you think about
9 COVID, so sensitivity would be that the person has
10 COVID and the COVID test is positive. Specificity
11 would be that the person does not have COVID and
12 the test is negative. And so, for any test, you
13 have this balance; you have this need to balance
14 specificity and sensitivity. So for this COVID
15 example, you want to balance, like, having more
16 false negatives, which would mean that the person
17 has COVID, but they test negative on the test, or
18 false positives, meaning that the person doesn't
19 have COVID, but they test positive for it, so that
20 would be a false positive. So if we have more
21 false positives for a COVID test, then we're
22 risking people who are not sick having to
23 quarantine. If we have more false negatives, then
24 we're risking exposing the COVID to other people
25 from someone who's sick and contagious. And so you

1 need this balance of specificity and sensitivity.

2 And so, for the PPG, we would rather have more
3 false -- more false negatives -- excuse me. So
4 that means that the PPG doesn't show sexual arousal
5 to children, but the person is actually sexually
6 aroused to children. So we want to -- because we
7 have to balance them, we want to have more false
8 negatives than false positives. And a false
9 positive would be that the PPG shows that
10 somebody's sexually aroused to children, but they
11 actually aren't. And so, because it's just one
12 data point in the context of a lot of other data
13 and information, we would rather miss somebody on
14 the PPG than falsely -- you know, have way too low
15 of a cut score that's showing lots of people that
16 are aroused by this when we know that they're not.

17 Q So you mitigate this with the conservative cut
18 score you were talking about?

19 A Correct.

20 Q Now, what -- what stimulus sets do you use?

21 A We use both the Marshall's stimuli set and the Real
22 Child Voices, or RCV stimuli.

23 Q And what is the Marshall stimulus set?

24 A So the Marshall stimuli set was developed by Bill
25 Marshall a long time ago, because he is long, long

1 retired, now, and it features a monotone male voice
2 kind of reading sexual scenarios. And the examinee
3 listens to them in that stimuli, and it features
4 prepubescent, pubescent, adult, neutral stimuli,
5 looking at coercion, persuasion, sexual violence,
6 and then consenting adults.

7 Q And what is the -- what is the Real Child Voices?

8 A The Real Child Voices that is similar in that it's
9 also audio, so they're listening to it, but it's
10 what's called "slide plus audio," which has been
11 shown in a really large meta-analysis to be the
12 best stimuli to use when it's slide plus audio. So
13 for the Real Child Voices, they're shown a picture,
14 so they're shown a slide that's going to kind of
15 prime them for what they're about to hear. So if
16 it was a trial featuring a six-year-old female
17 child, they would see a picture of a female, six-
18 year-old child, maybe in a bathing suit, but
19 clothed, and then they would hear the audio which
20 includes actors on a soundstage where they splice
21 that right into the audio. And so it isn't just
22 the monotone male voice, you hear actors' voices.
23 You hear sound effects, like one of the trials
24 takes place in a bar, so you hear, like, glasses
25 clinking, people talking in the background. And

1 so, again, that features prepubescent, pubescent,
2 adult, coercion, persuasion, neutral stimuli.

3 Q Now, can these -- well, Mr. Daily hasn't been
4 charged with any offenses against adult females; is
5 that correct?

6 A That's correct.

7 Q Okay. So can these tests -- these stimuli tests be
8 tailored to their offending patterns?

9 A Yes. So for the Marshall, we always select, you
10 know, if we want to hear all prepubescent female
11 children or all prepubescent male children or if
12 they have also teenager/adult victims then we
13 include those. No matter how you tailor it, they
14 all hear the neutral trials and the heterosexual
15 and homosexual consensual adult trials.

16 So for the Real Child Voices, we previously
17 would give the whole set because it's shorter than
18 the Marshall, but I have been tailoring it so that
19 they're not hearing the male stimuli except --
20 unless it's consensual and not hearing coercion
21 against adults.

22 Q How many labs, currently, in the United States
23 currently use the Real Child Voices?

24 A So it's hard to pinpoint exactly how many, we think
25 it's around 50 to 100. So when somebody purchases

- 1 a penile plethysmography system from Limestone,
2 there's, I think, two or three companies that make
3 PPG readily available in the United States.
4 Limestone is in Canada. So when they purchase the
5 -- the hardware, the RCV software comes along with
6 it. So we know how many labs have purchased a
7 Limestone PPG. We don't know if they're using
8 their own stimuli that they made and not using the
9 RCV. We know for sure that the sexually violent
10 predator programs in Minnesota, California,
11 Illinois, New York use Real Child Voices.
12 Missouri, I believe uses it, as well. Yeah. So
13 we're designing -- ATSA is designing a survey to
14 try to figure out, you know, what lab is using what
15 stimuli, but really we just know how many labs have
16 purchased it.
- 17 Q So you said that -- when you said "sexually violent
18 predator treatment programs," then -- what'd you
19 say, California?
- 20 A Minnesota, California, Illinois, I believe
21 Missouri, and I believe New York.
- 22 Q And they're using it in -- in people who have been
23 committed to the --
- 24 A Correct.
- 25 Q -- to their programs?

1 A Yes.

2 Q Why would you use both the Marshall and the Real
3 Child Voices?

4 A Well, again, I like to do a multimethod assessment.
5 So I like to measure the same construct in multiple
6 different ways. So I want to see from my own
7 research, and it -- it appears that if somebody is
8 going to respond to the PPG stimuli, they're more
9 likely to respond to the Real Child Voices.

10 The Marshall's been around longer. It's been
11 -- I would say studied more, but now the RCV has
12 been the subject of more studies, yeah. It's been
13 established; it's been used for a long time, but I
14 like to use both, especially because the literature
15 suggests that the slide plus audio is -- I wouldn't
16 say the gold standard, but has the highest
17 reliability in a PPG, and I want to get as much
18 data as I can.

19 Q You mentioned a metadata study on them. Could you
20 tell the Court what that's about --

21 A Yeah. So --

22 Q -- or what it is?

23 A -- I mean, there's been a number of meta-analyses.
24 The one that I think is really good that I like to
25 talk about is a meta-analysis that was conducted --

1 or it was published in 2019, and it include -- it
2 included data -- I want to say, over 9500 men. I
3 couldn't find that exact number. But -- so it had
4 multiple groups of men who had undergone a PPG and
5 then their results were presented in multiple
6 studies. And so, in a meta-analysis, you take all
7 of the results from multiple studies and you
8 combine them and you analyze that data in such a
9 way that you can combine them across studies.

10 And so, this PPG meta-analysis looks at, you
11 know, 4700 men who had sexually offended against
12 children. Almost 2100 men who had offended against
13 adults but not children, 540 men who had gone on to
14 sexually recidivate, over 2000 people who had a
15 sexual offense and then they didn't recidivate, and
16 then men who had no known sexual offenses. And so
17 they compared the PPG data between all of those
18 groups, and they looked at effect sizes and the
19 ability for the PPG to discriminate between all of
20 those groups. And, really, the results, especially
21 between men who had no known sexual offenses and
22 the sexual offenses against children, to the child
23 stimuli was staggering the way that it could
24 discriminate between those two groups.

25 Q So just kind of wrapping up on the -- the Limestone

1 PPG, and you were talking about the conservative
2 cut scores, if you sent your results to another
3 Limestone, certified PPG analyst, would they see
4 the -- the clinically sexual arousal the same as
5 you?

6 A Yes. I mean, you're looking at numbers. So you're
7 doing equations looking at numbers from the
8 physiological data that's happening in real time,
9 and then it -- you can print out all of that data
10 and compare from where they started on that trial,
11 their baseline to their maximum level of arousal.

12 Q So the Real Child Voices, has it been peer
13 reviewed?

14 A It has.

15 Q Okay. And what does peer review mean?

16 A Peer review is a process. So when you have a
17 scholarly publication or you would like to present
18 the results of your research at a professional,
19 scholarly conference, you have reviewers who review
20 the whole thing, and you never get accepted on the
21 first go-around. They -- the reviewers always come
22 back and say, I don't understand this, or run this
23 analysis. So it goes through a whole review
24 process, the editor of the journal, who is an
25 expert in the field will review it. And so that --

1 you know, make sure that we're not just letting
2 anything get published; it has to be on the up and
3 up and scientific.

4 Q So what does published mean? Are they the same,
5 peer review and published, or . . .

6 A No. So published means that the journal accepted
7 it for publication, and then they are publishing it
8 in their journal, which is a print journal and
9 available online. And so, before it can get
10 published, the peer reviewers have to be satisfied
11 that it's scholarly and meets, you know, the
12 standard for that journal.

13 Q So it would be fair to say that even if something's
14 not published doesn't mean that it's not peer
15 reviewed?

16 A Correct.

17 Q Okay. And are you a peer reviewer?

18 A Yes.

19 Q Well, moving on to Mr. Daily specifically, when was
20 Mr. Daily's evaluation?

21 A It was in 2020 and 2021. So he came to our lab in
22 March of 2020 and indicated that he did not want to
23 take the PPG, so he was given other assessment
24 measures, and then I offered an affidavit
25 explaining why it was necessary for me to use it,

1 and he did take the PPG in May of 2021.

2 Q Now, when he came back, he was under a court order?

3 A There was a court order for him to comply, I think,
4 yes.

5 Q Did you still obtain his consent?

6 A Yes.

7 Q Okay. And what's that process?

8 A So when they initially present to the lab, they are
9 presented with our consent form that is eight pages
10 long. It's comprehensive, so it explains the
11 reason that they're there, like tests that may get,
12 tests that they may not even get. So we explain in
13 each section, you know, what this evaluation
14 process is, that it's not secret, that -- you know,
15 who requested it, who gets a copy of it.

16 And then for each test or thing that we might
17 do, they initial next to each one, and then they
18 sign the overall consent form. And then on every
19 subsequent time that they come back to the lab
20 they're given what we call a "rereading" of the
21 consent form, so they have the opportunity to go
22 back over the entire consent form, ask any new
23 questions that they have, and then re consent to
24 that consent form.

25 Q And that happened in this case?

1 A Yes.

2 Q So tell the Court why is the PPG necessary in Mr.
3 Daily's case?

4 A So for Mr. Daily, specifically, between the
5 Department of Mental Health evaluator, Dr. Gillen
6 and Dr. Tross and myself, we came up with the same
7 diagnosis. So I -- there isn't a dispute between
8 us that Mr. Daily has pedophilic disorder, sexually
9 aroused to female children, exclusive types of --
10 all of the specifiers were the same. However, Mr.
11 Daily never really came out and said that he was
12 sexually aroused by children.

13 When we went over some test results, it seemed
14 like maybe he was aware of that, but he didn't
15 report that. So we have the offense behaviors that
16 suggest that there might be arousal to prepubescent
17 children, DMH gave them -- gave him that diagnosis,
18 but the question is: Is -- does he currently have
19 it, and does he have strategies to mitigate his
20 risk. So we know specifically sexual arousal to
21 prepubescent children is a risk factor for
22 recidivism. So there's no dispute that he has this
23 disorder, that we know makes somebody more risky
24 when they've already offended than somebody who
25 does not have this disorder.

1 But the question is: Is -- is he -- does he
2 have it right now? Has he learned any strategies
3 to mitigate it? He wasn't forthcoming about his
4 arousal, so it becomes really important to capture
5 in the lab what he's currently aroused by.

6 Q Now, how do you know he wasn't forthcoming?

7 A Because I gave him a battery of measures, many of
8 them -- several of them indicated that he either
9 had some positive impression management, so he was
10 trying, you know, to self-preserve, not admit any
11 minor or major flaws within himself. There was
12 some defensiveness noted, which is not unusual, but
13 all of that suggests that his self-report is not
14 going to be -- may not be as valid as somebody who
15 was not defensive on testing.

16 Q Was your opinion solely based on results of the
17 PPG?

18 A No.

19 MR. RUNYAN: Thank you, Doctor. Please answer
20 any questions that Mr. Thompson may have.

21 THE COURT: Counselor?

22 MR. THOMPSON: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. THOMPSON:

25 Q Doctor, let me just start out, do you have a copy

1 of the affidavit you gave when they were trying to
2 get an order to have PPG testing done?

3 A Yes. Let me get it.

4 MR. THOMPSON: I can approach, Judge, with
5 my --

6 THE COURT: Yes.

7 THE WITNESS: I may not have brought that with
8 me. Sorry.

9 MR. THOMPSON: Yeah.

10 CROSS-EXAMINATION CONTINUES

11 BY MR. THOMPSON:

12 Q I'm going to hand this to you.

13 The lab you work at, now --

14 A Yes.

15 Q -- is it certified?

16 A Through Limestone, yes.

17 Q Yeah. And what is it certified as?

18 A A clinical and research lab.

19 Q A research lab, okay. And as a research lab do you
20 do tests on every male that comes through there?

21 A Do I do --

22 Q The PPG on every male that comes through there?

23 A Adult male; anyone over the age of 18.

24 Q Okay. Which I believe that's in Item Number 8
25 there, correct?

- 1 A Standardly administered to all men referred for an
2 evaluation of sexual behavior, correct.
- 3 Q It's standardly administered?
- 4 A Correct.
- 5 Q Okay. And let's see. We find the last part here.
6 In the very last paragraph -- Number 17 -- and I
7 believe you testified to this. You find it to be
8 something to validate what's been done? The PPG to
9 validate?
- 10 A I'm not sure what you mean by "validate."
- 11 Q Okay. Let's see. A valid indicator of sexual
12 arousal.
- 13 A I noted in that paragraph that his self-report may
14 not be a valid indicator of his sexual arousal, so
15 then the physiological data is a valuable
16 component.
- 17 Q Now, anywhere in that affidavit you gave to the
18 Court, did you say it was necessary that a PPG be
19 done?
- 20 A I don't think I used the word "necessary," not to
21 my knowledge.
- 22 Q Doctor, I think you -- in there you said it was
23 your standard procedure on all adult males,
24 correct?
- 25 A Correct.

- 1 Q And you're a research laboratory?
- 2 A We are a clinic and research.
- 3 Q And research? Why do you do it to all adult males?
- 4 A Why do we?
- 5 Q Yes.
- 6 A So, as I indicated, the PPG is going to give us
7 objective physiological data about arousal. So we
8 know we need that when we're formulating diagnoses,
9 when we're looking at risk.
- 10 Q Well, one of the reasons -- or the reason you gave
11 in that last paragraph in the affidavit was that
12 you -- let me find it again. I shouldn't have
13 closed it.
- 14 In Paragraph 17 of this affidavit, you said,
15 "That the evaluation -- prior to the evaluation of
16 Mr. Daily indicated evidence of deceptiveness, that
17 he was not likely being entirely forthcoming, and
18 that the self-report may not be a valid indicator
19 of sexual arousal. Therefore, physiological data
20 from the PPG becomes a valuable component"; is that
21 correct?
- 22 A Correct.
- 23 Q So every male that comes through your lab is not
24 being -- is being deceptive or maybe not being
25 truthful?

1 A I wouldn't say "every," but as I testified to, we
2 know that in this kind of evaluation people have
3 reasonable motivations to not be forthcoming about
4 things that could cause them shame, could get them
5 civilly committed, that would sound bad.

6 Q Okay. So every male that comes through there, you
7 take that approach with them if they're not being
8 absolutely truthful with you?

9 A So I don't administer the PPG because I think that
10 they're not telling the truth; I'm looking at
11 physiologically what they're aroused by. So that's
12 why I give it standardly.

13 Q Is part of the reason you give a standard because
14 you're also a research laboratory, and you're using
15 this for research?

16 A I do use the data that I collect in the clinic for
17 research, but I'm not, like, running a study where
18 I'm getting someone's consent to just participate
19 in the study. So whether or not I'm ever gonna do
20 research with the data, I'm still going to conduct
21 the evaluation.

22 Q Do men just walk in off the street and say, "Hey, I
23 want to participate in research and have a PPG
24 done"?

25 A Do they -- well, I'm not running a study, so if

1 they did that, I would turn them away.

2 Q What I'm getting at is you're a research
3 laboratory; part of your lab is a research lab,
4 right?

5 A We're the Sexual Behavior Clinic and Lab where we
6 do clinical and research, correct.

7 Q And you've got a captive audience with people
8 that's been a sexual violent predator being
9 evaluated for sexual violent predator?

10 A What do you mean by "captive"?

11 Q Well, Mr. Daily is an unwilling guinea pig in your
12 research; is that right?

13 A No.

14 Q He did not want the test.

15 A Well, he consented to take it, but he didn't take
16 it for research purposes.

17 Q Well, he consented to take it after he was
18 threatened by the Court, and he'd be held in
19 contempt if he didn't, right?

20 A To my understanding, but the way that we approach
21 it, you're not going to force anybody to do
22 anything. So if -- I've had people who come back
23 and say they still don't want to take it. We're
24 not going to hold somebody down and make them do
25 anything that they don't consent to do.

1 Q Well, I understand you're not, but the Court would,
2 right? They'd be -- be held in contempt if they
3 didn't?

4 A I guess that's my understanding. I don't -- I
5 don't know for sure what the Court would do.

6 Q But you use some of this in your research?

7 A Some of -- I -- all the data that I -- that we
8 collect in competency, criminal responsibility,
9 fitness for duty police officers, all of that we
10 enter into the databases for future research.

11 Q Okay. And the -- the data you obtain is from
12 people who have been court ordered to come down and
13 participate in the PPG; is that correct?

14 A Not always court ordered. So I do, like I
15 mentioned, for federal probation, I provide
16 treatment for them, and I do an assessment before I
17 start treatment; so they're not court ordered. I
18 guess they're ordered by federal probation.
19 Licensing board evaluations for sexual boundary
20 violations, pretrial requested by an attorney,
21 that's not court ordered.

22 Q Let's talk a little bit about the consistency of
23 the of the method with recognized scientific
24 principles. For the testing -- I believe you
25 testified that the Montgomery -- not Montgomery --

1 what was the other name -- Marshall -- the Marshall
2 test is the old test that's been used 30 years or
3 so?
4 A It's been used for a long time.
5 Q A long time. This new test that's being -- that
6 you're using now, is a combination of Marshall and
7 Real Child Voices; is that correct?
8 A Well, I use the Marshall and I use the Real Child
9 Voices. So I -- people usually use different
10 stimuli, so those are just two stimuli sets that I
11 use in the PPG.
12 Q So is that two PPGs you're giving, two PPG tests?
13 A I don't -- I don't think you would call it two PPG
14 tests. I mean, they're -- they have the strain
15 gauge on for the duration of the Marshall and the
16 RCV.
17 Q Okay. And this RCV, Real Child Voices, that was a
18 test that was developed Dr. Burke of Summerville,
19 right?
20 A Yes.
21 Q Were they -- were they in conjunction with your
22 lab?
23 A I -- I don't think that Dr. Dwyer -- so Gregg Dwyer
24 was the director, formerly. I don't think that he
25 was involved in creating it; it was Dr. Burke and

1 Musolf, I think.

2 THE COURT REPORTER: (To the witness) I'm
3 sorry?

4 THE WITNESS: I think it's -- I'll have to
5 look it up, M-u-s-o-l-f, but I'm not sure that
6 that's correct.

7 A He did it with somebody who is not affiliated with
8 MUSC.

9 Q How did the Real Child Voices come to be used in
10 your lab?

11 A Well, we are affiliated with Dr. Burke. Dr. Dwyer
12 who was formerly the director, collaborated with
13 Dr. Burke often; I also collaborate with him. He's
14 a -- what is the word? Not an adjunct. He has --
15 he has a faculty appointment -- a volunteer faculty
16 appointment at MUSC, as well.

17 So we use the Limestone system because based
18 on looking into the, you know, three widely
19 available systems -- or two in the United States,
20 that is the one that looked -- you know, it's the
21 most reliable. I like all the calibration and
22 standardization stuff, and that is -- RCV comes
23 standardly with that.

24 Q So Dr. Burke is associated in some form with your
25 lab?

- 1 A Yes.
- 2 Q And he sells these Limestone sets, correct?
- 3 A He doesn't sell them; Limestone sells them.
- 4 Q Limestone. Well, he makes a profit off what's
5 sold; is that correct?
- 6 A I would assume so. I'm -- I'm not privy to that.
- 7 Q And you talk about standardization in the U.S.
8 versus international?
- 9 A Yes.
- 10 Q Each -- and let's -- let's talk about -- let's
11 forget the international; let's just talk about in
12 the U.S. Does each lab use the exact same set of
13 stimuli in the exact same order?
- 14 A Typically, it would be the same order, because
15 that's kind of how it's loaded onto the PPG when
16 you purchase it. But, as I mentioned, there is
17 Monarch. They make a -- a PPG system that has
18 their own stimuli. So people, I think, typically
19 use Monarch, Marshall, RCV, a combination of those.
- 20 Q And is there any standardization between the
21 different sets?
- 22 A It isn't the set itself that's standardized. So
23 the -- when you get the stimuli set it's already
24 produced/created, so when you're administering a
25 PPG, you're like hitting a -- a button that's going

1 to start that stimuli. So, I guess, yes, it would
2 be standardized because everybody is using --
3 everybody that use -- uses RCV is using the same
4 RCV.

5 Q Well, you said the PPG doesn't always have expected
6 results; is that right?

7 A What I said is that there's been some commentary or
8 criticism in the literature that says that -- a --
9 a concern is that, for example, men who have
10 offended against children don't always show sexual
11 arousal to children on the PPG.

12 Q So there's false positives and there's false
13 negatives?

14 A Correct. But I don't think that those are false
15 positives or false negatives. So we know that
16 there are a lot of reasons why people sexually
17 offend. Having a paraphilic interest in that
18 stimuli is only one reason. So people might not be
19 aroused by children, but, for example, they are
20 very antisocial, so they had a sexual need, the
21 child was available, and they didn't care about the
22 wishes, safety, desires of their victim. So people
23 who offend for a reason other than pedophilic
24 arousal, you would not expect that then they're
25 going to show pedophilic arousal, because they

1 don't have pedophilic disorder.

2 Q How many tests did you give Mr. Daily?

3 A How many, like --

4 Q PPG tests?

5 A Oh, one.

6 Q One? How many PPG tests do you normally give to

7 somebody that you test?

8 A One.

9 Q One? Isn't one of the tenets of scientific method

10 being able to repeat a test and get the same

11 results and not different results?

12 A Your underlying opinion in test construction --

13 there's test-retest reliability, so you want it to

14 be reliable across time. But I say "one test," he

15 was administered, you know, all of the trials for

16 the Marshall set and then the ones relevant to his

17 offenses in the RCV, so it wasn't like he just had

18 one stimuli; he had multiple stimuli presentations

19 within that test. So you can look at consistency

20 between the tests or within the test, as well.

21 Q So you're about consistency within the test at the

22 same time?

23 A Correct, yeah.

24 Q Could you bring him back a week later and do the

25 test, again?

- 1 A No.
- 2 Q If you could have done that, would it have shown --
- 3 if it had shown the same thing wouldn't that be
- 4 more consistent?
- 5 A Potentially, but his results were really consistent
- 6 within his test and across looking at other data
- 7 points.
- 8 Q Scientific testing also has a margin of error; is
- 9 that --
- 10 A Correct.
- 11 Q -- right? What's the margin of error with the PPG?
- 12 A Well, I think you could think of it for -- in
- 13 regards to specificity and sensitivity. So that's
- 14 the error rate -- the margin of error, and so we
- 15 know, depending on where you cut it, that if you're
- 16 trying to balance the false positives with the
- 17 false negatives, that you're going to -- one of
- 18 them is going to be higher than the other. So
- 19 we're really minimizing false positives. So that
- 20 rate is 87 to 95 percent depending on the study
- 21 that you're looking at, whereas the other is lower,
- 22 usually, like, around 50-60 percent.
- 23 Q Which -- which one's lower?
- 24 A The -- so specificity is around 95 percent, whereas
- 25 across studies, sensitivity ranges from 40 percent

1 to 95 percent. But the highest specificity is in
2 studies assessing men who offended against
3 children. So we know that the PPG isn't as good at
4 identifying arousal for something like rape of an
5 adult or sadistic arousal. And the reason for
6 that, probably, is that it isn't -- it's something
7 about that that you can't recreate in the lab, so
8 they're not raping the person, they're listening to
9 it. So the PPG is the most valid in individuals
10 who offended against children.

11 Q So, now, you're using the words "specificity" and
12 "sensibility."

13 A Sensitivity.

14 Q Sensitivity; I'm sorry. What I'm hearing -- and
15 let me make sure I'm hearing this correct -- is
16 that you're saying the margin of error of
17 specificity is about 95 percent accurate, right?

18 A Correct. Yes.

19 Q And as to sensitivity, you're saying the margin of
20 error is 40 to 95 percent?

21 A Yes. Sensitivity is lower, because you are
22 minimizing false positives in that way.

23 Q And you said in your testimony you tailored the
24 stimuli set?

25 A Yes.

1 Q What do you do to tailor it?

2 A So I have the tech skip -- for the RCV, skip the
3 ones featuring male prepubescent children, male
4 teenagers for -- for somebody who doesn't have
5 victims.

6 Q Okay. So you -- you're changing the test?

7 A Yes. Skipping some of the stimuli. So for
8 Marshall, all of the sets are much longer, and so
9 they come in separate files and so you select,
10 okay. I want this examinee to have the
11 prepubescent female trial. So you could give them
12 prepubescent females/prepubescent males. For RCV
13 it's 27 trials that has everything, and it's come
14 up before when somebody, for example, has arousal
15 to rape but they -- against adult women, but
16 they've -- their offenses are against children, so
17 that might be something they're aroused by, but
18 they haven't acted on. And I -- I agree. We
19 shouldn't be looking at things that is not
20 consistent with their offense behaviors.

21 Q And how do you know that some of these things you
22 take out wouldn't arouse somebody, too?

23 A Well, that's what I'm saying. But -- so it's
24 irrelevant if, for example, Mr. Daily was aroused
25 by rape -- a violent rape of an adult woman. That

1 would be irrelevant because he has no convictions
2 for rape against an adult woman.

3 Q So by tailoring it, then you are -- there's no
4 consistent method in the test; is that correct?

5 A I -- I would disagree. So when you, for example,
6 give somebody an IQ test, that has standardly ten
7 subtests, but the person might be blind, for
8 example, so you would give them a supplemental
9 subtest, and that isn't considered, you know, doing
10 it not standardized; you have all of these subtests
11 for a reason. So somebody that you're testing,
12 they have, you know, no reason that they can't take
13 the standard ten, that's what you would do, but
14 there's many tests that you would change the
15 trials, and that doesn't mess up the
16 standardization of it.

17 Q Now, you talk about the test being used in New York
18 and California and some other states?

19 A Yes.

20 Q And you specifically said it was being used in
21 treatment; is that correct?

22 A In the sexually violent predator commitment
23 programs, yes.

24 Q For treatment?

25 A For those programs that I mentioned, yes. It's

1 also being used by their evaluators for
2 precommitment, but when I discuss the programs,
3 they only do treatment there. And then for the
4 annual reviews, they use both data, as well.

5 Q Well, now, the PPG is a good tool to treatment,
6 isn't it?

7 A It's a good tool to assess treatment needs and then
8 measure treatment progress.

9 Q In other words, when you go in treatment you do the
10 PPG, you get a baseline. Then, say, a year down
11 the road, you do another PPG and see if the
12 treatment is effective?

13 A I don't think I'd refer to it as a baseline. So
14 when you're doing treatment planning, you want to
15 know what that person's diagnosis is, the etiology
16 of their offending, and what they're aroused by to
17 see if that was related to their offending. So
18 we're getting -- I administer a lot of tests when I
19 do treatment evaluations to determine what all of
20 their treatment needs are.

21 So it isn't necessarily a baseline; it's --
22 they have that diagnosis. Then, I'm going to
23 tailor their treatment to target what was going on
24 that contributed to their offending. And then as
25 they're going through treatment, I'm going to be

1 doing sexual arousal management therapy with them.
2 I'm going to be teaching them how to control and
3 hopefully change what they're aroused by. Then,
4 I'm going to put them in the lab to see how
5 effective they are at that treatment.

6 Q And I believe in your testimony, you also testified
7 that people are more likely to respond to the Real
8 Child Voices than to the Marshall?

9 A That is from a small study that I conducted, so --
10 how many people are in that sample -- maybe 75 or a
11 hundred, so that is in our lab from that study.

12 Q Your lab promotes the Real Child Voices; is that
13 correct?

14 A I wouldn't say we promote it; we use it.

15 Q You use it?

16 A Yes.

17 MR. THOMPSON: Thank you. I have no further
18 questions.

19 THE COURT: (To Mr. Runyan) Anything at all?

20 MR. RUNYAN: Just briefly, Your Honor.

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MR. RUNYAN:

24 Q So, Dr. Gottfried, you were just asked about Real
25 Child Voices being more -- or had more arousal in

1 the Real Child Voices, and you quoted a study that
2 you did. What type of -- what type of stimulus set
3 is the Real Child Voices? Is it audio only?

4 A It's the slide plus audio. It's the meta-analysis
5 that I talked about. They looked at, you know,
6 showing somebody a video, just audio only, still
7 images, or slides only and then combinations of
8 those, and they found that the slide plus audio was
9 the most reliable in the study.

10 Q So it tends to reason that because the Real Child
11 Voices is a slide plus audio, it would pick up more
12 arousal to --

13 A Correct. Correct, yes.

14 Q Maybe you can explain this to me because I have a
15 hard time understanding this argument, but you were
16 asked about a baseline. I don't think you
17 necessarily agreed with that, but they come into
18 the treatment program and they're given a -- a PPG
19 to assess their arousal. That's objective
20 measuring of their arousal, correct?

21 A Correct.

22 Q And then you utilize that. You'll give them PPGs
23 throughout the treatment program to see how your
24 treatment techniques are working?

25 A Right. And see if they're actually able to utilize

1 them in -- I wouldn't call that a real-life
2 setting, but it will give us more information that
3 if they're, you know, out and they have access to a
4 child, are they going to be able to utilize those
5 strategies to reduce their arousal so they're not
6 creating a new victim.

7 Q So this argument that this baseline when they come
8 into treatment, how is that any different than like
9 -- if there's a treatment door, hypothetically, and
10 one person is on this side, not treatment, and one
11 side, this is treatment. They're given a baseline
12 PPG over here versus diagnostic PPG over here.
13 What's the difference?

14 A I -- the way you're explaining it, there is no
15 difference.

16 Q And so -- so I guess what I'm getting at, it's an
17 objective measure?

18 A It's an objective measure of what they were aroused
19 by on the day that they were assessed.

20 MR. RUNYAN: May I approach, Your Honor?

21 THE COURT: Sure.

22 REDIRECT EXAMINATION CONTINUES

23 BY MR. RUNYAN:

24 Q And could you tell the Court what this is?

25 A That is an order to compel cooperation from --

1 THE COURT REPORTER: I'm sorry. (To the
2 witness) Can you repeat that?

3 THE WITNESS: "Order to compel cooperation,
4 the State of South Carolina, County of
5 Spartanburg in the Court of Common Pleas,
6 Seventh Judicial Circuit."

7 REDIRECT EXAMINATION CONTINUES

8 BY MR. RUNYAN:

9 Q And you got a copy of this as a part of your
10 assessment of Mr. Daily?

11 A Yes.

12 Q Could you read the -- the part of the findings of
13 fact there that I've highlighted from Judge Cole?

14 A Yes. It says, "Dr. Emily Gottfried was designated
15 by MUSC to conduct that evaluation. Dr. Gottfried
16 has advised the Court that in order to conduct a --
17 a complete evaluation, it will be necessary to
18 utilize certain procedures including, but not
19 limited to the penile plethysmograph, PPG. These
20 examinations are standard protocol based on the
21 evidence-based literature for assessing
22 respondent's likelihood to engage in future acts of
23 sexual violence per Dr. Gottfried's affidavit
24 attached to the State's motion."

25 MR. RUNYAN: Okay. Nothing further, Your

1 Honor.

2 MR. THOMPSON: (To the Court) I just have
3 just one follow-up question.

4 THE COURT: Yes, sir.

5 RECROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q Dr. Gottfried, are you saying that you cannot do a
8 -- an assessment without the PPG?

9 A You've asked me this question before, and I find it
10 really difficult to answer. So I think that it's
11 an important part. I think all of the tests that
12 are in our battery are selected for a reason. They
13 have empirically supported literature base. They
14 contain data that is important to formulating my
15 opinion in an empirically supported way. So I
16 think that it is important. I have had -- I guess,
17 one case that I'm thinking of off the top of my
18 head where the Court said that the examinee did not
19 have to take a PPG, but in that case, I had
20 thousands and thousands of pages of data. And so I
21 had to, you know, caveat my report that this was an
22 important part of it, but I couldn't do it.

23 Sorry. The question that you asked me was
24 could I do it without it, no.

25 Q Is it possible to do an evaluation without a PPG?

1 A Some examiners do. For me, it's a really important
2 part.

3 Q Okay. That answers my question.

4 MR. THOMPSON: Thank you.

5 THE COURT: Doctor, you may step down. Please
6 be very careful.

7 (WHEREUPON, the witness was excused.)

8 THE WITNESS: Thank you.

9 THE COURT: Counsel, anything? Any other
10 witnesses on this subject?

11 MR. RUNYAN: Nothing else, Your Honor.

12 THE COURT: Okay. (To Mr. Thompson)
13 Anything?

14 MR. THOMPSON: Nothing, Your Honor.

15 THE COURT: Okay. All right. What else do we
16 have? We've got a few more things to talk
17 about, probably?

18 MR. THOMPSON: On this one?

19 MR. RUNYAN: On the PPG?

20 THE COURT: Well, on other -- you've got other
21 motions?

22 MR. THOMPSON: I don't believe there's any
23 other motions.

24 MR. RUNYAN: No. Nothing further from the
25 State.

1 THE COURT: Okay. Let's take about a 15-
2 minute break. We've been running here for
3 about an hour and a half; I like to break
4 about every 90 minutes. Let's take about 15
5 minutes, and then we'll come back and talk
6 nuts and bolts a little bit, how about that?

7 MR. THOMPSON: All right.

8 THE COURT: Everybody refresh themselves (as
9 spoken.) Doctor, the restroom facilities are
10 across the way, if you choose and -- and
11 there's water here and be happy to get you
12 some ice if you would like something to drink.

13 MS. GOTTFRIED: Thank you.

14 THE COURT: And lawyers have water on their
15 desks, I think. Okay. Let's take a few
16 minutes.

17 (WHEREUPON, a break was taken from 3:26
18 p.m. until 3:47 p.m.)

19 THE COURT: Thank you. Thank you. Please be
20 seated. Okay. Of course, this is under
21 advisement. I'll -- what I'll do is I'm going
22 to do some more reading and some studying
23 about it, but then I'll -- tomorrow morning
24 what we'll do is put some -- put some things
25 on the record.

1 Any other matters pretrial?

2 MR. THOMPSON: Not concerning this case.

3 MR. RUNYAN: No, Your Honor.

4 THE COURT: Okay. We can get off the record
5 then.

6 (WHEREUPON, Day 1 of the trial
7 concluded at 3:48 p.m.)

8 START OF DAY 2 – MARCH 15, 2022

9 INTRODUCTORY REMARKS BY THE COURT

10 THE BAILIFF: All rise and come to order. The
11 Common Pleas Court in the Seventh Judicial
12 Circuit is now in session. The Honorable
13 Keith Kelly presiding.

14 THE COURT: Thank you. Thank you. Please be
15 seated. Good morning.

16 THE COURT: Good morning, ladies and
17 gentlemen. I'm Keith Kelly, I'm one of your
18 circuit court judges here in the Seventh
19 Judicial Circuit. Let's see if that's a
20 little better right there. Can you hear me in
21 the back? In the back if you cannot hear --
22 okay. I've got your thumbs up, okay.

23 Ladies and gentlemen, we understand that
24 jury service is an inconvenience to you in
25 your professional and personal lives, and we

1 will not have you here anymore -- any longer
2 than is absolutely necessary to conduct our
3 business, but we do need you this week. And
4 it's why we did not bring you in yesterday.
5 We had some things that we have non-jury to
6 do, and so we did not need you here, but we
7 find ourselves in need of your service.

8 You will be happy to know that I've
9 reviewed the docket, and there's nothing on
10 our docket that would last past Friday of this
11 week, okay. That's not true every -- every
12 term of court, but it is true here, so you can
13 expect your jury service to end no later than
14 Friday of this week.

15 Now, ladies and gentlemen, I call your
16 attention to the bailiffs that are wearing the
17 red jackets. The bailiffs are uniformed law
18 enforcement personnel, also, Ms. Amy and her
19 fine staff, if you have a -- have an emergency
20 at work or at home, a child is sick, a parent
21 is sick, a car will not start, if you will
22 notify one of those people, they will be happy
23 to assist you with that matter.

24 Now, our purpose this morning is to
25 determine your qualifications and eligibility

1 to serve as jurors. And jury qualification is
2 done in several stages. The first stage is
3 generally referred to as the "roll call."

4 Madam Clerk will call the roll of all persons
5 who have been summoned for duty, and when your
6 name is called, we ask that you stand and in a
7 clear, audible, outside voice -- please speak
8 loudly as I'm trying to do now -- and tell us
9 the following information: your occupation if
10 you are employed; if you are self-employed,
11 please tell us the nature of your business; if
12 you are retired or disabled, please tell us
13 your former occupation. If you are married
14 and your spouse is employed or you have a
15 significant other who's employed, please tell
16 us the nature of his or her employment. And
17 if you have no objection, please tell us your
18 age. Also, Madam Clerk do you need the
19 mileage?

20 THE CLERK OF COURT: Yes, sir.

21 THE COURT: We need the mileage from one
22 direction -- from your house to the
23 courthouse, please.

24 As part of the roll call qualification
25 process, it is necessary that you be sworn, so

1 I ask each of you now to please stand. Madam
2 Clerk?

3 THE CLERK OF COURT: Thank you, Your Honor.
4 Would you all please raise your right hands?

5 (WHEREUPON, the jury was sworn at
6 approximately 9:36 a.m.)

7 THE COURT: Thank you. Please be seated.
8 Ladies and gentlemen, please give your
9 attention to Madam Clerk.

10 JURY ROLL CALL

11 THE CLERK OF COURT: Thank you, Your Honor.
12 We're gonna start with Juror Number 2, Kevin
13 Allen. If you would, please stand, and wait
14 for a microphone.

15 THE COURT: Microphone's coming to you.

16 MR. ALLEN: Kevin Allen, a counselor. My wife
17 is a school teacher. Twenty miles.

18 THE CLERK OF COURT: Twenty miles. Could you
19 repeat your occupation?

20 MR. ALLEN: A counselor.

21 THE CLERK OF COURT: A counselor. Thank you,
22 sir. Juror Number 6, Amy Armour.

23 MS. ARMOUR: I'm a realtor and my husband is a
24 construction superintendent. About ten miles.

25 THE CLERK OF COURT: Could you repeat your

1 husband's occupation?

2 MS. ARMOUR: He's a construction
3 superintendent.

4 THE CLERK OF COURT: Thank you, ma'am. I do
5 apologize. These mics are making an echo up
6 front, so if you could just be patient with us
7 if we ask you to repeat something, we do
8 appreciate it. Excuse me.

9 Juror Number 13, Brianna Bell.

10 MS. BELL: I'm a registered medical assistant,
11 13 -- no. Twenty miles. I'm single.

12 THE CLERK OF COURT: Thank you, ma'am. Juror
13 Number 16, Austin Blackwell.

14 MR. BLACKWELL: I'm a material handler. I
15 live 15 miles, and I'm single.

16 THE COURT REPORTER: I can't hear.

17 THE COURT: Madam Clerk --

18 THE CLERK OF COURT: Mr. Blackwell, could you
19 please repeat that one -- the -- your mileage?

20 MR. BLACKWELL: About 15 miles.

21 THE CLERK OF COURT: Fifteen miles. Did
22 everyone get that he was a material handler?
23 Thank you, sir.

24 Juror Number 19, James Brown.

25 MR. BROWN: I'm a dentist. Fourteen miles.

1 My wife is working in clerical (inaudible.)
2 THE CLERK OF COURT: I am so sorry, Mr. Brown;
3 if you could repeat. I believe I heard that
4 you were a dentist?
5 MR. BROWN: Yes, ma'am.
6 THE CLERK OF COURT: Okay. And that's the
7 only part I heard. There's an echo up here.
8 MR. BROWN: Probably, 14 miles at least to get
9 here. My wife works for -- in Clerical -- in
10 Clerical for Spartanburg County System, and
11 I'm 54.
12 THE CLERK OF COURT: And you said your wife
13 worked for Clerical in Spartanburg County?
14 MR. BROWN: Yes.
15 THE CLERK OF COURT: Thank you, sir.
16 MR. RUNYAN: Judge -- Judge Kelly, they're
17 going to have to speak up. She -- she can't
18 here.
19 MR. THOMPSON: Yeah. We can't hear, either.
20 THE CLERK OF COURT: Madam Court Reporter, is
21 that all? Madam Court Reporter, do you need
22 that repeated?
23 THE COURT REPORTER: Yes, please.
24 THE CLERK OF COURT: Mr. Brown, I am so sorry.
25 Could we get you to repeat that for the court

1 reporter?

2 MR. BROWN: Everything?

3 THE CLERK OF COURT: Yes, sir.

4 MR. BROWN: Okay. I'm a dentist. My wife
5 works for Spartanburg County in clerical work
6 Fourteen miles here, and I'm 54 years old.

7 THE COURT REPORTER: That's better. Thank
8 you.

9 THE CLERK OF COURT: Thank you, Mr. Brown.
10 Sorry for that.

11 Juror Number 24, Mackenzie Hamby.

12 MS. HAMBY: Mackenzie Hamby. I'm 30 years
13 old. I'm a corporate payroll manager, and I'm
14 single.

15 THE CLERK OF COURT: And the mileage?

16 MS. HAMBY: About 20 miles.

17 THE CLERK OF COURT: Thank you, ma'am. Juror
18 Number 25, Joel Cantrell.

19 MR. CANTRELL: I'm a registered medical
20 imaging technologist. I drive six miles to
21 here. I'm 42 years old. Single.

22 THE CLERK OF COURT: Thank you, sir. Juror
23 Number 26, Luke Carter.

24 MR. CARTER: I am self-employed as a human
25 resources consultant. My wife helps run our

1 business, I'm 33, and we are 17 miles from
2 here.

3 THE CLERK OF COURT: Thank you, sir. Juror
4 Number 27, John Catalano.

5 MR. CATALANO: I'm a printing press operator.
6 My wife is an HR manager. I live 10 miles
7 from here, and I'm 52 years old.

8 THE CLERK OF COURT: Thank you, sir. Juror
9 Number 34, James Cooper.

10 MR. COOPER: I am a broadcast radio and
11 television engineer. My wife is a pharmacist.
12 I am 50 years old and traveled 18 miles.

13 THE CLERK OF COURT: Thank you, sir. Juror
14 Number 35, Abigail Cote -- "Co-Tae".

15 MS. COTE: "Co-Tea." I am a digital marketer
16 out of DCM. I am not married, and I drove 25
17 miles.

18 THE CLERK OF COURT: Thank you, ma'am. Juror
19 Number 37, Denise Curtis.

20 MS. CURTIS: I am a housewife. My husband
21 works for BJU as a facilities maintenance (as
22 spoken), and I'm 54. About 18 miles.

23 THE CLERK OF COURT: Thank you, ma'am. Juror
24 Number 39, Kane Davis (phonetic.)

25 MR. DAVIS: I'm a salesman. It was about 25

1 miles here, and I'm 21 years old.

2 THE CLERK OF COURT: And your spouse's
3 occupation?

4 MR. DAVIS: I am single.

5 THE CLERK OF COURT: Thank you, sir. Juror
6 Number 42, Jacqueline Dogan.

7 MS. DOGAN: I am an office assistant. I am 57
8 years old. My husband runs a transportation
9 company, and it's maybe, like, 15 miles.

10 THE CLERK OF COURT: Thank you, ma'am. Juror
11 Number 45, Shelida Duckett.

12 MS. DUCKETT: I work in housekeeping. I live
13 half a mile away from here, and I'm single.

14 THE CLERK OF COURT: Thank you, ma'am. Juror
15 Number 48, Jeffrey Edwards.

16 MR. EDWARDS: I am a computer programmer. I'm
17 42 years old. I live about ten miles from
18 here, and I'm single.

19 THE CLERK OF COURT: Thank you, sir. Juror
20 Number 53, Cheryl Fenton (phonetic).

21 MS. FENTON: I'm a quality control (inaudible)
22 manager and my husband is a international
23 engineer and eight miles.

24 THE CLERK OF COURT: Thank you, ma'am. Juror
25 Number 55, Jennifer Fowler.

1 MS. FOWLER: Dispersion/resin at a trucking
2 company. I drove about 18 miles and single.
3 THE CLERK OF COURT: Thank you, ma'am. Juror
4 Number 56, Richard Francis. Is he the one we
5 excused, Richard Francis? I apologize, Your
6 Honor. That's the juror we transferred.
7 Juror Number 65, Lega Gosnell (phonetic).
8 MR. GOSNELL: I'm 30 years old, I work in
9 manufacturing. My wife's a hairdresser. I
10 live, probably, ten miles away from here.
11 THE CLERK OF COURT: Thank you, sir. Did
12 everybody get that?
13 THE COURT: What's the number?
14 THE CLERK OF COURT: His number was --
15 UNKNOWN FEMALE: Sixty-five.
16 THE COURT: -- 65?
17 THE CLERK OF COURT: Yes, sir. Do we need any
18 clarification from the attorneys? Everybody
19 good? Okay.
20 Juror Number 68, Jennifer Fowler-Hayden
21 (phonetic).
22 MS. FOWLER-HAYDEN: I am a chemist, single,
23 53, and five miles.
24 THE CLERK OF COURT: You said five miles?
25 MS. FOWLER-HAYDEN: Yes, ma'am.

1 THE CLERK OF COURT: Thank you, ma'am. Juror
2 Number 71, Tyler Hewell (phonetic).

3 MR. HEWELL: I'm a production associate at
4 BMW. I am 34. I am single, and I live about
5 20 miles away.

6 THE CLERK OF COURT: Thank you, sir. Juror
7 Number 72, Amy Hicks.

8 MS. A. HICKS: I'm a registered nurse, I live
9 about 15 miles from here, I'm divorced. I
10 have a question. Can I ask a question?

11 THE CLERK OF COURT: Your Honor, can she ask a
12 question? If it's about excuse, we'll have to
13 deal with that in just a moment, ma'am. Thank
14 you.

15 Juror Number 73, Jermilia Hicks.

16 MS. J. HICKS: I'm 50 years old. I'm a
17 referral clerk. My husband is a order
18 processor and about eight miles away.

19 THE CLERK OF COURT: Eight miles away. Thank
20 you, ma'am. Juror Number 74, Michael Hopkins.

21 MR. HOPKINS: I'm self-employed. I own a
22 seamless aluminum gutter company. My wife is
23 a schoolteacher at Spartanburg Christian
24 Academy, and I live about 21 miles away.

25 THE CLERK OF COURT: One mile away, sir?

1 MR. HOPKINS: Twenty-one miles.

2 THE CLERK OF COURT: Twenty-one miles. Thank

3 you, sir. Juror Number 75, Alan Horton.

4 MR. HORTON: I'm an engineer in the automotive

5 industry. My wife is a homemaker. I live 15

6 miles from here in Greer.

7 THE CLERK OF COURT: Thank you, sir. Juror

8 Number 76, Justin Howard.

9 MR. HOWARD: I'm a 22-year-old

10 firefighter/EMT. I'm single, and I live

11 approximately 20 miles away.

12 THE CLERK OF COURT: Thank you, sir. Juror

13 Number 77, Leslie Howell-Goings (phonetic).

14 MS. HOWELL-GOINGS: I work for UPS. My

15 husband works for a company called

16 (inaudible). I'm 59 years old, and I live

17 around five miles from here.

18 THE CLERK OF COURT: Thank you, ma'am. You

19 said nine miles?

20 MS. HOWELL-GOINGS: About five.

21 THE CLERK OF COURT: Five. Thank you. Juror

22 Number 78, Jeffrey Hull (phonetic).

23 MR. HULL: Manager at the Greenville

24 Fabrication. My wife is an accountant, and --

25 and I live about -- approximately 20 miles.

1 THE CLERK OF COURT: I'm sorry. Could you
2 repeat your miles, sir?

3 MR. HULL: Twenty.

4 THE CLERK OF COURT: Twenty. Thank you, sir.

5 Juror Number 79, Audrey Houston

6 (phonetic).

7 MS. HOUSTON: I am a registered nurse. I live
8 about 15 miles from here, and I am not
9 married.

10 THE CLERK OF COURT: Thank you, ma'am. Juror
11 Number 81, Alexis Jackson.

12 MS. JACKSON: Twenty-nine years old, 1099
13 employee with a -- I'm an interior designer,
14 and then, a superintendent for a construction
15 company. My husband is a traveling sales
16 manager. Roughly 13 miles.

17 THE CLERK OF COURT: Thank you, ma'am. Juror
18 Number 82, Joey Jarvis.

19 MR. JARVIS: Assistant quality manager I'm 68
20 -- 58 years old. My wife, she is self-
21 employed. She (inaudible.) About five miles.

22 THE CLERK OF COURT: Thank you, sir. Could
23 you repeat what your wife does. I'm sorry. I
24 didn't hear that.

25 MR. JARVIS: She's self-employed. She's a

1 hairedresser. She runs a salon.

2 THE CLERK OF COURT: Thank you, sir. Juror

3 Number 84, Brian Johnson.

4 MR. B. JOHNSON. Yes. I am a landscaper. My

5 wife is a (inaudible), and I'm 50 years old.

6 THE CLERK OF COURT: And how many miles, sir?

7 MR. B. JOHNSON: Four miles.

8 THE CLERK OF COURT: Four miles. Thank you,

9 sir. Juror Number 85, Matthew Johnson.

10 MR. M. JOHNSON: I'm an assistant principal.

11 About ten miles from here. My spouse is an

12 adjunct college professor.

13 THE CLERK OF COURT: Thank you, sir. Juror

14 Number 90, Maria Krechko.

15 MS. KRECHKO: My husband is a self-employed

16 trucker.

17 THE CLERK OF COURT: I'm sorry. Mr. Bogan,

18 could you hold the mic straight at her?

19 MS. KRECHKO: I'm an underwriter. My husband

20 is self-employed. He's a driver. I'm 44

21 years old and live about 20 miles.

22 THE CLERK OF COURT: And you said how many

23 miles?

24 MS. KRECHKO: Twenty.

25 THE CLERK OF COURT: Twenty. Thank you,

1 ma'am. Juror Number 91, Steven Landrie.
2 MR. LANDRIE: I'm an engineer and my wife is a
3 homemaker and I'm 55 years old. Ten miles
4 from here.
5 THE CLERK OF COURT: Thank you, sir. Juror
6 Number 93, Brandon Layton.
7 MR. LAYTON: I'm a propane service tech. My
8 wife's a nurse at Greenville Dermatology. I
9 live about 20 miles away.
10 THE CLERK OF COURT: Thank you, sir. I'm
11 sorry. Could you repeat what you do?
12 MR. LAYTON: I'm a service tech.
13 THE CLERK OF COURT: A service tech?
14 MR. LAYTON: Uh-huh.
15 THE CLERK OF COURT: Thank you, sir. Juror
16 Number 99, Shannon Mabry.
17 MS. MABRY: I'm a senior financial analyst
18 with a facility services company.
19 THE CLERK OF COURT: I'm sorry. I'm going to
20 -- thank you.
21 MS. MABRY: I'm a senior financial analyst
22 with a facility services company. I'm 49
23 years old, single, and 20 miles.
24 THE CLERK OF COURT: Thank you, ma'am. Juror
25 Number 100, Roberto Marciano.

1 MR. MARCANO: I'm 20 years old. I work for
2 the South Carolina State Port Authority. My
3 wife's a manager, and I'd say about ten miles
4 away.

5 THE CLERK OF COURT: Thank you, sir. Juror
6 Number 102, Shannon McCarroll (phonetic).

7 MS. MCCARROLL: I'm a customer service
8 associate. My husband works at (inaudible),
9 and 20 miles.

10 THE CLERK OF COURT: You said 20 miles, ma'am?

11 MS. MCCARROLL: (Nods head up and down.)

12 THE CLERK OF COURT: Thank you, ma'am. Juror
13 Number 105, Chelsea Miller. (To the Bailiff)
14 She's on the front, Mr. Bishop.

15 MS. MILLER: Chelsea Miller, 31, I work in
16 customer service for State of New Mexico, HR
17 department, and 25 miles.

18 THE CLERK OF COURT: Thank you, ma'am. And
19 your spouse's occupation?

20 MS. MILLER: I'm not married.

21 THE CLERK OF COURT: Thank you, ma'am. Juror
22 Number 107, Bobbie Moralis (phonetic).

23 MR. MORALIS: I'm a distribution coordinator
24 for (inaudible), I'm 49, I'm single, and 20
25 miles.

1 THE CLERK OF COURT: Thank you, ma'am. Juror
2 Number 109, Jeremy Neal.

3 MR. NEAL: A pipe fitter/installer. Fifty
4 years old. Single father, and I'm about seven
5 miles.

6 THE CLERK OF COURT: You said seven miles,
7 sir?

8 MR. NEAL: Yes, ma'am.

9 THE CLERK OF COURT: I'm going to -- going to
10 ask you to repeat everything you just said
11 because I think we didn't hear it here.

12 MR. NEAL: A pipe fitter/installer. Single
13 father. I'm 50 years old, and live about
14 seven miles.

15 THE CLERK OF COURT: Thank you, sir. Juror
16 Number 116, Robert Peters.

17 MR. PETERS: I'm a truck driver. I'm 56 years
18 old. I'm divorced, and I live about five
19 miles away.

20 THE CLERK OF COURT: Thank you, sir. Juror
21 Number 117, Casey Pettit (phonetic).

22 MS. PETTIT: I'm a 49-year-old registered
23 nurse. My husband is a realtor, and I
24 traveled about 15 miles.

25 THE CLERK OF COURT: Thank you, ma'am. Juror

1 Number 118, Michael Phillips.

2 MR. PHILLIPS: I'm a sales manager. I'm 48

3 years old. My wife is a elementary school

4 principal. Ten miles.

5 THE CLERK OF COURT: Thank you, sir. Juror

6 Number 120, Nikki Pitts.

7 MS. N. PITTS: I'm 42, medical assistant, and

8 about ten miles.

9 THE CLERK OF COURT: And your spouse's

10 occupation, ma'am?

11 MS. N. PITTS: I'm not married.

12 THE CLERK OF COURT: Thank you, ma'am. Juror

13 Number 121, Zoey Pitts.

14 MS. Z. PITTS: I work retail. My husband also

15 works retail, and I live about ten miles.

16 THE CLERK OF COURT: Say that mileage one more

17 time.

18 MS. Z. PITTS: Ten.

19 THE CLERK OF COURT: Ten. Thank you, ma'am.

20 Juror Number 123, Brianna Privet.

21 MS. PRIVET: Brianna Privet. I'm a student at

22 Wofford College. From my dorm, it's about a

23 mile. From my home it's probably five miles,

24 and I'm 20 years old.

25 THE CLERK OF COURT: Thank you, ma'am. Juror

1 Number 125, Jose Questen (phonetic). Thank
2 you, sir. I do apologize for that
3 mispronunciation.
4 MR. QUESTEN: I'm 55 years old. I'm
5 (inaudible.)
6 THE CLERK OF COURT: And your spouse's
7 occupation?
8 MR. QUESTEN: (Inaudible.)
9 THE CLERK OF COURT: What does -- what does
10 your spouse do?
11 MR. QUESTEN: Oh, my wife works in a factory
12 in Inman.
13 THE CLERK OF COURT: Factory in Inman?
14 MR. QUESTEN: Yes.
15 THE CLERK OF COURT: And how many miles is it
16 to your home?
17 MR. QUESTEN: It's about 15.
18 THE CLERK OF COURT: Fifteen. Thank you, sir.
19 Juror Number 127, Emily Reagan.
20 MS. REAGAN: I'm a waitress. I'm single and
21 probably about five miles from here.
22 THE CLERK OF COURT: Thank you, ma'am. Juror
23 Number 129, Elijah Rhodes.
24 MR. RHODES: A shipping manager. My wife is a
25 quality engineer. I'm 45, and I live about 15

1 miles away.

2 THE CLERK OF COURT: Thank you, sir. Juror

3 Number 131, Rosa Revas.

4 MS. REVAS: Retired. Sixty-six. Twenty

5 miles.

6 THE CLERK OF COURT: Thank you, ma'am. Can

7 you tell us what you did before you retired?

8 MS. REVAS: Worked at Walgreens.

9 THE CLERK OF COURT: And what did your spouse

10 do?

11 MS. REVAS: I'm divorced.

12 THE CLERK OF COURT: Thank you, ma'am. Juror

13 Number 133, Jonica Robinson (phonetic).

14 MS. ROBINSON: I'm 34, single, production

15 associate at BMW, and I'm about ten miles

16 away.

17 THE CLERK OF COURT: Thank you, ma'am. Juror

18 Number 135, Roland Salley.

19 MR. SALLEY: I'm a retired -- excuse me -- I'm

20 a retired production coordinator and

21 vocational rehabilitator. My wife is a city

22 councilwoman with Spartanburg, and I'm 77

23 years old. I'm the ancient one here, and --

24 and I'm about six miles away.

25 THE CLERK OF COURT: Thank you, sir. Juror

1 Number 145, Joshua Snyder.

2 MR. SNYDER: Thirty-seven. Divorced. Truck

3 driver. Twenty miles.

4 THE CLERK OF COURT: Thank you, sir. Juror

5 Number 147, Yaroslav Stanislavov. I feel like

6 I mispronounced your name. I am so sorry.

7 MR. STANISLAVOV: I'm a college student,

8 single, and about 26 miles from here.

9 THE CLERK OF COURT: Thank you, sir. Juror

10 Number 150, Ronald Sullivan.

11 MR. SULLIVAN: Yeah. I'm 64 years old,

12 retired from manufacturing, and about 27

13 miles.

14 THE CLERK OF COURT: Thank you, sir. And your

15 spouse's occupation?

16 MR. SULLIVAN: I'm single.

17 THE CLERK OF COURT: Thank you, sir. Juror

18 Number 152, Richard Tatum.

19 MR. TATUM: I'm a -- excuse me -- I'm a

20 restaurant general manager, divorced, and I am

21 56.

22 THE CLERK OF COURT: And your mileage, sir?

23 MR. TATUM: About five.

24 THE CLERK OF COURT: Five miles?

25 MR. TATUM: Uh-huh.

1 THE CLERK OF COURT: Thank you, sir. Juror
2 Number 162, Jonique Wannamaker.
3 MS. WANNAMAKER: I program (inaudible), and
4 I'm about 20 miles from here.
5 THE CLERK OF COURT: Thank you, ma'am. Juror
6 Number 164, Robert Weed.
7 MR. WEED: I'm 28 years old. I'm a corporate
8 due diligence investigator. My fiancée is an
9 academic librarian, and I live about three
10 miles away.
11 THE CLERK OF COURT: Okay. So I picked up on
12 about a third of that. Could I get -- ask you
13 to speak really loud and repeat that for me?
14 Thank you.
15 MR. WEED: Yes. I'm 28 years old. I'm a
16 corporate due diligence investigator. My
17 fiancée is an academic librarian. I live
18 about three miles away.
19 THE CLERK OF COURT: Perfect. Thank you, sir.
20 Juror Number 165, William White.
21 MR. WHITE: I'm a warehouse operator, 50 years
22 old. My wife works at the Family Life Center,
23 and I live 15 miles from here.
24 THE CLERK OF COURT: Thank you, sir. Juror
25 Number 166, Natasha Whitner.

1 MS. WHITNER: I'm an extruder operator at
2 Michelin. I'm 44, single, and about 12 miles
3 away.

4 THE CLERK OF COURT: Thank you, ma'am. Juror
5 Number 168, Rachel Wilkins.

6 MS. WILKINS: I'm 53. I'm divorced, live
7 about 25 miles, and I own a company that works
8 with special needs children.

9 THE CLERK OF COURT: Thank you, ma'am. And
10 your mileage. I'm sorry. Repeat that for me.

11 MS. WILKENS: Twenty-five.

12 THE CLERK OF COURT: Thank you, ma'am. Juror
13 Number 169, George Williams.

14 MR. WILLIAMS: I am 55. I am an English
15 professor, live about a mile and a half from
16 here, and my partner is a mental health
17 professional and executive professional.

18 THE CLERK OF COURT: Thank you, sir. Juror
19 Number 172, Jamie Williamson.

20 MS. WILLIAMSON: I'm a (inaudible) technician.
21 My husband is a senior pastor and I'm 44 years
22 old and it's about 15 miles.

23 THE CLERK OF COURT: Thank you, ma'am. Juror
24 Number 173, John Williamson.

25 MR. WILLIAMSON: I'm an appliance technician,

1 live about 12 miles, and my wife's a senior
2 director of billing.

3 THE CLERK OF COURT: And you said 12 miles
4 away, sir?

5 MR. WILLIAMSON: Twelve.

6 THE CLERK OF COURT: Thank you, sir. Juror
7 Number 174, Mackenzie Willoughby (phonetic).

8 MS. WILLOUGHBY: I'm order manager for
9 Siemens, I'm 32 years old, I'm a team director
10 of IT, and about five miles away.

11 THE CLERK OF COURT: Thank you, ma'am.

12 Is there anyone here whose name I did not
13 call? Once again, is there anyone here whose
14 name I did not call?

15 THE JURY PANEL: (No response.)

16 THE CLERK OF COURT: Okay. Thank you. That's
17 the roll, Your Honor.

18 JURY QUALIFICATIONS

19 THE COURT: Ladies and gentlemen, there are
20 certain questions that I'm required by state
21 law to ask of you this morning to determine
22 your eligibility to serve, and quite honestly,
23 there's a couple of questions that might be
24 deemed personal in nature. For instance,
25 there is a question that -- that I have to

1 ask, whether or not you have a prior criminal
2 history for which you could have been
3 sentenced to more than one year in prison, all
4 right? So if you have a driving under the
5 influence, first offense, that's 30 days. You
6 don't have to tell me about that, or the
7 lawyers, you don't have to tell us about that.
8 But if you, at some point in your life, along
9 with your friends thought it was funny to open
10 a car door in a neighborhood and take the
11 pocket change out of the cupholder, that
12 carries up to five years. And you would not
13 have gotten the five-year sentence for doing
14 something silly like that, but it carries up
15 to five years. You probably got a fine for
16 doing something like that. But if you have a
17 crime on your record for more than one year,
18 you have to tell me about that, okay?

19 The other question is whether or not you
20 are suffering from a mental or physical
21 condition that would prevent you from serving
22 this week, and I have no way of knowing that,
23 okay? So if you are taking medication and a
24 medical doctor has advised you not to operate
25 machinery, don't drive a car, do not make

1 legal decisions, while you're taking this
2 medication, then you need to tell me about
3 that, and we can make sure that you are
4 transferred to another term of court.

5 Our purpose is not to embarrass anyone,
6 so if you need to answer one of those
7 questions, or any other questions privately,
8 at the very end of my question-and-answer
9 period, I will leave the bench and I will come
10 over and stand next to Madam Court Reporter
11 and you can come forward one at a time to
12 answer that question, and the lawyers will
13 gather up, as well. That's not an invitation
14 for 63 people to come speak to me, usually I
15 have one or two, but not usually more than one
16 or two or three, okay?

17 These are the questions I'm -- I'm
18 required to ask: Is there a member of this
19 panel who is not a citizen of the United
20 States of America? You must be a citizen of
21 this country to serve on -- as a juror. Is
22 there a member of this panel who is not a
23 citizen of the United States, please stand?
24 THE JURY PANEL: (No response.)
25 THE COURT: Is there a member of this jury

1 panel who is not a resident and citizen of
2 Spartanburg County? Now, Greer and Chesnee
3 sit on the county line; one in Cherokee and
4 one over in Greenville. So is there someone
5 here that pays property tax in another county
6 besides Spartanburg County; must be a
7 Spartanburg County resident?

8 THE JURY PANEL: (No response.)

9 THE COURT: Okay. Is there a member of this
10 panel who is unable to read, write, speak, or
11 understand the English language? If so,
12 please stand.

13 THE JURY PANEL: (No response.)

14 THE COURT: Is there a member of this panel
15 who has less than a sixth-grade education? If
16 so, please stand.

17 THE JURY PANEL: (No response.)

18 THE COURT: Is there a member of this panel,
19 due to a mental or physical infirmity, unable
20 to render service on the jury this week? For
21 example, is there a member of this panel who
22 has a medical condition that would prevent you
23 from serving this week? If so, please stand
24 or see me privately.

25 THE JURY PANEL: (No response.)

1 THE COURT: Here's the other one. Is there a
2 member of this panel who has been convicted by
3 a guilty plea or a trial in a state or federal
4 court of record of a crime punishable by
5 imprisonment for more than one year, and your
6 civil rights have not been restored by pardon
7 or amnesty? Punishable by more than one year
8 means you could have received a sentence of
9 more than one year regardless of what sentence
10 you actually received. If so, please stand or
11 see me privately.

12 Okay. Your number, sir?

13 MR. JOHNSON: Eighty-four.

14 THE COURT: One-five-four?

15 MR. JOHNSON: Eighty-four.

16 THE COURT: One-eight-four. Okay. Eighty-
17 four -- eighty-four. All right. Sir, let's -
18 - let's do this because of unable to hear, you
19 three gentlemen, if you will, just come --
20 just come down over here to the side.

21 (WHEREUPON, a bench conference was held.)

22 THE BAILIFF: Eighty-two.

23 (WHEREUPON, a bench conference was held.)

24 THE BAILIFF: 125.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: Is there a member of this panel
2 who is a clerk or deputy clerk of court,
3 constable, sheriff, or other commissioned law
4 enforcement officer, probate judge, county
5 commissioner, magistrate, or other county
6 officer, or employed within the walls of any
7 courthouse? If so, please stand.

8 THE JURY PANEL: (No response.)

9 THE COURT: Is there a -- is there a member of
10 this jury panel who previously served on jury
11 duty in circuit court this calendar year --
12 that would be difficult -- but you were called
13 to serve in circuit court this calendar year?
14 If so, please stand.

15 THE JURY PANEL: (No response.)

16 THE COURT: Is there a member of this panel
17 who served as a Spartanburg County Grand Juror
18 during the past several years? If so, please
19 stand if you were on the County Grand Jury.

20 THE JURY PANEL: (No response.)

21 THE COURT: Ladies and gentlemen, we now move
22 to exemptions. State law provides exemptions
23 for service, and an exemption does not mean
24 that you are not qualified to serve; it means
25 you choose not to serve. Persons who are 65

1 years of age or older may be excused if you
2 choose to do so, but you're not required to.
3 Any person here 65 years of age or older and
4 you wish to be excused, please stand.

5 THE JURY PANEL: (No response.)

6 THE COURT: All right. Thank you. Because I
7 know we have a couple who are older. So thank
8 you for staying with us.

9 Another exemption concerns prior jury
10 service. No person is required to serve as a
11 juror more often than once every three
12 calendar years. Is there a member of this
13 panel who served on jury duty during the last
14 two calendar years in circuit court and you
15 wish to be exempt, please stand?

16 THE JURY PANEL: (No response.)

17 THE COURT: Persons who served as a Grand
18 Juror during the last five calendar years may
19 be exempt if you choose to do so. Is there a
20 member of this panel who served on -- as a
21 Grand Juror during the last five calendar
22 years, and you wish to be exempt? If so,
23 please stand.

24 THE JURY PANEL: (No response.)

25 THE COURT: The next exemption concerns those

1 who have the care, control, and custody of
2 young children and has several subparts, all
3 of which must apply for you to be excused.
4 You may be excused if you have a child under
5 the age of seven years and you have the care,
6 control, and custody of the child; and you are
7 the principal caregiver of the child; and you
8 are unable to make arrangements for adequate
9 care while serving. If all requirements are
10 met and you wish to be excused, please stand.
11 In other words, you are a stay-at-home parent
12 more or less. Stay home.

13 (To Juror Number 81) You stay home?

14 MS. JACKSON: I am a 1099 employee, so my hours
15 vary, but I am the sole caregiver of a two-
16 year-old and a seven-year-old, whom I have to
17 pick up from school.

18 THE COURT: Okay. So you are unable to --
19 where are the children now?

20 MS. JACKSON: They go to my --

21 THE COURT: One's in school?

22 MS. JACKSON: -- one is in school, and one is
23 with my mother-in-law, yes, sir.

24 THE COURT: One's with your mother-in-law?

25 MS. JACKSON: Yes, sir.

1 THE COURT: Okay. She can't do that all week?
2 MS. JACKSON: Not to my knowledge, no, sir.
3 THE COURT: Okay. If you would come over and
4 sign an affidavit. If you'll come over here.
5 She has to sign -- you have to sign an
6 affidavit.
7 MS. JACKSON: Yes, sir.
8 THE COURT: Your number, again?
9 MS. JACKSON: Eighty-one.
10 THE COURT: Eighty-one. Okay. Yes, ma'am?
11 In the back.
12 MS. HAMBY: Juror Number 24. My daughter is
13 seven. she isn't going to be in school,
14 because she tested positive for strep throat
15 and cannot -- and can't return until she
16 doesn't have a fever. She was running a fever
17 this morning. My dad is with her and can only
18 stay till lunch today when he has to go to
19 work.
20 THE COURT: Yes, ma'am. If you'll come up and
21 sign an affidavit. Your number, again?
22 THE CLERK OF COURT: Twenty-four.
23 MS. HAMBY: Twenty-four.
24 THE COURT: Twenty-four.
25 MS. ROBINSON: I'm Number 133 and I have a

1 five-year-old and he gets out of school at two
2 and I don't have, like, a proper -- someone to
3 go pick him up from school.

4 THE COURT: Well, do you work outside of the
5 home?

6 MS. ROBINSON: Yes.

7 THE COURT: Do you work nights or something?

8 MS. ROBINSON: I work night shift, yes.

9 THE COURT: All right. Well, so you get him
10 every day from school?

11 MS. ROBINSON: Yes, sir.

12 THE COURT: And there's no one else that can
13 get the child?

14 MS. ROBINSON: I don't have anything arranged
15 with his daddy for -- to get him. So I hope
16 it works out. I don't know. He comes in
17 early, I mean, late from work, so I don't know
18 if that can work out. So, I mean, I can make
19 better arrangements. I might. I might.

20 THE COURT: You can make arrangements?

21 MS. ROBINSON: I possibly can.

22 THE COURT: Okay. We'd like you to stay --
23 for you stay with us if you can.

24 MS. ROBINSON: Okay. I'll make better
25 arrangements.

1 THE COURT: Thank you. Stay with us. Yes --
2 yes, ma'am? Your number, please?
3 MS. RIVAS: I'm 131.
4 THE COURT: 1-3-1?
5 MS. RIVAS: Yes.
6 THE COURT: Okay.
7 MS. RIVAS: Today, my daughter's off, but I
8 take care of my grandson, I mean --
9 THE COURT: We -- I can't -- I can't --
10 MS. RIVAS: I take care of -- I take my
11 grandson to school, and I gotta pick him up,
12 because we don't have other family.
13 THE COURT: Can someone get the child?
14 MS. RIVAS: Today only.
15 THE COURT: Okay. What about tomorrow?
16 MS. RIVAS: No.
17 THE COURT: And she --
18 MS. RIVAS: Well, tomorrow my daughter has
19 him. She's off today and tomorrow, but other
20 than that, no. She works at --
21 THE COURT: Can y'all hear? You don't have
22 any other -- anyone else that can get the
23 child?
24 MS. RIVAS: Just today and tomorrow.
25 THE COURT: Just today and tomorrow.

1 MS. RIVAS: I've got to pick him up -- well,
2 Thursday and Friday I've got to watch him
3 because he'll be out from school at 11, and
4 then Friday he'll be off all day. My other
5 daughters work, so there's --
6 THE CLERK OF COURT: It's her grandchild.
7 THE COURT: Grandchild? It doesn't apply
8 to --
9 MS. RIVAS: And my grandson --
10 THE COURT: Yeah. That doesn't apply to
11 grandchildren, ma'am. It applies to children;
12 your -- your child.
13 MS. RIVAS: Oh, okay.
14 THE COURT: Okay. Can you make arrangements?
15 Somebody's got to make arrangements for the
16 child. Unless you have custody of the child.
17 Do you have legal custody?
18 MS. RIVAS: No.
19 THE COURT: I'm sorry. It doesn't -- that
20 doesn't apply.
21 MS. RIVAS: Okay.
22 THE COURT: You have to make arrangements for
23 the child, okay? Thank you.
24 MS. RIVAS: Thank you.
25 MR. SNYDER: This may be off subject. I've

1 got my son at home. 145.

2 THE COURT: 145.

3 MR. SNYDER: Yes. I pay child support and
4 stuff. I mean, I don't how all this works. I
5 get paid weekly. I work three jobs. I don't
6 know how all of this works. I'll end up here
7 anyway for not doing my job. But I have to
8 take care of three kids. I'm divorced and pay
9 child support and all that good stuff.

10 THE COURT: Yes, sir. I -- I understand about
11 the financial end of it, but that's -- that's
12 -- I can't help you with that. You work, like
13 you say, three jobs?

14 MR. SNYDER: Yes.

15 THE COURT: Okay. I'm gonna have to ask you
16 to stay with us.

17 MR. SNYDER: All right.

18 THE COURT: If you are the caregiver of a
19 person 65 years of age or older and unable to
20 provide care for that person or arrange care
21 for that person while serving, you may be
22 exempt. Does that apply to anyone here?

23 THE JURY PANEL: (No response.)

24 THE COURT: If you are the caretaker of a
25 severely disabled person who is unable to care

1 for himself or herself and cannot be left
2 unattended and you are unable to provide care
3 for that person while serving, you may be
4 exempt. Does that apply to anyone?

5 THE JURY PANEL: (No response.)

6 THE COURT: If you are attending school or
7 working at a school in some capacity and this
8 exemption applies to you, we will transfer
9 your service to the summer months or spring
10 break, at which time will not interfere with
11 school responsibility. Is there a member of
12 this panel who's a full-time student, teacher,
13 crossing guard, bus driver, or who serves in
14 other school-related functions who cannot
15 serve this week and desires to be transferred
16 to the summer or spring break, please stand?

17 We've got one lady in the back. Yes,
18 ma'am? Your number?

19 MS. PRIVET: I'm 123. 123.

20 THE COURT: Okay. You are a student?

21 MS. PRIVET: Yes, sir. At Wofford.

22 THE COURT: Okay. And you wish to be
23 transferred?

24 MS. PRIVET: Yes, sir.

25 THE COURT: Okay. (To the Clerk of Court)

1 You've got her number?

2 THE CLERK OF COURT: Yes, sir.

3 THE COURT: Okay. Ma'am, we'll transfer you
4 to the summer.

5 Is there a member of this panel who is
6 employed with the Department of Corrections
7 and wishes to be excused? If so, please
8 stand.

9 THE JURY PANEL: (No response.)

10 THE COURT: Is there a -- is a juror -- is
11 there a juror here who performs services for a
12 business, commercial or agricultural
13 enterprise, which is so essential that the
14 business is required to stop functioning or
15 close because you're not there, and wishes to
16 be -- be excused, please stand? Yes, sir.
17 Your number, sir?

18 MR. HOLTON: Seventy-four. Seven-four.

19 THE COURT: Seven-four.

20 MR. HOLTON: Yes, sir.

21 THE COURT: Okay.

22 MR. HOLTON: Well, as I said, I'm self-
23 employed. I have a seamless gutter company,
24 so while I'm here, I don't have anybody
25 answering my phone. I don't have any way of

1 getting any work done since I'm self-employed.

2 THE COURT: They -- they can't function
3 without you?

4 MR. HOLTON: No, sir. It's -- it's just me.
5 There's only two -- only three of us. I only
6 have two employees.

7 THE COURT: Okay.

8 MR. HOLTON: I run a small business.

9 THE COURT: Seventy-four. Sir, we'll excuse
10 you. Anyone else?

11 THE JURY PANEL: (No response.)

12 THE COURT: Ladies and gentlemen, that
13 concludes the statutory list of qualifications
14 that I have to ask, and maybe I can get off
15 script here.

16 Sixty days ago/ninety days ago, you did
17 not know you would be summoned for jury duty.
18 Is there anyone here who planned a vacation,
19 who planned a trip, whether that's business or
20 pleasure, money was paid, plans were made, and
21 you can't -- it's this week. Okay. Ma'am,
22 your number, please?

23 MS. PETTIT: One-seventeen. One-seventeen.

24 THE COURT: One-seventeen. You were going
25 somewhere this week?

1 MS. PETTIT: Friday.
2 THE COURT: What if I protect you Friday?
3 MS. PETTIT: I'm good.
4 THE COURT: Okay. One-seventeen is protected
5 Friday, so you will not have to serve on
6 Friday, okay?
7 MS. PETTIT: Thank you.
8 THE COURT: Thank you. Yes, sir? Your
9 number?
10 MR. STANISLAVOV: One-seven-four (verbatim).
11 THE COURT: One-seven-four.
12 MR. STANISLAVOV: Yes, sir.
13 THE COURT: You're leaving somewhere this
14 week?
15 MR. STANISLAVOV: Yes, sir. The family's
16 going --
17 THE COURT: I couldn't hear.
18 MR. STANISLAVOV: My family is, and I'm -- and
19 I'm going on vacation this week.
20 THE COURT: When are you leaving?
21 MR. STANISLAVOV: Huh?
22 THE COURT: When are you leaving?
23 MR. STANISLAVOV: Tomorrow, probably, depends.
24 THE COURT: Okay. You want to be transferred?
25 MR. STANISLAVOV: No.

1 THE COURT: I can't excuse you, but I can
2 transfer you to the next term of court.
3 MR. STANISLAVOV: Well, I can't do it in the
4 summer. I've got an internship and classes
5 and stuff.
6 THE COURT: I can transfer you to another
7 term; that's all I can offer you.
8 MR. STANISLAVOV: When is that?
9 THE COURT: A couple of weeks from now.
10 THE CLERK OF COURT: We can do it in June.
11 MR. STANISLAVOV: Well, I've got school --
12 THE COURT: Okay. Well, you can do spring
13 break then.
14 MR. STANISLAVOV: This is my spring break
15 right now.
16 THE COURT: All right. Well, we got -- I
17 cannot excuse you, okay. Just -- I can't. So
18 you're gonna have to serve. You're going to
19 be called back. You can serve this week, or
20 you can serve another week. Tell me what you
21 want to do.
22 MR. STANISLAVOV: Well, I guess, I got to do
23 this week. Just sit at home, I guess.
24 THE COURT: Well, you want to stay this week?
25 MR. STANISLAVOV: Well, I would like -- I

1 would like to get dismissed, I guess, but --
2 THE COURT: I can't dismiss you; State Law
3 doesn't allow me to dismiss you.
4 MR. STANISLAVOV: Well, then I don't have any
5 choices.
6 THE COURT: Okay. When -- when -- you want to
7 transfer or not?
8 MR. STANISLAVOV: No. I go to school.
9 THE COURT: So you're going to stay with me
10 this week?
11 MR. STANISLAVOV: Yeah.
12 THE COURT: Okay. Good. Stay with us.
13 THE CLERK OF COURT: And he's 147, Your Honor.
14 THE COURT: 147. Okay.
15 THE CLERK OF COURT: Yes, sir.
16 THE COURT: Stay with us, sir. Anybody else?
17 THE JURY PANEL: (No response.)
18 THE COURT: Ladies and gentlemen, the jury is
19 now qualified. If you have a cell phone, a
20 smart phone --
21 THE BAILIFF: Your Honor.
22 THE COURT: Y'all have someone else?
23 THE BAILIFF: I have a question.
24 THE CLERK OF COURT: There's someone in the
25 back.

1 THE COURT: Oh.

2 MS. A. HICKS: I have a letter from my
3 employer, so I'm a supervisor for a Medicaid
4 home care company, and I'm the only nurse at
5 the practice this week. I can --

6 THE COURT: Let's -- come -- come over. Let's
7 get the lawyers over here.

8 THE BAILIFF: Juror 72.

9 (WHEREUPON, a bench conference was held.)

10 THE BAILIFF: Juror 105.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: If you have a cell phone, a
13 tablet, any kind of communication device --
14 some folks have a -- have a communication
15 capability (as spoken) built on their
16 wristwatch -- but if you have such an item as
17 that, do not bring those to the courthouse.
18 They are actually allowed in the courthouse,
19 but they are prohibited in the courtroom. So
20 if you come over to the courthouse, just do
21 whatever you've got to do, and you're not in a
22 courtroom, you may have those in the hallway,
23 but you cannot have them in the courtroom by
24 order of the South Carolina Supreme Court.

25 All right. So if you have that device,

1 please leave it in your automobile. If you're
2 selected as a juror, they are not allowed in
3 the courtroom, and they are not allowed in a -
4 - in a jury deliberation room, okay? That
5 will cause a mistrial of a case. Please do
6 not have one of those devices in a jury -- in
7 a courtroom or in a jury deliberation room.
8 Again, it can cause a mistrial on the case,
9 and it -- I don't know what the Supreme Court
10 will do about that, but I will tell you ahead
11 of time that the Chief Justice of our Supreme
12 Court is a Spartanburg native, and his office
13 is at our courthouse. You will see him
14 walking through the courthouse from time to
15 time, so please don't have one of those
16 devices in your hand.

17 Don't have any contact with the lawyers
18 of the parties/the litigants in these cases
19 while you're serving. You may see someone
20 here that you know, whether it's a witness or
21 a lawyer or a litigant or a -- do not have any
22 contact with them if you're serving on the
23 jury this week.

24 We thank you for being prompt in your
25 jury service. We ask that you continue that,

1 because, when we need all 12 of you, we need
2 all 12 of you at that time; we have to wait if
3 someone is not there.

4 Okay. Anything from the lawyers at this
5 point? Anybody have anything? All right.
6 Let's see. We've been running -- (To the
7 Clerk of Court) You think we need to take a
8 quick -- a quick break?

9 THE CLERK OF COURT: It's up to you, Your
10 Honor. If you want a break, we'll take a
11 break.

12 THE COURT: Let me ask this: We are -- we're
13 getting ready to pick the first jury, so let
14 me ask, is there anyone here that needs a
15 comfort break real quick? You do? Okay.
16 I've got some hands. Let's do this. Let's
17 take ten minutes. Okay. Let's take ten
18 minutes. (To the Clerk of Court) The
19 restrooms are out this way?

20 THE CLERK OF COURT: Yes, sir.

21 THE COURT: Okay. The restrooms are this way.
22 The bailiffs are here. Let's take a quick ten
23 minutes, and then we're gonna pick the first
24 and second jury.

25 (WHEREUPON, the jury pool was excused at

1 10:32 a.m.)

2 (WHEREUPON, a break was taken from 10:32
3 a.m. until 10:39 a.m.)

4 (WHEREUPON, the jury pool came into open
5 court at 10:39 a.m.)

6 THE COURT: I understand we have everyone.

7 Ladies and gentlemen, we are about -- this is
8 a civil case, and you are in civil court this
9 week. This is not a criminal case despite the
10 caption of this case, but this is a civil case
11 and it is the "State of South Carolina vs.
12 Shawn Daily" and the Case Number is 2019-CP-
13 42-3230.

14 I'm going to ask Mr. Daily to please
15 stand just for a minute or so.

16 THE DEFENDANT: (Complies.)

17 THE COURT: Can everyone see Mr. Daily? This
18 is Shawn Daily. Thank you, sir. You may be
19 seated.

20 Is there any member of this -- ladies and
21 gentlemen, you were previously sworn; you
22 remain sworn. Is there any member of this
23 jury panel who is related by blood or marriage
24 to Shawn Daily? If so, please stand.

25 THE JURY PANEL: (No response.)

1 THE COURT: Is there any member of this jury
2 panel who has a close or personal or social
3 relationship with Mr. Daily? If so, please
4 stand.

5 THE JURY PANEL: (No response.)

6 THE COURT: The following is a list of
7 potential witnesses in this case: Dr.
8 Christopher Gillen, Carolyn Daily, Shawn
9 Daily, and Dr. Emily Gottfried. Is there any
10 member of this jury panel who has -- is
11 related by blood or marriage to any of the
12 potential witnesses in this case? If so,
13 please stand.

14 THE JURY PANEL: (No response.)

15 THE COURT: Any member of this panel have a
16 social or personal relationship with any of
17 the potential witnesses in this case? If so,
18 please stand.

19 THE JURY PANEL: (No response.)

20 THE COURT: I'm going to ask the lawyers to
21 introduce themselves to you at this point in
22 time. First, the State?

23 MR. RUNYAN: My name is Christopher Runyan,
24 Assistant Attorney General for the State of
25 South Carolina.

1 MS. SHAW: Good morning, ladies and gentlemen.
2 My name is Suzanne Shaw, also an Assistant
3 Attorney General for the State of South
4 Carolina.
5 THE COURT: Mr. Thompson?
6 MR. THOMPSON: Good morning. My name is Don
7 Thompson. I'm an attorney who practices in
8 Greenville and Spartanburg and Cherokee.
9 THE COURT: Is there any member of this jury
10 panel who has a -- who is related by blood or
11 marriage to any of the lawyers in this case?
12 If so, please stand.
13 THE JURY PANEL: (No response.)
14 THE COURT: Any member of this panel have a
15 social or personal relationship with any of
16 the lawyers? If so, please stand.
17 THE JURY PANEL: (No response.)
18 THE COURT: Any member of this jury panel --
19 excuse me -- ever consulted with any -- any of
20 these lawyers about a matter, whether that's a
21 civil matter, a criminal matter, a will,
22 buying a house, anything, you consulted with
23 one of these three lawyers about something?
24 If so, please stand.
25 THE JURY PANEL: (No response.)

1 THE COURT: Any member of this jury panel ever
2 been summoned by one of these lawyers, meaning
3 they subpoenaed you or asked you to come to
4 court to testify in a case? If so, please
5 stand.

6 THE JURY PANEL: (No response.)

7 THE COURT: Any -- any member of this panel
8 ever been represented by the attorney
9 general's office or some member of the
10 attorney general's office? If so, please
11 stand.

12 THE JURY PANEL: (No response.)

13 THE COURT: Any member of the jury panel ever
14 been represented by Mr. Thompson's law firm,
15 please stand?

16 THE JURY PANEL: (No response.)

17 THE COURT: Is there any member -- either you
18 yourself or a member of your family or a very
19 close friend ever been employed by a law
20 enforcement agency; state, federal, that
21 includes military police, you've been -- you
22 were a law enforcement officer or a family
23 member is or was a law enforcement officer at
24 any point in time, whether that's a detention
25 officer or state trooper, whatever agency,

1 please stand?

2 Okay. We're going to use outside voices,

3 okay? Right here. Ma'am, your number?

4 MS. CURTIS: Thirty-seven.

5 THE COURT: Thirty-seven. Would that

6 interfere with your ability to be fair and

7 impartial?

8 MS. CURTIS: I don't know.

9 THE COURT: Okay.

10 MS. CURTIS: Yes, sir.

11 THE COURT: That's a fair answer, but I have

12 to have a definitive answer. If you think so,

13 then I'm not going to let you serve in this

14 case.

15 MS. CURTIS: I think so.

16 THE COURT: You think it would interfere?

17 MS. CURTIS: Yes.

18 THE COURT: Okay. Ma'am, you -- 37 will not

19 serve at the trial of this case. Yes, ma'am?

20 MS. ARMOUR: Number 6. Number 6.

21 THE COURT: Seven-six?

22 MS. ARMOUR: Six.

23 THE BAILIFF: Six.

24 THE COURT: Number 6?

25 THE BAILIFF: Yes.

1 THE COURT: Thank you. I'm having trouble
2 hearing up -- I've got a fan running behind me
3 back here. I don't know what that is, but
4 it's tough to hear.

5 Number 6. Ma'am, would that interfere
6 with your ability to think clearly?

7 MS. ARMOUR: No.

8 THE COURT: Then stay with us. Yes, ma'am?

9 MS. WILKENS: 168.

10 THE COURT: One-six-eight. Would that
11 interfere with your ability to be fair and
12 impartial?

13 MS. WILKENS: No.

14 THE COURT: You may stay. Yes, sir?

15 MR. HAUL: Seventy-eight.

16 THE COURT: Seventy-eight. Would that
17 interfere with your ability to be fair and
18 impartial?

19 MR. HAUL: No, sir.

20 THE COURT: You may stay. Yes, sir?

21 MR. BLACKWELL: Sixteen.

22 THE COURT: One-one-six or one-six?

23 MR. BLACKWELL: Sixteen.

24 THE COURT: Sixteen.

25 MR. BLACKWELL: Can I ask you -- you said

1 anybody related to a law enforcement officer?

2 THE COURT: Yes.

3 MR. BLACKWELL: Okay.

4 THE COURT: Would that interfere with your
5 ability to be fair and impartial?

6 MR. BLACKWELL: No.

7 THE COURT: Thank you, sir. You may stay.

8 Is there any member of this jury panel
9 who has any information or knows anything
10 about this matter concerning Shawn Daily? If
11 so, please stand. I know very little about
12 it. Anyone here know anything about this --
13 about this case? If so, please stand.

14 THE JURY PANEL: (No response.)

15 THE COURT: Mr. Shawn Daily has been convicted
16 of a sexual offense and has completed his
17 prison term. This present action is a civil
18 action to determine his status under what's
19 known as the "Sexually Violent Predator Act"
20 by the State of South Carolina. Would the
21 fact that he's -- he has a conviction and a
22 sentence in any way affect your ability to
23 render a fair and just verdict in this matter?
24 If so, please stand.

25 Okay. Ma'am, your number, please?

1 MS. COTE: Thirty-five.

2 THE COURT: Three-five? Would that interfere
3 with your ability to be fair and impartial?

4 MS. COTE: Yes.

5 THE COURT: Ma'am, you will be excused from
6 the trial in this case. Stay with us.

7 Have you as a member of this panel or a
8 member of your family or a very, very close
9 friend been involved in a civil commitment
10 proceeding in any form or fashion? If so,
11 please stand.

12 THE JURY PANEL: (No response.)

13 THE COURT: Are you yourself or a member of
14 your family or, again, a very close friend a
15 supporter or contributor or involved in any
16 way with any club, agency, or organization
17 that promotes or advocates support for law
18 enforcement, criminal prosecution, or victims'
19 rights? Examples are: Citizens Against
20 Violent Crime, the Rape Crisis Hotline, #MeToo
21 Movement, and other like organizations? If
22 so, please stand.

23 THE JURY PANEL: (No response.)

24 THE COURT: Okay. Is there any member of this
25 panel, either yourself, a member of your

1 family, or a very close friend ever been the
2 victim of a sexual assault? I will not ask
3 details. If so, please stand.

4 Okay. Your number, please?

5 MS. MORALIS: One-oh-seven.

6 THE COURT: One-oh-seven. Would that affect
7 your ability to be fair and impartial?

8 MS. MORALIS: Yes.

9 THE COURT: One-oh-seven is excused for the
10 trial of this case.

11 Is there a member of this panel --

12 THE BAILIFF: Judge?

13 THE COURT: I'm sorry. One more? Your
14 number, sir?

15 MR. BLACKWELL: Sixteen. Sixteen.

16 THE COURT: Yes, sir. Would it interfere with
17 your ability to be fair and impartial?

18 MR. BLACKWELL: Yes, sir.

19 THE COURT: Okay. He'll be excused from the
20 trial in this case.

21 MR. THOMPSON: What number?

22 MR. RUNYAN: Sixteen.

23 MR. THOMPSON: Sixteen, okay.

24 THE COURT: Is there any member of this panel
25 who has an opinion or a belief relating to

1 sexual crime or those convicted of sexual
2 crimes, which are so strong and entrenched
3 that you cannot put them aside and give both
4 the State and the defendant a -- or Respondent
5 a fair and impartial trial? If so, please
6 stand. Okay, sir? I believe you're one-four-
7 five?

8 MR. SNYDER: Yep.

9 THE COURT: Okay. Would that interfere with
10 your ability to be fair and impartial?

11 MR. SNYDER: Yes.

12 THE COURT: All right, sir. One-four-five
13 will not serve in this case.

14 Is there a member of this panel, either
15 yourself or a family member or a very close
16 friend ever work for or been involved with or
17 a client of an advocacy center or a crisis
18 center? If so, please stand.

19 THE JURY PANEL: (No response.)

20 THE COURT: Is there a member of this panel,
21 either yourself, a family member, or a very
22 close friend pursued a degree or training or
23 worked in the areas of psychiatry or
24 psychology or law, please stand? Yes, ma'am.
25 Your number?

1 MS. PETTIT: One-seventeen.

2 THE COURT: One-seventeen. And that'd

3 interfere your ability to be fair and

4 impartial?

5 MS. PETTIT: No.

6 THE COURT: Thank you. You may stay.

7 MR. CARTER: Twenty-six. Did you say "law"?

8 THE COURT: Yes.

9 MR. CARTER: My father's an attorney, but, no.

10 THE COURT: It would not interfere with your

11 ability to be fair and impartial. Thank you.

12 Your number again, sir?

13 MR. CARTER: Twenty-six.

14 THE COURT: Twenty -- 26?

15 MR. CARTER: Twenty-six.

16 THE COURT: Yes. Thank you.

17 MR. WILLIAMS: One-six-nine.

18 THE COURT: Would that interfere with your

19 ability to be fair and impartial?

20 MR. WILLIAMS: No. It would not.

21 THE COURT: Thank you, sir. You may stay.

22 Is there a member, either yourself or a

23 member of your family or a very close friend

24 been employed by, confined to, or have

25 interaction with the South Carolina Department

1 of Mental Health, Medical University of South
2 Carolina, or any inpatient or outpatient
3 psychiatric treatment facility that would
4 affect your ability to be fair and impartial,
5 please stand? I will not ask any questions,
6 no -- no specifics. Please stand. Your
7 number, sir?

8 MR. WHITE: 165.

9 THE COURT: Would it interfere with your
10 ability to be fair and impartial?

11 MR. WHITE: No, sir.

12 THE COURT: Sir, you may stay. Thank you.
13 One-six-five.

14 Is there any member of this jury panel
15 had any consultations with any of -- well, Dr.
16 Christopher Gillen or Dr. Emily Gottfried?
17 Anyone at all have any interaction with them,
18 been a patient, met with them, please stand.

19 THE JURY PANEL: (No response.)

20 THE COURT: Is there a member of this panel
21 who has been involved in what's known as a
22 "prison ministry, prison outreach program," or
23 other program involving contact with
24 incarcerated persons? If so, please stand.
25 Your number is one-six-five?

1 MR. WHITE: Yes, sir.

2 THE COURT: Would that interfere with your

3 ability to be fair and impartial?

4 MR. WHITE: No, sir.

5 THE COURT: Thank you. You may stay.

6 (To Unknown Female) You're already

7 excused, I believe.

8 UNKNOWN FEMALE: Right.

9 THE COURT: Yes, sir?

10 MR. ALLEN: Yes.

11 THE COURT: Your number?

12 MR. ALLEN: Two. Two.

13 THE COURT: Two. Would that interfere with

14 your ability to be fair and impartial?

15 MR. ALLEN: No.

16 THE COURT: Thank you, sir. You may stay.

17 Yes, sir?

18 MR. SALLEY: 135.

19 THE COURT: One-three-five?

20 MR. SALLEY: Yes.

21 THE COURT: Would it interfere with your

22 ability to be fair and impartial?

23 MR. SALLEY: No, sir.

24 THE COURT: Thank you, sir. You may stay.

25 Is there a member of the panel -- of this

1 panel who is related by blood or marriage to
2 any other member of this jury panel? If so,
3 please stand. Recently, I had a husband and
4 wife on one. Anyone?

5 THE JURY PANEL: (No response.)

6 THE COURT: Is there any -- is there a juror
7 here that knows why -- of any reason why he or
8 she should not serve on the jury in this case?
9 If so, please stand.

10 THE JURY PANEL: (No response.)

11 THE COURT: Anything from the State?

12 MR. RUNYAN: Nothing from the State, Your
13 Honor.

14 THE COURT: From the defense?

15 MR. THOMPSON: No.

16 THE COURT: Okay. We're gonna have 14.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: Madam Clerk, we have the jury.

19 JURY STRIKES

20 THE COURT: Madam Clerk, let me have the jury.

21 THE CLERK: At this time, I would ask the
22 attorneys to give me your strikes starting
23 with the State going first, then alternating
24 with the defense, using the numbers to the
25 left of the name.

1 MR. RUNYAN: State strikes Juror Number 7.
2 MR. THOMPSON: Defense strikes Juror Number 5.
3 THE CLERK: Was that Number 5?
4 MR. THOMPSON: Five, yes.
5 THE CLERK: Five.
6 MR. RUNYAN: State strikes Juror 20.
7 MR. THOMPSON: Respondent strikes Juror Number
8 4.
9 MR. RUNYAN: State strikes Juror Number 15.
10 MR. THOMPSON: Respondent strikes Juror Number
11 6.
12 MR. RUNYAN: State strikes Juror Number 16.
13 MR. THOMPSON: Respondent strikes Juror Number
14 8.
15 THE CLERK: For your first alternate?
16 THE COURT REPORTER: I'm having trouble
17 hearing down here.
18 THE CLERK: For your first alternate?
19 MR. RUNYAN: For our first alternate, Juror
20 strike -- I'm sorry -- State strikes Number
21 22.
22 THE CLERK: For your second alternate?
23 MR. THOMPSON: Respondent strikes Juror Number
24 23.
25 THE CLERK: Now, for your second alternate?

1 MR. RUNYAN: For the second alternate, State
2 strikes Number 25.

3 MR. THOMPSON: And Respondent strikes Juror
4 Number 24.

5 THE CLERK: At this time, I will repeat the
6 strikes back to the attorneys just to make
7 sure we have the correct numbers.

8 State strikes Number 7, Number 15, Number
9 16, Number 20, Number 22, and Number 25; is
10 that correct?

11 MR. RUNYAN: That's correct.

12 THE CLERK: The Defense strikes Number 4,
13 Number 5, Number 6, Number 8, Number 23,
14 Number 24; is that correct?

15 MR. THOMPSON: That's correct.

16 THE CLERK: Okay. Ladies and gentlemen of the
17 jury, at this time, I will be calling the name
18 and juror numbers of the jurors that have been
19 selected for service in this trial. When your
20 name and number is called, please -- please
21 bring your belongings with you and come to the
22 front. A juror -- the bailiff will seat you.

23 Juror Number 25, Joel Cantrell; Number
24 127, Emily Reagan; Number 55, Jennifer Fowler;
25 Number 39, Kane Davis; Number 100, Roberto

1 Marcano; Number 48, Jeffrey Edwards; Number
2 27, John Catalano; Number 19, James Brown;
3 Number 91, Steven Landrie; Number 150, Ronald
4 Sullivan; Number 93, Brandon Layton; Number
5 82, Joey Jarvis; Number 85, Matthew Johnson.
6 That's the first alternate, and for the second
7 alternate, Juror Number 45, Shelida Duckett.
8 THE COURT: Any matters for the jury from the
9 State?
10 MR. RUNYAN: Nothing from the State, Your
11 Honor.
12 THE COURT: From the Defense?
13 MR. THOMPSON: No, sir.
14 THE COURT: Okay. Ladies and gentlemen of the
15 jury who have been selected, you have been
16 given a yellow sheet of paper that's going to
17 ask -- it's going to tell you where to park,
18 that is the parking deck on Magnolia Street,
19 okay? That's on the corner of Saint John --
20 it's been there for years -- Saint John Street
21 and Magnolia Street; there's a parking deck
22 there. At one time, that's where a -- a bank
23 was; Palmetto Bank was in that building. But
24 it's on that corner right there, and -- and
25 we're gonna ask you to park in there and you

1 will be giving parking chips so you don't have
2 to pay to park, but there's parking there for
3 you. You have the instructions.

4 I say that to you so that you don't park
5 in the Library Street parking deck. The
6 brand-new parking deck, adjacent to the
7 courthouse is known as the "Library Street
8 parking deck." Please do not park there. And
9 the reason is, when we first started this and
10 -- and the deck opened last July, the jury was
11 parking in there along with the lawyers and
12 the lawyers have been instructed not to speak
13 to you and the lawyers said, "We feel rude if
14 we're not speaking to the jurors, but we
15 can't." So we've -- we've taken and moved the
16 jury back, where the jury has parked for a
17 number years, and that is the Magnolia Street
18 parking deck. While you're serving on jury
19 duty, please park in the Magnolia Street -- I
20 don't need that. Please park in the Magnolia
21 Street parking deck, okay?

22 And you have a number on there that's
23 different from a number that other folks are
24 gonna get. So there's a message -- at the end
25 of the day, you're asked to call that number.

1 You have the number that you would be calling
2 for your message on a recorded line, okay?

3 I'm going to ask you -- we're gonna break
4 here. We have to go over to the courthouse
5 and set up, so we'll be in the courtroom over
6 there. I'm going to ask you when you park to
7 come to the -- walk down the street, a half a
8 block; come through the front door -- (to the
9 bailiff) right? Okay. Come through the front
10 door of the courthouse, the one that's on
11 Magnolia Street. So you'll walk a half a
12 block, come through the front door.

13 Other folks come through the Library
14 Street door, but we're segregating you from
15 other witnesses and litigants, okay. So
16 they'll be parking in the Library Street
17 parking deck, coming in a different door than
18 you will. When you come in, there will be
19 bailiffs waiting on you to go straight ahead
20 and put you in the jury assembly room. There
21 will be people waiting for you.

22 I need you to be in place at 2:15,
23 please. Please be in place, ready to work at
24 2:15. The courthouse is open. You can get
25 there at two o'clock; you can get there at

1 1:45, whenever you want. We're gonna convene
2 at two, but I'm gonna ask you to be ready at
3 2:15, okay, 2:15, please; and I need all 14 of
4 you.

5 All right. Anything else? All right.
6 As far as the parties go, lawyers we'll see
7 you at two o'clock in the courtroom -- two
8 o'clock in the courtroom. They'll be ready at
9 2:15.

10 MR. RUNYAN: Thank you, Your Honor.

11 THE COURT: We'll put a couple of things on --
12 pretrial on the record. All right. (To the
13 Clerk of Court) And I know you've got Jury
14 Number 2.

15 THE CLERK: We do. Do you want me to address
16 the jury, or do you want to do that?

17 THE COURT: I'm going to leave the jury to
18 Madam Clerk.

19 THE CLERK: Thank you.

20 THE COURT: I'm going to go to the courthouse.

21 THE CLERK: (To the Jury Pool) Thank you
22 everyone. Judge Cole is -- my understanding
23 is he is here already, waiting to pick the
24 second jury. So congratulations, you get two
25 shots at the lottery today.

1 Judge Cole is gonna come out in just a
2 moment. He's going to just simply ask you the
3 same type of bias questions as to whether or
4 not you have any bias or anything that might
5 cause you not to serve on the second jury.
6 So, hopefully, this will go very quickly. I'm
7 going to ask that you wait to take a break
8 until we get this jury cleared out. Give us
9 about three minutes, and then we'll let you
10 take a restroom break.

11 (Whereupon, the jury was excused at 11:13
12 a.m.)

13 (WHEREUPON, a lunch break was taken from
14 11:15 a.m. until 2:11 p.m.)

15 DAY 2 OF TRIAL - AFTERNOON

16 (On the record at 2:11 p.m.)

17 THE BAILIFF: All rise and come to order.

18 THE COURT: Thank you. Thank you. Please be
19 seated. Thank you. Good afternoon, everyone.

20 THE COURT REPORTER: Good afternoon.

21 MR. RUNYAN: Good afternoon, Your Honor.

22 PRETRIAL MOTIONS

23 THE COURT: Okay. The first thing to put on
24 the record -- (to the Court Reporter) you've
25 got the caption, so we're good and ready?

1 THE COURT REPORTER: (Nods head up and down.)

2 THE COURT: Okay. First thing the Court's
3 going to put on the record before the Jury
4 comes in and sworn is I have a motion of
5 consideration to not allow the PPG to come in,
6 and I've made some notes.

7 Over our break, this Court considered the
8 respondent's motion to suppress the PPG
9 testimony. And this Court heard the proffered
10 testimony from Dr. Emily Gottfried in the --
11 from the Medical University of South Carolina
12 who was stipulated to be an expert for
13 purposes of the hearing only.

14 Rule -- Rule 702 governs the
15 admissibility of the testimony. Additionally,
16 this Court reviewed "State vs. Council" and
17 "State vs. Jones" in outlining the factors to
18 be considered by this Court in deciding
19 whether to admit the scientific evidence. One
20 consideration is known as peer review in
21 publications. Dr. Godfrey -- Gottfried
22 testified that the PPG test is subject to peer
23 review, and she is part of a peer review team.
24 Also, the test has been the subject of
25 numerous publications including the new or

1 newest "DSM-5," which is the most recent
2 edition of that book, and I believe it to be
3 the 2013 version of the book.

4 Another factor is the prior application
5 of the methods of the type of evidence. Dr.
6 Gottfried testified that this method is in use
7 in over 50 laboratories throughout the United
8 States. And while there is some international
9 cooperation, there are different standards for
10 some countries and the United States.
11 Specifically, Canada is -- is one of the
12 countries that she talked about and her
13 brothers and sisters there.

14 This Court finds that there is a standard
15 application in the United States based on the
16 doctor's testimony. Another factor is known
17 as "Quality Control Procedures." This Court
18 finds the standard is met according to the
19 testimony of the doctor. She testified the
20 United States uses a conservative threshold,
21 and that -- and that our conservative
22 threshold would err on the side of a false
23 negative rather than a false positive.
24 Additionally, there is a baseline used by the
25 technicians, which satisfy the quality control

1 requirement. She further explained in great
2 detail about how that baseline is established.
3 And, finally, the standard would be the
4 consistency and method, which is recognized in
5 scientific laws and procedures. This Court
6 takes note that Dr. Gottfried's testimony
7 indicates the RCV images -- that's the
8 children's voices -- images and audio are
9 standard and are providing by the
10 manufacturer. She indicated that she and
11 other technicians operate the test, use the
12 standard instructions provided by the
13 manufacture, and that there are methods used
14 to ensure or to prevent a manipulation of --
15 of the test data. In fact, she gave some
16 examples of that.

17 This Court finds that she testified that
18 the -- no. This Court notes that she
19 testified that the PPG test is just one data
20 point and that it does not preclude other
21 considerations, although she conceded in a
22 cross-examination that it is a really
23 important part of her evaluation. These --
24 this Court finds that the testimony is
25 admissible and the respondent's arguments go

1 to the weight of the testimony, not its
2 admissibility. So I'm going to allow it.
3 (To Mr. Runyan) Anything else --
4 MR. THOMPSON: No, sir.
5 THE COURT: -- from the State?
6 MR. RUNYAN: No, Your Honor.
7 THE COURT: And one last thing to the doctor?
8 Am I saying that correct? Is it "Gottfried"?
9 DR. GOTTFRIED: Gottfried, correct.
10 THE COURT: Gottfried, okay. I didn't want to
11 mispronounce your name, doctor.
12 Okay. Is there anything else on -- on
13 any other point? The jury, I'm told, is here.
14 I have all 12 -- all 14.
15 MR. RUNYAN: The State's ready, Your Honor.
16 MR. THOMPSON: We're ready, Judge.
17 THE COURT: Okay. Very good. Everybody
18 ready, Madam Clerk?
19 THE CLERK: (Nods head up and down.)
20 THE COURT: Okay. We'll have all 14 of them.
21 I need the alternates to be last, please.
22 THE BAILIFF: Yes, sir.
23 THE COURT: And I will appoint a foreman when
24 they get in here --
25 THE BAILIFF: Yes, sir.

1 THE COURT: -- how about that?

2 (WHEREUPON, the jury enters open court at
3 2:18 p.m.)

4 THE COURT: Any matters before we swear in the
5 jury from the State?

6 MR. RUNYAN: Nothing from the State, Your
7 Honor.

8 THE COURT: From the defense?

9 MR. THOMPSON: No, sir.

10 THE COURT: Madam Clerk, if you'll swear this
11 jury to try this case.

12 (WHEREUPON, the jury was sworn at
13 approximately 2:22 p.m.)

14 THE COURT: Thank you, ladies and gentlemen,
15 you may be seated. If at any time you cannot
16 hear, if you would raise your hand during the
17 trial if a witness is testifying, if I'm
18 speaking, or one of the lawyers, if you will
19 be kind enough to raise your hand that will
20 alert us that -- that someone is speaking too
21 softly and we'll instruct them to speak louder
22 for you, okay?

23 UNKNOWN MALE: All right.

24 Also, when you go in and out of this
25 courtroom, if you -- you are free to change

1 seats. And if you like to stand or want to
2 stand, you see me stand some during this trial
3 because I just can't sit still long enough to
4 -- to be there all afternoon; you're free to
5 do that. But if you're gonna stand, I would
6 ask that you always sit on the back row so
7 it's not to obscure the view of a fellow
8 juror.

9 Ladies and gentlemen, you are now the
10 jury in this case, and I'm going to take a few
11 minutes to tell you a little something about
12 your duties as jurors and provide some
13 instructions. At the close of this trial, I
14 will provide more detailed instructions, and
15 those instructions will control your
16 deliberations.

17 The nature of this case, the present
18 action, is a civil action to determine the
19 status of the respondent under the Sexually
20 Violent Predator Act or Law of the State of
21 South Carolina. Now, the lawyers will explain
22 to you, in what's known as their opening
23 statements, the -- the particulars: dates,
24 times, nuts and bolts when they make their
25 opening statements in just a few moments.

1 South Carolina law makes you 12 the
2 finders of the facts. You 12 alone are the
3 finders of facts, and it will be your duty to
4 decide from the evidence what the facts are.
5 You 12 will hear the evidence, decide what the
6 facts are, apply the law -- those facts to the
7 law as I provide at the close of this case and
8 reach a verdict. And, in doing so, you must
9 follow the law, whether you agree with it or
10 not.

11 Ladies and gentlemen, the evidence will
12 consist of testimony of witnesses who will
13 testify from the witness stand, documents, and
14 other items received into evidence as
15 exhibits, and any facts on which the lawyers
16 agree or stipulate.

17 The same law of South Carolina that makes
18 you 12 the sole finder of facts makes me the
19 judge of the law. Our rules of evidence --
20 and here's a "Rules of Evidence" book, right
21 here. Our rules of evidence control what can
22 be received into -- in -- into evidence. And
23 when a lawyer asks a question or offers an
24 exhibit into evidence, and the lawyer on the
25 opposing side believes it is not permitted by

1 our rules, that lawyer may object. Ladies and
2 gentlemen, that simply means that the lawyer
3 is requesting I make a decision on a
4 particular rule of evidence. South Carolina
5 law forbids a trial judge from making a
6 comment to a jury about a fact in a case.
7 Therefore, because it may be necessary for me
8 to comment on a fact in applying our rules of
9 evidence, it may be necessary for me to speak
10 with the lawyers outside of your hearing by
11 having a bench conference while you are
12 present in the courtroom or by excusing you
13 from the courtroom. Now, ladies and
14 gentlemen, a bench conference would be where I
15 would waive the lawyers usually in this manner
16 up to the bench, put my hand over the
17 microphone and speak with them about what the
18 objection is to some rule. The purpose of the
19 conference is to decide how to -- how the
20 evidence is to be treated under our rules of
21 evidence.

22 I will tell you know that certain things
23 are not evidence. Statements, arguments,
24 questions, and comments by the lawyers
25 representing the parties are not evidence.

1 Objections are not evidence. A lawyer has a
2 duty to his client to object when they believe
3 something is improper under a rule of
4 evidence. You should not be influenced by the
5 objection.

6 If I sustain an objection, you must
7 ignore the question or the exhibit, and you
8 must not try to guess what the answer might
9 have been or what the exhibit might have
10 contained.

11 If I overrule the objection, the -- the
12 evidence is admitted, but do not give it
13 special attention because it drew an
14 objection.

15 Testimony that I strike from a record, or
16 tell you to disregard, is not evidence, and it
17 must not be considered by you. Anything you
18 see or hear about this case outside of this
19 courtroom is not evidence. Now, furthermore,
20 a particular item of evidence sometimes is
21 received for a limited purpose only. That is,
22 it can only be used by you for a particular
23 purpose and no other purpose.

24 Some of you -- finally, some of you may
25 have heard the terms "direct evidence" and

1 "circumstantial evidence." Ladies and
2 gentlemen, direct evidence is testimony by a
3 witness about what that witness personally
4 saw, heard, or did. Circumstantial evidence
5 is indirect evidence. It is proof of one or
6 more facts from which one can find or infer
7 another fact. You may consider both direct
8 and circumstantial evidence. Our state law
9 permits you to give equal weight to both, but
10 it is up for you to decide how much to --
11 weight to give any evidence.

12 In deciding what the facts are, you 12
13 may have to decide what testimony you believe
14 and what testimony you do not believe. You
15 may believe everything a witness says or part
16 of what a witness says or none of what a
17 witness says. In deciding what to believe,
18 you may consider a number of factors, which
19 include, but are certainly not limited to, the
20 witness's ability to see, hear, or know the
21 things about which the witness testifies, the
22 quality of the witness's testimony, the
23 witness's manner in testifying, whether the
24 witness has an interest in the outcome of the
25 case or any motive, bias, or prejudice, or

1 whether the witness is contradicted by
2 something the witness may have said or written
3 before the trial and how reasonable the
4 testimony is when considered in the light of
5 all evidence.

6 Ladies and gentlemen, it is my
7 responsibility to rule, as a matter of law, as
8 to whether the testimony is admissible, but
9 once the testimony is admitted, whether or not
10 you believe it, is solely for you 12 to
11 determine.

12 To ensure fairness, you as jurors must
13 not talk among yourselves about this case or
14 about anyone involved with the case until the
15 end of the case when you go to the jury room
16 to decide your verdict.

17 Please do not talk with anyone about the
18 case or anyone who has something to do with it
19 until it has ended and you have been
20 discharged as a juror. Ladies and gentlemen,
21 "anyone" includes members of your family and
22 your friends. You are free to tell them that
23 you are a juror, but do not talk about the
24 case until the case has ended and you have
25 been discharged as a juror. Then you can talk

1 about it as much or as little as you'd like.

2 Do not let anyone talk to you about the
3 case. And if someone should try to do so in
4 the hallway or otherwise, please report that
5 to me.

6 During the trial, do not speak with any
7 of the parties, the lawyers, or any of the
8 witnesses. You should not even pass the time
9 of day with them, because it is important that
10 not only you do justice, but that you give the
11 appearance of doing justice.

12 If a lawyer or party or witness does not
13 speak to you or pass by you in the hallway or
14 on an elevator or out in the parking deck, it
15 is because they are not to talk to you. They
16 are following my instructions to refrain
17 speaking with you as a juror.

18 I don't see any media, but in the event
19 that there's a news story or an article
20 about this case or someone involved with it,
21 please do not listen to any radio or
22 television report or read any story about the
23 case. Do not do any research on the Internet
24 about this case or consult any blog or
25 dictionary or reference materials; and do not

1 make any investigation on your own.

2 You are not to make up your mind what the
3 verdict should be until you 12 are in the room
4 discussing it as one mind -- one juror.
5 Please keep an open mind until then.

6 Sometimes I'm asked about note-taking.
7 Ladies and gentlemen, you are not to take
8 notes during the trial of this case, and the
9 reason is we want you to pay close attention
10 to each witness as he or she testifies and not
11 be fixated on making notes during the trial.

12 I'm going to appoint -- I need to appoint
13 a foreman of the jury or forelady. I
14 alternate back and forth, and it's time for a
15 foreman. Juror Number 19, Mr. James T. Brown.
16 Sir, where are you? Would you serve as our
17 foreperson?

18 MR. BROWN: Yes, sir.

19 THE COURT: Okay. Thank you. I'm not going
20 to make you do it, but it's -- I try to
21 alternate, and I would appreciate your help.

22 Dr. (as spoken) Brown, if you would, when
23 we -- after we break, when we come back and --
24 and otherwise, if you would change seats with
25 the gentleman on the front, on the corner,

1 who's wearing a navy top -- navy shirt. If
2 you would always sit there, that's my
3 foreperson's seat. My eye always drops there,
4 because you become the -- you become the
5 spokesperson for this jury. So when the jury
6 leaves and returns, I will be asking you, "Is
7 everything okay? You need anything?" that
8 sort of thing. I always look to that seat.

9 And I believe that you two are my
10 alternates. Right there and right there, yes.
11 You are sitting in the correct seats. If
12 you'll just stay right there in those. Those
13 are always my alternate seats on the end of my
14 jury. Everyone else is now free to move
15 around, okay. So if you want to sit on the
16 back row, if you want to sit left or right,
17 that's fine with me, but if -- if the -- if
18 the three of you would always sit in the
19 assigned seat, I would be most appreciative.

20 (To Mr. Runyan) Anything from the State?

21 MR. RUNYAN: No, Your Honor.

22 THE COURT: And from the Defense?

23 MR. THOMPSON: No, sir.

24 THE COURT: Are we ready to open?

25 MR. RUNYAN: Yes, Your honor.

1 THE COURT: Ladies and gentlemen, give your
2 attention to the lawyer. Counsel?

3 MR. RUNYAN: May it please the Court.

4 THE COURT: Yes, sir.

5 OPENING STATEMENTS

6 BY MR. RUNYAN:

7 MR. RUNYAN: Good afternoon, ladies and
8 gentlemen. My name is Chris Runyan. I work
9 for The Office of the Attorney General. I'm
10 an Assistant Attorney General, as I introduced
11 myself to you this morning. With me today is
12 Suzanne Shaw as she introduced herself this
13 morning. She is also an Assistant Attorney
14 General at The Office of the Attorney General.

15 I do want to take a minute just to thank
16 each of you. And I know you're probably gonna
17 be thanked a lot today because what you do is
18 important.

19 I -- I believe that jury service is the
20 most important thing you can do for your
21 fellow citizens, because as the judge
22 explained to you, you have a very unique role
23 here today, and that's to be the fact finder.
24 You 12 together will find the facts in this
25 case. And I know it's hard in this day and

1 age to get 12 people to agree on anything, but
2 you'll find that you'll come together in one
3 voice, and you'll make a decision on a
4 disputed question, and that's the value.
5 That's what you bring to the table here today
6 as a fact finder. I can't tell you the facts.
7 Mr. Thompson can't tell you the facts. And as
8 the judge told you, he can't even tell you the
9 facts. It's going to be the 12 of your job
10 (as spoken) together to come up with the facts
11 in this case. And that's very important in
12 our judicial system, because it allows us to
13 solve cases peacefully. You help answer
14 disputes, dispute questions, and we thank you
15 for it; and I'm very sincere when I say that.
16 So, like I said, I work for the Attorney
17 General's office. And you might be wondering
18 why the Attorney General's office from
19 Columbia is here in Spartanburg, not like a
20 local attorney like Mr. Thompson who practices
21 in Greenville. Well, it's a simple answer to
22 that question. And it's because in 1998 when
23 the State -- the lawmakers up in Columbia
24 passed the Sexually Violent Predator Act,
25 they wrote into law and said, "The Attorney

1 General's office will work the cases on behalf
2 of the State." So that's why I'm here; that's
3 why Ms. Shaw's here.

4 We are -- have a duty that was assigned
5 to us by the Attorney General, Mr. Alan
6 Wilson, to work these cases, and sometimes we
7 do them by ourselves; sometimes we do them
8 together depending on our workloads. So
9 that's why we're here today.

10 Now, the State is seeking civil
11 commitment of Mr. Shawn Daily, who you met
12 earlier. And you might be wondering, at this
13 point, what is a sexually violent predator?

14 Well, back in 1998, I think it was 22 --
15 20 -- 24 years ago now, when the State passed
16 this law, they really had two things in mind.
17 And the first thing they had in mind is that
18 there are individuals in the State that
19 suffered from mental abnormality or
20 personality disorder that makes them likely to
21 commit acts of sexual violence if they're not
22 confined for long-term, controlled care and
23 treatment. And the State contends that Mr.
24 Daily is one of those people.

25 The other thing they had in mind is that

1 those individuals who suffer from it -- like I
2 said, they need treatment, and that treatment
3 needs to come in a secure facility, and that's
4 to protect the public from the dangerousness
5 that these individuals pose to this community.

6 Now, I want to stop for just a minute,
7 and I want to apologize to you; and you're
8 probably wondering why I would want to
9 apologize to you. And that's simply because
10 two or three weeks ago when you received your
11 summons in the mail to come to civil jury
12 duty, you probably thought you were coming for
13 a car accident, you know, two people ran into
14 each other and they're arguing over whose
15 fault it is, or, maybe, somebody was at the
16 Food Lion and they slipped and fell and hurt
17 themselves and they're seeking compensation
18 for their injuries. That's what usual civil
19 cases are about, and we understand those
20 because those are things we deal with every
21 day in our lives. I'm going to go out on a
22 limb here and say you probably -- when you
23 walked through the doors this morning, you
24 probably didn't think sexually violent
25 predator. So I'm apologizing to you because

1 the facts that you're gonna hear may be
2 disturbing to you. You're gonna hear about
3 crimes that Mr. Daily committed against,
4 basically, little girls, and it might make you
5 angry, might make you not like Mr. Daily very
6 much. But it's important that you listen to
7 those facts because those are the facts upon
8 which you're gonna determine whether or not he
9 needs treatment.

10 The other reason -- and I want you to
11 listen to this because this is very important.
12 The other reason I want you to listen to these
13 facts is because Mr. Daily's liberty is at
14 stake here. And it's very important that you
15 listen to these facts, because the State is
16 seeking to commit him for long-term,
17 controlled care and treatment. So it's
18 important that you listen to all of the facts.

19 Now, what must be proved to you? What --
20 what is a sexually violent predator? Well,
21 the, you know, lawmakers they define that for
22 us, and it's really two things. The first
23 thing to be considered a sexually violent
24 predator is that the person must have been
25 convicted of a least one sexually violent

1 offense that's in the statute. That's the
2 first thing.

3 Now, I'm gonna submit to you that Mr.
4 Daily has been convicted of not one, but three
5 sexually violent offenses that are in the
6 statute. And you're going to see those -- I'm
7 gonna enter evidence -- and you're gonna see
8 what those are. They're for lewd act on a
9 minor, three counts.

10 And I don't think this is really going to
11 be contested by Mr. Daily. I think you'll
12 find that he has been convicted of at least
13 one sexually violent offense.

14 Now, the second thing we have to prove is
15 that mental abnormality -- and he suffers from
16 a mental abnormality, a personality disorder,
17 that makes him likely to commit acts of sexual
18 violence that might confine him for long-term,
19 controlled care and treatment.

20 Now, on that we need the help from the
21 mental health community, okay? That's not
22 something we can just determine looking at
23 a -- a piece of paper, so you're going to hear
24 from a couple of experts. Dr. Gillen was
25 appointed by the Department of Mental

1 Health, court appointed, and he says that Mr.
2 Daily does not meet the criteria for civil
3 commitment. So the statute allows either the
4 person or the State can get a second opinion,
5 and so we reached out to Dr. Emily Gottfried
6 from the Medical University of South Carolina
7 to see what her opinion was; and she's gonna
8 testify that she believes he does meet the
9 criteria of civil commitment.

10 And what do they have to show? They have
11 to show a mental abnormality, a personality
12 disorder, and I think you're gonna hear
13 testimony from both Dr. Gillen and Dr.
14 Gottfried that Mr. Daily suffers from
15 pedophilic disorder, exclusive type, sexually
16 attracted to females. I think they're
17 gonna -- both gonna agree on that. And then
18 they're gonna to tell you -- and Dr.
19 Gottfried's gonna tell you how she does her
20 comprehensive evaluation. And she's gonna get
21 in to all the tests and all the -- the
22 interviews, the records reviews, the battery
23 of tests that she gave him, and she's gonna to
24 explain to you why she diagnosed him with
25 pedophilic disorder, what pedophilic disorder

1 is, and why she thinks he's at a risk to
2 reoffend to the extent that he needs to be
3 confined for long-term, controlled care and
4 treatment.

5 Now, this is simply this -- I'll tell
6 you. My wife, a couple of years ago, she was
7 working out and she was doing some push-ups
8 and something popped in -- in her wrist, and
9 it swole up and -- and she went to the doctor
10 and the doctor, like doctors do, poked,
11 prodded, and -- and asked her all sorts of
12 questions about it and did an X-ray. And he
13 said, "Well, I don't think anything's broken.
14 Take some ibuprofen, and it should be better
15 in two weeks."

16 She didn't like that answer, so she went
17 out and got a second opinion, and that's the
18 same thing we did here, today. She went out
19 and got a second opinion and she went to a
20 second doctor and that doctor poked and
21 prodded, squeezed her hand, asked her what
22 happened; he did an X-ray. He also did an MRI
23 (as spoken) and he saw that there was some
24 tears in her ligament and he thought she had
25 some bone damage, some deterioration of her

1 bone. And he recommended she have surgery.
2 It's two different opinions, the same thing we
3 have in this case. And I'll just tell you,
4 she went and got the surgery and fixed her
5 wrist, so just to -- I'm gonna leave that
6 hanging, but . . .

7 So after hearing all the testimony from
8 all the witnesses, you're going to be left
9 with a question, and the question is whether
10 Mr. Daily is a sexually violent predator.
11 Again, that question's going to be answered by
12 the facts that you find during this case. So
13 that's what we must prove to you.

14 The -- really the next question or --
15 that you have to ask is, "How do we have to
16 prove it to you?" And that's called "standard
17 of proof." You know, what level of proof do
18 we have to provide to you to show you that Mr.
19 Daily meets the criteria of being a sexually
20 violent predator.

21 Well, in a normal civil case, it's called
22 "preponderance of the evidence." That simply
23 means greater weight. So imagine you have
24 result scales that weigh things and you have a
25 big giant rock on one side and you have a

1 hundred little rocks on the other side and
2 they weigh exactly the same thing. And then
3 imagine that you have a -- like a bird flying
4 over and that bird drops a feather and it
5 floats down and it lands on either side of
6 those scales and tips it just ever so
7 slightly. My law professor who called it "50
8 percent plus a feather." That's who would win
9 in a normal civil case, but I think you
10 figured out by now this is not a normal civil
11 case.

12 So what the legislators did in this case
13 is they gave us a standard of beyond a
14 reasonable doubt. Now, you're probably
15 familiar with "beyond a reasonable doubt." We
16 hear it on -- if you watch any law shows or
17 criminal shows or you listen to the news,
18 you've probably heard beyond a reasonable
19 doubt before.

20 Now, at the end of this, as the judge
21 told you, he's gonna to instruct you on a few
22 things. And he's gonna tell you what, under
23 the law, beyond a reasonable doubt means. But
24 I'm going to suggest to you right now that
25 he's going to tell you that if after hearing

1 the evidence you are firmly convinced that Mr.
2 Daily is a sexually violent predator, then we
3 have met our burden of beyond a reasonable
4 doubt, because it's not beyond all doubt.
5 There's very little things we know beyond all
6 doubt or beyond every doubt or any doubt. So
7 I think he's gonna tell you that if you are
8 firmly convinced, after hearing the evidence,
9 we have met our burden.

10 Now, law is a second career for me. It's
11 not something that I -- I started out in. I
12 went back to school late in life. We'll say
13 at a mature age, I went back to law school. I
14 spent 20 years prior to this building cellular
15 towers and putting fiber in the ground. And I
16 had a -- a construction foreman that once told
17 me always ask for what you want, so I've --
18 I've kind of done that all throughout my life.
19 I'm gonna ask you guys for what I want.

20 What I want is simply this: I want you
21 to listen to all the evidence. As disturbing
22 as it may be, as much as it may bother you or
23 not, I want you to listen to the evidence and
24 not just the State's evidence. I want you to
25 listen to Mr. Daily's evidence. And I think

1 as you listen to those two and listen to all
2 the evidence that you're gonna hear today,
3 it's gonna become clear to you that the answer
4 to the question is, "Yes. Mr. Daily is a
5 sexually violent predator."

6 I thank you for your time.

7 THE COURT: Mr. Thompson?

8 MR. THOMPSON: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. THOMPSON: May it please the Court.

11 THE COURT: Yes, sir.

12 OPENING STATEMENTS

13 BY MR. THOMPSON:

14 MR. THOMPSON: I ain't into shouting.

15 Good afternoon, ladies and gentlemen. I
16 am gonna start out by apologizing right up
17 front, as you can see it's happening now. For
18 some reason over the past several days, my
19 voice goes in and out. I don't know whether
20 it's the weather or sinuses or what, but, I
21 usually have a very strong voice. But now I'm
22 having to literally force it to come out.

23 You know, I don't disagree with a lot of
24 the things that Mr. Runyan told you. What he
25 told you about the law, that's correct.

1 What we're here today to decide is
2 whether or not Mr. Daily meets the definition
3 of a sexually violent predator. Now, I think
4 the evidence is going to show, both from Dr.
5 Gottfried, the State's doctor, and from Dr.
6 Gillen, our doctor, that there is a prior
7 conviction that kicks off this sexually
8 violent predator evaluation. He has been
9 convicted of some sex crimes. He has gone to
10 prison. He has served his time, and he has
11 been released from prison, okay? We're not
12 here to punish him today. That's already
13 taken place. What we're here today to
14 determine is what needs to happen in the
15 future, and it's not a punishment.

16 I think you're also gonna hear from --
17 that the -- the law requires that there be a
18 mental abnormality or a personality disorder
19 that may cause him to likely commit another
20 crime in the future. I think you'll hear from
21 both doctors that there is a mental
22 abnormality. That's pedophilic disorder.

23 I'm telling you this because what I'm
24 trying to do is narrow down what I really
25 think you need to focus on. A sexually

1 violent predator under the act is somebody
2 that needs to be involuntarily committed for
3 treatment to prevent them from offending again
4 in the future. I think you're gonna hear from
5 both doctors that treatment is necessary.

6 Here's where we go different paths.

7 The State thinks he needs to be
8 involuntarily committed for treatment as Dr.
9 Gottfried who is -- as Mr. Runyan's told you,
10 has been hired by the Attorney General to get
11 a second opinion. Dr. Gillen will be
12 testifying to you. He was the doctor
13 appointed by the Court.

14 Mr. Daily needs treatment, but it can be
15 done on an outpatient basis. That's the
16 entire issue that we're here for today,
17 whether it should be inpatient or outpatient,
18 okay?

19 You don't -- you do. I mean, I want -- I
20 don't want to lessen your obligations. You do
21 need to find that he has a prior conviction.
22 You do need to find that he has pedophilic
23 disorder, a mental abnormality, but I'm
24 sitting here telling you that that's going to
25 be an easy find. That's gonna be the

1 testimony you're gonna hear from both doctors.
2 Where the -- the -- the metal meets the road,
3 where you get to the fork in the road as Yogi
4 Berra say, "You take it."

5 How do we get the treatment? Is it
6 required? And you've heard Mr. Runyan say,
7 "Mr. Daily is a liberty interest to the State
8 here. It will be placed -- if -- if he -- you
9 find that he needs involuntary treatment, he's
10 placed in a treatment facility. Does he need
11 -- does the evidence show that he needs to be
12 involuntarily placed, or does it show he can
13 get his treatment outpatient? That's what you
14 really need to be looking for.

15 Now, the State has the burden of proof,
16 and burden of proof is beyond a reasonable
17 doubt. And as Mr. Runyan told you, I think
18 the judge's definition of beyond a reasonable
19 doubt is gonna include the words -- words
20 "firmly convinced." The State has the burden
21 of proof. Now, after you listen to them and
22 after you listen to the our -- our
23 presentation, are you firmly convinced that he
24 has to be placed in involuntary treatment?
25 That -- that's the issue. Nothing else that

1 you need to really worry yourself with. I
2 think everything else is going to fall in
3 place. That's the question in this case.

4 There's gonna be a lot of things you're
5 gonna hear. There's gonna be a lot of things
6 that might well be disgusting to you. You
7 can't hold that against anybody, okay. You
8 can't hold it against the State; you can't
9 hold it against Mr. Daily. That's the way
10 things work in a courtroom. It's the only way
11 you can get to the truth is to throw
12 everything out there.

13 And I think as he said, you know, if you
14 want something, you've got to ask for it. I
15 think when this is over with, you're not going
16 to be firmly convinced that he needs
17 involuntary treatment. And, if that's the
18 case, then you find in favor of Mr. Daily.

19 With that, I'm gonna sit down and let Dr.
20 Gottfried testify, or if that's who he calls
21 first. But, please, I just -- I want to
22 reiterate this is not a case where we're gonna
23 punish somebody for what they've done in the
24 past, even though it may be disgusting. This
25 is a case of where we're going to decide how

1 we're going to deal with it in the future.

2 Thank you.

3 THE COURT: Counsel?

4 MR. RUNYAN: Your Honor, the State will call
5 Dr. Emily Gottfried to the stand.

6 THE COURT: Doctor, come up and be sworn.

7 (WHEREUPON, the witness was sworn.)

8 MR. RUNYAN: Good afternoon, Dr. Gottfried.

9 THE WITNESS: Good afternoon.

10 THE COURT: Let me do this. Doctor, when you
11 get situated, if you'll adjust that microphone
12 to suit yourself. Tell us who you are and
13 spell your last name for the court reporter,
14 please.

15 THE WITNESS: Sure. Dr. Emily Gottfried.
16 It's G-o-t-t-f-r-i-e-d.

17 THE COURT: Thank you. Counsel?

18 MR. RUNYAN: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. RUNYAN:

21 Q Dr. Gottfried, I'll just stand back here. Just so
22 you know, I'm not yelling at you, but if -- if I
23 can hear you back here then the jurors all they way
24 back here can hear you, as well, so . . .

25 All right. Doctor, will you tell us by whom

1 you're employed and what capacity?

2 A Yes. I work at the Medical University of South
3 Carolina in Charleston where I'm an Associate
4 Professor of Psychiatry and Behavioral Sciences. I
5 also serve as the director of our Sexual Behaviors
6 Clinic and Lab.

7 Q Now, in order to be employed in this capacity, are
8 you required to have a certain education,
9 background, or experience?

10 A Yes.

11 MR. THOMPSON: Your Honor, he may want to go
12 through this, but I will stipulate that she is
13 qualified as an expert forensic psychiatry in
14 sexual behaviors.

15 MR. RUNYAN: We are offering as a -- a
16 forensic psychologist in sexual offending
17 behavior.

18 THE COURT: Okay. He is stipulating to that.

19 Ladies and gentlemen of the jury,
20 normally a person cannot give an opinion on --
21 on -- give opinion testimony. When that
22 person testifies, they must tell what they see
23 -- have seen, heard, or assist, but there is
24 an exception known as a -- an expert witness.
25 This expert has been stipulated by the lawyers

1 that -- that Dr. Gottfried is an expert in her
2 field. (To Mr. Runyan) Go ahead, Mr. Runyan.

3 DIRECT EXAMINATION CONTINUES

4 BY MR. RUNYAN:

5 Q So, Doctor, if you can briefly -- now that you're
6 qualified, if you can briefly tell us where you did
7 your undergrad, graduate, and doctoral degrees.

8 A Sure. So I completed a bachelor's of an arts
9 degree in psychology at San Diego State University.
10 I then did a master of arts degree in psychology at
11 Columbia University, and then I followed that with
12 a master's of science and a doctorate of
13 philosophy, or a PhD, in clinical psychology at
14 Florida State University.

15 Q Okay. Now, are you published in the area of
16 forensic psychology?

17 A I am.

18 Q Have your works been peer reviewed?

19 A Yes.

20 Q Could you explain what peer review is?

21 A Sure. So when you conduct a study or write a
22 scholarly journal article, you submit it for
23 publication in a journal within your field. And so
24 when you send it to the editor, they'll review it,
25 see if it seems like a good enough study or

1 publication for their journal. They'll then send
2 it to a team of peer reviewers who are experts in
3 the field. They'll review it and then send back
4 either revision, comments, or just straight up
5 reject it. So peer review is that it's gone
6 through experts in your field.

7 Q So have you -- have you had any of your research
8 published? Peer reviewed publications?

9 A Yes. I have, I think, 30 peer reviewed
10 publications and about six peer reviewed book
11 chapters. So instead of being in a journal
12 article, it would be in a scholarly book.

13 Q Do you present at professional conferences?

14 A Yes.

15 Q About how many have you presented in?

16 A I present pretty regularly, about 62 presentations
17 -- peer reviewed presentations within the field.

18 Q And could you just briefly just tell us what
19 professional organizations or research
20 collaborations you may be a part of?

21 A Sure. So I am in a number professional
22 organizations, so American Psychological
23 Association, and then -- that's the APA. Within
24 the APA, I'm the president-elect of the assessment
25 section of the APA. The American -- no. Sorry.

1 The Association for the Treatment of Sexual
2 Abusers, or ATSA. That is the national
3 organization for people who do this kind of work:
4 Sexual behavior with people who sexually offend.
5 I'm on the executive committee of that
6 organization. I'm the research representative.
7 I'm also the secretary of the South Carolina Local
8 Chapter of ATSA, so SCATSA. I'm a member of the
9 American Academy of Forensic Sciences, The Society
10 for Personality Assessment, American Psych and Law,
11 a bunch of different professional organizations.
12 Q And you're licensed?
13 A I am licensed.
14 Q In what states?
15 A I'm licensed -- I'm a clinical psychologist in
16 South Carolina and Georgia.
17 Q Now, moving on, Doctor, what are -- what are your
18 job duties at -- you said you were the director of
19 the SCBL?
20 A SBCL. Sexual Behaviors Clinic and Lab. Uh-huh.
21 Q And what are your job duties there?
22 A So within the Sexual Behaviors Clinic and Lab, as
23 the director, I oversee all the administrative --
24 the contracts that come in and out of the lab. We
25 have contracts with United States Federal

1 Probation, so individuals who are convicted of
2 sexual offenses and go to federal prison, when they
3 come out of prison, they have to be monitored by a
4 sex offender specific probation agent. They're
5 required to get treatment, and assessment services,
6 so I manage that contract for the Tri-County area,
7 so Charleston, Dorchester, Berkley. I do sexual
8 violent risk assessments, not only in this
9 capacity, but individuals who have been charged
10 with a crime, but not yet convicted. I do that for
11 both sides, the defense and the prosecutor.

12 For the licensing board, if there is someone
13 who's licensed like a physician, massage therapist,
14 pharmacist who there's an allegation of
15 inappropriate sexual conduct, I do those
16 evaluations, so a lot of different kinds of risk
17 assessment. And then in addition to my duties
18 within our Sexual Behaviors Clinic and Lab, I do
19 forensic evaluations for the department, so things
20 looking at is the person incompetent to stand trial
21 for criminal charges, threat assessment, violent
22 risk assessment and then things with police
23 officers, are they fit for duty, and the like.

24 Q And how many times have you been qualified as an
25 expert in the field of forensic psychology specific

1 to SVP proceedings?

2 A Specific to SVP, it's been 16 times.

3 Q And how many times total have you been?

4 A About 35 or 36 times.

5 Q All right. Doctor, could you tell us what
6 psychology is?

7 A Yeah. So I'll talk about clinical psychology.

8 Clinical psychology is a subspeciality of
9 psychology that is kind of a comprehensive
10 treatment healthcare of mental and behavioral
11 health. So clinical psychologists can diagnose
12 mental illness, treat, do research, and then do
13 testing and assessments, so administer and
14 interpret psychological tests, tools, assessments,
15 kind of using them all as the same term.

16 Q Now, what is forensic psychology?

17 A So forensic psychology is the intersection of
18 psychology and the law. So, typically, a forensic
19 psychologist will conduct an evaluation or serve as
20 an expert to help the judge or the jury understand
21 things about mental health and mental illness as it
22 relates to a specific law. So, for example, if
23 somebody is competent to stand trial, that's a
24 legal term, but it involves their mental health, so
25 that's where we come in to kind of assist the legal

1 system with our specialized knowledge in
2 psychology.

3 Q All right. Doctor, moving on to this case. What
4 type of evaluation did you conduct in this case?

5 A This is called a "pre-commitment evaluation."

6 Q Now, can you describe for us the protocol or the
7 steps you do in conducting an evaluation of this
8 type?

9 A Yes. So for this kind of evaluation, the Attorney
10 General's office will contact MUSC, and request an
11 evaluation. Then from the Attorney General's
12 office, they send us all of the collateral
13 information, so that might include the original
14 police reports, forensic interviews of victims,
15 medical records, records from mental health
16 facilities, prison records, like disciplinary and
17 mental health records, medical records from a
18 prison/detention center, criminal history. That is
19 what I get from the Attorney General's office. So
20 I review all of that material to determine if I'm
21 missing anything, request that. Once I have all of
22 the information that I need, then I schedule the
23 examinee to come to the lab. Typically, it's three
24 appointments, so they're administered a battery of
25 testing, and then I do a comprehensive clinical

1 interview with them, depends on, you know, how much
2 information they provided; but they typically range
3 from five to eight hours of interview with the
4 person.

5 Q You didn't do any other type of testing?

6 A Yeah. A battery of -- of testing in addition.

7 Q So how were you paid to conduct this evaluation?

8 A So the Attorney General's office pays MUSC. Do you
9 want a -- tell how much?

10 Q Sure.

11 A So they pay MUSC \$5600. That includes all of the
12 testing, the record review, the interview, writing
13 the report, and then one day of testimony, yeah.
14 And that's how we're paid.

15 Q Are you personally -- do you personally receive
16 this fee?

17 A No. It doesn't come to me. I'm paid a salary by
18 MUSC, so I imagine that, that money goes towards my
19 salary, but it doesn't come directly to me.

20 Q Does your fee or salary change depending on the
21 results of your evaluation?

22 A No. It's always the same rate.

23 Q How many times has the Attorney General's office
24 contacted you to conduct pre-commitment
25 evaluations?

- 1 A For pre-commitments specifically, 24 times.
- 2 Q At the -- let's see. At the beginning of the
3 evaluation, was Mr. Daily informed about what you
4 were doing?
- 5 A Yes.
- 6 Q And did he sign -- or just tell us the process of
7 consent.
- 8 A Yeah. So we have a pretty long, maybe, six or
9 seven page consent form that we go over and read
10 with the examinee. It explains the reason that
11 they're there, the, like, nonconfidential nature,
12 so letting them know that nothing we talk about is
13 going to be secret or confidential. It's going to
14 go in a report that's going to be sent to the
15 Attorney General who might share it with the Court,
16 and then notifying them of different tests that
17 might be administered to them; and then they go
18 through and ask questions about it, express their
19 understanding, initial next to each, you know,
20 possible thing that they might undergo as part of
21 the evaluation; and then they sign the overall
22 consent form; and then on every subsequent
23 appointment when they come back, they re-review
24 that consent form and then sign a new rereading of
25 that consent form. And they have the opportunity

1 to ask questions or revoke their consent for a
2 certain parts at that time.

3 Q Did Mr. Daily sign these consent forms?

4 A Yes.

5 Q Doctor, as a part of that -- the evaluation that
6 you've done, did you meet and interview with Mr.
7 Daily?

8 A Yes.

9 Q Is that man you've met, is he in the courtroom
10 today?

11 A Yes.

12 Q Could you point him out for us?

13 A Yes. He's sitting next to Mr. Thompson.

14 MR. RUNYAN: Your Honor, I would ask that the
15 record reflect that Dr. Gottfried did --
16 entered -- identified Mr. Daily as the person
17 she interviewed for this evaluation.

18 THE COURT: Any objection?

19 MR. THOMPSON: No.

20 THE COURT: That's the -- it's so noted.

21 MR. RUNYAN: Thank you.

22 Q How many -- on how many occasions did you meet with
23 Mr. Daily?

24 A Mr. Daily came to the Sexual Behaviors Clinic and
25 Lab on four occasions. I met with him personally

1 for two of those dates, and he met with one of or
2 our technicians during the other two days.

3 Q In addition to meeting with and interviewing Mr.
4 Daily, what information did you receive to aid in
5 conducting your evaluation?

6 A So prior to even scheduling the appointment dates,
7 the Attorney General's office sent MUSC documents
8 from Spartanburg County Sheriff's office,
9 Spartanburg Public Safety Department, Spartanburg
10 County Court of General Sessions, the Greenville
11 County Sheriff's office, Greenville County Court of
12 Sessions, records from the South Carolina
13 Department of Corrections, Mr. Daily's criminal
14 history report, and then the initial evaluation
15 conducted by Department of Mental Health.

16 Q Did you consider and rely on the records you just
17 told us about and your interview and the
18 assessments you performed in rendering your opinion
19 in this matter?

20 A Did I consider them?

21 Q Did you consider them, yeah. Rely --

22 A I did.

23 Q Yeah.

24 A Yes.

25 Q Is the information that you listed typed as

1 typically and reasonably relied on by experts in
2 your field?

3 A Yes.

4 Q Doctor, can you explain to us how an individual's
5 past sexual offending behavior relates to his
6 future sexual offending behavior?

7 A Sure. So the best predictor of future behavior is
8 past behavior. So when you're looking at risk for
9 reoffending, it's important to look at prior crimes
10 to look at the offense characteristics, so what
11 actually happened during that offense, victim
12 characteristics, so you're looking for patterns of
13 behavior that might inform the person's diagnosis
14 and pattern to cross offenses.

15 Q So why is it important to look at prior criminal
16 history?

17 A So for an evaluation like this or any kind of a
18 risk assessment, you are looking to estimate what
19 the risk is of reoffending based on published
20 studies, so you get a lot of those characteristics
21 by looking at the previous criminal history.
22 You're looking at a person's ability to follow
23 rules or having, like, rule violations, breaking
24 the law, and also it helps you estimate that if
25 another crime were to occur, who a potential victim

1 -- or not who, but, you know, if they only had
2 offended against adult women, that's going to be
3 informative. And if a crime were to occur, how,
4 you know, the seriousness of it, the extent of
5 injury, and those kinds of characteristics.

6 Q Is it important to -- for you to look at the
7 criminal history even if it's not sexual?

8 A Yes.

9 Q And why is that?

10 A Kind of as I mentioned, you're looking at a
11 person's ability to follow rules and regulations.
12 How often are they getting in trouble? How often
13 are they able to control their behavior?

14 Q You also consider it even if they -- if they're not
15 convicted, but they're charged or -- or possibly
16 they self-report it to you. Do you consider those?

17 A Yes.

18 Q Why is that?

19 A Well, for an evaluation like this, the consult
20 question is: Does the person have a mental
21 abnormality or personality disorder that makes them
22 likely to reoffend? And so I consider everything
23 as a data point. Something that isn't convicted
24 doesn't get as much weight as convictions, but
25 we're looking for a pattern of behaviors. We're

1 looking to see if the person has a mental
2 abnormality, so a diagnosis and all that
3 information is valuable to consider.

4 Q In your review of Mr. Daily's nonsexual criminal
5 history, what, if anything, did you find
6 significant?

7 A I found it significant that he didn't have a
8 nonsexual criminal history. There was one note of
9 a violation of the drug distribution law in his
10 record, but there was no information about it. He
11 indicated he didn't know where it came from, so
12 aside from that, which we have no more information
13 on, his offenses were restricted to sexually
14 offending against young, female, prepubescent
15 children.

16 Q Was that important to you?

17 A Yes.

18 Q Well, let's talk about that. He does have a sexual
19 history -- sexual criminal history, correct?

20 A Yes.

21 Q Okay. Let's look at those. Based on your
22 interview with Mr. Daily and your review of his
23 file, at the time he was interviewed, had he been
24 convicted of any sexually violent offenses?

25 A Yes. He had.

- 1 Q What are they?
- 2 A He was -- in 2010, he was convicted of three counts
3 of lewd act with a child under the age of 16.
- 4 Q And what were those offenses for? What was the
5 timeline?
- 6 A One had occurred -- I believe it was 1992. So the
7 first was either 1992 or 1994 and then the next
8 victim was between 2002 and 2006 and then the third
9 victim was approximately 2006 to 2008.
- 10 Q Now, those were the -- those were sexually violent
11 offenses, correct?
- 12 A Correct.
- 13 Q Okay. Was he convicted of other crimes that were
14 sexual in nature?
- 15 A Yes.
- 16 Q Okay. And what was that?
- 17 A In 2010, he pled guilty to assault and battery of a
18 high and aggravated nature, but he had initially
19 been charged with another lewd act against a child;
20 and I believe that it was pled down or a plea
21 agreement that he took the assault and battery of a
22 high and aggravated nature rather than lewd act.
- 23 Q Did he self-report any undetected sexual offending?
- 24 A Not really.
- 25 Q Did you review the law enforcement court records

1 and -- and other documents concerning these
2 offenses?

3 A Yes.

4 Q Are those records a part of the information you've
5 listed for us?

6 A Yes.

7 Q Did you ask Mr. Daily about each of these to get
8 his input?

9 A Yes.

10 Q Why is it important to get their -- the person's
11 input?

12 A So you're looking at things like insight. You
13 know, there's a misconception that if somebody has
14 no empathy that they're dangerous, but we know that
15 empathy, unfortunately, isn't really related to
16 reoffending. But so you're still -- you want to
17 get his take on what happened. You know, is he
18 admitting that is happening, and what is his plan
19 and strategy for preventing that from ever
20 happening again.

21 Q Now, all these things you listed for us and -- and
22 -- and Mr. Daily's -- what he said to you, are --
23 is -- that's the type of records and other experts
24 in your field reasonably rely on in rendering
25 opinions?

- 1 A Yes.
- 2 Q So please tell us why it's necessary to examine the
3 underlying detail behind the convictions.
- 4 A So, as I mentioned, we are assessing Mr. Daily to
5 see if he has a mental abnormality or personality
6 disorder. So we want to know the characteristics
7 of what happened at the time of those crimes. Are
8 they -- are all the crimes completely different
9 from one another, or is there a pattern that might
10 support that the person committed these offenses
11 due to sexual arousal versus another reason like
12 not caring about someone else's needs.
- 13 MR. RUNYAN: May I approach, Your Honor?
- 14 THE COURT: Yes, sir.
- 15 Q Dr. Gottfried, do you recognize the documents that
16 I've given you?
- 17 A Yes.
- 18 Q Are they something that you reviewed in this case?
- 19 A Yes.
- 20 Q Is there anything on those documents that would
21 indicate the documents' authenticity?
- 22 A They're notarized. There - there's a seal.
- 23 Q Okay. Is the -- is the seal signed?
- 24 A Yes.
- 25 Q Okay. Could you tell us what each of those

1 documents are?

2 A So these are the three sentencing sheets for each
3 of his lewd act convictions.

4 Q Is there other -- other documents on -- other stuff
5 on the other page -- pages?

6 A Oh, yes. Also, the indictments -- it's not a
7 warrant, right, just the --

8 Q Just the indictments.

9 A -- indictments and description of the offenses.

10 Q Okay.

11 MR. RUNYAN: Your Honor, I would ask at this
12 time that what has been premarked State's 1,
13 2, and 3, be entered into evidence.

14 MR. THOMPSON: No objection.

15 THE COURT: Without objection, 1 through 3 are
16 admitted.

17 (WHEREUPON, the sentencing sheets, are entered
18 into evidence as State's Exhibit Nos. 1, 2,
19 and 3.)

20 MR. RUNYAN: Thank you, Your Honor.

21 Q Dr. Gottfried, let's turn to each of these, and, I
22 guess, let's take them chronologically. That'd be
23 probably the easiest way to do it. So you
24 considered -- I think -- I believe you said 1999
25 offense -- I just have to find it. I apologize.

1 Let's just go over the 1999 offense. There
2 was -- there was three counts. He was -- please
3 tell us in 2010, what date was he convicted of all
4 of those?

5 A He was convicted on March 18th, 2010.

6 Q That -- that's -- that's for all three?

7 A Yes.

8 Q Okay. Let's take those in order. So let's talk
9 about the -- did you consider the 1999 offense?

10 A Yes.

11 Q And what was he convicted of for that offense?

12 A That was --

13 Q State's 1.

14 A -- lewd act -- committing or attempting lewd act
15 upon a child under 16 years old.

16 Q Was it -- did he have a trial or did he plead?
17 What did he do? Did he plead guilty?

18 A He pled guilty.

19 Q He pled guilty. What was the sentence of the
20 Court?

21 A He was sentenced to 15 years in South Carolina
22 Department of Corrections, and then it's noted that
23 he had to serve ten years and then the rest of it
24 was suspended to probation -- probation for five
25 years, so ten years in prison and then the

1 remaining five on probation.

2 Q All right. So without -- without telling us the
3 victim's name -- we'll just use initials.

4 A Uh-huh.

5 Q This is victim Z.G., correct?

6 A Correct.

7 Q Okay. Can you tell us what are the underlying
8 details of this offense?

9 A Yes. So this was a child who was six and seven
10 years old during the time of the offenses. Mr.
11 Daily was a -- an acquaintance of the victim's
12 mother. They had met at Spartanburg Tech. And he
13 would look after her or babysit her, the -- the
14 child, when she was six to seven years old.

15 So when the victim was 14 years old, she
16 disclosed that Mr. Daily had molested her. She
17 reported that in 1999, he would sexually touch her
18 and hurt her. Police reports indicated that he
19 exposed himself to her in his residence, and he
20 would ask her to sit on his penis. Other incidents
21 involved the victim waking up in Mr. Daily's bed
22 without any clothes on. She said, you know, he
23 would rub her back in the bed, that he would --
24 while he was rubbing her back, he would put her --
25 his hand down her pants and rub her. That she

1 would at times fall asleep with clothes on and wake
2 up and would be nude with her clothes in a pile on
3 the floor. She would wake up and feel sick, and he
4 would tell her it was probably something that she
5 ate. Let's see. He also insisted on bathing her
6 and he would -- it was -- she reported that he
7 washed her between the legs, I think, with a
8 washcloth, but it would be slow and for a long
9 period of time.

10 He also took her to Myrtle Beach in his
11 camper. I think it's on a number of occasions, so
12 on more than one occasions, just him and her
13 without her mother. And then he was interviewed by
14 police after this was reported. Should I describe
15 that, as well?

16 Q Please do. What -- what did -- what did he say
17 about them?

18 A So it was initially reported in April of 2008, and
19 the victim underwent some therapy and made some
20 initial disclosures. And then Mr. Daily was
21 interviewed by police. He said that he was friends
22 with the victim's mother, that he had taken the
23 victim on vacation several times that the mother
24 didn't want to go. When the police asked him if
25 anything inappropriate had happened with the

1 victim, he said not that he recalled or I don't
2 recall.

3 The police reported that the victim said that
4 he had been touching her inappropriately, and he
5 told police that he didn't remember anything like
6 that. And then two days after question -- being
7 questioned by police, he attempted suicide. And
8 then he was arrested, I think, about eight months
9 later in November of 2008.

10 Q Well, what about Mr. Daily's criminal offense
11 behavior for this particular charge or conviction
12 is significant to you in regards to your opinion?

13 A Well, this is going to start setting up a pattern
14 of Mr. Daily kind of assuming a
15 caretaking/caregiving role and offending against
16 young prepubescent female children and some
17 grooming behaviors. So "grooming" is kind of
18 things that you do to offend against somebody. So
19 grooming might be, you know, promising special
20 gifts to somebody, giving someone special
21 attention; so he was taking the child on vacation.
22 It's kind of setting up what will later become a
23 pattern of his offense behaviors.

24 Q Moving on. You had -- I think you said there was -
25 - the second offense -- again, this would be

1 against the victim S.B. I think you said like 2002
2 and 2006.

3 A Yes.

4 Q You considered that one?

5 A I did. But what I haven't gotten to yet for Z.G.
6 is what he told me during my --

7 Q Oh, I'm sorry.

8 A -- evaluation.

9 Q Please -- yeah.

10 A Sorry. I'll --

11 Q Tell me what he said about --

12 A I'll put them all together.

13 Q -- yeah.

14 A So when I do an evaluation, you know, I ask the
15 examinee to tell me what happened. I'll have them
16 give me their account, and then I will, I guess,
17 challenge them, or read them parts of the police
18 report and ask them about the inconsistencies.

19 And so I did that with Mr. Daily. He said
20 that these allegations were brought against him by
21 his first girlfriend's daughter. And that it
22 occurred -- that the allegations had come forward
23 ten years after he had seen his ex-girlfriend or
24 this friend and her daughter. He told me that
25 there was an allegation. That he had rubbed her

1 buttocks underneath her underwear, and that, that
2 was pretty much all that he remembered.

3 When I kind of encouraged him to provide more
4 information of either what he remembered at the
5 time or what he remembered from being interviewed
6 by police, he told me that he was taking sleeping
7 pills at the time. That he was prescribed Ambien
8 and taking that, I think, daily at the time. And
9 so he told me, "I don't know if it occurred when it
10 occurred." He said, "I don't know anything about
11 it," or, I didn't know anything about it until it
12 was brought up ten years later, and that there had
13 been no issues and no concerns. When I, like,
14 specifically, directly asked him if he was saying
15 that he didn't commit the offenses, or he was
16 saying he didn't remember, he said to me, "I'm not
17 going to say nothing happened when I was taking
18 Ambien for sleep regularly. I have no doubts of
19 their allegations," meaning victim's allegations or
20 their claims. And he told me, "It was my
21 responsibility to not take the medication, but I
22 did."

23 When I asked him specifically about the report
24 that he told her -- or that the victim said that he
25 asked her to hold his erect penis or sit or help

1 her bathe, he said, "I don't recall helping her
2 bathe. I might have helped her wash her hair." He
3 didn't recall asking her or having her put her hand
4 on his penis, yeah. So that's kind of the gist of
5 what he told me that he didn't remember it. He
6 didn't necessarily say it didn't occur, but that he
7 was on Ambien at the time.

8 Q Okay. So now moving on to the -- to the 2002 to
9 2006 offense against S.B. Did you consider that?

10 A Yes.

11 Q And what was he convicted of?

12 A He was convicted of lewd act.

13 Q And was that part of a plea agreement, as well?

14 A Yes.

15 Q And what was the sentence of the Court?

16 A The sentence was the same for all three of these,
17 so the 15 years, served ten in prison, five on
18 probation to be served concurrently at -- at the
19 same time. So not 15, 15, 15, but one 15 years for
20 all three.

21 Q Now, what are the underlying details surrounding
22 this offense?

23 A So S.B. is the victim in this case, and S.B. was
24 the daughter of Mr. Daily's best friend. So he
25 reported he had a female best friend, and this was

1 her daughter. In 2006, when S.B. was approximately
2 six years old, a police report was completed and
3 referenced to Mr. Daily inappropriately touching
4 S.B. at the YMCA. But, at that time, the victim's
5 mother didn't allow her daughter to be interviewed
6 by police, and so nothing came of that police
7 report in 2006.

8 So when her mother asked her about these
9 allegations, the victim initially denied that
10 anything had happened. But a few a months later in
11 2006, she reported to her mother that Mr. Daily
12 would sit naked on the couch with a blanket over
13 his lap and have the victim sit on his lap. She,
14 in the police reports, indicated that that made her
15 really uncomfortable, and that she could feel his
16 penis when she was sitting on his lap. He would
17 bathe her and rub her chest area while bathing, and
18 she reported that she bathed herself at home by
19 herself, but that Mr. Daily insisted on bathing her
20 when she was with him.

21 So, initially, the victim's mother didn't go
22 to police when her daughter reported these things
23 to her, but she confronted Mr. Daily who denied the
24 allegations and then never contacted the family
25 again. And it was noted that him and this woman

1 had been friends for six or seven years, and so
2 this was reportedly their last contact. So the
3 mother reported the sexual abuse of S.B. in
4 December of 2008. And it was noted that the
5 offense behaviors ranged from 2002 to 2006.

6 And so then in 2009, Mr. Daily was charged
7 with the -- with the lewd act. And then when I
8 talked to him about that during my evaluation, he
9 said that this was an offense against his best
10 friend's daughter. That his best friend wanted her
11 daughter to learn how to swim, and that Mr. Daily
12 had a YMCA membership. And so he said that he
13 would babysit the victim, I think he said, about
14 every three to four months; and he would either
15 take her to the pool at the Y or he would keep her
16 at his house. He said that when they were at the
17 Y, that he would help her with her bathing suit.
18 He said that he looked at the paperwork, and he
19 thought that it said the victim had been three
20 years old at the time and so she would've needed
21 help, you know, putting on or taking off her
22 bathing suit. He said that when he was helping her
23 with her bathing suit, at one point, she kind of
24 leaned back and her hand touched his penis over his
25 clothing, but she was kind of touching his leg to

1 hold herself up.

2 When I asked him if he recalled if he had an
3 erection at that time, he said, "I can't recall at
4 this time if I did or did not. I was on Ambien and
5 don't recall having an erection on Ambien."

6 And I asked him, "Do you -- did you take
7 Ambien while you were babysitting?"

8 And he said, "It was still in my system." So
9 he didn't necessarily take it and then go babysit,
10 but he took it on a daily basis, so to him it was
11 still in his system.

12 Let's see. So when I asked him if he was
13 aware of, you know, the other allegations that this
14 victim had made, he said, "At the pool, like,
15 someone, you know, called the police, or made this
16 police report in 2006," and that he was lifting her
17 out of the pool, and the victim bumped her leg when
18 she was getting out, and she was grabbing her leg.
19 He said that he sent her to the bathroom, and then
20 he took her home. That he got a call from the
21 Spartanburg police that there was an allegation,
22 but he didn't know what it was.

23 Let's see. So when I asked him about, you
24 know, insisting on bathing the victim, he said that
25 he washed her hair one time, that he didn't

1 remember touching her chest and that he didn't need
2 to bathe her, but that her mom had asked that he
3 help her, like, wash shampoo out of her hair. And
4 then I asked him about the report of him sitting
5 naked on the couch with the blanket over his lap.
6 He said, "I've never been naked with her, never had
7 her sit on my lap. I helped her with her bathing
8 suit, and her hand did end up on my penis."

9 When I asked, "Is it possible that you don't
10 remember being naked because of the Ambien use?"

11 And he said, "I've never been unclothed around
12 her consciously." And then I -- you know, he -- he
13 told me that he pled no contest to this offense,
14 and I asked him the reason that he pled no contest,
15 and he said, "I have no way to refute or dispute
16 this child. I should have been more-clear headed,
17 nonmedicated. I shouldn't have put myself in this
18 position. I couldn't say yay or nay about the
19 allegations. I had to go off of that they were
20 telling the truth."

21 Q So what about the -- the details in what he said to
22 you about them -- about this offending behavior was
23 significant to you and your opinion?

24 A So, again, this is a child that he offended against
25 while in a caretaking role. He was, you know, best

1 friends with her mother, grooming her, taking her
2 swimming, teaching her how to swim, and kind of
3 blaming the offenses on not being in his right
4 state of mind.

5 Q I guess, the -- the third exhibit there is that you
6 -- you said you looked at, so, I guess, for 2006 to
7 2008 offending against the victim B.H.; is that
8 correct?

9 A Yes.

10 Q Okay. What was he convicted of in that -- for that
11 count?

12 A Lewd act on a minor --

13 Q Okay.

14 A -- 0 to 15 years old.

15 Q Same sentence?

16 A Yes.

17 Q And he pled to that one, as well?

18 A Yes.

19 Q Okay. So what are the underlying details
20 surrounding that -- that offending?

21 A So this was victim B.H., and the victim's mother --
22 so B.H.'s mother had been dating Mr. Daily for
23 seven years. He met her daughter, who was the
24 victim, when the victim was four years old. And
25 the victim's mother reported that although she was

1 in a romantic relationship with Mr. Daily for seven
2 years, they had never had any intimate, physical
3 contact; as Mr. Daily said that he had never been
4 with a woman sexually, and he was waiting until
5 marriage to have sex.

6 And so, although, B.H.'s mother -- the
7 victim's mother was interviewed by police in 2008
8 in reference to one of these other offenses, she
9 denied that Mr. Daily would have molested her
10 daughter. However, in 2009, she reported to the
11 police that when her daughter was nine years old,
12 that Mr. Daily would use his fingers to penetrate
13 the victim's vagina. That he would rub her back in
14 what was called "private area." He would, like,
15 sit in the bathroom while she would bathe and
16 observe her and help her wash shampoo out of her
17 hair while she was bathing. The incident dates
18 span from 2006 to 2008, and that the victim would
19 spend the night alone at Mr. Daily's house a number
20 of times while he cared for her.

21 Q Okay. And what did Mr. Daily say to you about
22 these -- this -- this offense?

23 A So when I asked him about this offense, Mr. Daily
24 reported that these allegations were made by his
25 second daughter's -- second girlfriend's daughter.

1 He told me, "I don't know the complete account of
2 what she alleged other than that I touched her
3 either in or around the vagina." And when I asked
4 him more about it, he said that he could only
5 recall one incident where the victim had a rash on
6 her legs from an illness; and that he had applied
7 rash cream to -- to the rash; and that some of it
8 was kind of close to her vagina; but that it was a
9 clinical thing -- nonsexual thing; and that there
10 was no problem when that happened. He said that
11 this allegation came up after the first charge we
12 talked about. And he said that it was four or five
13 years later after it had been -- reportedly it had
14 occurred. He said that there were never any
15 concerns or allegations. That he regularly talked
16 to the mother, talked to the victim. There was
17 never any concerns brought up. He said, "Only
18 after I was arrested the first time, for Z.G.,
19 victim, that the allegations came about."

20 When I asked him about pleading guilty or
21 pleading no contest in this case, he said that all
22 of these allegations kind of came up at the same
23 time. He said, "I don't doubt their stories. They
24 can't be blamed for this. This is on me." He said
25 that he didn't think that they were lying, but that

1 he had little recollection or memory and that he
2 couldn't refute it. He said, "By no means I'm not
3 innocent. I was taking more Ambien than I should
4 have."

5 Q So what about his -- Mr. Daily's criminal offense
6 behavior in this, based on what he told you, was
7 significant to you in your opinion?

8 A So this is another victim that he had access to
9 because he was dating her mother. A young, female,
10 prepubescent child, similar offense behaviors, some
11 grooming behavior, and it also was significant that
12 he was in a romantic relationship with her mother,
13 that he had not engaged in sexual activity with a
14 reportedly willing sexual partner and was instead
15 sexually offending against her young, prepubescent
16 daughter.

17 Q Now, you testified earlier there was another
18 conviction that was sexual in nature, but it wasn't
19 for a lewd act. I think you said assault and
20 battery of a high and aggravated nature.

21 A Yes.

22 Q Could you tell us if you -- if you considered that
23 one?

24 A I did.

25 Q And what was he convicted of there? Oh, I'm sorry.

1 Scratch that.

2 What was the sentence of the Court in that
3 case?

4 A So he pled guilty to the assault and battery of a
5 high and aggravated nature, and he was sentenced to
6 ten years in prison to be served at the same time
7 with the previous sentences, the -- the ten years
8 he was already doing for that 15-year sentence.

9 Q Well, what were the underlying details behind --
10 behind this offense? And this would be for victim
11 B.J. (as spoken)

12 A Yes. So, in 2009, it was reported to police that
13 14 to 15 years previously -- so that would've been
14 1994 or 1995 -- that Mr. Daily molested victim B.J.
15 who was approximately four years old at the time.
16 It was reported to police that she was in the
17 bathroom and Mr. Daily touched her vagina and then
18 put her hand on his exposed penis. And she
19 reported that this lasted for 10 to 15 minutes.
20 Her mother had previously worked with Mr. Daily,
21 and that's how they knew each other.

22 When Mr. Daily was questioned by police in 2009,
23 he just essentially said he had no memory of going
24 to the location where the assault or molestation
25 had occurred. And so he was initially charged with

1 a lewd act on a child and then pled to assault and
2 battery of a high and aggravated nature. So I also
3 talked to him about this during my evaluation. He
4 said that this offense occurred when he was
5 approximately 19 years old. He said, "The only
6 thing I can remember is using the restroom." So he
7 said that he was babysitting for the victim and
8 that she had walked into the restroom when he was
9 using it. And he said, you know, "It was 30 plus
10 years ago. I only saw limited case information."
11 He said that the allegations against him included
12 inappropriate touching.

13 When I said, you know, "Tell me more about
14 what that means."

15 He said, again, "It was 30 years ago. I
16 really have no recollection of what happened."

17 I asked him about her report that he
18 reportedly removed his pants after taking her to
19 the bathroom. He said, "I can't recall that. I do
20 know that she came into the bathroom."

21 When I asked him about the report of touching
22 her vagina, he said, "I wish I could recall that
23 memory," and he said that it had been so long he
24 couldn't remember anything. So I noted to him that
25 based on his self-report and the timeline, that

1 this would have been his first sexual experience.
2 And, you know, I kind of questioned him about his
3 reported inability to recall any details of it.
4 Typically, for a lot of people, your first sexual
5 experience is significant and something that you
6 remember even years later. But he didn't really
7 recall anything about it.

8 When I asked him, like, do you think that this
9 did happen, he said, "I know that she walked into
10 the bathroom." When I asked him if he thought that
11 the allegations that the victim made, you know,
12 touching her vagina, putting her hand on his penis,
13 had actually occurred, he said, "I pled, basically,
14 guilty to it. I have no reason to believe she is
15 telling a lie." And when I asked if he was saying
16 that he thought that it did actually happen, he
17 said, "I'm going to say yes. I think it happened."

18 When I asked him, "Do you recall, you know,
19 being aroused," he said he didn't recall.

20 Q And what about his -- Mr. Daily's -- what he said
21 to you in his criminal offense behavior was
22 significant to you in -- in your opinion for this
23 conviction?

24 A So this is actually the first victim. So this was
25 1992 to 1994. So, I mean, this kind of sets up

1 that he was offending against female, prepubescent
2 children from a period of 15 to 17 years. And,
3 again, this is a victim that he had access to,
4 because he worked with her mother, similar offense
5 characteristics, really kind of setting up this
6 pattern of his offenses.

7 Q Now, is that all the sexual convictions that you
8 looked at?

9 A Yes.

10 Q Do you consider institutional misconduct?

11 A Yes.

12 Q And why would it be important to consider
13 institutional misconduct?

14 A So you're looking at someone's ability to follow
15 the rules, basically.

16 Q Did Mr. Daily have any offenses while he was at the
17 South Carolina Department of Corrections?

18 A No.

19 Q And why is that significant to you?

20 A I mean, by all accounts, he functioned well in
21 prison. He, I think, had jobs. He, maybe, you
22 know -- he did well in prison. So it's significant
23 that he was able to follow the rules in prison, so
24 that's a good thing for him, but it also perhaps
25 demonstrates that, you know, he's able to stop

1 himself from committing other crimes. There are no
2 children in prison. So he wasn't committing
3 nonsexual crimes, you know, out in the community.
4 He wasn't getting into trouble in prison. It
5 really is restricted to these sexual offenses
6 against children.

7 Q Now, do you also review prior evaluations as part
8 of your evaluation?

9 A Yes.

10 Q Why would you look at prior evaluations?

11 A It's -- I want to compare what the examinee told me
12 versus what they told other evaluators. Also, am I
13 missing information? Are they citing, you know, a
14 police report that I didn't know about, that I
15 haven't gotten. So you're looking for consistent
16 and inconsistent information.

17 Q Did you review any prior evaluations as a part of
18 this case?

19 A Yes.

20 Q And what did you review?

21 A There was a report that was signed in February of
22 2020 by the DMH evaluators.

23 Q And what, if anything, was significant to you about
24 the evaluation done by DMH?

25 A It was consistent that we both scored Mr. Daily on

1 two of the same risk assessment measures and got
2 the same exact results on that. They determined --
3 or reported that he had other risk factors
4 including sexual preference for prepubescent
5 children, a lack of emotionally intimate
6 relationships with adults, emotional congruence
7 with children, and some offense supportive
8 attitudes. They also noted that -- his
9 diagnosis -- they diagnosed him with pedophilic
10 disorder, exclusive type, attracted to female
11 children.

12 And they did not think that he was a sexually
13 violent predator, met the criteria laid out in the
14 statute, because Mr. Daily and other sources
15 communicated that he had a prosocial identity, had
16 prosocial future goals, several sources of
17 community support that would hold him accountable,
18 and several protective factors to include empathy,
19 impulse control, insight into the problematic
20 nature of being around children, and that those
21 protective factors would mitigate his risk to
22 reoffend.

23 Q Okay. Now -- so that's all the -- I guess, all the
24 records that you looked at; is that correct?

25 A Yes.

1 Q Okay. So moving on to your -- you had testified
2 earlier you do a battery of testing. Did you
3 perform any -- were there any assessments you
4 performed as a part of your evaluation?

5 A Yes.

6 Q What type of assessments are they?

7 A So they kind of fall into three categories. So the
8 first category is, like, a self-report computer
9 test. So that's where the examinee sits in a room
10 by themselves. They might answer true/false
11 questions on the computer or ask -- answer
12 questions about sexual interest and arousal, but
13 they're answering the questions in response to the
14 computer asking them questions.

15 The other type are physiological measures
16 where I'm actually measuring something that's
17 physiological like arousal.

18 And then the third category that I use are
19 called "clinician scored." So these are ones that
20 they don't actually take, but based on everything
21 that I've learned about the examinee, I score them
22 on different constructs including: risk factors,
23 personality characteristics, so a battery of tests
24 that fall into those three categories.

25 Q Why do you perform these tests?

- 1 A So each of these tests -- or from this test, I get
2 multiple data points of Mr. Daily's psychological
3 functioning, his mental health history, history of
4 symptoms, sexual interest, substance use, sexual
5 behaviors; so this is my data collection.
- 6 Q Okay. Was the information you learned from the
7 assessments a part of the basis of your opinion?
- 8 A Yes.
- 9 Q Okay. And are the assessments that you used the
10 type that other experts in your field reasonably
11 rely on in rendering opinions in cases of this
12 nature?
- 13 A Yes.
- 14 Q Why were all these assessments done?
- 15 A So it's really important to have multiple data
16 points. You never want to base any opinion on,
17 like, one test or one piece of information. So the
18 more data points you have it might make it more
19 complicated, but it's really important, because it
20 would be I -- I would say unethical to just base
21 your opinion on one data point. So it's also
22 really important to do a multimethod assessment.
- 23 So I don't want to just ask the person, you
24 know, "Are you aroused by young female children?"
25 I want to measure the constructs in what's called a

1 "multimethod way." So we know sometimes people are
2 more forthcoming when you just ask them, and
3 sometimes they're more forthcoming when they sit in
4 a room by themselves and answer questions on a
5 computer. So it's -- when you think about
6 statistics and, like, test development, it's just
7 really important to have multiple measures of the
8 same construct or thing that you're trying to
9 measure.

10 Q So you testified just a minute ago that you use
11 self-report or what you called "computer-based
12 tests"; is that correct?

13 A Yes.

14 Q Okay. Well, what about Mr. Daily's performance on
15 these types of tests was significant to you in
16 regards to your opinion?

17 A So I gave him a number of self-report tests. And
18 rather than kind of go through each one, I can kind
19 of put them together of what was significant. So
20 for all of the self-report tests that I use, they
21 all have what's called "validity scales." So
22 that's looking at the person's approach to testing.
23 So did it seem, like, you know, they were being
24 forthcoming, or did it seem like they were being
25 defensive? And across the tests, there was

1 evidence of a defensive response style. He
2 appeared to be defensive about his own interest in
3 sex. He had a really high level of denial related
4 to past sexual interest or urges and things that
5 might be considered deviant. And "deviant" would
6 be, like, nonconsensual or abusive.

7 There were data to suggest that he was trying
8 to paint himself in an overly positive light, so
9 maybe unwilling to disclose, like, minor faults in
10 himself. High scores on a lot of those validity
11 scales.

12 Looking more at them, like, what he answered
13 questions specifically about, test results
14 suggested that there was a high probability that he
15 has or has had a substance use disorder, as well as
16 a high risk of a problem with prescription drug
17 abuse. So when I discussed all of the test results
18 with him during my follow-up interview, the only
19 substance he had ever reported using was Ambien.
20 So I asked him about that, and he told me that it
21 was possible that he had had a problem with Ambien;
22 so maybe that's where that test result was coming
23 from.

24 On one of the tests, he disclosed that from
25 the age of 27 to 34, he had engaged in child

1 molestation three times with three different
2 victims. He said that his victims included girls
3 under the age of five and between the ages of 6 and
4 13, and that the victims were neighbors or
5 acquaintances. And then during the follow-up
6 interview when we talked about that, he agreed with
7 those results, but noted that he had four victims,
8 not three victims.

9 On testing, he reported that he exposed
10 himself to a child, that he had molested female
11 children. During the follow-up interview, he said
12 that he had exposed himself to his four-year-old
13 victim.

14 On testing, he placed responsibility for his
15 behavior on having to keep the person washed and
16 clean, so he was probably thinking about the
17 bathing of the victims. He placed responsibility
18 for his behavior on having had too much alcohol or
19 drugs, so probably the Ambien and his use of
20 pornography.

21 Testing also noted that he likely lacks sexual
22 interest in adults -- adult women.

23 And then looking at sexual rationalizations,
24 so, like, what people tell themselves to make their
25 behavior okay like rationalizing their behavior.

1 He, on testing, reported that he's always known it
2 was wrong to engage in sexual activity with an
3 underage person. However, despite reporting that
4 he knew that was wrong, there were several things
5 that he used to rationalize these behaviors to
6 himself. He attempted to explain away his behavior
7 by indicating that he was mixed up. That he's not
8 perfect. He attempted to minimize these behaviors
9 by indicating that he didn't plan them, that he
10 slipped one time, made a mistake, and he didn't
11 know how the sexual things actually ended up
12 happening. And he, yeah, placed the responsibility
13 on having had too much drugs and pornography and
14 washing the victims.

15 Q Now, is that all the -- that's all the information
16 you have for the -- for the computer-based test?

17 A Yes.

18 Q Okay. So moving on you -- you had testified that
19 you also do physiological testing?

20 A Yes.

21 Q Please tell us why it's important in these types of
22 evaluations to measure current or assess current
23 sexual arousal?

24 A So the --

25 MR. THOMPSON: Your Honor, if this goes into

1 the PPG, I'm gonna note my objection.

2 THE COURT: Okay. We'll see the lawyers.

3 (WHEREUPON, a bench conference was held.)

4 THE COURT: (To the jury) Mr. Foreman and
5 ladies and gentlemen, an objection is about to
6 be raised, or it has been raised, and I'm
7 going to rule on that momentarily, but,
8 nonetheless, it's time for our afternoon
9 break. I was watching that clock, and in
10 about the next four minutes was going to stop
11 counsel, so that you can take your afternoon
12 break.

13 I try very hard not to keep you more than
14 90 minutes at a time, and we have actually had
15 another 15 or 18 minutes in the courtroom
16 before you got here, so it's time for us to
17 take a break too.

18 Mr. Foreman, I'm going to let you take
19 your jury out. Do not talk about the case.
20 Do not discuss it. You're on break. You're
21 working here, and the last thing you want to
22 do when you go on a break is talk about work;
23 so don't be talking about work while you're
24 back there. Don't do any research. Don't --
25 don't try to learn anything about the case

1 outside of the courtroom.

2 Let me ask this: And I hope the answer's
3 no, but is there a smoker on the jury, and you
4 want to smoke? Okay. All right. We can
5 arrange that. You'll have to be escorted out
6 by law enforcement or a bailiff, and they'll
7 have to stay with you while you smoke.
8 There's no tobacco use inside the courthouse.
9 I wish you would quit. I don't mind telling
10 you, and I'm happy to tell you, it killed my
11 sister at the age of 48. So with that --
12 that's the preaching on the -- on the smoking
13 -- but Mister -- Mr. Foreman, if you'd take
14 your jury out, and somebody will have to go
15 with the smokers.

16 (WHEREUPON, the jury was excused at 3:41
17 p.m.)

18 THE COURT: Okay. Let me get the -- (To Mr.
19 Thompson) you want -- you have an objection
20 at this point?

21 MR. THOMPSON: Your Honor, I know that you've
22 ruled previously on the admissibility of the
23 PPG, but in order to protect the record, I
24 need to raise my objection again, because
25 she's getting ready to testify to it.

1 THE COURT: Okay, sir. He's raised the
2 objection again to my ruling on the PPG.

3 (To Mr. Runyan) Counsel, you want to be
4 heard on that?

5 MR. RUNYAN: No. As -- as long as your --
6 your ruling stands.

7 THE COURT: Yes. Then the ruling stands for
8 all the reasons heretofore enunciated, which
9 are on the record, and you are protected on
10 the -- for appeal purposes, Mr. Thompson.

11 Doctor, you may step down and -- and
12 refresh yourself. The restroom facilities are
13 across the way. I notice you have your own
14 water bottle. There's water right there you
15 may take with you if you'd like to refill it.
16 And if you need ice, the bailiff's will be
17 happy to get some, because we have a ice
18 machine back here. I can't let you go back
19 there, but they'll -- they will be happy to
20 get you a cup of ice to put in your bottle if
21 you need it.

22 You can't talk to anyone about your
23 testimony while you're on break, and we'll be
24 back here about the top of the hour. How
25 about that?

1 THE WITNESS: Okay. Thank you.

2 THE COURT: All right. Everybody let's stand
3 in recess.

4 (WHEREUPON, off the record at 3:42
5 p.m. until 4:07 p.m.)

6 THE BAILIFF: All rise. Come to order.

7 THE COURT: Thank you. Please be seated.
8 Thank you. Let's see the lawyers.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: Okay. She has -- my -- my deputy
11 clerk has a childcare issue, so she has to --
12 we're going to have to stop at 5:00/5:05,
13 something like that. (To Mr. Runyan) So
14 you're talking about having segments?

15 MR. RUNYAN: Yes.

16 THE COURT: If you get to where those segments
17 at the end and it's 4:55 or 5:05, something
18 like that, just, if you don't mind, then we'll
19 break and we'll come back tomorrow.

20 MR. RUNYAN: I'll just say, "Your Honor, may
21 we approach?" And we'll do that.

22 THE COURT: Yeah.

23 MR. RUNYAN: Okay.

24 THE COURT: She's -- she's got a childcare
25 issue.

1 MR. RUNYAN: Okay.

2 THE COURT: New baby.

3 THE CLERK: I have two, actually.

4 THE COURT: I know, but you've got the new

5 baby.

6 THE CLERK: Yeah.

7 THE COURT: How old is it?

8 THE CLERK: Yeah. Four and five months.

9 THE COURT: Five months.

10 THE CLERK: Yeah.

11 THE COURT: There you go.

12 THE CLERK: Thank you, sir.

13 THE COURT: All right. Okay. We're going to

14 stop real close to five. Okay. Everybody

15 ready?

16 MR. THOMPSON: Yes, sir.

17 THE COURT: We'll have our jury.

18 (WHEREUPON, the jury came into open court

19 at 4:09 p.m.)

20 THE COURT: Okay. You may be seated. Thank

21 you. Mr. Foreman, everybody good?

22 THE FOREMAN: Yes, sir.

23 THE COURT: All right. Everybody's ready to

24 work. Counsel?

25 MR. RUNYAN: Thank you, Your Honor.

1 DIRECT EXAMINATION CONTINUES

2 BY MR. RUNYAN:

3 Q Dr. Gottfried, before we broke, you -- we were
4 talking about a physiological test that you do to
5 measure current sexual arousal, and I'd ask you to
6 tell us why it's important to use evaluations to
7 assess current sexual arousal.

8 A So we know, based on the literature, that sexual
9 arousal to nonconsensual abusive, illegal stimuli
10 is a really strong risk factor for sexual
11 reoffending. We also know that in evaluations like
12 this, people have, maybe, understandable motivation
13 or reason for not being completely forthcoming
14 about what is arousing to them, especially if it's
15 something that can cause them shame, or could get
16 them civilly committed. So we need to have an
17 objective way to measure sexual arousal beyond
18 their self-reports.

19 Q So you -- you do use self-report for sexual --
20 current sexual arousal?

21 A Yes.

22 Q And what is a self-report?

23 A So I discuss their sexual arousal with them at
24 length, and then one or two -- two for Mr. Daily of
25 the questionnaires -- the computer administered

1 questionnaires -- also talks about sexual arousal.

2 Q Well, what if anything, did Mr. Daily reveal to you
3 about his sexual arousal in any self-reports that
4 you had?

5 A He basically said that he didn't have sexual
6 arousals, essentially, so he said that he hadn't
7 masturbated in greater than five to seven years,
8 which is unusual, not necessarily biologically
9 normal.

10 When I asked him -- or he also said that he's
11 never engaged in any kind of consensual sexual
12 activity with another person to include any kind of
13 sexual activity, not just, you know, vaginal-penile
14 intercourse. no oral sex, stimulation, nothing
15 sexual.

16 And when I asked him the reason for that, he
17 said that with the first girlfriend that he had --
18 so he had, I believe, two girlfriends, he -- due to
19 his religious background, he didn't believe in
20 having sex before marriage and that his first
21 girlfriend was willing to have sex with him and
22 ultimately ended up being sexually active with
23 other people. And then during the second
24 relationship, the girlfriend was of the same
25 religious mindset that he was. So, essentially,

1 told me he wasn't sexually aroused.

2 Q Now, do you use any other measures to measure

3 current sexual arousal?

4 A I use physiological measures in addition to self-

5 report and then on the questionnaires.

6 Q What physiological measures do you use?

7 A So I use a test called "penile plethysmography,"

8 abbreviated to "PPG."

9 Q Okay. And what is the PPG?

10 A So this is a physiological test, objective test of

11 male sexual arousal. And the way that it works is

12 the examinee is sitting in a private room by

13 themselves, they have a little stretchy gauge

14 around their penis that they place on it

15 themselves, and then they're presented with a

16 variety of auditory or like, you know, hearing

17 sexual scenarios, lots of different trials, where

18 it's describing sexual activity between an adult

19 man and children, teenagers, adults. Some of them

20 are sexually violent; some of them are coercive or

21 persuasion. And then we're comparing their arousal

22 to the illegal, nonconventional, abusive stimuli to

23 their arousal to consenting adults, both

24 heterosexual and homosexual scenarios, and neutral

25 trials that are not sexual at all.

1 Q Now, do you recognize this book?

2 A Yes.

3 Q Could you tell the jury what this book is?

4 A That is the "Diagnostic and Statistical Manual."

5 It's the DSM-5. It is published by the American

6 Psychiatric Association, and it includes every

7 mental health diagnosis that's recognized by the

8 American Psychiatric Association and lists, you

9 know, all the criteria for those diagnoses,

10 etiology, prevalence, everything you need to know

11 about diagnosing.

12 Q Would you consider -- as an expert in the field,

13 would you consider the DSM-5 authoritative in your

14 field?

15 A Yes. It is.

16 Q And could you just define what "authoritative"

17 means to you?

18 A My understanding is that, that means that's what

19 everybody relies on. That is the way to do it. It

20 informs the diagnosis.

21 MR. RUNYAN: May I approach, Your Honor?

22 THE COURT: Yes, sir.

23 Q Doctor, on -- on Page 699 of the DSM-5, I've --

24 I've marked a passage there. Could you please read

25 that for us?

- 1 A Yes. So this is on Page 699, under "Diagnostic
2 Markers." It says, "Psychophysiological measures
3 of sexual interest may sometimes be useful when an
4 individual's history suggests the possible presence
5 of pedophilic disorder" -- that's sexual arousal to
6 prepubescent children -- "but the individual denies
7 strong or preferential attraction to children. The
8 most thoroughly researched and longest used of such
9 measures is penile plethysmography" -- or PPG --
10 "although the sensitivity and specificity of
11 diagnosis may vary from one site to another."
- 12 Q Thank you. Could you please tell the jury what the
13 Association for the Treatment of Sexual Abusers is?
- 14 A Yeah. I talked about that in the beginning of my
15 testimony; that is the national organization for
16 people who do this kind of work. So the
17 Association for the Treatment of Sexual Abusers
18 includes clinicians who actually treat and evaluate
19 people and researchers who are experts in the field
20 on sexual behavior, primarily abusive sexual
21 behavior.
- 22 Q And you refer to that as "ATSA," you said?
- 23 A Yes.
- 24 Q And what does ATSA say about the PPG?
- 25 A So ATSA recommends the responsible and ethical use

1 of the PPG, and I put it like that because like
2 I've mentioned, it's unethical to use any one data
3 point as the sole decision -- or the sole way you
4 make a decision. So ATSA acknowledges that the PPG
5 can be useful in diagnosing, looking at risk
6 factors, treatment targets, but caution that it
7 should never be used in absence of other things or
8 context.

9 Q Are there other large organizations that recognize
10 the PPG?

11 A The -- I don't know if this is an organization, but
12 the PPG equipment that we use is FDA approved --
13 certified by the FDA. Blue Cross Blue Shield
14 authorizes PPG tests, like they pay for it under
15 insurance for things like erectile dysfunction and
16 things like that. Yeah. I think those two . . .

17 Q You mentioned erectile dysfunction. What --
18 what -- tell us in what other ways that PPG is
19 utilized?

20 A So it isn't -- so penile plethysmography isn't just
21 used in this kind of evaluation, to look at, you
22 know, arousal to something that's deviant. It's
23 used kind of widely in sexual behavior. So if
24 somebody is being treated for erectile dysfunction
25 or having a problem maintaining or sustaining an

1 erection, it can look to see if, you know, they did
2 an implant or somebody had some kind of surgery,
3 the functioning of the penis, treatment, behavioral
4 strategies; the PPG is used frequently in that kind
5 of work, as well.

6 Q What kind of training have you had in regards to
7 the PPG?

8 A So specific to the PPG, I am certified by the
9 manufacture -- the -- the psychologist that
10 oversees the manufacturer in Canada; it's Limestone
11 Technologies. I'm a certified clinical analyst for
12 the PPG.

13 Q What does that certification process consist of?

14 A So I got certified in 2018, and I need to go back
15 and -- and so I can do how long things take (as
16 spoken.) So there's a classroom portion; now, they
17 do a lot of it online. But basically, they go over
18 slides; they go over all the research about PPG,
19 really, like, learn, you know, what's it's
20 measuring, what's it's doing. So there's a
21 classroom portion, maybe a week. I -- I don't know
22 for sure how -- I can't remember how long that is,
23 but it's definitely a substantial classroom
24 portion, and then it's two or three days where you
25 go to a lab of somebody who is an instructor and

1 you administer and interpret PPGs all day long.

2 And then in order -- after you complete all of

3 that, in order to actually become certified, you go

4 back to your own lab, you do PPGs, and then you

5 send the data to the instructor, and they make sure

6 that your analysis is correct.

7 Q You testified earlier you are the director of the

8 Sexual Behaviors Clinic and Laboratory?

9 A Yes.

10 Q Does the SBCL hold any certifications regarding the

11 PPG?

12 A Yes. Our laboratory is both clinical and research

13 certified. Research certification is the highest

14 level that you can get for a lab.

15 Q So tell us briefly how does the PPG work.

16 A So, as I mentioned, the person undergoing the test

17 is presented with a variety of stimuli. And,

18 basically, what we want to know is: Does the

19 person have, like, equal arousal or greater arousal

20 to, for example, child stimuli, sexual situations

21 involving children, than they do to consenting

22 adults. So we're looking both at preference, so

23 preference over adults, but, also, just the

24 presence of that arousal, which is not normative.

25 So normative would be anybody who's gone through

1 puberty and can reproduce. So being sexually
2 aroused by rape or offending -- or sexual activity
3 with children, that would not be normal. So that's
4 what we're looking at: What are they aroused by,
5 and is that arousal greater or equal to appropriate
6 arousal.

7 Q Are there issues with the PPG?

8 A Yes.

9 Q What are they?

10 A So the PPG has been criticized for some
11 standardization issues. And what that means is
12 that some labs do things differently, and there's a
13 couple reasons for that. So here in the United
14 States, we have no medical exemption to our federal
15 pornography laws. So if I were to bring somebody
16 into the lab and show them a picture of a nude
17 child, I could be arrested and charged in federal
18 court with child pornography -- possession of child
19 pornography or distribution.

20 Other countries -- Canada, I believe, Czech
21 Republic -- other countries are able to show nude
22 images of children for a medical purpose. And so
23 at MUSC and here in the U.S. we use stimuli that is
24 not going to get us arrested as ethical. But other
25 countries -- so I'm in an international

1 standardization group with researchers and
2 physicians in Canada, the Czech Republic, and the
3 U.K. And one kind of point of contention is that
4 countries that have exemptions to do things that
5 the U.S. can't do are really reluctant to change
6 their methods. So they've been, you know, using
7 this particular stimuli set for 20 years; they're
8 having no problems with it. And when we're working
9 on standardizing so everybody's doing it the same
10 way, they're really hesitant to be like, "We don't
11 want to change our methods just because your lab
12 can't do this." So standardization has been
13 something that's been noted.

14 Another thing that appears in the literature
15 sometimes is they say that some offenders don't
16 show expected arousal pattern. For example,
17 somebody who sexually offended against children
18 might not show arousal to children on the PPG. And
19 to me, this is kind of a no-brainer because -- I
20 think I mentioned earlier -- people offend for a
21 lot of different reasons. Being sexually aroused
22 by children is only one reason. So not everybody
23 who offends against children offends because they
24 are sexual attracted or aroused by them, and you
25 would not expect those people to show the arousal

1 on the PPG.

2 There have been a lot of studies looking at
3 the reliability of the PPG and its ability to
4 differentiate between people who offended against
5 children and people who haven't. There was a
6 recent study in 2019, like a really large study,
7 where they combined the PPG data of almost 9500 men
8 from lots of different groups, men who had offended
9 against children, men who had sexually offended
10 against adults, men who had no known sexual
11 offenses, men who went on to, you know, have a new
12 sex offense versus men who didn't. And the results
13 showed that men who had sexually offended against
14 children, the PPG was really able to discriminate
15 those people from all other groups.

16 Q So what quality control measures do you use at your
17 lab?

18 A So we really do everything standardized and that is
19 how we have a research certification. So every
20 person who is involved in administering or
21 interpreting a PPG is certified to be able to do
22 it; so they have credentials to do it; they're
23 certified; they've done a minimum number to qualify
24 to do it.

25 And then we do everything in the same way.

1 Before we administer a PPG, the gauge that goes on
2 their penis has to be calibrated, I believe, three
3 times before the program will even start. So you
4 have to go through and make sure it's perfectly
5 calibrated, getting a correct reading. We control
6 the humidity, the temperature, so every PPG from
7 administration to interpretation is done exactly
8 the same way. So that's one way we do quality
9 control.

10 We, also, want to employ measures to make sure
11 that the person has a valid test. So we measure
12 their breathing; they have a respiration strap on.
13 So we can see if somebody is holding their breath,
14 maybe trying to manipulate the -- the test.
15 They're sitting on a pad that's recording movement,
16 so we can see if they're squirming in their chair.
17 We can see if they sneeze, and it moves the penile
18 gauge; that obviously wouldn't be arousal; that
19 would be a sneeze. So that's really important to
20 measure all of those things, as well.

21 We, also, have the person hit a button on a
22 keypad next to their chair whenever the scenario
23 that they're listening to becomes sexual or
24 violent. That's one way we can try to ensure that
25 they're paying attention. We can note how many

1 button-presses that they did not do. And then
2 intermittently the technician will ask the person,
3 over a microphone -- they're in a separate room --
4 but they'll ask them over an intercom to briefly
5 describe the scenario they just heard, which is
6 another way that we're trying to determine and make
7 sure that that person is paying attention.

8 Q So why -- why use the PPG?

9 A Well, I -- I think I mentioned that really large
10 meta-analyses, which means a study that took the
11 results and the participants from lots and lots of
12 other studies, we're talking, like, tens of
13 thousands of people, to look at differences between
14 people who sexually reoffended and those who
15 didn't. People who are sexually aroused by
16 children and have offended against children, that
17 is a significant risk factor. So it's really,
18 really important to objectively know what this
19 person is aroused by, because we can, for the most
20 part, reasonably expect that somebody is not going
21 to come in and say, "I'm aroused by children." Or
22 they might say, "I was, but I'm not now." And so
23 the PPG is going to give you data about today on
24 the day of the assessment what they were aroused by
25 in the laboratory.

1 Q So why is the PPG particularly useful in regards to
2 pedophilic disorders?

3 A So those big studies that I talked about really
4 showed that the PPG has the greatest validity and
5 reliability, so the statistics for it are the best
6 for people who are aroused by children. For people
7 who offend against adults or are aroused by, like,
8 sadism, so like hurting or humiliating somebody for
9 a sexual purpose, the PPG doesn't do as well in
10 identifying those people. We're not a hundred
11 percent sure what the reason is, but it's something
12 about how that can't be recreated in the lab. So
13 it might not be just like hearing that, but
14 actually the physical act of doing something is
15 what is arousing to them. So people who sexually
16 offended against children, the PPG has the
17 strongest results for those people.

18 Q Was the information you had learned from the PPG
19 assessment a part of the basis of your opinion?

20 A Yes.

21 Q And what about Mr. Daily's performance on the PPG
22 was significant to you in regards to your opinion?

23 A Well, his results were right in line with his
24 offenses. So he had clinically significant sexual
25 arousal to trials featuring sexual activity with a

1 female infant, a preschool-aged female child, and a
2 grammar school or elementary school-aged child.
3 And those were really consistent with his offense
4 behaviors.

5 And then he didn't show clinically significant
6 arousal to consenting adults. So when I kind of
7 did the mathematical equations, his arousal to
8 prepubescent children -- female children were more
9 than two and a half standard deviations greater.
10 So what that means without explaining standard
11 deviations and these scores, is that he showed a
12 clear preference for children -- for the child
13 scenarios over the adult scenarios.

14 Q And you -- you determined that, I think you said
15 that's called "clinically significant arousal"?

16 A Yes.

17 Q Was there anything else about the PPG that was
18 significant?

19 A Well, as I mentioned, I always do a follow-up and
20 give the person all of their test results. I think
21 it's important for them to know what I'm going to
22 say in my report, and, you know, maybe they --
23 during the self-report they push a wrong button or
24 something. So I want to give them feedback on all
25 their test results, get their take on it.

1 So I went over Mr. Daily's PPG results with
2 him, and he said that he was really tense during
3 the PPG. He said that the attacks -- that during
4 the attacks on the children -- the scenarios he was
5 listening to, that he became more tense; he was mad
6 at the aggressor. He said, "I have four charges.
7 I realized that was mean to the girls. Not mad at
8 the victims in those stories, but against the
9 aggressor. My actions were wrong. The aggressor's
10 actions were wrong. I should have been the
11 protector not the aggressor."

12 You know, when I asked him more questions
13 about what he made of his test results, he said,
14 "As I listened to the scenarios, I didn't feel
15 aroused. I don't want to be aroused by any of
16 this." More information, he said he was
17 disheartened by the results that it showed it that
18 way. He said, "In any of those situations,
19 children are not sex toys." So that was kind of
20 his take on his results.

21 Q All right. Doctor, that's all the physiological
22 assessments you did; is that correct?

23 A Correct.

24 Q So let's just move onto your diagnosis of Mr.
25 Daily. So based on your evaluation, were you able

1 to diagnose Mr. Daily with any relevant mental
2 abnormalities and personality disorders?

3 A Yes.

4 Q And what did you diagnose him with?

5 A My diagnosis was pedophilic disorder, exclusive
6 type, sexually aroused to female prepubescent
7 children.

8 Q Now, is pedophilic disorder -- is that in the
9 DSM-5?

10 A Yes.

11 Q And what is the criteria to meet -- the diagnostic
12 criteria to meet?

13 A So, generally, it's a period of over six months or
14 greater where the person has demonstrated -- so
15 that could be in behavior, fantasies, urges -- of
16 sexual activity involving prepubescent children.
17 And prepubescent is a child who has not entered
18 puberty, so no secondary sex characteristics
19 whatsoever. And so they either have acted on this
20 arousal, or they are fantasizing about it; or they
21 have urges that's causing them to stress or
22 physical or personal harm to another person.

23 So, I'm my opinion -- opinion, Mr. Daily
24 really clearly meets for pedophilic disorder. He
25 pled no contest or was found guilty to sexually

1 offending against four prepubescent girls who were
2 not in puberty. He -- clearly his actions were
3 sexual. He, you know, asked them to touch his
4 penis, to sit on his lap when he was naked,
5 fondling them, digital penetration of their
6 vaginas. He groomed his victims. He, you know,
7 taught them to swim at the YMCA. He took them on
8 vacation, maybe special attention. He offended
9 from approximately '92 or '94 until 2008, so that
10 would be a range of 15 to 17 years; so much greater
11 than that six-month minimum criterion.

12 So during my evaluation, he maintained that he
13 doesn't fantasize about prepubescent children,
14 denying being aroused by them, but -- but despite
15 him telling me that, the data collected during the
16 evaluation suggests that he is aroused. And he
17 currently is aroused as demonstrated by the PPG
18 results that showed his arousal to the preschool,
19 grammar school, infant scenarios.

20 So for the specifiers, so exclusive type,
21 means that Mr. Daily is not aroused by adults; he's
22 exclusively aroused by children. And this is
23 demonstrated in that he was dating one of victims'
24 mothers who was a willing sexual participant, and
25 he didn't have sex with her, but he was sexually

1 offending against minor children, which suggests
2 that's what he's aroused by. Yeah. So he had
3 available sex partners; he's still offending
4 against children. And then sexually attracted to
5 female children, that specifier -- it could be
6 female children, male children, or both; he has no
7 known male victims. All the data suggests that
8 he's exclusively aroused by prepubescent female
9 children.

10 Q Is pedophilic disorder chronic?

11 A I'm sorry?

12 Q Is it chronic?

13 A It is chronic.

14 Q Yeah. What -- so what does it mean for someone
15 like Mr. Daily to have a diagnosis of pedophilic
16 disorder?

17 A So this is something that's going to take lifelong
18 management. So we do have treatments for
19 pedophilic disorder. Like all treatments that are
20 hard, if you think about things like substance use,
21 they're really hard to treat. It's difficult if
22 you think about, like, what you're aroused by and
23 if all of a sudden it was like you can never think
24 about that again or ever do that again. It -- it's
25 really hard to stop doing things, especially things

1 that are pleasurable.

2 So there are treatments. We can treat this,
3 but he hasn't had treatment. And at the very
4 least, you have to have strategies to manage those
5 arousals so that you don't create a victim. So
6 it's chronic in that this is something that he is
7 going to have to manage for his entire life. We do
8 have treatments, he can be treated, but it's
9 something that he's going to have to work on
10 chronically.

11 Q Now, the pedophilic disorder is considered a
12 paraphilic disorder, correct?

13 A Yes.

14 Q And you would consider that a mental abnormality?

15 A Yes.

16 Q Now, did you consider any personality disorders?

17 A No. I consider every disorder, so I -- my
18 assessment is, like, literally thinking about every
19 potential diagnosis. So I considered a personality
20 disorder, but he does not have a personality
21 disorder.

22 Q Did you consider any substance abuse disorders?

23 A Yes.

24 Q And what'd you consider?

25 A So he kind of waxed and waned -- like during

1 feedback from testing, he said it was possible that
2 he had a problem with Ambien, but in other parts he
3 -- of the evaluation, he said that he definitely
4 had a problem with Ambien. He said that he was
5 physically dependent on it, that he craved it, that
6 when he didn't take it, he had what's called
7 "rebound insomnia," so he couldn't really sleep
8 without it. He said that when he was under the
9 influence of Ambien, sometimes he would, like,
10 spend money that he -- on stuff he didn't need. He
11 said he got a ticket for a fender bender driving on
12 Ambien.

13 When I asked him, like, "Okay. When those bad
14 things happened, like getting into a fender bender,
15 did you continue using it?" And he said he cut it
16 out, that he -- it wasn't hard to stop. He
17 actually just quit Ambien cold turkey and said,
18 like, once it was out of his system, he had no
19 problems with it.

20 And so for a substance use disorder, there's a
21 number of criteria, but it's basically taking a
22 substance in large quantities or larger quantities
23 than you planned to, on purpose, that's causing,
24 you know, a lot of symptoms and problems for the
25 person.

1 So what Mr. Daily described about his Ambien
2 use is what's expected of Ambien. So when you take
3 a medication for a long period of time, especially
4 a drug like Ambien, you are going to become
5 dependent on it. It's going to be difficult to
6 sleep when you stop taking it for a little while.

7 He said he never consciously took more than he
8 was prescribed, but sometimes he would discover,
9 under the influence of Ambien, he would take
10 another one. But based on his report, he is
11 describing the expected effect of what Ambien would
12 have on a person. So I -- it's my opinion that he
13 does not have a substance use disorder related to
14 Ambien.

15 Q Now, as far as the Ambien and his offending
16 pattern, what -- he had four -- you testified to
17 four different sexual offenses. Was he on Ambien
18 on -- on every one of those?

19 A No.

20 Q Which one did -- was he was not on Ambien?

21 A The first one when he was 19. So this was
22 something that I thought was important to note in
23 my report, that he really blamed the offenses on
24 "being under a fog of -- of Ambien," is how he said
25 it. But it's really my opinion, based on the data,

1 that his offenses are directly related to
2 pedophilic disorder. So the sexual arousal to the
3 prepubescent girls and not due to, like, being
4 under the influence of Ambien. And the reasons for
5 that is, one of the offenses -- the earliest one in
6 '92 or '94, he wasn't on Ambien, and he still
7 offended against that victim.

8 Additionally, like very, very rarely, sleep
9 sex has been reported, people on Ambien -- I'm sure
10 you've all heard stories of, you know, people night
11 eating or doing crazy things on Ambien. So very,
12 very rarely there have been reports of someone,
13 like, having sex in their sleep on Ambien. But
14 none of the victims reported that Mr. Daily was
15 sleeping when this happened, so he might have been
16 taking it at the same time, but it's my opinion
17 that they're unrelated to each other.

18 Q And were there any other diagnoses (verbatim)
19 that you were -- did or didn't give him?

20 A No.

21 Q All right. Well, moving on, Doctor, you had -- you
22 had talked about clinician score assessments, and I
23 really want to move on now from the diagnosis to
24 what your risk assessment is.

25 A Yes.

1 Q So talking about the clinician score assessments,
2 could you tell us what they are and how they work?

3 A So clinician rated are things that I don't ask him
4 specifically but that I rate him on scales on --
5 based on my review of the collateral records that I
6 receive and my interview with him. So these are,
7 like, risk factors that I'm looking at based on
8 everything that I know from officially-reported
9 information and some of his self-reported, but
10 mostly officially-reported.

11 Q So what actuarial assessments do you use?

12 A I use the Static-99R and the Static-2002R.

13 Q Could you tell us what an actuarial assessment is
14 and maybe tell us how it works?

15 A Yeah. So, basically, you are trying to figure out
16 what factors make, like, a group of people more
17 susceptible to something risky. So I like to use a
18 life insurance example. So I don't know how many
19 of you have applied for life insurance, but when
20 you apply, they're gonna get a lot of information
21 from you, because a life insurance company is never
22 going to be able to predict when you specifically
23 are going to die, but they're gonna look and see if
24 you have known risk factors associated with, you
25 know, having a heart attack or an early death. So

1 they want to know, maybe, how many speeding tickets
2 you've gotten, what your profession is, are you a
3 racecar driver, are you, you know, an accountant
4 sitting at a desk all day. So they're gonna -- you
5 know, they want to know your age. They want to
6 know your gender; women live approximately five
7 years longer than men.

8 So they're gonna determine your premium for
9 your insurance policy based on your risk factors.
10 So while they can't say, "Okay. This person is
11 definitely going to pass away at 60 years old."
12 They can say, "Okay. We -- this person had a
13 physical, they have these medical conditions. They
14 have a risky lifestyle. They smoke." And so they
15 can put all that together to kind of estimate
16 you're at higher risk for an early death than
17 somebody who doesn't have those risk factors.

18 So that's kind of how an actuarial assessment
19 works. It doesn't tell you anything about the
20 specific person, it tells you things about groups
21 of people who have similar characteristics.

22 Q So you mentioned risk factors. Are there different
23 types of risks factors?

24 A Yes.

25 Q What are they?

1 A So there are static risk factors and dynamic risk
2 factors. Static risk factors are things that you
3 pretty much can't change, so your age. You're
4 always going to get older but there's no treatment
5 I can give you to make you younger, so your age is
6 a static risk factor.

7 The presence of a male victim is a risk factor
8 for sexual reoffending. So I can give you
9 treatments so you never have a male victim again,
10 but I cannot treat you to not have that male victim
11 in your past. So they're relatively unchanging
12 static factors -- or the static ones.

13 Dynamic risk factors have the ability to
14 change; they might be difficult. So those are
15 things like substance use, pedophilic disorder,
16 like, problems in your relationships, problems at
17 your job. Things like that would be more dynamic.
18 They might hard to treat, but we can treat those.

19 Q Now, you had mentioned the Static-99R and the
20 Static-2002R. What risk factors do those types of
21 measurements measure?

22 A They both measure static risk factors. So that
23 comes from really, really large meta-analysis
24 studies where they combine the data of lots of
25 studies, so it's like tens of thousands of people

1 who reoffended or didn't reoffend and they look to
2 see what's in common between these people. And so
3 let's try to estimate what your person, their risk
4 of reoffending is based on that score, but it's
5 based on that population and not the person in
6 front of you.

7 Q Was the information you learned from your
8 assessment with the Static-99R and 2002R a basis of
9 your opinion? Did you use the result as the basis
10 of your opinion?

11 A Not the sole basis, but, yes, I -- they informed my
12 opinion.

13 Q Okay. And why do you use both assessments?

14 A So the 2002 came out after the 99, and it was
15 developed to kind of improve how people coded. It
16 seems like a simple instrument, but it's
17 actually -- they're kind of hard to code; you have
18 to know all this information. So they tried to
19 make something that people more consistently scored
20 in the same way. They wanted to try to improve the
21 predictive accuracy of who was going to go on and
22 reoffend. And so I used both of them because
23 research shows that incrementally, so when you add
24 them both together, that score is more predictive,
25 better associated with likelihood of reoffending

- 1 than the scores individually. And so that's why,
2 typically, we'll give both of them to incrementally
3 improve the prediction.
- 4 Q So, specifically the Static-99R, what is the
5 scoring range of the Static-99R?
- 6 A You -- it ranges from negative 3 to 12.
- 7 Q And what was Mr. Daily's score on the 99R?
- 8 A It was 2.
- 9 Q And what is the range of score on the Static-2002R?
- 10 A Negative 2 to 13.
- 11 Q And what was Mr. Daily's score on the Static-2002R?
- 12 A It was also 2. So they were both in the average-
13 risk category.
- 14 Q I think you've already answered this question,
15 Doctor, but do -- do doctors in your -- in your
16 field solely rely on the Static as the measurement
17 of risk?
- 18 A They shouldn't.
- 19 Q What did you learn from the -- from both
20 assessments that was significant to you about Mr.
21 Daily's level of risk?
- 22 A So thinking just about his static risk factors,
23 he's at an average risk to reoffend. Let's see.
24 Since I authored my report, new statistics, a new
25 manual was published in 2020, so looking at those

1 numbers, in a sample of men with a Static-99 score
2 of 2, about 4.6 percent of them reoffended in five
3 years, 7.2 percent of them reoffended in ten years,
4 and the estimated 20-year average was about 8.9
5 percent. So kind of looking at his score in --
6 compared to other people that they scored on the
7 Static-99, that puts him at about the 48th
8 percentile. So if you round that, that means,
9 like, out of 100 people, 40 people would have a
10 lower score than him, 18 would have the same exact
11 score as him, and 43 would have a higher score. So
12 he's really right in the middle there of those
13 static factors.

14 Q Now, in your opinion, do the Static actuarial
15 assessments have a potential to under -- under
16 report risk?

17 A It -- it can under report, for sure.

18 Q Why is that?

19 A So the Static-99 is only looking at detected
20 offenses, that is -- or those are offenses that
21 were reported to authorities. And we know that
22 sexual offenses are the least likely of any crime
23 to be reported to authorities. Depending on the
24 study, like, only up to 30 percent of sex offenses
25 are actually reported. So there are a lot of

1 people who are offended against, and for a variety
2 of reasons, never report it. So the Static is only
3 looking at risk factors associated with people who
4 offended, then got caught.

5 Q So, Doctor, turning to dynamic risk factors, you
6 described to us what they were. How do you assess
7 dynamic risk factors?

8 A There are different ways to assess dynamic risk
9 factors. Some people use a meta-analysis that was
10 published in 2010, and they, like, kind of think
11 about that article. I like to use what's called
12 like a "structured, professional, judgment
13 checklist." So I use a measure that has the risk
14 factors that have the most empirical support, that
15 is they appear most consistently in studies showing
16 this is a risk factor for sexual reoffending. It
17 really just kind of structures the way that I'm
18 thinking about it. I'm not missing anything. I'm
19 not, you know, thinking of something as a risk
20 factor that actually the science doesn't show that
21 it is.

22 Yeah. So it's looking at risk factors that
23 have been repeatedly shown in the scientific
24 literature, and then studies on the -- the
25 checklist that I use, show that it's a good

1 predictor of future sexual violence and it is at
2 least as accurate or more accurate than the Static
3 measures.

4 Q So what risk factors did you assess Mr. Daily with
5 -- dynamic risk factors?

6 A So on the measure and the checklist that I use,
7 there's three categories of dynamic risk factors.
8 There are psychosocial adjustment risk factors.
9 And so for those, I noted that Mr. Daily had what
10 they call "sexual deviation," so for him that is a
11 stable pattern; so 15 to 17 years of sexual arousal
12 to prepubescent female children. I also noted that
13 he has sexual health problems. So he self-reported
14 to me that he was previously preoccupied with sex
15 and had what he a "pornography addiction."

16 Another psychosocial adjustment risk factor is
17 a history of a suicide attempt. So after he was
18 questioned by the police, I believe in 2008, he
19 attempted suicide; that increases someone's future
20 risk. He has relationship problems, so he doesn't
21 have relationships with adults, really lack of
22 adult -- at least romantic partners. And then I
23 noted instead of it being fully present, possible
24 or partial risk factor related to substance use
25 because he really was, you know, fixated on this

1 Ambien stuff, so possibly that is a risk factor.

2 So those are the psychosocial.

3 For the sexual offending risk factors, I noted
4 that he had problems with chronic sexual offending.
5 So he had four victims from '92 or '94 to 2008, so
6 15 to 17 years; that's pretty chronic. He, in my
7 opinion, had extreme minimization or denial of
8 sexual offending. So, for example, he blamed his
9 sexual offenses on his Ambien use. Like he told
10 me, "Like, I'm not disputing these allegations,"
11 but he wasn't disclosing of them. And then he had
12 some possible or partial psychological coercion in
13 his offenses, and that would be the grooming
14 behavior. So he manipulated his victims into
15 situations that he could offend against them.

16 And it was my opinion that he didn't have any
17 of the future plan risk factors. Those are things
18 like -- like future plans being unrealistic or
19 having negative attitude towards treatment or
20 supervision or intervention; he didn't demonstrate
21 those.

22 Q So you looked at the dynamic risk factors. What
23 are protective factors?

24 A So protective factors are -- I'm going to say a
25 newer thing, at least in the sexual offending

1 literature. And so purportedly or -- you know,
2 what protective risk factors are supposed to be are
3 -- they're supposed to be things that lower the
4 risk of reoffending, but it's not always known what
5 people mean when they talk about protective
6 factors. So is a protective factor the opposite of
7 a risk factor? So, for example, if somebody -- we
8 know that a risk factor is negative social
9 influences. So if you hang out with people that
10 commit a lot of crimes, that's a risk factor for
11 committing crimes. So is the opposite protective,
12 that, you know, if you hang out with good people,
13 that's going to protect you, or is it just the
14 absence of the risk factor that they just -- they
15 don't hang out with negative social influences?

16 So the research on protective factors is
17 really in its infancy. So a -- a lot have been
18 identified as being potential risk factors. They
19 might be identified in one study, but then not
20 replicated in another. So there are protective
21 factors that are -- come under investigation,
22 possible, but nothing that's really been
23 established because this is a newer way to look at
24 risk factors in offending.

25 Q Well, are these protective factors, what -- what

1 about empathy? Is -- how -- how does that play
2 into recidivism?

3 A So I think I mentioned this already today. Empathy
4 is something that I have to constantly remind
5 myself that this isn't a risk factor. So if
6 somebody, like, seems like they have no empathy for
7 their victim, like, even though that to me -- I'm
8 like, "Wow. Like, you can't describe the effect
9 that your behavior had on your victim?" To me that
10 should make somebody risky, but I have to remind
11 myself that's not a risk factor. So when you look
12 at the literature, there was an article by David
13 Thornton in 2013 and he noted that research has
14 consistently failed to find any relationship
15 between the degree to which offenders show empathy
16 for past victims and whether or not they go on to
17 offend again. So really unrelated.

18 The meta-analysis that I was talking about
19 that some clinicians will use to kind of guide
20 their thinking about dynamic risk factors. In that
21 article, it was noted that empathy is unrelated to
22 sexual recidivism, that there is a small
23 relationship between poor victim empathy and
24 violent offending that isn't sexual and general
25 offending, but nothing specific to sexual

1 offending.

2 Another paper from 2014 said that empathy
3 is -- is a risk factor for offending is far from
4 conclusive, that although people who have committed
5 sexual offenses might be, like, deficient in
6 empathy, it isn't predictive of sexual reoffending.
7 And so while we want somebody who has a lot of
8 empathy to say, "Okay. Great. That's a protective
9 factor," it really hasn't been shown in the
10 literature that they're related.

11 Q Well, let's talk about treatment. Has Mr. Daily
12 had any treatment?

13 A No.

14 Q And why is that significant to you, in your
15 opinion?

16 A So I noted in his records that he hadn't had
17 treatment, but I also talked to him about this.
18 And he said that he was approached when he was in
19 South Carolina Department of Corrections, and that
20 he was, like, approached to attend a 12-week -- he
21 called it a "class," but he asked to defer
22 attending that class until after a parole hearing.
23 And then he said that he never heard back after
24 that.

25 So this is significant because, as I

1 mentioned, this is a chronic condition that
2 somebody needs treatment for. If Mr. Daily could
3 control it, I don't think that he would have four
4 victims. This is something that he knew was wrong,
5 that he probably feels potentially shame about. He
6 was able to control himself from committing any
7 other kinds of offenses, but repeatedly, over this
8 long period of time, offending against prepubescent
9 victims.

10 So we know that he has the arousal and we know
11 that he currently has it from the PPG and we know
12 that he doesn't know what to do with it. He hasn't
13 had treatment to manage it, and that puts him at
14 high risk for producing a new victim. I kind of
15 talked to him at length about how he planned to
16 keep other people safe from him. And he,
17 essentially, told me, like, "This is a conversation
18 that I wish that was started when I was in the
19 Department of Corrections." Basically said, "I
20 don't know. If -- you know, if somebody told me,
21 'Okay. If you have a sexual thought about children
22 just go masturbate in the shower,' I'll do that."
23 But that's strange, because he says he hasn't
24 masturbated in five to seven years, and he
25 basically told me, "Like, you know, I actually have

1 no idea. I'm just saying, like, I'll do anything."
2 So this is a person who maybe genuinely wants to
3 not to reoffend, but has no idea how to manage that
4 arousal that he has. So to me that's really
5 significant that he doesn't know what to do with
6 it. He clearly needs treatment for it.

7 Q So, Doctor, putting -- putting everything we've
8 discussed together, what did you learn about Mr.
9 Daily's risk factors to reoffend?

10 A So it's my opinion that he is at high risk to
11 reoffend. So he only committed sexual offenses.
12 You know, he had a successful job. He had
13 supportive people in the community. I believe he
14 probably had empathy while he was offending, but
15 none of that really matters, because there's
16 nothing different -- nothing -- there's been no
17 intervention between when he was offending and now.
18 So he hasn't had treatment in prison. He doesn't
19 have realistic strategies of how he is going to
20 manage this arousal, and -- and it's clear that he
21 has the arousal. So he acted on the arousal at
22 least four times -- or four times and there's
23 nothing that he has demonstrated or that has been
24 done that suggests that he's going to be able stop
25 himself from acting on it again.

1 Q Did you discuss his future plans?

2 A Yes.

3 Q And what was his -- what's his plan if he's
4 released?

5 A So I asked about short-term and long-term plans, I
6 usually say, you know, short-time -- short-term is,
7 like, in the next year; long-term is, like, in the
8 next ten years. So he said that he wants to get
9 out -- excuse me -- and live with his family -- his
10 parents, so he's going to live with them. He wants
11 to get a job so he can, you know, provide to the
12 household. He wants to earn his own money so he's
13 not a burden to his parents.

14 His long-term plans, he said that he wants to
15 work with a pastor on continued rehabilitation and
16 spiritual growth. He'd like to find a lady who
17 would be willing to date him, and he said, "If
18 marriage becomes an option, I look forward to
19 that." He said he wants to be a productive member
20 of society again. He said -- regarding what he
21 needed from, you know, accountability and working
22 with the pastor, he said that, "You know, I had
23 these lewd act charges. I need to have an
24 accountability partner. Everybody needs support
25 and accountability." So those were his plans, move

1 in with his parents and get a job and seek
2 religious guidance and potentially counseling from
3 his religious leader.

4 Q So tell me, is there any difference in his support
5 system before he went into SCDC and his plans
6 after?

7 A By all accounts, his family was supportive of him
8 prior. They're still supportive of him per his
9 accounts, so no.

10 Q And why is that significant?

11 A So we know that having negative peer influences is
12 a risk factor, but we don't really know if having
13 positive is protective or not. It might be, but it
14 doesn't matter, because he had these positive
15 social influences and community support and support
16 of his family while he was offending. So there's
17 nothing that's changed. He had that support system
18 back then, so it isn't like now he has a brand-new
19 support system that might mitigate his risk.
20 Nothing has changed there. He had those -- that
21 system and that support while he was offending, and
22 he still has it.

23 Q Doctor, given all this, do you believe that Mr.
24 Daily is a candidate for outpatient treatment?

25 A Well, so per the statute, my consult question is:

1 Does the person have a mental abnormality or
2 personality disorder that makes them likely to
3 reoffend? And my opinion is that he does. So when
4 I think about inpatient/outpatient I don't think
5 about that for a case like this. That's -- as far
6 as I know, no one's asked me to make that opinion.

7 We don't have outpatient sexually violent
8 predator treatment in South Carolina. Other states
9 have tried it, but we don't have it here. So if
10 it's my opinion that the person is a sexually
11 violent predator, then it's my opinion that they
12 get civilly committed to an inpatient facility.

13 Q And, Doctor, wrapping up here, did you make any
14 conclusions about whether Mr. Daily presents a risk
15 to reoffend?

16 A Yes.

17 Q Is it your expert opinion that Mr. Daily suffers
18 from relevant mental abnormality?

19 A Pedophilic disorder, yes.

20 Q Is it your opinion that Mr. Daily's pedophilic
21 disorder affects his volitional control to the
22 extent it causes him serious difficulty in
23 controlling his behavior?

24 A Yes. I don't think that he can control it.

25 Q Why is that?

1 A Because he acted on it for many years. He was
2 confronted about it by, you know, the -- I believe,
3 the girlfriend -- the mother of the victim was his
4 girlfriend -- confronted about it previously, still
5 didn't stop doing it. Had willing sexual partners,
6 adult partners, he didn't engage in. I -- I think
7 there's a lot of things that suggest that he can't
8 control it. And then in asking him how he was
9 gonna control it, he really had no realistic
10 strategies, in my opinion, to manage this. So if
11 somebody can kind of lay out for me, "This is how
12 I'm going to prevent having a new victim," I put a
13 lot of weight on that. But, like I said, I don't
14 think that he wants to reoffend. I don't think
15 that he knows how not to.

16 Q Do you believe that Mr. Daily has the propensity to
17 commit future sexually violent offenses to such a
18 degree that he is likely to reoffend?

19 A Yes.

20 Q Do you believe that Mr. Daily's predisposition
21 poses a menace to the health and safety of others
22 if not committed to a secure facility for long-
23 term, controlled care and treatment?

24 A Yes. I mean, it's my opinion that if he is not
25 treated, he will act on this disorder, again.

1 Q And, finally, Doctor, do you have an opinion as to
2 whether Mr. Daily meets the criteria under the
3 statute to be found a sexually violent predator?

4 A Yes. It's my opinion he had those three lewd acts.
5 He has pedophilic disorder that he doesn't know how
6 to manage. That will make him likely to act on
7 that again if he doesn't get treatment, which he
8 needs.

9 Q Did you draw all your conclusions to a reasonable
10 degree of psychological certainty?

11 A Yes.

12 MR. RUNYAN: Thank you, Doctor. Please answer
13 any questions that Mr. Thompson may have.

14 THE COURT: Okay. Thank you.

15 Mr. Foreman and ladies and gentlemen,
16 we're going to recess for the day. Mr.
17 Thompson will ask some questions on what's
18 known as "cross-examination," but it's five
19 o'clock, and some folks have childcare issues,
20 I mean, they've got to pick up children from
21 daycare and that sort of thing, and we've
22 worked all day and you've -- you've been with
23 us every step of the way. So we're going to
24 recess for the evening.

25 Now, Mr. Foreman and ladies and

1 gentlemen, I charge you that you are not to do
2 any research. You're not to try to learn
3 anything about this case outside of this
4 courtroom. That -- that could cause a -- a
5 mistrial in this case. Please don't do any
6 research. Don't try to learn anything about
7 the case. Don't talk about the case. Again,
8 you can tell someone, family member, friend
9 that you're a juror, but don't talk about the
10 case until it's over and you have been
11 discharged, at which time you can talk about
12 it as much or as little as you like, okay?

13 I'm going to ask you to be back in the
14 morning, ready to work at 9 a.m. -- (To the
15 Clerk) We don't have anything before us, do
16 we?

17 THE CLERK: No, sir.

18 THE COURT: 9 a.m., okay. I'm here by eight
19 o'clock every morning. I'm encouraging you to
20 get here sometime after 8:30. The courthouse
21 opens at 8:30, right, Mr. Bailiff? Yep. At
22 8:30. These folks in the red coats make some
23 pretty good coffee around here, so I'm gonna
24 encourage you to come here and get yourself a
25 good cup of coffee in the morning. And I

1 think it's going be raining or supposed to be
2 according to the weather forecast, so you
3 might have -- need to have a chance to stow
4 your raingear, umbrellas, whatever you might
5 need, before we come to work here in the
6 courtroom.

7 So -- but we're going to take the bench
8 at 9 a.m. So get here before then, get you
9 some coffee, use the facilities, and we'll be
10 ready to work at 9 a.m. tomorrow morning. Mr.
11 Bailiff, if you'll take the jury out, please.

12 (WHEREUPON, the jury was excused at 5:01
13 p.m.)

14 THE COURT: Doctor, you certainly may be
15 excused for the evening. Have a good evening.
16 Enjoy our fine city while you're here. We
17 have some good restaurants around here.

18 THE WITNESS: Thank you.

19 THE COURT: I hope you'll be comfortable.
20 Don't talk to anyone about your testimony, and
21 we'll see you tomorrow morning at 9 a.m.

22 THE WITNESS: Thank you.

23 THE COURT: Anybody have anything before --

24 MR. THOMPSON: No, Your Honor.

25 THE COURT: Please be careful stepping down;

1 there's a little step there. More than one
2 have tripped.
3 THE WITNESS: Thank you.
4 THE COURT: Okay. We're going to be -- be
5 careful over there. We'll be in recess until
6 -- until nine in the morning. Anybody needs
7 me, again, I'll be here at eight o'clock. And
8 I'm happy to help -- anything I can do to help
9 you, I'm happy to do so in the morning. Okay.
10 We'll be in recess, and Madam Clerk you need
11 to go get your babies.
12 (WHEREUPON, Day 2 of the trial
13 concluded at 5:03 p.m.)
14 DAY 3 OF TRIAL – MARCH 16, 2022
15 THE BAILIFF: All rise. Come to order.
16 THE COURT: Thank you. Thank you. Please be
17 seated. Good morning.
18 THE COURT REPORTER: Good morning, sir.
19 MR. RUNYAN: Good morning.
20 MR. THOMPSON: Good morning.
21 THE COURT: We have everybody, don't we, Ben?
22 THE BAILIFF: Yes, sir. We do.
23 THE COURT: Everybody ready? We have all the
24 jurors.
25 MR. THOMPSON: Yes, Your Honor.

1 MR. RUNYAN: Yes, Your Honor.

2 THE COURT: Okay.

3 THE COURT: Doctor, if you'll come on back to
4 the stand, please.

5 THE CLERK: Judge?

6 THE COURT: Yes.

7 THE CLERK: She doesn't need to be sworn,
8 again, right?

9 THE COURT: No. She was previously sworn and
10 remains sworn.

11 (WHEREUPON, the jury came into open court
12 at 9:14 a.m.)

13 THE COURT: Please be seated. Mr. Foreman,
14 everybody ready?

15 THE FOREMAN: Yes, sir.

16 THE COURT: Okay. We're good. (To Mr.
17 Thompson) Yes, sir.

18 MR. THOMPSON: Thank you, Your Honor. Please
19 the Court.

20 THE COURT: Yes, sir.

21 MR. THOMPSON: Mr. Runyan and Ms. Shaw.

22 CROSS-EXAMINATION

23 BY MR. THOMPSON:

24 Q Let me turn it around and get started here. Good
25 morning, Doctor.

- 1 A Morning.
- 2 Q How are you today?
- 3 A Doing good, thanks.
- 4 Q I know you parked next to me in the garage this
5 morning, but I wasn't ignoring you. I just didn't
6 want to say anything to make people think we were
7 violating an order since you were still on the
8 stand.
- 9 I'm not going to go into everything that was
10 gone into yesterday, so this won't be as long. I
11 just want to highlight a few things.
- 12 The offenses that Mr. Daily committed, they
13 dealt with children or -- or daughters, I guess, of
14 people that he was in either a relationship with or
15 worked with; is that correct?
- 16 A Yeah. One was the daughter of a best friend, one
17 was a girlfriend, one was a coworker, yeah. All
18 acquaintances.
- 19 Q None of these children were strangers?
- 20 A Correct.
- 21 Q And they were children that he had known for some
22 time; is that correct?
- 23 A None of them were strangers; he cared for them. I
24 don't know how long he knew each of them, but he
25 hadn't met them on the day of the offences.

- 1 Q Okay. What is "grooming"?
- 2 A So, as I talked about yesterday, grouping --
- 3 grooming is kind of manipulating a person so you're
- 4 able to offend against them. So that can be giving
- 5 them special favors, you know, taking them on
- 6 vacation, to the beach, buying them things, giving
- 7 them money.
- 8 Q Okay. And, I believe, on each of the instances,
- 9 you indicated that the grooming occurred?
- 10 A Definitely on some of the instances. I'm not sure
- 11 every one; one he took to Myrtle Beach in his
- 12 camper. I'm trying to -- to think, let me look at
- 13 my report. On at least some of them --
- 14 Q At least some of them? Okay.
- 15 A -- there's evidence of grooming.
- 16 Q I -- I guess my question, what I'm trying to get to
- 17 is: He didn't just go down to the convenience store
- 18 and -- and commit a lewd act on a -- a little girl
- 19 in a store that he'd never met before?
- 20 A Correct.
- 21 Q And nothing in his history or in any of his testing
- 22 indicates that he might do something like that; is
- 23 that correct?
- 24 A That he would?
- 25 Q Pick a stranger in a store and just immediately

1 commit a sexual violent act against them.

2 A I mean, that's pretty rare in general. So,

3 typically, people offend against children that they

4 know; that they have gained the trust of the child.

5 Q And I believe you said that while he was locked up,

6 in his institutional conduct, there were no

7 offenses whatsoever?

8 A Correct.

9 Q Everything was good?

10 A Yes.

11 Q Now, in your -- I'm looking at Page 33 of your

12 report, about a little bit over halfway down the

13 page -- in your behavioral observations and mental

14 status exam that you -- you've got that report?

15 A I do.

16 Q Okay. You indicate, do you not, that his thought

17 process was logical and goal directed with

18 appropriate content --

19 A Correct.

20 Q -- correct? Okay. So there was nothing out of the

21 ordinary -- he wasn't psychotic or anything like

22 that?

23 A That's right. His thoughts were organized, linear,

24 logical, no evidence of disorganized thoughts or

25 something that would suggest major mental illness,

- 1 like schizophrenia.
- 2 Q Okay. And I believe that later in your report, at
- 3 some point, you indicate that there was no evidence
- 4 of him being a psychopath?
- 5 A Correct.
- 6 Q Okay. So from that, can I take -- take it to --
- 7 and maybe I'm reading between the lines wrong --
- 8 but can I take that to mean that he was in control
- 9 of what he was doing and knew what he was doing?
- 10 A At the time of my evaluation?
- 11 Q Or at the time of the offense.
- 12 A I mean, yeah. I think he was organized. I think
- 13 he knew what he was doing. I don't think it
- 14 occurred in the context of like a psychotic episode
- 15 or something like that, if that's what you mean.
- 16 Q So, now, he has been convicted, incarcerated; he's
- 17 been punished?
- 18 A Correct.
- 19 Q How does the fact that he's been punished play into
- 20 his -- his likelihood of offending again? In other
- 21 words, he -- he committed three or four offenses
- 22 prior to going to prison. How does being in prison
- 23 -- would that have an effect on his going forward?
- 24 A An effect on reoffending?
- 25 Q Yes.

- 1 A So for some people, just the idea of going to
2 prison, serving time in prison is a deterrent, but
3 he already had been questioned by police about his
4 conduct. He had been confronted by at least one,
5 maybe two of the victims' parents, so he had that
6 threat of, you know, being detected, being
7 incarcerated, and continued to offend.
- 8 Q There was a threat of it, but he had never actually
9 experienced it; is that correct?
- 10 A Correct, yes.
- 11 Q Okay. Let's talk a little bit about the PPG -- if
12 I can find it here. You say that there were two
13 types of tests you use: The Marshall -- a Marshall
14 set and a RCV, Real Child Voices?
- 15 A Two -- those are stimuli sets. So the audio that
16 he listened to came from two standard sets that we
17 use for all examinations. So not two tests; two
18 stimuli sets.
- 19 Q Now, on the Marshall set -- I'm looking for it. I
20 can't seem to find it in my notes here. I believe
21 you indicated on -- tell -- what's the Marshall
22 set? Tell us what that is first.
- 23 A So the Marshall is a little bit of an older set;
24 it's been used for a pretty long time. It was
25 developed by William Marshall, who's now, like,

- 1 very long retired. So it's -- it was created some
2 time ago. And it's a monotone male voice
3 describing the sexual scenarios.
- 4 Q Okay. And I believe in your report you indicate
5 that he did not meet the minimum requirement for a
6 valid Marshall test; is that right?
- 7 A Correct. Only the second set.
- 8 Q All right.
- 9 A The second stimuli set was valid.
- 10 Q Well, explain to us what you mean by "he didn't
11 meet the minimum requirement." What did not
12 happen?
- 13 A So when we interpret a penile plethysmography exam,
14 we're looking for what's called "clinically
15 significant arousal." So you want to look at the
16 changes to the circumference of the penis from
17 where they started at the baseline to their maximum
18 level of arousal. And we have a very conservative
19 cut score of what we say is clinically significant
20 arousal. And so, if they don't show arousal to the
21 trials -- any of the trials in that set to meet the
22 minimum threshold that we say it's clinically
23 significant arousal, then we say it's an invalid
24 test.
- 25 Q Okay. If -- well, let me ask this question: In

1 the Marshall set, are there photographs of young
2 prepubescent females?
3 A No photographs.
4 Q No photographs.
5 A It's all audio, so --
6 Q Oh, all audio.
7 A Yes.
8 Q So there's no photographs until you do the RCV?
9 A There are images before the audio on the Real Child
10 Voices stimuli set, yes.
11 Q So, now, the -- the PPG, basically, the results
12 were what you expected; is that correct?
13 A Yes.
14 Q And it's what we all know, he -- he has a
15 pedophilic disorder?
16 A Correct.
17 Q Okay. It didn't indicate anything else?
18 A That's right.
19 Q Now, these results, also of the PPG, were in line
20 with what he was convicted of, his offenses; is
21 that correct?
22 A Correct.
23 Q Nothing out of the ordinary there?
24 A No. The prepubescent female children was the only
25 trials that he was aroused -- showed clinically

- 1 significant arousal to.
- 2 Q Okay. Now, did you give a test, the -- the
- 3 Multiphasic Sex Inventory II?
- 4 A Yes.
- 5 Q And his results, were they in line with -- with
- 6 other admitting male sex offenders?
- 7 A They were similar to what's called "the reference
- 8 group of adult men convicted of sexual offenses."
- 9 Q So there's nothing unexpected there; is that
- 10 correct?
- 11 A I suppose that would be expected --
- 12 Q Okay.
- 13 A -- in regards to being similar to the reference
- 14 group.
- 15 Q And I believe you indicate in your report that this
- 16 test, the MSI II, indicated a potentially positive
- 17 response to treatment for Mr. Daily?
- 18 A Yes.
- 19 Q So I guess my question is: There's nothing really
- 20 out of the ordinary with him as to other sex
- 21 offenders who have -- who have offended in the way
- 22 he has, and he does appear to be receptive to
- 23 treatment; is that correct?
- 24 A Well, the treatment was mixed. So yes, there was
- 25 indication of positive in that it -- the test --

1 based on his responses he had, you know, good
2 verbal abilities. He'd probably be able to engage
3 in treatment if he were so interested or motivated,
4 but it also noted that he wasn't fully disclosing
5 of his sexual behaviors. He -- his responses
6 didn't show evidence of feeling guilty or ashamed
7 of any of his sexual behaviors. Test results
8 suggested he does not believe he needs to control
9 his sexual impulses and behavior, but then I noted
10 if motivation for treatment were to increase, his
11 test results suggest he may potentially be a
12 suitable treatment candidate. So both positive and
13 negative.

14 Q Then when you do your evaluation you do a -- a --
15 one of the tests you do is a Static-99 and Static-
16 2002R?

17 A Yeah. Those are one of the clinician-rated scales
18 that I talked about.

19 Q And those are the ones that are -- they're
20 basically actuarial?

21 A Correct.

22 Q Now, on the Static-99R, what did you -- what score
23 did you give him?

24 A He had a score of 2.

25 Q That's on a range of minus 3 to 12?

- 1 A Correct.
- 2 Q Minus 3 being the best and 12 being the worst?
- 3 A Yeah. Negative 3 being the lowest risk -- in the
- 4 lowest risk category; 12 being at the highest risk.
- 5 Q And he had a risk of 2 --
- 6 A Yes.
- 7 Q -- or a scoring of 2?
- 8 A Uh-huh. So the way the Static is broken up, it's
- 9 in risk categories. I believe a score of 2
- 10 averages in the third category. I need to look.
- 11 Q And that puts him at average risk; is that correct?
- 12 A Correct.
- 13 Q Now, being -- having a score of 2, the five-year
- 14 sexual -- in your report you say, "The five-year
- 15 sexual recidivism rate is 5.6"; is that correct?
- 16 Down at the bottom of Page 43.
- 17 A Yes. Well, that is people in the normative sample
- 18 when they were -- excuse me -- creating this test,
- 19 5.6 percent of people with the same score offended
- 20 within five years.
- 21 Q Okay. In other words, people in the same position
- 22 he's in, 5.6 percent of them would reoffend within
- 23 five years?
- 24 A People who had the same Static risk scores as him.
- 25 Q That's what I'm saying.

- 1 A Yes.
- 2 Q Okay. Now, I believe you also testified that there
3 was a new report that came out in 2020, and that
4 reduced that number to 4.6 percent; is that
5 correct?
- 6 A Correct.
- 7 Q So let's just round it up; let's say 4.6 is 5
8 percent. That means out of a hundred people, five
9 of them would reoffend?
- 10 A Correct. Right. But then when I went into the
11 percentile rankings, I think that gives you more
12 information, but, yeah, that's correct, 4.6.
- 13 Q And 95 percent of them, there would be no evidence
14 of them reoffending within five years; is that
15 correct?
- 16 A Correct. No detected sexual offense.
- 17 Q So how do we know which category Mr. Daily falls
18 under? Is he a 5 percent reoffender or a 95
19 percent nonoffender?
- 20 A Not sure I'm following.
- 21 Q Okay. Is there any way you can tell whether or not
22 Mr. Daily is going to fall in that 5 percent of
23 people that will reoffend, or remain in that 95
24 percent of people who's not detected to reoffend?
- 25 A From the Static-99, no. So it just gives you the

1 percentages of detected offenses for people with
2 the same risk score, but that's why you don't
3 solely rely on any data point but, also, it's
4 Static-99. So you, also, look at dynamic risk
5 factors, including diagnoses.

6 Q I understand. The Static-2002R was also a score of
7 2; is that correct?

8 A Yes.

9 Q And those percentages are about the same on that;
10 is that correct?

11 A Correct.

12 Q You gave a -- an example in your testimony that
13 this is kind of like a life insurance company that
14 can never predict when you're going to die?

15 A That's right.

16 Q So this is -- am I correct in saying this is simply
17 a number that's never going to predict whether or
18 not he can reoffend?

19 A Well, it gives you a better estimate of what risk
20 grouping, based on Static factors, he belongs to,
21 but there's no test, or anything, unless somebody
22 says, "When I get out, I'm planning to reoffend."
23 There's nothing that's gonna tell you for a hundred
24 percent.

25 Q Okay. Just like in life insurance, even though

1 they do actuarial studies, there's no way they can
2 tell the exact date you're gonna die?

3 A That's right.

4 Q Now, in the sexual violent risk -- and I can't tell
5 if that's 20 or 2.0 -- I believe in that as you
6 indicated that that's one of -- that's one of the
7 dynamic factors, correct?

8 A Correct.

9 Q And you indicated that he didn't have any future
10 plans -- he did not have any of the future plans
11 that are risk factors; is that correct?

12 A Right. So in the three categories of dynamic risk
13 factors that are assessed on the SVR-20, it was my
14 opinion that he didn't have any of the three risk
15 factors that fall in the future plan risk factors.

16 Q Okay. And, Doctor, we're -- we're all in
17 agreement, I think, that -- and in no way to deny
18 the fact that he was convicted of these offenses?

19 A Correct.

20 Q And I think we're all in agreement that he has a
21 mental abnormality of this pedophilic disorder?

22 A Yes.

23 Q But the issue now is where do we go from there? I
24 believe one of the things is you -- you believe
25 that he doesn't have a support system when he gets

1 out. He's had that in prison, but not when he gets
2 out; is that correct? A sufficient support system?

3 A No. I think it sounds like he has a really well-
4 established support system.

5 Q Okay. But didn't you testify that he had that same
6 support system when he was reoffending?

7 A When he was offending, it appears that nothing has
8 changed in his support system. It sounds like he
9 had a good support system while he was offending,
10 and that he remains to have that support system.

11 Q And I believe you testified that part of your work
12 you do with MUSC is federal probation?

13 A I do.

14 Q What -- what do you do for federal probation?

15 A So as the director of the clinic I manage the
16 contract. I submit all the monthly reports, all
17 the kind of paperwork to be in compliance with the
18 contract. I see right now, I think, two people on
19 an individual basis for treatment. Once a month, I
20 oversee all the treatment providers who do the
21 group treatment, individual treatment, and then I
22 do, I'd say, 95 to a hundred percent of the
23 treatment assessments.

24 So when they get out of federal prison and
25 they're referred to MUSC for services, we do an

1 evaluation -- a treatment evaluation. So we do all
2 the testing, we do a PPG, figure out a diagnosis,
3 risk level, and then create treatment targets from
4 that.

5 Q Well, it sounds to me like you're saying that you
6 do treatment. There is outpatient treatment for
7 people on probation?

8 A Yeah. It's mandated by federal probation that they
9 get treatment.

10 Q Are you aware of any conditions on Mr. Daily when
11 he gets out?

12 A Yes. So he has the five years of probation that I
13 believe already started. Let me see. He'll be --
14 let me look and see. Let's see. So according to,
15 I believe, an attorney from the Department of
16 Probation, Parole, and Pardon Services in South
17 Carolina, he said, "Mr. Daily was given a split
18 sentence of 15 years, suspended to ten active and
19 five years probation. His active sentence expired
20 on January 31st of 2020, which would have seen the
21 activation of his probation sentence. Due to the
22 'Miller' decision his probation cannot be tolled
23 due to the involuntary commitment, so his probation
24 is scheduled to end on January 30th, 2025,
25 regardless if he is in the community, waiting on an

1 SVP trial, or committed to the SVP program.

2 "Regardless of whether he has probation left
3 or not, he'll be required to wear a GPS device upon
4 his release and for as long as he resides in South
5 Carolina. Outside South Carolina, he would be
6 subject to whichever state's laws he chooses to
7 reside. Ten years after the device is put on,
8 he'll be eligible to petition the Court for removal
9 of the device."

10 Q Okay. Now, he will be supervised - are you aware
11 of the fact he'll be supervised by a -- I'll call
12 it a "specialized agent in probation" who deals
13 with sex offenders?

14 A I don't work with state probation, but I would
15 appreciate that that probably is how it works.

16 Q Okay. So you don't know whether they have any
17 conditions or anything like that?

18 A I mean, typically, people on probation have
19 conditions.

20 Q Right. But you don't know whether or not one of
21 the conditions would be that he seek treatment?

22 A I don't know that for a fact, but it would be
23 likely that that would be a requirement.

24 Q Well, in -- in the federal system they require
25 treatment, correct?

- 1 A Yes. They are referred for services, and then
2 based on our treatment evaluation, they kind of go
3 off of that.
- 4 Q And those people are out on the street; they're not
5 confined to a facility?
- 6 A That's correct.
- 7 Q And let me make sure I'm not misstating you. You
8 find that he does need treatment?
- 9 A Definitely.
- 10 Q And I believe in response to Mr. Runyan's questions
11 yesterday, you said you had not rendered an opinion
12 as to whether it should be inpatient or outpatient?
- 13 A Well, it's not part of the referral questions, so
14 as I mentioned yesterday, when I get a referral for
15 this kind of evaluation, the consultation question
16 is: Does the person who has been convicted of
17 sexually violent offenses, do they have a mental
18 abnormality or personality disorder that makes them
19 likely to reoffend if not committed?
- 20 Q The key word here, I guess, is "likely" to
21 reoffend; is that correct?
- 22 A Yes.
- 23 Q And that's the issue in this case?
- 24 A Yes.
- 25 Q And your Static-99 and Static-2002 -- and I know

- 1 you don't take everything by itself, but those two
2 tests indicate that he's likely not to reoffend?
- 3 A Yeah. It put him at the average -- at the average
4 level compared to other people convicted of sexual
5 offenses.
- 6 Q With a 5 percent chance of reoffending, and a 95
7 percent chance of not reoffending --
- 8 A Well, it's not --
- 9 Q -- approximately?
- 10 A -- specific to him, so it's not a 5 percent chance
11 that he'll reoffend. It's people who have the same
12 Static scores as Mr. Daily, 5 percent of them
13 reoffended in a five-year period.
- 14 Q There's no way you can predict who's gonna do what?
- 15 A Correct. Right.
- 16 Q But --
- 17 A Not with a hundred percent certainty.
- 18 Q But in that group as a whole, people with a score
19 of 2 -- and I don't know how many thousands of
20 people are in that group, but 5 percent of them
21 reoffend and 95 percent don't?
- 22 A Correct. Five percent of them had detected sexual
23 offenses.
- 24 Q So somebody in that group is likely not to
25 reoffend; is that correct?

1 A Based on the Static factors of the -- yeah -- of
2 people with a 2 only 5 percent of those people --
3 or 4.6 -- reoffended.

4 MR. THOMPSON: (To the witness) Bear with me
5 just a minute. I think I'm close to the end
6 here. Oh, I'm gonna ask one other question.

7 CROSS-EXAMINATION CONTINUES

8 BY MR. THOMPSON:

9 Q Do you -- you work for MUSC, or do you work for an
10 independent lab?

11 A No. The Sexual Behaviors Clinic and Lab is in the
12 Department of Psychiatry at MUSC.

13 Q Is MUSC a state-funded agency?

14 A Yes.

15 Q They're funded by the state?

16 A Yes. So University is state-funded, and then we
17 have MUSC Physicians Group, that's the for-profit
18 part, but I'm a State employee.

19 Q But the attorney general has to pay \$5600 to have
20 an opinion from MUSC?

21 A That's -- yeah. How much the evaluation costs.

22 Q So one state agency is paying another state agency?
23 One state agency, the attorney general, is paying
24 another state agency, MUSC?

25 A Correct.

1 MR. THOMPSON: (To the witness) Thank you.

2 THE COURT: (To Mr. Runyan) Anything?

3 MR. RUNYAN: Yes, Your Honor. Briefly.

4 THE COURT: Okay.

5 MR. RUNYAN: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. RUNYAN:

8 Q Dr. Gottfried, there was some -- some questioning
9 about whether or not Mr. Daily's victims were
10 strangers or whether he knew them or not. Can you
11 tell us, you know, why -- why is that significant?
12 Why is a stranger significant versus somebody that
13 you would know?

14 A So in terms of just thinking about risk factors,
15 Static score, if you -- if the person knew their
16 victim for less than 24 hours, that would make them
17 a stranger, and that would get them an extra point
18 on the Static; so it's a risk factor. And it's a
19 risk factor because it's unusual, so it's unusual
20 that somebody would -- you know, stranger-danger,
21 abduct a child. Typically, people who offend
22 against children get close to the family, you know,
23 gain the trust. So taking someone off the
24 playground, you might hear about it in the news,
25 but that's pretty rare.

1 Q So is the fact that he knew these children -- or
2 that they weren't strangers, does that fact make
3 him not a risk to reoffend?

4 A No.

5 Q Now, you were asked about institutional misconduct
6 and you -- you said, like you did yesterday, that
7 he was not charged with institutional misconduct?

8 A I have no record that he had any charges within the
9 institution.

10 Q Was there anything in his criminal history that
11 would suggest that he would have difficulty in
12 prison?

13 A Nothing from his criminal history, because it was
14 all sexual offenses against children, and there are
15 no children in SCDC.

16 Q Now, you were talking about -- you were asked about
17 the MSI II, and I believe you just testified that
18 that he was positive and negative. I think you
19 said there were some -- some instances of him not
20 disclosing; you said not being ashamed or guilty.
21 And could you explain why not -- not disclosing or
22 not being forthcoming about your offenses is a
23 risk?

24 A Well, it isn't -- on its own it's not necessarily a
25 risk. So we know that denial of your offenses,

1 when you enter treatment, is not predictive of
2 reoffending. However, to be successful in
3 treatment, it's really important to figure out why
4 you were offending, what kind of drove you to that,
5 what you told yourself to make it okay. So it's
6 important to at least be open with yourself, and
7 figure out a strategy so that you don't create new
8 victims.

9 Q Is it your opinion that Mr. Daily has -- has these
10 strategies necessary to help him?

11 A No. I don't think that he has strategies. I mean,
12 during my evaluation, he said, "I wish that this
13 was a conversation that occurred when I was still
14 in prison. You know, I'll do whatever it takes,
15 but I really have no idea." That was the part
16 where he said, you know, "If -- if it was
17 recommended that I step in the shower and
18 masturbate to prevent that," that he would do that,
19 just inconsistent with him saying he hadn't
20 masturbating in five to seven years. So I think he
21 wants to have a realistic strategies, but he hasn't
22 received treatment, and I don't think that he has
23 any.

24 Q Now, you said he -- he wished that happened in
25 prison? But --

- 1 A Yes.
- 2 Q -- wasn't he approached for treatment in prison?
- 3 A He reported that he was approached to attend a "12-
- 4 week class," is what he called it, that he asked to
- 5 defer until a parole hearing, and then he said he
- 6 was never approached again.
- 7 Q Now, the Static-99R is -- there was a lot of talk
- 8 about the Static-99R. Did you perform a Static-99R
- 9 and render your opinion?
- 10 A No. I did a battery of tests.
- 11 Q So you don't solely rely on the Static-99R?
- 12 A No.
- 13 Q But it is used in forensic psychology as a tool?
- 14 A It's widely used, yes.
- 15 Q Widely used to assess risk?
- 16 A Yes.
- 17 Q Now, there was a lot of talk about the 99R and the
- 18 five-year recidivate, and I think you said that --
- 19 well, in your report it was 5.6, but under the new
- 20 guidelines that you quoted from the -- I think it's
- 21 the 2020 guidelines that came up from the creators,
- 22 that it was 4.6 --
- 23 A Correct.
- 24 Q -- on the five-year.
- 25 A Yes.

- 1 Q Mr. Thompson didn't ask you about the ten-year re-
2 offense rate. What's -- what's the ten-year re-
3 offense rate?
- 4 A The ten-year was 7.2.
- 5 Q 7.2? So 4.6 to 7.2, so it -- it almost doubles
6 after ten years; is that correct?
- 7 A Yes.
- 8 Q So are the Static -- the Static -- the Static-99R
9 developers saying that risk recidivate increases
10 over time?
- 11 A I suppose, because that number is larger. We know
12 that a lot of people who recidivate, recidivate
13 within five years or shortly after they're
14 released, but in the normative sample, people who
15 were scored a 2 on the -- on the Static-99R, when
16 they followed them for ten years, 7.2 reoffended.
- 17 Q Now, the developers put a 2 -- score of 2 in the
18 average risk category, correct?
- 19 A Yes.
- 20 Q I think you testified that's not the lowest
21 category, correct?
- 22 A No.
- 23 Q What is the lowest category?
- 24 A So there are five risk levels. So the first is
25 very-low risk; that's a negative 3 or a negative 2.

1 There's below-average risk, which is a negative 1
2 or a zero on the Static, and then he was in the
3 average risk.

4 Q And then it goes up two more from there?

5 A Yes. There's above-average risk, and a well-above
6 average risk.

7 Q So the developers of the Static-99R, when they're
8 doing these actuarial assessments, the numbers that
9 they use, they didn't put a 2 in the bottom; they
10 put a 2 average. It's in the middle --

11 A Correct.

12 Q -- of their assessment of what risk is in that
13 measure, correct?

14 A Yes. There's two categories below and two above.

15 Q Now, you testified that -- or were asked if people
16 that scored a 2 -- you know, people who scored a 2,
17 five out of a hundred would go on to reoffend, and
18 95 out of a hundred would not go on to reoffend.
19 But you testified yesterday -- just tell us what --
20 what percent of sexual crimes are -- go unreported
21 or go reported?

22 A I mean, because they go unreported, it's difficult
23 to have an exact number, but there has been a lot
24 of research where they survey large groups of the
25 population and find staggering numbers of people

- 1 who have been sexually offended against. And so
2 kind of from that they extrapolate and try to
3 predict, and they say only about up to 30 percent
4 of people report their offenses.
- 5 Q And Static-99 and Static-2002 are only based on
6 offenders who have been detected reoffending?
- 7 A Correct. Detected offenses.
- 8 Q Now, it -- Doctor, did Mr. Daily offend without
9 detection?
- 10 A I'm sorry?
- 11 Q Did Mr. Daily offend without detection?
- 12 A Eventually, he was detected.
- 13 Q Eventually, but how many years -- what was the span
14 of years he had offended?
- 15 A The first one was reported to have occurred
16 sometimes -- sometime between 1992 and 1994, up to
17 2008 or '6.
- 18 Q And up until 2008, he had not been detected
19 offending?
- 20 A Correct.
- 21 Q Now, you were asked about a support system, you
22 know, you had testified yesterday that his support
23 system was the same now as it -- as it was. And
24 could you just tell us, again, why that support?
- 25 A So we know that negative social influences is a

1 risk factor, and so I discussed that we don't
2 exactly know what the role of positive. So if you
3 think about protective factors, if it's the absence
4 of a risk factor, then the presence of a positive
5 support network could be protective. However, to
6 me it doesn't matter as much, because this isn't
7 like a new support system that he has. According
8 to his report and -- and collateral documents, he
9 had support of family, you know, coworkers, when he
10 was offending. So it isn't as though he went to
11 prison and now he's developed this whole new
12 support system that is going to be protective. To
13 me, nothing has changed; he has the same support
14 system as when he was offending.

15 Q Now, you were also asked about your -- your work
16 with the federal probation?

17 A Yes.

18 Q And you said under the federal probation there is a
19 system where they -- they come to you for
20 assessment and treatment --

21 A Yes.

22 Q -- under sex offenders -- federal sex offenders,
23 correct?

24 A Yes.

25 Q Is there a comparable state probation program?

1 A There is, I believe some of them attend our groups,
2 but we don't specifically have a contract to do
3 services with South Carolina Probation.

4 Q Now, finally, this is the last question, Doctor. I
5 think you testified -- Mr. Thompson asked you about
6 -- you would not have rendered your opinion if you
7 didn't believe that he needed to be committed for
8 long-term control, care, and treatment; is that
9 correct?

10 A Correct. It's my opinion that he has a mental
11 abnormality that makes him likely to reoffend if
12 not committed and gets treatment.

13 Q And -- I'm sorry. I have one more, too, so I
14 apologize. So when you were considering this
15 opinion that he needed -- that he met the criteria
16 and he needed to be commitment -- committed, did
17 you -- you knew that he had probation? You knew
18 that he was going to be under GPS monitoring?

19 A Yes.

20 Q You knew that his probation would go through 2025?

21 A Yes.

22 Q And you considered all that?

23 A Yes.

24 Q And it's still your opinion that he needs to be
25 committed for involuntary --

1 A Yes.

2 Q -- civil commitment?

3 MR. RUNYAN: (To the witness) Thank you.

4 I'll take that.

5 THE COURT: (To Mr. Thompson) Nothing?

6 MR. THOMPSON: Nothing.

7 THE COURT: Doctor, you may step down. Please

8 be careful.

9 THE WITNESS: Thank you.

10 (WHEREUPON, the witness was excused.)

11 THE COURT: Counsel?

12 MR. RUNYAN: Your Honor, we have nothing -- no

13 -- no further witnesses.

14 THE COURT: No further witnesses from the

15 State. And so --

16 MR. RUNYAN: The State rests.

17 THE COURT: -- the State's rested?

18 MR. RUNYAN: Yes, sir.

19 THE COURT: Okay. Mr. Foreman, ladies and

20 gentlemen of the jury, I -- I told you there

21 would be some matters of law that I would have

22 to take up. This is one of those points that

23 I'm -- I'm gonna have to take up something

24 outside of your presence. It has to do with a

25 -- about a question of law -- a matter of law.

1 With that, don't talk about the case. Mr.
2 Foreman, if you'll take your jury out. We
3 won't be very long at all.

4 (WHEREUPON, the jury was excused at 9:51
5 a.m.)

6 THE COURT: Matters from the State?

7 MR. RUNYAN: Your Honor, we would just ask
8 that Dr. Gottfried be released from her
9 subpoena?

10 THE COURT: Any objection?

11 MR. THOMPSON: No objection.

12 THE COURT: Doctor, you're released from your
13 subpoena. You may stay or go, whichever you
14 choose.

15 THE WITNESS: Thank you.

16 THE COURT: Any other matters from the State?

17 MR. RUNYAN: No, Your Honor.

18 THE COURT: Okay. From the Defense?

19 MR. THOMPSON: Your Honor, we would make the
20 motion for a directed verdict. Our argument
21 would simply be that, under the statute, the
22 State has probably proven that he has a mental
23 -- or they have at least put up information he
24 has a mental abnormality. We think that they
25 have failed to prove that mental abnormality

1 is likely to make him engage in acts of sexual
2 violence if not confined. And confined is --
3 is honestly the key to this case.

4 THE COURT: From the State?

5 MR. RUNYAN: Your Honor, when ruling on a -- a
6 directed verdict motion, the Court needs to
7 look at the evidence in the light most
8 favorable to a nonmoving party. And it's not
9 -- the Court must look not just at the weight
10 of the evidence, but the -- just the existence
11 of evidence. And I think in this case, the
12 statute says there's two things that we have
13 to show: One, that he has been convicted of a
14 sexually violence offense. I think we've
15 shown that; he has three counts of lewd acts.
16 We often -- also, have to show that he suffers
17 from mental abnormality and personality
18 disorder that would make him likely to commit
19 acts of sexual violence if not confined for
20 long-term control, care, and treatment. I
21 think Dr. Gottfried testified that she did
22 diagnose him with pedophilic disorder,
23 exclusive type, sexually attracted to females,
24 and she gave a diagnostic criteria on how he
25 met that. She also talked about the Static --

1 the Static risk factors, his dynamic risk
2 factors, and how these -- he shows no insight
3 into how he's going to control himself if he
4 is released. I think that's enough to
5 establish the evidence and send this to the
6 jury.

7 THE COURT: Yeah. The Court doesn't weigh the
8 evidence in a directed verdict motion. It --
9 it -- it only determines whether or not
10 there's a scintilla or any evidence as our --
11 our courts have -- our appellate courts have
12 said, and if there is, then it's to the finder
13 of fact, which is the jury, and it should go.
14 And so the Court finds that there is some
15 evidence, not weighing the evidence, but there
16 is some, and I'll let it go to the jury.

17 Anything else?

18 MR. THOMPSON: No, sir. I just -- to be
19 honest with you Judge, I -- I knew the outcome
20 of that one. It's rather a stupid motion to
21 make, but in order to preserve the field, you
22 have to make it.

23 THE COURT: We've all known each other a long
24 time, Mr. Thompson --

25 MR. THOMPSON: Yeah.

1 THE COURT: -- and worked together in the
2 past.

3 Okay. While the jury is out, I'm going
4 to take time to refresh this coffee cup.
5 Anybody want to refresh yourself, we'll take
6 about five minutes real quick here. I'm just
7 going to grab some more coffee, and we'll be
8 ready to go.

9 (Off the record from 9:55 a.m. until
10 10:03 a.m.)

11 THE BAILIFF: All rise and come to order.

12 THE COURT: Thank you. Thank you. Please be
13 seated. Okay. Everybody ready?

14 MR. THOMPSON: Yes, sir.

15 MR. RUNYAN: Yes, Your Honor.

16 THE COURT: Okay. (To the bailiff) We'll
17 have our jury.

18 THE BAILIFF: Yes, sir.

19 (WHEREUPON, the jury came into open court
20 at 10:06 a.m.)

21 THE COURT: Thank you. Please be seated. Mr.
22 Foreman, everybody ready?

23 THE FOREMAN: Yes, sir.

24 THE COURT: Okay.

25 MR. THOMPSON: Your Honor, we would call Dr.

1 Christopher Gillen to the stand.

2 THE COURT: Doctor, come up and be sworn.

3 (WHEREUPON, the witness was sworn.)

4 THE COURT: Doctor, if you'll adjust that
5 microphone to suit yourself, and please tell
6 us who you are; and spell your last name for
7 Madam Court Reporter, please.

8 THE WITNESS: My name is Dr. Christopher
9 Gillen. Last name is spelled G-i-l-l-e-n.

10 THE COURT: Thank you. Counsel?

11 MR. THOMPSON: Thank you, Your Honor.

12 VOIR DIRE DIRECT EXAMINATION OF DR. CHRISTOPHER GILLEN

13 BY MR. THOMPSON:

14 Q Dr. Gillen, where are you employed?

15 A I'm currently employed with the South Carolina
16 Department of Mental Health as a psychologist.

17 Q Okay. And let's -- let's go into your background,
18 first. What is your education?

19 A I have a doctorate in clinical psychology, which I
20 received in 2018 from the University of Southern
21 Mississippi. So I have a master's degree in
22 psychology from Carlton University, as well as a
23 bachelor's degree from Carlton University in
24 psychology.

25 Q Okay. And when did you go to work for MUSC?

- 1 A I've never been employed --
- 2 Q Not MUSC, I'm sorry. Department of Mental Health?
- 3 A I started working there in October of 2019.
- 4 Q Okay. Have you testified in court before?
- 5 A I have, yes.
- 6 Q Do you have any idea how many times?
- 7 A Five times in South Carolina.
- 8 Q Okay. And has that testimony been for the State or
- 9 for respondents?
- 10 A Both.
- 11 Q So you -- you've testified for both the State and
- 12 individuals?
- 13 A Yes.
- 14 Q Different cases or same case?
- 15 A All five were separate cases; all were sexually
- 16 violent predator cases.
- 17 Q Okay. Are you licensed in the State of South
- 18 Carolina?
- 19 A I am. I am licensed as a psychologist in this
- 20 state.
- 21 Q Have you had any specific training in forensic
- 22 psychology?
- 23 A I have, yes. Prior to getting my job at the
- 24 Department of Mental Health, I completed a one-year
- 25 post-op for fellowship in forensic psychology in

1 Madison, Wisconsin, at their main forensic
2 hospital. It included two different rotations.
3 One, at the sexually violent person facility that
4 they have in Wisconsin, where I received training
5 on how to conduct treatment with those individuals,
6 as well as conduct evaluations for the sexually
7 violent person law there. And then the other half
8 of it was with competency to stand trial, criminal
9 responsibility, evaluations, and training in that
10 area, as well.

11 When I was an intern, so the year before I was
12 in Wisconsin, I also completed specialized
13 rotations in forensic psychology to include
14 domestic violence risk assessments, waiver -- or
15 transfer of juveniles to adult court, conducting
16 those evaluations, as well as competency in
17 criminal responsibility evaluations with adults and
18 juveniles, as well.

19 Q Is that the type of work you've done since you've
20 been with the Department of Mental Health?

21 A Since I've been at the Department of Mental Health,
22 primarily, I've been conducting sexually violent
23 predator evaluations. I've also been working on
24 some psychological referral questions from our main
25 forensic hospital, as well.

1 MR. THOMPSON: Your Honor, at this time, we
2 would offer Dr. Gillen as an expert in
3 forensic psychological evaluations,
4 particularly as to sexual behavior.

5 THE COURT: (To the State) Questions?

6 MS. SHAW: Your Honor, I just have a few voir
7 dire questions.

8 THE COURT: Sure.

9 MS. SHAW: If I can just ask him from here, if
10 that pleases the Court?

11 THE COURT: Sure.

12 VOIR DIRE CROSS-EXAMINATION

13 BY MS. SHAW:

14 Q Good morning, Dr. Gillen.

15 A Good morning.

16 Q Now, you -- you were the court appointed evaluator
17 in this case, correct?

18 A Yes. That's -- that's correct.

19 Q Okay. And you hold a South Carolina license to
20 practice psychology?

21 A Yes. That's correct.

22 Q Okay. Now, are -- now, this was a precommitment
23 evaluation. Are there different types of sexually
24 violent predator evaluations that you do as part of
25 your duties?

1 A Uh-huh. Yes. So I -- I conduct both annual review
2 evaluations. So those are the evaluations for
3 individuals who have already been committed to the
4 sexually violent predator treatment program to
5 determine whether their mental abnormality or
6 personality disorder has so changed as part of the
7 treatment program. And then, also, conducting the
8 precommitment evaluations like on individuals like
9 Mr. Daily.

10 THE COURT: Counsel, if you could speak a
11 little louder, Madam Court Reporter is giving
12 me the --

13 MS. SHAW: I'm sorry, Your Honor. I'm
14 naturally very soft spoken I will do my best.

15 THE COURT: Thank you.

16 MS. SHAW: (To the court reporter) Is that
17 better?

18 THE COURT REPORTER: Uh-huh.

19 MS. SHAW: Okay.

20 VOIR DIRE CROSS-EXAMINATION CONTINUES

21 BY MS. SHAW:

22 Q So, Dr. Gillen, at the time you did this
23 evaluation, how many evaluations of both types had
24 you conducted?

25 A I'm not sure on the exact number at this point.

1 There was definitely one prior precommitment that I
2 had completed and one or two annual reviews. I
3 can't remember off the top of my head, but that --
4 that's ballpark how many I had completed at that
5 time.

6 Q Okay. And at this point in time, how many have you
7 done?

8 A I believe, in total, it's around 60. Let me just
9 check, 64. I've completed 64 sexually violent
10 predator evaluations in my time here in South
11 Carolina.

12 Q And what percentage -- or how many of each type of
13 evaluation, at this time, have you completed?

14 A Nine of those have been the precommitment
15 evaluations; the rest have been annual review
16 evaluations.

17 Q But this was your first one, right?

18 A Sorry?

19 Q This was your first one?

20 A I believe this was the second precommitment
21 evaluation that I worked on with Dr. Tross. So
22 both the first one and this one. I worked on this
23 case with the more -- more senior psychologist that
24 was also employed through the Department of Mental
25 Health.

1 Q And how many times have you been qualified -- you
2 may have already answered this question?

3 A Five -- five total times.

4 Q All right. And are you a member of any
5 professional organizations, like the ATSA or Law
6 and Psychology Society?

7 A Yeah. I'm a member of the American Psychology-Law
8 Society.

9 Q Okay. But you're not a member of the ATSA?

10 A ATSA, yes. Yeah. That's correct. I'm not a
11 member of ATSA.

12 MS. SHAW: Your Honor, at this time we have no
13 objection to qualifying Dr. Gillen as an
14 expert in clinical forensic psychology as Mr.
15 Thompson asks.

16 THE COURT: Thank you. Ladies and gentlemen,
17 this witness is now qualified as an expert in
18 his field of forensic psychology.

19 CROSS-EXAMINATION CONTINUES

20 BY MS. SHAW:

21 Q Dr. Gillen, you were not here yesterday during Dr.
22 Gottfried's testimony, were you?

23 A That's correct.

24 Q I'm going to try to not go back through everything
25 that we did yesterday to -- for the establishing of

1 some of her opinions. You're in agreement, are you
2 not, that Mr. Daily has the three lewd act
3 convictions on his record?

4 A Yes.

5 Q And a ABHAN conviction?

6 A Yes.

7 Q We won't go back into the details of those. In
8 your evaluation of Mr. Daily, do you also agree
9 that he suffers from a mental abnormality?

10 A I do.

11 Q And what is that mental abnormality?

12 A I believe he has pedophilic disorder.

13 Q Okay. Briefly, can you tell us what -- what caused
14 you to believe he has pedophilic disorder?

15 A So it's looking at his offense history, (To the
16 jury) besides Mr. Thompson just mentioned the four
17 convictions of sexual offending. They took place
18 over a period of time, greater than six months to
19 include the 1990s up until 2008, at the time of his
20 arrest. The specifier that I added to that
21 diagnosis, I believe, was similar to Dr.
22 Gottfried's, which was the exclusive type. The
23 reason for that being that Mr. Daily did not have
24 sexual relationships with adults throughout his
25 life. He reported being celibate, so his sexual

1 acts or behavior was exclusively with -- with the
2 children that he had the convictions for. So based
3 on that and that pattern of behavior, that's what
4 led to me making that diagnosis.

5 Q Did you find any other mental abnormalities with
6 Mr. Daily?

7 A No.

8 Q What about any personality disorders?

9 A No. Mr. Daily does not meet criteria for a
10 personality disorder.

11 Q Now, while he was incarcerated, did you have access
12 to records to do this evaluation?

13 A Yes. Yeah. I did a thorough review of the records
14 to include records from his imprisonment, the
15 Department of Corrections, the investigative
16 records from police outlining his charges and
17 convictions for the sexual offending to include
18 others.

19 Q Was there any indication from his Department of
20 Corrections' records that there had been any
21 disciplinary problems or mental health issues?

22 A None.

23 Q Did his records from the Department of Corrections
24 indicate the residence he lived in and any
25 conditions of that residence in the Department of

1 Corrections?

2 A Would you be able to clarify?

3 Q Yeah. As to where he was housed, was there

4 conditions to remain housed in that unit? Do you

5 know what unit he was housed in?

6 A Not off the top of my head, but I believe it was a

7 character-based unit that he was residing in for a

8 period of time while he was in the Department of

9 Corrections.

10 Q Okay. And was there conditions to remain in that

11 unit?

12 A I'm sorry. Could you repeat that again?

13 Q Was there conditions that Mr. Daily had to meet to

14 remain in that unit?

15 A I'm not sure what the specific conditions of

16 remaining in the character-based unit are.

17 Generally, from my understanding, there does need

18 to be appropriate conduct, behavioral conduct, as

19 to remain a member on -- on that sort of unit in

20 prison.

21 Q And did you talk with certain people in the

22 Department of Corrections concerning Mr. Daily's

23 conduct?

24 A Yes. And I talked with, I believe, at least three

25 different SCDC or Department of Corrections

- 1 employees who knew Mr. Daily, knew him from his
2 employment while he was in prison, as well as knew
3 him from his unit that he was on. All those
4 individuals I talked to provided a similar account
5 that he did not exhibit any behavioral problems,
6 followed rules, did well in the prison environment.
- 7 Q Now, you heard Doctor -- this morning you were
8 present for Dr. Gottfried's testimony, correct?
- 9 A I was, yes.
- 10 Q Did you do a 99R on Mr. Daily?
- 11 A Yes. Yeah. I completed a Static-99R scoring on
12 Mr. Daily.
- 13 Q Okay. And what score did you get?
- 14 A I, also, scored him a 2 on that particular measure.
- 15 Q And what range did that fall in?
- 16 A That falls in the average range.
- 17 Q And what is the -- did you do a 2002R?
- 18 A Yes. I, also, scored the Static-2002R for Mr.
19 Daily.
- 20 Q And what score did you give on that?
- 21 A I, also, scored him a 2 on that measure, as well.
- 22 Q And what range does that fall in?
- 23 A Similar to the 99R, it places someone with that
24 score as in the average range.
- 25 Q And what is the recidivism rate for someone who

1 scores a 2?

2 A So I -- with the updated measures that have come
3 out recently for the 99R, the absolute recidivism
4 rates, so the probability or percentage of
5 reoffending was below 5 percent. I believe it's
6 around 4.6 percent for both measures within five
7 years.

8 Q And what was the rate for the 2002R?

9 A I believe it was the same, around 4.6 percent for
10 that five-year period.

11 Q Now, there was some questions -- and you were in
12 the courtroom this morning?

13 A Yes.

14 Q There was some questions about down the road,
15 beyond five years. Can you expound on that? Just
16 -- does a person -- the more time that goes on, are
17 they more likely to reoffend, or the more time that
18 goes without reoffending are they less likely?

19 A Yeah. So I can probably answer that question in
20 two ways. So, generally speaking, when someone is
21 released from prison or a confinement and they get
22 back out into the community, that's when their risk
23 relative to other time points is going to be
24 highest. If someone is going to reoffend, it's
25 going to typically happen in the years shortly

1 after release. What we notice in the research is
2 that as time moves on, regardless of what someone's
3 risk category initially is, that risk is going to
4 go down over time, and, eventually, it will reach
5 what is known as a "desistance level." Now, that
6 desistance level, what that means, is the rate of
7 sexual offending becomes the same as a non-sexual
8 offender. So you would expect them to have about
9 the same rate as someone who hasn't committed, or
10 at least been charged or convicted of a sexual
11 offense.

12 Someone with Mr. Daily's case, someone with
13 that same Static score of around 2, in that average
14 category, you'd expect to reach desistance levels
15 within just short of ten years when they're exposed
16 to risk out in the community. So, again, most of
17 that offending is going to take place in the years
18 shortly after release, and it's going to
19 precipitously -- or gradually drop up until -- for
20 someone with his initial starting point of risk,
21 around ten years, maybe a little less, it hits that
22 desistance level. That's what the research says
23 about someone with a score of 2 like Mr. Daily's.

24 Q Now, Mr. Daily's history involved prepubescent
25 females, correct?

1 A Yes. That's correct.

2 Q Was that -- those females, females that he was
3 familiar with?

4 A I believe so. Based on the records, it sounded
5 like these were people that he knew. He knew their
6 family, particularly the victims' mothers, and
7 that's how those -- that's how those connections --
8 or those relationships were formed between himself
9 and the families of the people he offended against.

10 Q Did you find evidence of grooming in any of these
11 cases?

12 A Probably the best way to answer that is it seemed
13 like there was definitely a pattern of him entering
14 into caregiver roles. So what he's doing is
15 he's -- well, what he was doing at the time was
16 forming connections with the child. From his own
17 accounts, he interpreted them as being kind of
18 emotionally close relationships that he had with
19 these children; that takes time to build. From his
20 perceptions, these relationships that he had, he
21 was trying to bathe them, spending time with them,
22 going to Myrtle Beach in his camper, for example.

23 This is -- the best way to put it is this is
24 showing you he's putting in time, effort, and
25 resources to gain access to and offend against

1 children.

2 Q So it was not something that came up just on the
3 spur of the moment for him to abuse these children?

4 A I don't believe so. It didn't -- it didn't come
5 across as someone who was impulsive or engaging in
6 a kind of spur of the moment sorts of behaviors,
7 given the victim profile and kind of the patterns
8 of his behavior across those four different
9 victims.

10 Q Now, paraphilic disorder -- pedophilic disorder,
11 that's a chronic condition; is it not?

12 A Yes.

13 Q Never goes away?

14 A There's no cure for pedophilic disorder.

15 Q So what can treatment do for pedophilic disorder?

16 A I'd say, in general, with sex offender treatment,
17 including for individuals with the pedophilic
18 disorder, it's gonna be learning strategies to
19 learn how to manage that deviant arousal to prevent
20 reoffending. There are a lot of other reasons why
21 people sexually offend, beyond just an attraction,
22 say in this case, the children. So sex offender
23 treatment is also going to help target and work on
24 addressing those factors, as well.

25 What we know from the research is as you

1 continue to address dynamic risk factors, whether
2 it be the sexual attraction to children, maybe some
3 of the attitudes or beliefs that support someone
4 making choices to offend, working on changing that
5 thinking, developing relationships with -- with
6 adults -- you know, prosocial adults rather than
7 with children. Those are the types of things that
8 someone like Mr. Daily and others will be able to
9 learn in treatment, with the goal, again, being
10 able to manage that arousal and prevent
11 revictimizing individuals.

12 Q Do you know of any requirements that Mr. Daily
13 would face once he's released?

14 A So Mr. Daily will have just under three years
15 remaining on his probation. That'll include
16 intensive supervision when he's out in the
17 community, also include sex offender treatment as
18 part of that. And then, once that his probationary
19 period is over, he's gonna remain on GPS
20 monitoring, and that is potentially lifelong GPS
21 monitoring, as well, in addition to his
22 probationary period; so that will continue after
23 that.

24 Q What does the GPS monitoring do?

25 A So it's gonna be able to alert individuals where he

1 is. So, for example, he's gonna have to register
2 on the Sex Offender Registry, he's gonna have to
3 register his home where he will be living, that --
4 that'll be information that will be known to the
5 registry. And kind of a real-world example, this
6 isn't Mr. Daily, this is a different person that I
7 evaluated, when they were out on probation on the
8 GPS monitoring, they were alerted when he wasn't at
9 the house, they saw that, hey, he's not, you know,
10 it's nighttime --

11 MS. SHAW: Objection, Your Honor.

12 A -- he's not there.

13 THE COURT: What's the objection?

14 MS. SHAW: Sidebar?

15 THE COURT: Yes.

16 (WHEREUPON, a sidebar was held.)

17 DIRECT EXAMINATION CONTINUES

18 BY MR. THOMPSON:

19 Q Dr. Gillen, you've talked with -- with a probation
20 agent, correct?

21 A Sorry?

22 Q You've talked with a probation agent that handles
23 sex offenders?

24 A Yes.

25 Q And treatment is a requirement of their program; is

1 that correct?

2 A Not everyone. That's why I follow up with
3 Probation, Parole and Pardon Services for these
4 evaluations to get an understanding of what sort of
5 conditions or restrictions might be placed on the
6 individual that I'm evaluating.

7 Q Were you given any indication of whether treatment
8 would be required of Mr. Daily?

9 A I was told that it was. As part of his probation,
10 he will be required to participate in the sex
11 offender treatment in the community.

12 Q In the community?

13 A Yes. As part of his probation.

14 Q Do you know where Mr. Daily would be living to go
15 into the community?

16 A So, at the time of my evaluation with him, I was
17 informed that he would be living with his parents
18 in South Carolina.

19 Q Have you talked with his parents?

20 A In 2020 -- January of 2020, I talked with them over
21 the phone for the purpose of this evaluation.

22 Q In your opinion, does -- do they have an
23 understanding of what's happened with him in the
24 past?

25 A They do. So rather than denying that their son

1 had, you know, committed these acts, they were very
2 upfront that they were aware of the children that
3 he victimized. They used an example of alcoholism,
4 over the phone, which I think was a really nice
5 example, to say that they understood their son had
6 a problem --

7 MS. SHAW: Again, Your Honor, objection:
8 hearsay. I mean, he's -- he's offering the
9 statements of the parents. They're not in
10 court. They're being offered for the truth.

11 MR. THOMPSON: Your Honor, hearsay is
12 admissible for an expert if they use that in
13 their determination.

14 MS. SHAW: This is going beyond the scope of
15 what is allowable for these types of matters,
16 Your Honor. The fact that Dr. Gillen spoke to
17 the parents is one thing, and that he
18 considered what they said, but going into
19 detail about what they actually said to him,
20 it's --

21 THE COURT: Yep.

22 MS. SHAW: -- it's well beyond what would be
23 permissible.

24 THE COURT: Yeah. Let's --

25 MR. THOMPSON: I can rephrase the question.

1 THE COURT: -- let's pull back a little bit,
2 we can ask the parents, themselves.

3 DIRECT EXAMINATION CONTINUES

4 BY MR. THOMPSON:

5 Q Dr. Gillen, from your conversations with his
6 parents, did you form any opinion?

7 A Yes.

8 Q And was that opinion that there would be certain --
9 I won't call them "restrictions," but certain
10 conditions on him living with his parents?

11 A Yes. I determined that they would be good supports
12 for him in the community in a risk-relevant way,
13 and what I mean by that, is that these are supports
14 that are going to help mitigate or lessen his risk
15 in the community.

16 Q But, going back, they had an understanding of what
17 had transpired, what had happened in the past, and
18 what was coming?

19 A Yes. They were aware of the sexual offending. And
20 what I think is very, very important, probably the
21 most important piece of information when talking
22 with the parents, is they recognize that there's a
23 chronic problem. That's why I was saying about
24 alcoholism, they recognize the chronic problems
25 that plague Mr. Daily; that's lifelong. When you

1 have supports that have that awareness, that is, I
2 think, very, very important.

3 Q Okay. Now, I think we've covered -- there's no
4 question he has a mental abnormality?

5 A Correct.

6 Q Do you believe he needs treatment?

7 A I believe that treatment is gonna be beneficial for
8 Mr. Daily. He has pedophilic disorder, as I've
9 already testified to. He does have risk factors
10 that are directly connected with that, sexual
11 attraction to children, a congruence or kind of an
12 attachment with children that played a role in his
13 offending. Difficulty having intimate
14 relationships with -- with adults. Some offense
15 supportive attitudes, he was able to address some
16 of that in the interview to suggest he's made
17 progress in that on his own, but still had some
18 offense supportive attitudes, as well, by the time
19 I evaluated him. These are all areas that are
20 risk-relevant, but, also, can be well targeted in
21 treatment programs. That's important in allowing
22 him to further reduce his risk through treatment.

23 Q Do you believe that Mr. Daily is a person who is
24 likely to engage in acts of sexual violence if he's
25 not confined to a -- to a secure facility for long-

1 term control, care, and treatment?

2 A I don't, not based on the evidence that we have for
3 him, including the average levels of Static risk.
4 He doesn't have numerous dynamic risk factors; the
5 ones he does have are directly connected with his
6 pedophilic disorder. And I think what's most
7 important is: this is someone when he -- you know,
8 his boots hit the ground, he's gonna have
9 oversight; he's gonna have supervision; he's gonna
10 have probation; he's gonna get treatment;
11 approximately, almost three years of it. He's
12 gonna be able to continue to work on those things
13 that are still problems for him, and he's gonna be
14 able to do it in a way where he's going to be, not
15 just monitored at home, but he's gonna be monitored
16 by the justice system.

17 And what's really important is that if Mr.
18 Daily messes up, stops going to appointments,
19 doesn't go to treatment, because of that legal
20 oversight, there are guardrails in place; he can go
21 back to prison. So if there is ever an issue where
22 he's not following through on treatment, not
23 complying with his supervision requirements, there
24 are safeguards in place to put him a more
25 restrictive environment if he's not able to manage

1 that sort of situation.

2 Q One final question. Were you hired to do this --
3 this evaluation, or were you appointed by the
4 Court?

5 A I was appointed by the Court as a State evaluator
6 at the Department of Mental Health.

7 Q Okay.

8 MR. THOMPSON: (To the witness) Thank you.

9 Answer any questions the State may ask.

10 CROSS-EXAMINATION

11 BY MS. SHAW:

12 Q Dr. Gillen, you can hear me from here, right?

13 A Yeah. And if I can't, I'll -- I'll ask to rehear.

14 Q All right. Thank you. So just a brief recap, you
15 agree with Dr. Gottfried that Mr. Daily suffers
16 from pedophilic disorder, exclusive type, sexually
17 attracted to female prepubescent children?

18 A Yes. That's correct.

19 Q Okay. And you agree that each and every one of his
20 four victims was of that age range and was
21 relatively young, from four to age six, when he
22 offended them, correct?

23 A I believe from age four to ten, but, yes, I would
24 say that all four victims were in the prepubescent
25 category.

- 1 Q Okay. And you and Dr. Gottfried both agree that
2 Mr. Daily falls into the average Static risk?
- 3 A Yes. That's correct.
- 4 Q Okay. But you also agree that that's just one
5 actuarial measure, and that does not necessarily
6 equate to an individual's actual risk; it's just a
7 relatively -- it's a tool to give you a relative
8 idea of where this person falls in the spectrum,
9 right?
- 10 A Yeah. I would agree with that, that it's a -- it's
11 a single piece of evidence in the overall risk
12 formulation.
- 13 Q Okay. And you agree that Mr. Daily -- with Dr.
14 Gottfried that the dynamic risk factors are
15 present? There's at least four of them, correct?
- 16 A Yes. Yeah. I believe that -- I would say there's
17 at least four dynamic risk factors that are still
18 present.
- 19 Q Okay. And could you please repeat those; sexual --
- 20 A Sure.
- 21 Q -- attraction to prepubescent children, lack of
22 emotionally intimate relationships with adults,
23 emotional congruence with children, and remind me
24 of the other one?
- 25 A Offense supportive attitudes. So in my report, I

1 talk about how there was still some evidence of
2 offense supportive attitudes in the types of
3 statements that he was making, as well as looking
4 back at the types of perceptions he had about his
5 offending at the time that happened. So there was
6 still some of that going on; however, he, also, did
7 not endorse other types of common offense
8 supportive attitudes that other types of pedophilic
9 offenders typically would endorse. So that could
10 include things like children cannot consent to sex,
11 that sexual offending is harmful to children, that
12 sexual offending is not an appropriate way to teach
13 children about sex. Those are some common types of
14 distortions or thinking patterns that -- that
15 people with pedophilic disorder can have. Mr.
16 Daily was not endorsing those types of offense
17 supportive attitudes, but there were still some
18 that -- that were remaining at the time I evaluated
19 him.

20 Q Specifically, tell me what offense supportive
21 attitudes he did endorse.

22 A So, historically, looking at some of the police
23 records, he was talking about how he would try and
24 pressure -- I think it was one victim, by saying
25 that it would be enjoyable or pleasurable, so that

1 kind of shows, again, his thinking of sexual
2 offending. He, also, very much saw his victims as
3 having kind of a close relationship or bond, but,
4 also, speaks to some of that emotional congruence
5 as well, but it also speaks to his perceptions
6 about the offending. Some ongoing minimization and
7 rationalization of -- of offending also kind of
8 fits within that category, as well.

9 Q Now, you just said "some minimization"?

10 A Uh-huh.

11 Q Mr. Daily, in fact, completely denied any memory of
12 offending these kids, correct?

13 A Partially, true. So I met with Mr. Daily on two --
14 two different interview dates -- myself and Dr.
15 Tross -- and on the first day, he was very much --
16 he -- denying the -- well, I wouldn't say denying
17 the offenses, but he was attributing the offenses
18 to -- I think the term was "Ambien fog." So he was
19 trying to explain that, you know, these things
20 happened because of the drugs that he was taking,
21 his -- his Ambien use. Whereas on the second day,
22 he was a little bit more open, so he was
23 acknowledging that the -- the offenses took place,
24 and he was framing them in terms of the emotional
25 connections that he had with the children as to why

1 these types of offenses were happening. So it was
2 a -- a bit of a mixed bag depending on which day
3 you talked to him about, I guess, the degree to
4 which he was -- I'm trying to think of a way to put
5 this -- I guess, the degree to which he was
6 acknowledging his understanding of the crimes
7 seemed to change from one day to the next.

8 Q Okay. And he -- he consistently tried to blame his
9 offending on the Ambien use?

10 A Not consistently. So that was definitely
11 consistent on the first interview day. However, on
12 the second interview day, again, it was -- he was
13 trying to connect it with some other factors like
14 that emotional connection with children I
15 previously mentioned.

16 Q Now, you would agree that if he had a substance
17 abuse disorder, which you didn't diagnose him
18 with --

19 A Uh-huh.

20 Q -- that a substance abuse disorder does not cause
21 or exacerbate a pedophilic disorder, does it?

22 A Well, I -- I don't know about that. I mean, I
23 think, again, not -- this wouldn't necessarily
24 apply to Mr. Daily, but generally speaking, there
25 are types of offenders who can use substances, have

1 a substance use problem, and that could -- could
2 exacerbate sexual offending, you know, just like if
3 someone were to go to the bar and have too -- too
4 much to drink, maybe they don't make the same sort
5 of decisions they make when they're sober. Again,
6 does drugs, in and of itself, cause people to
7 sexually offend against children? No. But can it
8 have a role, an exacerbating role? Maybe.

9 A great example I -- I like to use is
10 baseball. I'm a big baseball fan. And it's like
11 Mark McGwire, you know, he could hit home runs, but
12 when he was using steroids, he hit a lot more of
13 them. So, again, was he a great baseball player
14 without performance-enhancing drugs? He was, but
15 using the drugs got him even further. I think
16 that's a nice way to maybe think about that
17 relationship between a paraphilic disorder, like
18 pedophilia and drugs and how that might kind of
19 play with offending.

20 Q But Mr. Daily was not on Ambien when he offended
21 his first victim, who was actually the last one
22 discovered; isn't that correct?

23 A I'm not sure when that particular victim was
24 discovered, but, yes, that is true. His 1993
25 offense, he was -- by his own account, not using

1 Ambien at that time.

2 Q So pedophilic disorder predated the Ambien use?

3 A Oh, for sure. I think Mr. Daily did not offend
4 because he was using Ambien. That's not what I say
5 in the report, and that's not the testimony I'm
6 giving. It is because of the pedophilic disorder,
7 yes. That is the primary reason why he committed
8 those offenses.

9 THE COURT REPORTER: Sir, I'm having trouble
10 hearing you. Can you turn more this way?

11 THE WITNESS: Oh, sure. I'm sorry.

12 THE COURT REPORTER: Okay. Thank you.

13 CROSS-EXAMINATION CONTINUES

14 BY MS. SHAW:

15 Q All right. Now, you would agree, also, that the
16 more data you have regarding a particular offender
17 the better, right? That's why you conduct
18 collateral interviews; that's why you do your
19 record review; that's why you do the status, yeah?

20 A Sure, yeah.

21 Q Okay. And did you ask Mr. Daily whether he
22 currently experiences sexual arousal to children?

23 A I did.

24 Q And what did he say?

25 A He -- he denied that pedophilic disorder -- or

1 pedophilic interest were an ongoing area of need --
2 or an ongoing area of concern for him.

3 Q And you took him at his word?

4 A No. I didn't.

5 Q Do you believe that he has a current and ongoing
6 sexual attraction to children?

7 A Yes. I do. I diagnosed him with pedophilic
8 disorder. I think it's a chronic condition. I
9 believe he will always be attracted to children for
10 the rest of his life.

11 Q And you would agree that, based on your record
12 review, that Mr. Daily had been investigated more
13 than once prior to his actual arrest, and, in fact,
14 immediately before he was arrested, he tried to
15 commit suicide, correct?

16 A So in terms of the scope of investigations before
17 he was officially criminally charged, I'm not sure
18 exactly on the timeline, but, yes. He did try to
19 die by suicide just prior to his -- his arrest in
20 2008.

21 Q And there's no disagreement that Mr. Daily knew
22 that what he was doing to these children was both
23 illegal and wrong when he committed the offenses,
24 correct?

25 A I believe that to be the case, yes.

- 1 Q Okay. So the threat of prison didn't even deter
2 him when he was offending, correct?
- 3 A It's hard to know exactly what the thinking that --
4 that he was having at that time, and how much
5 blame, I -- or not the word blame, but, you know,
6 how much stock he was putting into prison, but,
7 yeah. He certainly knew that it was wrong, and,
8 you know, he grew up in the United States, I'm sure
9 he knew that when you, you know, break a law
10 there's always a chance that you can go to prison.
11 I'm -- I'm sure he was aware of that.
- 12 Q And -- and not only did he break the law, he broke
13 the law with children who could readily identify
14 him, right?
- 15 A Yes. That's true.
- 16 Q With -- with whom he had a relationship, right?
- 17 A In his mind, yes.
- 18 Q Well, he had a relationship with their mothers, and
19 then parlayed that into his offending behaviors,
20 correct?
- 21 A I believe that to be the case, yes.
- 22 Q And he knew he could go to jail as a result of his
23 conduct if he were discovered?
- 24 A I believe he was aware of the legal system and how
25 it operated, yes.

- 1 Q So the threat of prison for what he was doing
2 didn't deter him, didn't stop him, right?
- 3 A Possibly. It's tough to know exactly what was on
4 his mind and how much he weighed that. So I think
5 the best way to answer that is, he -- he's aware
6 of, you know, the justice system in the United
7 States and he knew that he -- what he was doing was
8 wrong and he was aware that, if caught, there could
9 be criminal consequences to that. How much that
10 played into his thinking and decision making, I --
11 I -- I'm not sure.
- 12 Q Now, you testified earlier about lowering risk over
13 time in terms of Statics and -- and -- more than
14 the highest likelihood to reoffend you said it was
15 basically right after an individual gets out of
16 prison, right?
- 17 A Yes. That's correct.
- 18 Q But the ten-year recidivism rate is almost double
19 that of the five-year recidivism rate; isn't that
20 correct?
- 21 A It is, and then the extrapolated 20-year rate for
22 him, which is viewed as a lifetime estimate, once
23 you hit 20 years it's at that desistance level I
24 was talking about, again. That's still on --
25 that's still below 10 percent. So, again, it shows

1 that as you keep going out, it starts to plateau
2 out. It's not gonna keep -- and just because
3 someone's out in the community for a long time,
4 they're not -- you know, their risk isn't gonna
5 stay the same throughout all those years. It's
6 gonna go down and kind of plateau out.

7 Q Yeah. But, Dr. Gillen, according to the undisputed
8 testimony, that risk actually goes up over ten
9 years. It goes from roughly 4.6 to over 7.

10 A No. That's not what I was testifying about. Maybe
11 I'll need to try and better explain it.

12 So the way to think of it is someone with a
13 Static score of 2, they're in the average range.
14 We know within a five-year period, individuals in
15 the sample with that score had a -- just under 5
16 percent of those people reoffended. You go out
17 another five years after that, then the total
18 becomes -- was it around 7 I believe you were
19 saying --

20 Q Seven.

21 A -- so what, again, it's capturing the people who
22 haven't offended within that five-year period. And
23 why that's important to note is because -- I wish I
24 could draw it -- but if you could picture a slope,
25 almost like a ski hill -- most of the reoffending,

1 regardless of someone's risk, is gonna take place
2 in those years immediately after.

3 Does that say that offending stops? No. It
4 doesn't -- it's not like a stair where it just goes
5 all the way down. It's a slow curve down. So,
6 yes, there's gonna be people who reoffend in the
7 years after five years. I mean, I'm -- I'm not
8 saying that's not the case, but what I'm saying is,
9 as you move further and further out, the rate at
10 which it happens decreases, and that's what I'm
11 trying to communicate.

12 Q But, Dr. Gillen, the estimated 20-year recidivism
13 rate for an individual with a Static score of 2 is
14 actually 8.9 percent, which is even higher than the
15 ten-year recidivism rate; isn't that correct?

16 A Yeah. That's exactly what I'm saying. So, again,
17 going from year ten to year 20, it jumps from 7 to
18 8, so you're only capturing a very, very small
19 number of people that are actually sexually
20 reoffending from year ten to year 20. It's the --

21 Q But, Doctor, isn't it true --

22 A -- it's the rate of the offending that actually
23 slows down, and it continues to slow down the more
24 times someone is crime-free in the community. And
25 that -- that's exactly what I'm saying. So, yeah,

1 I think those numbers actually bear that out very
2 well.

3 Q But, Doctor, the Statics only take into account
4 detected offenses. They don't take into account
5 undetected victim offences, do they?

6 A That's right. It's charges and convictions.

7 Q And you would not disagree that sex offenses are
8 most -- among the most underreported crimes that
9 can be committed, would you?

10 A Well, I think what's really important to know about
11 that, is underreporting crimes does not equate with
12 undetected recidivist. There's a few reasons why
13 that's the case. A recent article came out last
14 year, and they walked through exactly why that's
15 the case. What they show is that individuals who
16 have committed a sexual offense and then get
17 caught, there's a group of people who maybe they
18 weren't caught for, but they're still caught. They
19 were detected, even though maybe all their crimes
20 weren't. So some of those unreported crimes are
21 not necessarily equating with a unique recidivist
22 or reoffender each time.

23 Same thing is true if there's people who are
24 never caught by the criminal justice system, which
25 is clearly not Mr. Daily's case. There are people

1 who can string up a large number of offenses that
2 don't get caught, but it's one person doing it.
3 So, again, when we're talking about a recidivist
4 versus reported offenses, they're not one in the
5 same. And I think that's important to know when
6 we're talking about rates of nonreporting and how
7 that impacts whether someone can actually be
8 detected for a new offense, again.

9 Q So Mr. Daily started offending when he was 19 years
10 old, correct?

11 A I'm not sure how old he was in '93, but '93 was the
12 first -- first time he offended.

13 Q And he didn't stop offending until 2008 when he was
14 caught?

15 A I believe that was the last time, yes.

16 Q Because that's when he went to prison?

17 A Yes. I believe his most recent victim was up until
18 2008 before his arrest.

19 Q Okay. So, in reality, he has a 100 percent
20 recidivism rate, doesn't he? He offended the first
21 child. He knew it was wrong when he did that, yet
22 he reoffended again. He offended that child. He
23 knew it was wrong when he did that; he reoffended
24 again. And the same thing with his other two
25 victims; isn't that correct?

1 A No. That's -- that's incorrect.

2 Q It's incorrect that he has recidivated no less than
3 four times?

4 A No. Because that's not how recidivism is defined.
5 Recidivism is defined after someone is detected by
6 law enforcement and charged with a crime. And this
7 is actually important; this isn't just some
8 academic nonsense. Why this is important is we
9 know that no matter how many victims someone has --
10 so in this case Mr. Daily had four -- before
11 they're detected officially by law enforcement,
12 with a charge as happened with Mr. Daily, that does
13 not equate with someone having a large number of
14 victims after they're released. It's why the
15 measures like the Static, they're not looking at
16 total number of victims; they're looking at whether
17 someone does it again after they've been -- excuse
18 me -- after they've been caught, and that's what
19 the research bears out.

20 So I -- I just think that's really important
21 to keep in mind when looking at recidivism and
22 really what that means, because that's really the
23 question that we're looking at here today, and that
24 is: Is Mr. Daily when he gets out, is he gonna do
25 this again after he's now been sanctioned for it?

1 And that is what we're talking about when we look
2 at recidivism, not his cluster of offending that
3 took place from the 90s to 2008.

4 Q Okay. But you would agree, though, that, at this
5 point in time, Mr. Daily has had no sex offender
6 treatment whatsoever even though it was offered
7 while he was in prison?

8 A Yes. That's true.

9 Q Okay. And would you not agree that treatment is
10 essential for an individual not to recidivate if
11 they have pedophilic disorder?

12 A Actually, not necessarily. You don't need
13 treatment to no longer be of no risk. The vast
14 majority of individuals, regardless of whether they
15 had treatment or not, actually don't reoffend.
16 That's something really important to know is that
17 sexual offending, in general, including people with
18 child victims, that is a low-base rate thing, which
19 means it doesn't happen very often, which is good.
20 I mean, we don't want people going out and
21 reoffending again.

22 And treatment isn't a necessary prerequisite
23 or a necessary thing that someone needs to have in
24 order to not reoffend. In Mr. Daily's case, he
25 does have some treatment needs that I talked about

1 before, and I think it's good that he's gonna being
2 getting treatment for that. That's gonna help
3 further reduce his risk, but to say that he needs
4 that -- or that even someone with a pedophilic
5 disorder diagnosis needs it, I -- I don't think
6 that's consistent with what we know in science.

7 Q Can an individual develop appropriate coping
8 mechanisms without -- for this particular disorder
9 without treatment?

10 A Actually, yes. They can. And this -- that's a
11 really good point, because one of the things that
12 Mr. Daily talked about, in my interview with him,
13 was trying to also work with a pastor that has a
14 master's degree in counseling. So this would not
15 be sex offense specific treatment. That sort of
16 treatment is not going to be help manage pedophilic
17 arousal by any stretch, but it can still help
18 manage a lot of the underlying risk factors that he
19 still has, mainly that relationship piece.

20 We talked about earlier how he saw himself
21 kind of as equal with some of the children he was
22 offending against. He saw close emotional
23 connections with them, which was not the case with
24 adult relationships. Working on relationships,
25 that is something that he can do working with a

1 pastor, working with a master's level counselor;
2 that's definitely within their wheelhouse. So,
3 again, you don't need sex offense specific
4 treatment to get treatment in all the areas that
5 might be at play for an individual.

6 The sex offense specific treatment for him is
7 gonna be helpful with the pedophilic disorder and
8 managing that arousal, managing some offense
9 supportive attitudes; that's where that's gonna
10 come in handy. And based on what we know, it
11 sounds like he might have an opportunity of getting
12 both. He also can work on relationships in sex
13 offender specific treatment too. That's not
14 unusual, as well.

15 Q Last question, Dr. Gillen, you authored a report in
16 connection with your evaluation of Mr. Daily,
17 right?

18 A Uh-huh. That's correct.

19 Q And is it your belief, at this point, that Mr.
20 Daily does not have serious difficulty controlling
21 his pedophilic urges?

22 A So in -- in the report how I talk about this, when
23 I'm looking at trying to give an opinion on whether
24 someone who has a diagnosis, like in this case, a
25 pedophilic disorder, does that predispose an

1 individual? So that's one of the questions that
2 the Court wants -- wants an opinion on. So in that
3 sense, the things I'm looking at are, in looking at
4 their history, have they demonstrated a serious
5 difficulty controlling their behavior? In the case
6 with Mr. Daily, I believe the answer was, yes, that
7 he did demonstrate that, and that's why I believe
8 his pedophilic disorder is a mental abnormality.

9 Now, whether that difficulty is still the same
10 today, it's tough to know because, again, we're
11 looking at a completely different picture than when
12 he was at the time. First thing, the cat's out of
13 the bag. I mean, everyone knows that Mr. Daily, in
14 this community, committed these sexual offenses.
15 His church knows. His family knows. The people
16 that he befriended and betrayed their trust,
17 frankly, when he offended against their children,
18 know. So, again, does he himself have a severe
19 difficulty controlling his behavior, possibly, but
20 now there's gonna be a whole bunch of now external
21 constraints, supports, family members, probationary
22 period that's gonna include treatment. A lot has
23 changed in his situation from the time it was when
24 he was committing these offenses. That -- you
25 know, in that environment, is he gonna have a

1 severe difficulty controlling while he's getting
2 treatment; continuing to work on risk factors? I
3 don't believe that's the case now given his unique
4 situation and all the things that we're considering
5 with him.

6 Q Very last thing I'm gonna ask you to do, Doctor, do
7 you have a copy of your report with you?

8 A I do, yes.

9 Q Could you please turn to Page 13?

10 A (Complies.)

11 Q Got it?

12 A Yeah.

13 Q Can you read me the last two sentences from the
14 third paragraph?

15 A The one that starts with, "Mr. Daily's"?

16 Q "Mental abnormality is pedophilic disorder," and
17 those two sentences I'm asking you to read,
18 starting with, "Further." Three lines up from the
19 bottom.

20 A Okay. Yeah. "Further, he continued to offend
21 against children until his arrest despite
22 recognizing the behavior was wrong, per his report.
23 Collectively, these suggest serious difficulty
24 controlling and/or a predisposition to engage in
25 acts of sexual violence."

1 MS. SHAW: Thank you, Doctor. No further
2 questions.

3 THE COURT: (To Mr. Thompson) Yes, sir.

4 MR. THOMPSON: I have a couple, Judge.

5 REDIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q Dr. Gillen, I'm not sure we're clear on the Static-
8 99 numbers. The five-year recidivism rate for
9 somebody scoring a 2 is a 4.6?

10 A Yes. That's correct.

11 Q And I believe they said the ten-year was a --
12 around a 7?

13 A I believe that's correct, yes.

14 Q And the 20-year around 8?

15 A Correct.

16 Q Now, does that 7 encompass that 5 -- or that 4.6?

17 A I believe it does because, again, you're looking at
18 total number of recidivists in that sample as
19 they're followed up. So once you get your 5 -- or
20 around 5 in the first five years, it goes up by
21 another 2 or so, and then -- and then at five
22 years, and then the whole other ten years after
23 that, in extrapolating their estimating, it's only
24 gonna go up by another 1 percent or so. And,
25 again, that's exactly what I was trying to explain

1 when the rate at which the offending occurring is
2 what's decreasing over time.

3 Q Okay. Let's -- let's put it in a baseball analogy,
4 since you said that, baseball.

5 A Uh-huh.

6 Q If I'm playing baseball and after the first five
7 years I hit five home runs total, okay? Are you
8 saying that in the next five years, all of a
9 sudden, I've gone crazy and started hitting seven a
10 year, or seven during that period, or is it just
11 simply that I hit five the first, and now over a
12 ten-year period I've added two to that and get
13 seven?

14 A So, in this case, again, they're looking at a group
15 of people, so it would be like if a team, you know,
16 starts off -- maybe it's -- maybe it's an expansion
17 team; maybe they get a brand-new team. They start
18 off and they start hitting the home runs, you know,
19 five home runs say in the first few years of the
20 team being there, and then by year five or ten or
21 whatever it is, they hit seven home runs. They
22 would be including -- really, if you're looking at
23 the Static, it's the whole period of time. So
24 seven home runs would be from the time that new
25 team got started. They probably should get some

1 new players if they're only hitting seven home runs
2 in ten years, but . . .

3 Q But -- but that seven includes that first five?

4 A I believe so, yes.

5 Q And then that eight for the years ten through 20,
6 includes the seven from years one through ten?

7 A Yes. Yeah. That's -- that's the case, and that's
8 exactly why we say the rate's decreasing.

9 MR. THOMPSON: (To the witness) Thank you.
10 Nothing further.

11 THE COURT: (To Ms. Shaw) Anything at all as
12 to that?

13 MS. SHAW: No, Your Honor.

14 THE COURT: Thank you. Doctor, you may step
15 down. Please be careful.

16 (WHEREUPON, the witness was excused.)

17 THE COURT: Madam (as spoken) Foreman, ladies
18 and gentlemen, we're going to take a good -- a
19 good morning break here. It was a real short
20 one previously, but this is gonna be a good
21 15/20-minute break or so. Do I still have two
22 or so that want to smoke? If you do, I can
23 arrange that. Anybody? Okay. All right.
24 There's two or three that want to smoke. Mr.
25 Bailiff, if y'all -- or law enforcement,

1 somebody take care of that for us. Don't talk
2 about the case. You're on your morning break.
3 There's coffee here, water, restroom
4 facilities, anything you might need; just let
5 one of the bailiffs know. Mr. Foreman, if
6 you'll take the jury out.
7 (WHEREUPON, the jury was excused at 10:58
8 a.m.)
9 THE COURT: Let's see the lawyers.
10 (WHEREUPON, a bench conference was held.)
11 THE COURT: Well, let's take a break and then
12 we'll finish it up and then we'll be back at
13 two.
14 MR. RUNYAN: Okay.
15 MR. THOMPSON: Your Honor, I'm sorry. May Dr.
16 Gillen be excused from the --
17 THE COURT: Oh, any objection?
18 MR. RUNYAN: No objection.
19 THE COURT: Doctor, you may stay or go,
20 whichever you chose.
21 THE WITNESS: Thank you.
22 (WHEREUPON, a break was taken from 11:02
23 a.m. until 11:30 a.m.)
24 THE BAILIFF: All rise and come to order.
25 THE COURT: Thank you. Thank you. Please be

1 seated. Everybody ready for the --
2 MR. RUNYAN: Yes, sir.
3 THE COURT: (To the bailiff) We'll have the
4 jury.
5 (WHEREUPON, the jury came into open court
6 at 11:31 a.m.)
7 THE COURT: Thank you. You may be seated.
8 Mr. Foreman, everybody ready?
9 THE FOREMAN: Yes, sir.
10 THE COURT: Okay. (To Mr. Thompson) Counsel?
11 MR. THOMPSON: Your Honor, we call Ms. Carolyn
12 Daily.
13 (WHEREUPON, the witness was sworn.)
14 THE COURT: Ms. Daily, if you would adjust the
15 microphone to suit yourself, please. And you
16 have a very soft voice --
17 THE WITNESS: Okay.
18 THE COURT: -- so I'm gonna ask you to use
19 your outside voice --
20 THE WITNESS: All right. I'll try. Okay.
21 THE COURT: -- and -- and adjust your
22 microphone. Tell us who you are, and spell
23 your last name, please.
24 THE WITNESS: My name is Carolyn Daily, D-a-i-
25 l-y.

1 THE COURT: Thank you. If you'll -- if you'll
2 continue like that, we'll be able to hear you.

3 THE WITNESS: Okay.

4 THE COURT: Counsel?

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q Ms. Daily, I'm gonna ask you a just a few
8 questions. They're gonna seem very simple, but
9 they're important to the overall scheme of what
10 we're doing here, okay?

11 A Okay.

12 Q Are you Mr. Shawn Daily's mother?

13 A Yes.

14 Q Okay. Do you have other children?

15 A Yes. We do.

16 Q Okay. How many?

17 A We have six children total, with Shawn, also.

18 Q Okay. You've got to speak up.

19 A I'm sorry. We have six children total.

20 Q Okay. Do you have grandchildren?

21 A Yes. We do.

22 Q Okay. Are you aware of the situation that Mr.
23 Daily finds himself in?

24 A Yes. I am.

25 Q Are you aware of his convictions?

- 1 A Yes.
- 2 Q You aware of the underlying facts of those
3 convictions?
- 4 A Yes. We are.
- 5 Q Okay. Do you -- are you aware of the fact that he
6 desires to live with you?
- 7 A Yes. We are.
- 8 Q Who else lives in your house now?
- 9 A My husband and me.
- 10 Q Okay. And how old is your husband?
- 11 A He's 73.
- 12 Q Okay. He has some health problems, doesn't he?
- 13 A He does.
- 14 Q Okay. And what are those?
- 15 A Right now, he's taking IVG (as spoken) treatments
16 for neuropathy of his feet, and he has some -- at
17 times he has kind of forgetfulness.
- 18 THE COURT REPORTER: I'm sorry. Can you say
19 that last word again?
- 20 Q And I won't ask --
- 21 THE WITNESS: Forgetfulness. I'm sorry. He
22 kind of forgets things occasionally.
- 23 Q -- I won't ask how old you are, but you have some
24 health problems, also, right?
- 25 A Yes. I have Parkinson's.

- 1 Q Okay. Do you take medicine for that?
- 2 A Yes. I do.
- 3 Q Are your other children aware of Mr. Daily's
- 4 situation?
- 5 A Yes. They are.
- 6 Q Have you made them aware of that?
- 7 A Yes. They all know it.
- 8 Q Okay. Do you understand that -- and do they
- 9 understand that their children cannot be around Mr.
- 10 Daily?
- 11 A Yes. We all understand that.
- 12 Q Okay. Are you willing to let Mr. Daily live in
- 13 your house?
- 14 A Yes. We are.
- 15 Q Do you understand that some of the conditions of
- 16 probation with him living in your house would be
- 17 that you -- your home would be on the Sex Offender
- 18 Registry?
- 19 A Yes. We're aware of that.
- 20 Q Okay. Are you also aware of the fact that
- 21 probation could come and, basically, search your
- 22 house at any point in time they wanted to?
- 23 A Yes. We are.
- 24 Q And where do you live?
- 25 A We live on North Highway 14 in Greer.

1 Q Okay. Is it in a subdivision, or --

2 A No. We live on 11 acres that's --

3 Q I'm sorry. I can barely hear you.

4 A I'm sorry. We live on 11 acres.

5 Q Okay. Are there children next door to you?

6 A Not that I'm aware of, no.

7 Q Can you control Mr. Daily?

8 A No.

9 Q He's an adult. You can't control him, correct?

10 A No. I can't.

11 Q If he were to do something that you didn't think he

12 should be doing, is there anything you can do?

13 A Yes. I can make him leave my house.

14 Q You can make him leave. Is there anything else you

15 could do?

16 A I could call his probation officer if it was

17 something that he was -- he was doing that was

18 against what he should be doing as far as what the

19 law is telling him he could do, there's that.

20 Q Would you call his probation officer?

21 A Yes. I would.

22 Q Okay. Are you in denial as to anything that Mr.

23 Daily has done and is alleged to have done?

24 A No. I -- I understand now from what they've said.

25 I -- I believe he did the things. I --

1 Q Do you approve of what he's done?

2 A No. I don't.

3 MR. THOMPSON: (To the witness) Thank you.

4 Answer any questions the State may have.

5 CROSS-EXAMINATION

6 BY MS. SHAW:

7 Q Ms. Daily, my name is Suzanne Shaw. I'm just going
8 to ask you a couple of quick questions.

9 A Okay.

10 Q Now, you love your son, right?

11 A Yes. I do.

12 Q And you're here to support him today?

13 A Correct.

14 Q And that's -- you've always been a support to him,
15 correct?

16 A I hope so.

17 Q Now, you're aware that your son will only be on
18 probation for a little less than three years if he
19 is released after this trial?

20 A Correct.

21 Q Okay. Now, once he's -- assuming he successfully
22 completes his probation and he's off of it, if he
23 did something that you felt was inappropriate, what
24 would you do?

25 A I would call the authorities if he -- if he

1 committed something that was inappropriate, again.
2 He wouldn't stay at our house doing it. I would
3 call someone to come and take him and report it to
4 whoever it needed to be reported to if he's off
5 probation.

6 MS. SHAW: (To the witness) Thank you.

7 THE COURT: (To Mr. Thompson) Anything
8 further?

9 MR. THOMPSON: No, sir.

10 THE COURT: Ma'am, you may step down. Please
11 be careful.

12 THE WITNESS: All right. Thank you.

13 (WHEREUPON, the witness was excused.)

14 MR. THOMPSON: Respondent rests, Judge.

15 THE COURT: Respondent rests. (To Mr. Runyan)
16 Is there any reply or rebuttal?

17 MR. RUNYAN: No, Your Honor.

18 THE COURT: Nothing? Okay. Mr. Foreman,
19 ladies and gentlemen of the jury, the
20 Respondent has now rested its case, and -- and
21 the State does not intend to call anyone,
22 what's known as "a reply or a rebuttal." So
23 what that means to you is that all of the
24 testimony is now completed. There's not gonna
25 be another picture. There's not gonna be

1 another -- another sentence uttered from the
2 witness stand. You have all the evidence that
3 you're gonna have at this point.

4 We're gonna recess for lunch now at this
5 point, because I'm gonna take up a couple of
6 matters of law outside of your presence. I'm
7 gonna ask you to be back at 2:30. At 2:30.
8 Now, we're gonna come back at two because
9 we've got to put a couple of things on the
10 record and -- and so forth, so, again, I don't
11 need you until 2:30. We're gonna talk about a
12 jury charge and get ready, because, when you
13 come back, Mr. Foreman and ladies and
14 gentlemen, you would expect to hear from the
15 lawyers in what's known as their "closing
16 statements" to you. After they have made
17 their statements to you, then I will charge
18 you on the law and then send you to the jury
19 room to begin your deliberations.

20 So you will get this case here, early
21 afternoon and then it will -- you will be
22 asked to make a decision at that time, okay?
23 So you're not going to hear any more
24 testimony. It's over. And so, until then,
25 don't talk about it; don't think about it;

1 don't do any research, please, about this
2 case. And I will see you at 2:30. Mr.
3 Foreman.

4 (WHEREUPON, the jury was excused at 11:29
5 a.m.)

6 THE COURT: While we have a few minutes here,
7 anything from the State?

8 MR. RUNYAN: Nothing from the State, Your
9 Honor.

10 THE COURT: From the Defense?

11 MR. THOMPSON: I guess, at this point in time,
12 I have to renew my motion for directed
13 verdict, Judge.

14 THE COURT: Yes, sir. You do. Anything
15 further from the State?

16 MR. RUNYAN: I mean, we would -- we would
17 stand on our earlier arguments that we believe
18 that the evidence is there to -- he meets all
19 the elements and that we believe it should go
20 to the jury.

21 THE COURT: Yes, sir. And for the same
22 reasons heretofore enunciated it on the
23 record, the motion for directed verdict, at
24 this time, is denied. Okay. Anything
25 further?

1 MR. RUNYAN: No, Your Honor.

2 MR. THOMPSON: No, sir.

3 THE COURT: Okay. Let's meet at two, and we
4 can meet in here. That's what we'll do
5 because we -- usually, I use a jury room a lot
6 of the times, but that's going to be --

7 THE LAW CLERK: That's where Judge Cole's room
8 -- or jury is in, and ours is in the other, so
9 yeah.

10 THE COURT: Is Judge Cole still in trial?

11 THE LAW CLERK: I believe so.

12 THE COURT: Yeah. He's in trial, too, so
13 that's his jury room and then ours is all the
14 way down. We could meet in here, and it will
15 be very informal. We'll come sit at the table
16 and just talk about the jury charge, and I'm
17 going to read this for the first time.

18 Sarah's had it, but I haven't seen it, so . . .
19 . Okay. I will see everyone at -- I'll see
20 you guys at two.

21 MR. RUNYAN: Thank you.

22 MR. THOMPSON: Thank you.

23 THE COURT: And we'll be back on the record at
24 2:30.

25 THE BAILIFF: So we'll be in here at 2:30?

1 THE COURT: In here at 2:30.

2 THE BAILIFF: Yes, sir.

3 THE COURT: I'm gonna meet with the lawyers in
4 here at two.

5 (WHEREUPON, a lunch break was taken from
6 11:41 a.m. until 2:36 p.m.)

7 AFTERNOON SESSION

8 THE BAILIFF: All rise, please. Court come to
9 order.

10 THE COURT: Thank you. Thank you. Please be
11 seated. Good afternoon, everyone.

12 MR. THOMPSON: I'll go get my client.

13 THE COURT: Yes, sir.

14 MR. THOMPSON: I'll go get my client.

15 THE COURT: Okay.

16 MR. THOMPSON: I'm assuming they're bringing
17 him in cuffs.

18 THE COURT: Okay. Everybody ready? I'm told
19 the jury's here.

20 MR. THOMPSON: Yes, sir.

21 MR. RUNYAN: Yes, Your Honor.

22 THE COURT: -- we'll have the jury.

23 (Off the record from 2:36 p.m. until
24 2:38 p.m.)

25 (WHEREUPON, the jury enters open court at

1 2:38 p.m.)

2 THE COURT: (To the Jury) Okay. Please be
3 seated. Mr. Foreman, is the jury okay?
4 Everybody ready?

5 MR. FOREMAN: Yes, sir.

6 THE COURT: All right. If you'll give your
7 attention to the lawyers, please, for the
8 closing statements.

9 THE COURT: Counsel?

10 MR. RUNYAN: May it please the Court?

11 THE COURT: Yes, sir.

12 CLOSING ARGUMENTS

13 BY MR. RUNYAN:

14 MR. RUNYAN: Mr. Thompson.

15 Good afternoon, ladies and gentlemen. So
16 we're nearing the end when you guys are going
17 to have to perform your duty here today, and
18 that -- remember that role is to be the fact
19 finder here; and we're almost at that point.

20 And I think I told you in the opening
21 that you probably would be thanked a lot this
22 week. And -- and I'm sure you have been. And
23 I want to take one more opportunity to thank
24 you on behalf of the State of South Carolina
25 for serving as jurors. And I sincerely mean

1 that because you do serve an important role to
2 all of us here in solving disputes and
3 answering questions. And I hope that -- I
4 really hope that it's been a rewarding
5 experience for you, and you've learned
6 something about the court system and what --
7 what we do here.

8 So I also want to thank you, because I
9 asked you to do something when I opened with
10 you on Tuesday, and that was to listen to the
11 evidence. And I have been watching you
12 throughout the trial, and I know that you've
13 done that. You've been very attentive to what
14 has gone on here. I -- you've been very
15 attentive to both -- both parties, so I thank
16 you for that.

17 Ladies and gentlemen, Mr. Daily is a
18 sexually violent predator. He has offended
19 against four different females, little girls
20 essentially, over a 16-year period. Two of
21 these victims were reoccurring multiple times
22 over a three-year period. He offended in
23 multiple locations against victims who could
24 readily identify him, and if you remember, he
25 had that incident at the YMCA pool. He

1 continued these behaviors despite the fact
2 that he knew what he was doing was wrong. And
3 he didn't stop until he was arrested. He
4 targeted vulnerable single females who had
5 little girls. He fostered a caregiver
6 relationship; remember, he was a babysitter of
7 these girls. He fostered that caregiver
8 relationship, and then he abused that trust.

9 Now, this has been a short trial, and I'm
10 not gonna insult you guys with detailed
11 recitation of all the facts as you've heard.
12 It's your job to remember the facts, and I
13 think you've done a good job of that, so when
14 you go back and deliberate, it's the facts as
15 you remember them. But I do have a duty. You
16 know, if you remember, we talked about that
17 standard of proof that -- that high burden of
18 proof that the State has -- the beyond a
19 reasonable doubt standard, which the judge
20 will explain to you in just a few minutes when
21 we're done.

22 So I think, since we had that high
23 standards of proof, it's my duty just to
24 highlight some of the testimony that I think
25 will show that we meet the elements of what it

1 means to be a sexually violent predator. Now,
2 if you'll remember what -- I -- I told you
3 when -- when I opened what we had to prove to
4 you, and that's really two things. One, that
5 Mr. Daily has been convicted of at least one
6 sexually violent offense, and the second thing
7 we had to prove to you was that he has a
8 mental abnormality and personality disorder
9 that makes him likely to commit acts of sexual
10 violence if not confined for long-term
11 control, care, and treatment.

12 So I think we can dispense that first one
13 very quickly and very easily. I don't think
14 it was really seriously contested, and I think
15 it was probably conceded to by -- by Mr.
16 Daily's counsel that Mr. Daily has been
17 convicted of at least one sexually violent
18 offense, and he's been convicted of three;
19 three counts of a lewd act of a minor, and
20 they're all here. They've been entered into
21 evidence. You will have these back there in
22 the jury room with you when you go back. And
23 I encourage you, when you go back there, to
24 read these, okay? They're not -- they're not
25 very long; each one is a front and back. This

1 one's front and back. Read the evidence when
2 you get back there. Take a look at it. So I
3 submit we probably have met the burden on that
4 first element.

5 Now, the second element, as -- as you
6 heard, we need help from the mental health
7 community. It's not something that -- that we
8 can -- we can determine if someone has a
9 mental abnormality or personality disorder.
10 We really can't -- we need them to determine
11 the risk, as well. So you remember there were
12 two experts in this case. There was Dr. Emily
13 Gottfried from the Medical University of South
14 Carolina, and there was Dr. Christopher Gillen
15 from the Department of Mental Health. And
16 they both told you what their protocols were
17 in doing these types of assessments. And if
18 you remember, Dr. Gottfried testified that her
19 protocol was she does an interview, a records
20 review, and then she does a battery of tests,
21 which she defined as a test that Mr. Daily
22 took on paper and a computer; it's got self-
23 assessments. She talked about the
24 physiological tests that she gave him,
25 physical test that -- that she performed on

1 him, and she talked about the clinician-scored
2 test that she does; and that's kind of her
3 protocol.

4 And Dr. Gillen tell you -- told you his
5 protocol was basically do an interview, a
6 records review, and score two actuarial
7 assessments. That's -- that's basically his
8 protocol.

9 So you have to decide really from your
10 recollection, maybe, who did the more thorough
11 evaluation? Who had more information? So
12 both doctors testified to you on the stand
13 that they want to gather as much information
14 as they can to create data points so they can
15 make informed decisions. So I want you to
16 consider that when you go back there.
17 Consider who had more information to make an
18 informed decision.

19 Now, I think this is probably going to be
20 conceded to, -- I think it probably already
21 has -- that both experts diagnosed Mr. Daily
22 with pedophilic disorder, exclusive type,
23 sexually attracted to females. And they told
24 you what that meant. It means a pattern over
25 six months he has offended against little

1 girls ages four through ten. And they both
2 asked him -- if you remember, they both
3 testified they asked him because one of the
4 questions is: Is he aroused to it today?
5 That was the -- yeah. Was he aroused -- is he
6 aroused to it today? They both asked him if
7 he was aroused -- sexually aroused by little
8 girls. And, if you remember, both doctors
9 testified that when they asked him that
10 question, he said, "No." He wasn't. Dr.
11 Gillen didn't do anything else. Dr. Gottfried
12 performed the PPG. If you remember, she
13 talked about that. And I'm not gonna, you
14 know, go through what -- what the PPG is or
15 how it works. I think you guys have figured
16 that out. But I want you to remember what it
17 confirmed for Dr. Gottfried. It confirmed her
18 diagnosis of pedophilic disorder, because it
19 showed that he had clinically significant
20 arousal to an infant female, persuasion of a
21 grammar school female, and persuasion of a
22 preschool female. And it was important to her
23 that his current arousal to the stimuli
24 matched his offending behavior when he was
25 offending, so he still has that arousal to

1 little girls. So they diagnosed him with
2 pedophilic disorder. And like I said, I don't
3 that's disputed.

4 So does he have a mental abnormality or
5 personality disorder? Yes. He does. He has
6 a mental abnormality and has pedophilic
7 disorder.

8 Now, really -- like -- like Mr. Thompson
9 has said, we're gonna get -- what we're gonna
10 get down to is whether or not he has a risk to
11 reoffend. Is he likely to reoffend? And the
12 judge will tell you -- define likely for you,
13 but I'm gonna tell you what I think "likely"
14 means is that Mr. Daily's risk is such a
15 degree that he poses a menace to the health
16 and safety of the community. It's not that,
17 "Is Mr. Daily gonna go reoffend tomorrow?"
18 The question is: Does he have a propensity?
19 Is he likely to based on his risk factors? On
20 his insight? On his sexual arousal?

21 So the next thing that the doctors did is
22 they really assessed risk, and they talked to
23 you about how they did that. And really both
24 doctors told you that they used what they call
25 "Static and dynamic risk factors and risk

1 assessments." And if you'll remember, the
2 Static risk factors of those things that Dr.
3 Gottfried called "historical," not changing,
4 like your age. She really can't do anything
5 about your age. Based on historical charges,
6 like how many charges has someone had to make
7 historical data. It's unchanging. And they
8 can't do anything to treat that. I -- I think
9 Dr. Gottfried said there's nothing that she
10 can give you to stop you or treat you from
11 getting older. And I don't think it surprises
12 you that -- since it's based on these
13 historical factors, I don't think you're
14 surprised that both Dr. Gottfried and Dr.
15 Gillen came up with the same scores on those
16 two actuarial assessments, because they're
17 based on historical factors.

18 Now, they both give him a 2 on each
19 measure, and you heard that was the average
20 risk category. Now, Mr. Thompson's focused a
21 lot of attention on the Static-99R during
22 testimony. And I think Mr. Thompson wants to
23 focus your attention to that number. He wants
24 you to focus on the Number 2. He wants you to
25 make your decision based on that Number 2.

1 But you have to remember that both Dr.
2 Gottfried and Dr. Gillen told you that in
3 their profession as experts in forensic
4 psychology, you cannot rely on one data point.
5 They do not rely on one data point. Neither
6 one, Dr. Gillen or Dr. Gottfried, relied
7 solely on the Static-99R. They told you they
8 also have to look at the dynamic risk factors:
9 What his arousal habits are? What his
10 offending habits were? So they looked at the
11 dynamic risk factors. And that -- Dr.
12 Gottfried told you those are things that are
13 changing, that can be mitigated with
14 treatment. There's things that they can do to
15 help somebody with -- to manage their dynamic
16 risk factors.

17 And I'm not gonna go define every dynamic
18 risk factor for you. I'm just going -- I just
19 want to remind you of what the risk factor --
20 dynamic risk -- excuse me -- dynamic risk
21 factors that Dr. Gillen gave Mr. Daily and the
22 -- and the additional dynamic risk factors
23 that Dr. Gottfried gave. And I think it's
24 important you remember that I believe Dr.
25 Gottfried had more information. She had more

1 -- more data points that she did, the testing
2 that she did, the clinical interview that she
3 did. I think she had more data to pull these
4 dynamic risk factors from. Now, Dr. Gillen
5 said he had a sexual preference for
6 prepubescent children. That he had emotional
7 congruence with children and that he
8 identifies with children, creates
9 relationships with them. And that he had a
10 lack of intimate, emotional relationships with
11 adults, and I think you heard that through
12 testimony. You know, he really -- he's never
13 had sex with a -- a consenting adult female.

14 Dr. Gillen also gave him offense
15 supportive attitudes. In addition to those,
16 Dr. Gottfried gave him sexual deviation as a
17 risk factor, sexual preoccupation,
18 relationship problems, chronic sexual
19 offending, grooming behaviors, if you remember
20 what was said about that. Poor insight into
21 his disorder and offending behaviors and
22 extreme minimalization and denial of sexual
23 offending. So taking all the -- take all
24 those risk factors and think about what they
25 mean and think about what -- how -- what the

1 doctors told you about how they relate to
2 sexual reoffending.

3 Now, there was -- if you'll remember, Dr.
4 Gillen testified when he was being qualified
5 as an expert that he does a couple types of
6 evaluations as part of his duties at -- at
7 DMH. He does annual review evaluations, and
8 he does pre-commitment evaluations. And I
9 think the numbers he gave us were something
10 like I think 64 total to date that he had done
11 and a large majority of those were annual
12 reviews and he had done -- I think, it was
13 about seven or nine pre-commitment evaluations
14 as of today. And he told you the difference
15 between the two. And if you'll remember, he
16 told you that in an annual review, the
17 referral question, and what they're asked to
18 find is different than what they're asked to
19 find in pre-commitment case. And they're
20 asked to find whether or not a person's -- a
21 person who has been committed for treatment
22 whether their personality -- their mental
23 abnormality and personality disorder has so
24 changed that they're not likely to reoffend,
25 and it's a little bit different assessment.

1 And in that assessment, protective
2 factors are very important. What's some of --
3 what the external factors are. What somebody
4 has in place when they leave. It's very
5 important in an annual review, because it's
6 assumed that the person has learned management
7 strategies. They've been in the treatment
8 program; they've learned management
9 strategies; they take those management
10 strategies; and with the external support
11 systems and those protective factors, they go
12 out there and they can be successful members
13 of society.

14 I think Dr. Gillen placed too much
15 emphasis on protective factors, because if you
16 remember what Dr. Gottfried said when asked
17 about protective factors, she said, "We don't
18 really know the -- the research in this area
19 is in its infancy." And they really haven't
20 figured out what protective factors, how they
21 relate to someone's risk or mitigation of
22 risk, because it's really in the infancy in
23 their -- their area of expertise. I think
24 perhaps Dr. Gillen relied too much on those
25 external factors.

1 And remember, he talked -- we talked
2 about probation. There's no doubt that Mr.
3 Daily has probation. He has three years left
4 on it. There's no doubt that he has a family
5 that supports him. There's no doubt that he's
6 gonna have a GPS monitor. There's no doubt
7 that he's gonna have to have -- he has
8 conditions that they have -- have to meet,
9 including sexual -- I think sexual counseling
10 is one of them. There's no doubt that he has
11 all those.

12 But I want you to remember, Dr. Gottfried
13 had this information when she made her
14 assessments. It sounded like she skipped over
15 it or didn't consider it. She testified to
16 you. She considered this information, and
17 it's still her opinion, despite all that, that
18 Mr. Daily's risk is so high that he needs to
19 be committed for long-term control, care, and
20 treatment.

21 Now, Mrs. Daily, Mr. Daily's mother,
22 testified and -- and I listened to her and, I
23 tell you what, I have no doubt of her
24 sincerity. I believe she truly loves her son.
25 I believe she truly wants to help her son. I

1 believe she wants to make him a productive
2 member of society. But I want -- also want
3 you to remember that she also said, "He's an
4 adult." And she can't control him.
5 And what's important is what Mr. Daily's going
6 to do. Can he control his behavior? I think
7 the answer to that question is no.

8 And then Dr. Gottfried told you that
9 really what -- after you take -- she does all
10 these batteries of tests and all these -- she
11 talks to him and she does all these risk
12 assessments. She puts all that together to
13 form her opinion. And I -- we'll call it, you
14 know, "in totality." What -- what did really
15 Dr. Gottfried say? And it's this: She
16 believes, in her opinion, that Mr. Daily has
17 no realistic plans to avoid acts of sexual
18 reoffending. He's never received any sexual
19 behavior treatment. He didn't take it when it
20 was offered to him, and as to he's -- he
21 minimizes his sexual interest, his sexual
22 behaviors, and his sexual thoughts or
23 fantasies to her. His sexual suppression and
24 avoidance techniques are not realistic.
25 Remember she said he told her that if someone

1 told him to go jump in the shower and
2 masturbate that would relieve his -- his
3 sexual tensions or his sexual urges. But she
4 told Dr. Gottfried -- but he told Dr.
5 Gottfried that he hadn't masturbated in five
6 to seven years.

7 She also said that Mr. Daily doesn't
8 appreciate his risk of reoffending, and he was
9 unable to identify thoughts or fantasies or
10 warning signs. There was nothing to say to
11 him, "Hey, I need to put the brakes on." She
12 said he doesn't appreciate the role that
13 pedophilic disorder plays in his defenses,
14 and, taken altogether, she -- she thinks that
15 he shows poor insight. Poor insight into his
16 need for treatment, poor insight into his
17 pedophilic disorder, and poor insight how to
18 manage himself in the community. And she gave
19 you her opinion that he met the criteria to be
20 committed.

21 I can't say that -- I know Dr. Gillen
22 testified that it was his opinion that it
23 didn't -- that he didn't need to be committed.
24 Mr. Daily didn't need to be committed. But I
25 want you to remember on cross-examination of

1 Dr. Gillen. Dr. Gillen had to concede that
2 Mr. Daily had offended against four different
3 minor females over a long period of time.
4 That he offended in multiple locations against
5 victims who could readily identify him. That
6 he offended despite the fact that he knew his
7 actions were wrong up until a time that he was
8 arrested.

9 And Dr. Gillen said to this, if you
10 remember, he picked up his report and he read
11 this to you. He said, "Collectively, these
12 suggest serious difficulty and/or previous
13 position for Mr. Daily to engage in acts of
14 sexual violence." Ladies and gentlemen, that
15 is the definition of not being able to control
16 yourself.

17 I ask you to find the answer to the
18 question that you're gonna be presented as,
19 yes. Mr. Daily is a sexually violent
20 predator. I thank you for your time.

21 THE COURT: Mr. Thompson?

22 CLOSING ARGUMENTS

23 BY MR. THOMPSON:

24 MR. THOMPSON: May it please the Court, Your
25 Honor. Mr. Runyan and Ms. Shaw.

1 Ladies and gentlemen, I, too, want to
2 thank you for the last couple of days. You
3 took time out of your lives to listen to this
4 case, which really means nothing to y'all, but
5 it means a lot to Mr. Daily, because his --
6 his liberty is at interest here.

7 The judge will tell you what the law is.
8 I'm gonna give you a little bit here, but if I
9 say something different than what he says, you
10 listen to him, okay?

11 Our law defines a sexually violent
12 predator is a person who's been convicted of a
13 sexually violent offense. And as I told you
14 upfront in opening arguments, those lewd acts
15 are considered sexually violent offenses.
16 Now, the State's gonna have to prove that to
17 you, but that shouldn't be a hard burden of
18 proof right there. We're admitting to it,
19 okay?

20 Secondly, the person has to suffer from a
21 mental abnormality or personality disorder.
22 We -- both doctors testified that he suffers
23 from pedophilic disorder, which is a mental
24 abnormality. I don't think I asked Dr. Gillen
25 this, but Dr. Gottfried said there was no

1 personality disorder. But it doesn't take
2 both of them; it just takes one. And we
3 admitted to you upfront in the opening
4 arguments that, yes, he has a mental
5 abnormality. And mental abnormality is
6 pedophilia disorder and it's chronic. It
7 lasts a lifetime. There's no cure for it,
8 okay?

9 But the law goes on to say that that
10 mental abnormality has to make the person
11 likely to engage in active sexual violence if
12 not confined in a secure facility for long-
13 term control, care, and treatment. Now, as to
14 that -- that last statement, that's basically
15 what we're here about. I'll find it here.
16 The law also defines the term "likely to
17 engage in acts of sexual violence." It means
18 the person has a propensity to commit acts of
19 sexual violence of such a degree as to pose a
20 menace to health and safety of others.

21 Now, Mr. Daily's history from 19, what,
22 93 to 2008 is not a nice history. None of us
23 can say we approve of it, but this is not the
24 place to pull out the pitchforks and the
25 torches. That's already happened. He's been

1 to prison; he's been punished. What we're
2 trying to decide today is: Where does he go
3 from here?

4 Now, Mr. Runyan said I'm gonna try to put
5 a lot of weight on that PPG -- not PPG, the
6 Static-99. And I'm not going to put a lot of
7 weight on it, but I am going to put some on
8 it. It's one of the factors that they used.
9 And Dr. Gottfried testified that this is one
10 of the standards that they use. It's one of
11 the oldest standards they have to determine
12 things. Mr. Daily's score of 2 put him in the
13 average category. And that, at the time that
14 she did her report, average category was you
15 had a 5.6 percent chance of reoffending. That
16 means there was a 94.4 percent chance of not
17 reoffending. But the new numbers has lowered
18 that from -- to -- from 5.6 chance of
19 reoffending to a 4.6. So now under the new
20 guidelines, which, apparently, changed in
21 2020, he has a 95.4 percent chance of not
22 reoffending. We're getting into that word
23 "likely," somebody that's likely to do this.
24 If he has a 95.4 percent chance of
25 reoffending, does that mean he's likely to

1 reoffend?

2 Dr. Gillen testified the same -- same
3 number on there, a 2 average category, but
4 there were other things that was bad. That by
5 itself is -- is positive of the issue before
6 us, okay? It's one of the things you look at.
7 They look at it -- Dr. Gottfried, who by the
8 way, is employed by a State agency, MUSC, but
9 she gets paid to do this on the side by the
10 State. Dr. Gillen was ordered by the Court to
11 do the evaluation. His wasn't -- he wasn't
12 for either side -- hired by either side to do
13 it; the Court ordered him to do it.

14 The PPG as Dr. Gottfried testified to --
15 and we don't disagree with it. We're
16 admitting that there's a pedophilic disorder,
17 and that's exactly what it showed, but she did
18 say it was consistent to two tests: The
19 Marshall set and the Real Child Voices set.
20 And when he was shown the Marshall set -- or
21 given the Marshall set, he did not meet a
22 minimum requirement for a valid exam. In
23 other words, there was no arousal. It wasn't
24 until he put the pictures of the children up
25 there with their voices that there was

1 arousal. And she didn't go into how much
2 arousal. I -- I think -- I believe, what, she
3 said it takes 5 millimeters or something like
4 that. It don't have to be a full erection.
5 But under one part of that test, there was no
6 arousal. That needs to be taken into
7 consideration too.

8 As to these children he committed these
9 offenses against, they weren't just strangers
10 he picked up on the street. They were
11 children of people that he either had a
12 relationship with, worked with, or was friends
13 with, some kind of a relationship with the --
14 the mothers. And it was over a period of time
15 that he developed that -- and I don't want to
16 call it a relationship with the child, but it
17 was over a period of time that he developed
18 the ability to abuse that child, for lack of a
19 better word. It wasn't something that was
20 spur of the moment that -- okay? You're my
21 girlfriend's daughter. Come over here. It
22 was something that worked over time. And I'm
23 saying that because there's nothing to
24 indicate -- I mean, there was talk of
25 grooming. And that in fact was -- was

1 grooming; to get the child's confidence; to
2 get the child's respect; get the child's love.
3 And then step by step by step get there. That
4 is something that takes a little time to do.
5 It's not something to be done quickly. It's
6 not something that you can say, "Well, he's
7 likely to go out there and groom another one."
8 And I'm gonna tell you why.

9 There's talk about protective factors.
10 Dr. Gottfried did not see any protective
11 factors, but even though she was aware of him
12 being on probation for three years. And she
13 believed that he would be on GPS monitoring.
14 If I recall her testimony correctly, and if --
15 if you thought differently, you remember what
16 you -- you heard. But if I recall her
17 testimony correctly, she wasn't sure what
18 other factors he'd be subject to on probation.
19 Dr. Gillen had talked to the probation agent,
20 who is a specialized probation agent for sex
21 offenders. He's gonna be on GPS monitoring.
22 He's going to have to go to treatment, and
23 that's -- that's the big thing. Yes. He's
24 gonna have to have treatment. We can't just
25 open the door and say, "There was nothing. Go

1 fly free." He's going to have to be in
2 treatment.

3 But Dr. Gottfried said that there was no
4 new support system. He had the same support
5 system now he had before -- while he offended.
6 He does have a new support system. He's got a
7 probation officer, a probation officer who
8 deals with sex offenders. A probation officer
9 who will -- I can't say -- even the probation
10 officer can't make him do something just like
11 his mother can't. But if he doesn't do it,
12 the probation officer can put him back in
13 prison, okay?

14 He's got GPS monitoring 24 hours a day, 7
15 days a week, 52 weeks a year. They will know
16 where he's at every minute of his life. And
17 as it stands right now -- and there's --
18 there's some talk about changing it -- but as
19 it stands right now, that GPS monitoring is
20 lifelong, okay?

21 Dr. Gottfried talked about some of the
22 risk factors. And if you'll remember, she
23 said, "The lack of empathy is not a risk
24 factor." The fact that you don't feel sorry
25 for what you did, or -- is not a risk factor,

1 okay? She said he -- she thinks he does not
2 want to reoffend, but, now, she did, though,
3 say she doesn't believe he knows how not to.
4 Well, that's the part of treatment. The
5 treatment will help him learn how not to
6 reoffend.

7 Her testimony, I wrote it down, two --
8 two different things. One was her opinion is
9 that if not treated, he will reoffend. Not
10 inpatient treated, but if not treated. The
11 second thing she said, when asked by Mr.
12 Runyan, I believe it was, she had no opinion
13 as to inpatient verses outpatient treatment,
14 because that wasn't what she was hired to
15 evaluate; so she hadn't rendered an opinion on
16 inpatient versus outpatient. When I asked her
17 what kind of work she did, if you'll recall,
18 she does outpatient treatment for the federal
19 probation office. So it's not something that
20 doesn't exist. And because -- and I'm saying
21 that, because at one point during her
22 testimony, she said she didn't know about
23 outpatient treatment. Now, maybe she was
24 talking about she didn't know if the State did
25 it or not, but she knows she does it. She

1 does it for the federal probation office, and
2 you've heard testimony that the State
3 probation office has the same thing.

4 Ladies and gentlemen, it's -- the State
5 has the burden of proof as they told you, and
6 that burden of proof is, basically, are you
7 firmly convinced that he meets the elements to
8 be a sexually violent predator and committed
9 for treatment? If there's a real possibility
10 that he doesn't, then you'll find that he's
11 not a sexually violent predator for
12 commitment.

13 As I say, and looking at the law, we are
14 not arguing with whether or not he's been
15 convicted of an offense that qualifies. We're
16 not arguing with whether or not he has a
17 mental abnormality that qualifies. What we're
18 arguing with is whether or not he would likely
19 engage in acts of sexual violence if not
20 confined in a secure facility for long-term
21 control, care, and treatment. In other words,
22 does he have a propensity to commit acts of
23 sexual violence to such a degree as to pose a
24 menace to the health and safety of others?

25 His mother testified that she's gonna

1 live with him. She knows all the conditions.
2 She knows about it. She's got grandchildren.
3 She's told her family what's going on. He
4 can't be around them. There's a lot of
5 conditions on sexuality -- or sexual predators
6 and sex offenders in the probation office.
7 And we just talked about a couple of them.
8 But his mother told you that if she thinks he
9 gets out of line, she will call the probation
10 agent. She loves him, he's her son, but she
11 knows what he's done is wrong. If he gets out
12 of line, she will call the probation agent and
13 let him know. Ms. Shaw asked her and said,
14 "Well, what if active probation's over with
15 and he gets out of line."

16 "Well, I'll call whoever, the police,"
17 okay? He's got a support network out there.
18 He's got people that are going to make him
19 accountable: Probation officer, his family.
20 Now, you know, it's a situation -- and -- and
21 I'm not going to be naïve. You can't keep up
22 with somebody and track somebody -- well, you
23 can track him; they're going to do GPS
24 monitoring. But you can't keep up with
25 somebody 24 hours a day/7 days a week, okay?

1 No matter how hard you try except for the GPS
2 monitoring that he'll be getting.

3 Look at his offenses. One offense Dr.
4 Gottfried said was you can predict the future
5 from the past. Look at his offenses against
6 these children. They all involve a time
7 period. They all involved the child -- or
8 daughter of a friend or relative or -- or
9 girlfriend. They all involved grooming, which
10 takes time. So, yeah, if he gets a -- gets a
11 job and goes to work, his -- his employer will
12 know where he's at exactly. Nobody will know
13 where he's at between the time he leaves home
14 and gets to work except that GPS monitor. And
15 that officer that operates that for the County
16 can know every minute of his life where he's
17 at.

18 What I'm asking you to do, ladies and
19 gentlemen, he does not need to be placed in a
20 treatment facility involuntarily. He needs
21 treatment. He can get that outpatient. The
22 doctor, Dr. Gottfried, did not deny that. She
23 said she didn't think that finding was a part
24 of what she was supposed to determine, so she
25 did not deny that outpatient treatment would

1 work for him, and she does outpatient
2 treatment herself.

3 I'm asking you, given everything here
4 that's -- that you've heard -- and if you've
5 heard something different than what I just
6 told you, go by what you've heard. But given
7 the information you've heard as to the
8 protective factors, as to the Static factors,
9 the percentage of not reoffending of people
10 that scored in this category, I'm going to ask
11 you to go back when you deliberate and return
12 a verdict of, No. He is not a sexually
13 violent predator under the statute.

14 With that, I'm gonna sit down. Mr.
15 Runyan may address you again. You -- this is
16 my last time I'm addressing you. Again, I
17 want to thank you. I want to thank you for
18 listening. I want to thank you for being
19 diligent in what you do, and whatever your
20 decision is, honestly, nobody can blame you
21 for anything, okay? It's got to be a
22 collective decision among all 12 of you, and
23 we all have to accept whatever that is. Thank
24 you very much.
25 THE COURT: Counsel?

1 MR. RUNYAN: A few items, Your Honor?

2 THE COURT: Yes, sir.

3 MR. RUNYAN: Thank you.

4 REBUTTAL ARGUMENTS

5 BY MR. RUNYAN:

6 MR. RUNYAN: Ladies and gentlemen, I just want
7 to address a few things that Mr. Thompson
8 said. And nothing probably need -- and what
9 we do is this is called a "rebuttal" or a -- a
10 "response." And I don't think when Mr.
11 Thompson said that -- that Dr. Gottfried did
12 this on the side, she -- she worked for MUSC,
13 but she does these things on the side, I don't
14 think that's what he really meant
15 intentionally because she told you that it's
16 part of her duties to do these. When they --
17 when -- when the attorney general sends -- and
18 we have a contract and we -- she told you we
19 send her a referral as part of her duties.
20 The fee's paid to MUSC, and she's compensated
21 with salary, so there's nothing -- nothing on
22 the side. It's part of her duties as -- as
23 the director of the -- the laboratory.

24 I'd also like to point out that Mr.
25 Thompson has said a couple of times about MUSC

1 being paid as a State agency -- by a State
2 agency, but Dr. Gillen's court appointed;
3 courts are State agencies. He's paid by the
4 Department of Mental Health to do the
5 evaluation, which is a State agency. I mean,
6 so the State's paying a lot of money to have
7 these evaluations done.

8 I'd also like to just note that, you
9 know, Mr. Thompson said Dr. Gillen had called
10 -- that he had talked to the -- the parole,
11 pardon, and probation agent about the -- these
12 external factors that he has, but I want you
13 to remember that he seems to suggest that Dr.
14 Gottfried didn't know those things, but if you
15 remember right here on the stand, she pulled
16 out her notebook and she read to you the e-
17 mail and the correspondence that she had with
18 PPP and told you what those -- those factors
19 were; so she -- she did know about them and
20 she testified to that.

21 Also, like Mr. Thompson said, I agree
22 there's some question about, you know, whether
23 GPS monitoring is lifelong, and that's a
24 question for another day. But I think, if
25 you'll remember, Dr. Gillen testified today on

1 direct that Mr. Daily would be available to
2 have the GPS monitor taken off of him in ten
3 years if he petitioned to the Court. I
4 believe that's what he said, but you -- like I
5 said, you -- if you remember that, you
6 remember it how you remember it, but I think
7 that's what Dr. Gillen said today.

8 Now, again, back to the Static, I want to
9 point out and, again, give you these numbers
10 again and Mr. Thompson kept saying, "He's" --
11 Mr. Daily -- "He is not" -- "He" -- which
12 category is him? Is he 5 percent? Is it the
13 95 percent? But remember it's -- these Static
14 numbers aren't related to Mr. Daily. They're
15 a group of individuals who they've identified
16 risk factors and they grouped them together
17 and you're compared to -- Mr. Daily, he scored
18 the same as people who were -- reoffended at
19 this rate or that rate. It's not that Mr.
20 Daily is going to reoffend at one rate or the
21 other. It's that the group of individuals who
22 scored the same as him tended to reoffend at
23 those rates.

24 And I also want you to remember -- this
25 is very important to me -- what Dr. Gottfried

1 told you about the underreporting risk of the
2 Static-99R and 2002R. I think Dr. Gillen said
3 the same thing, too, that sex crimes are one
4 of the most underreported crimes for various
5 reasons. I mean, a lot of people just don't
6 come forward with sex crimes. And these
7 Static actuarials are based on detected
8 offenses, so they have a potential to reduce
9 or lower or give you a false image of what the
10 actual risks are, so remember that.

11 And, Mr. Thompson spent a little -- a lot
12 of time actually talking about the fact that
13 he groomed these children. That he took a
14 long time -- he took a long time to sexually
15 molest these little girls. I think that he's
16 suggesting that that means Mr. Daily can
17 control his behaviors. And I -- I don't think
18 that's the case. I don't think it's just a
19 matter of -- the statute doesn't just apply to
20 people who just grab somebody off the street
21 and offend with them right away impulsively.
22 It doesn't -- it covers everything. It covers
23 all offending. There's a pattern of behavior
24 of Mr. Daily grooming his victims and sexually
25 offending against them. And I want you to

1 remember what Dr. Gillen said to you from his
2 report. Dr. Gillen, their own expert, said
3 that Mr. Daily -- that these items seriously
4 suggest -- or these suggest serious difficulty
5 controlling and/or a predisposition to engage
6 in acts of sexual violence. Mr. Daily has an
7 issue controlling his behavior. Both Dr.
8 Gottfried and Dr. Gillen agree on that.

9 And, finally, these -- these external
10 factors or the protective factors, again, I
11 really want to emphasize to you. I -- I
12 really think that -- that Mr. Daily's mother
13 wants to help him. I do honestly believe
14 that, but as Mr. Thompson said, "Nobody can
15 track anybody 24 hours a day/7 days a week."
16 As she said, "He's an adult." He can't -- she
17 can't control him. And, also, you have to
18 know that the offending's going on in order to
19 call the police. You have to know what's
20 happening. Mr. Daily, for 16 years, was able
21 to cover up offending against four different
22 little girls.

23 So, again, ladies and gentlemen, I ask
24 you to return a verdict of, yes. Mr. Daily is
25 a sexually violent predator. Thank you.

1 JURY CHARGE

2 THE COURT: Mr. Foreman, and ladies and
3 gentlemen of this jury, it is now my duty as
4 the trial judge on the constitution of our
5 state to charge and instruct you on the law
6 applicable to this case. It is your duty as
7 jurors to accept and apply the law as I now
8 state it to you.

9 The State of South Carolina has brought
10 this case under the Sexually Violent Predator
11 Law of South Carolina. The State seeks the
12 civil commitment of Shawn Daily, the
13 respondent, for long-term control, care, and
14 treatment in a secure facility. This is not a
15 criminal proceeding seeking incarceration, but
16 rather a proceeding seeking civil commitment.

17 The State alleges or claims that the
18 respondent, Mr. Daily, is a sexually violent
19 predator under our law. The respondent denies
20 that he is a sexually violent predator, and
21 the burden of proof is therefore on the State
22 to prove by evidence sufficient to satisfy you
23 -- each of you beyond a reasonable doubt that
24 Mr. Daily is a sexually violent predator.

25 If the State is unable to meet that

1 burden of proof as to one or more of the
2 elements of this claim, the respondent is
3 entitled to a finding that he is not a
4 sexually violent predator.

5 Ladies and gentlemen, I want to ensure
6 that you understand Mr. Daily is not accused
7 of committing a crime in this proceeding. As
8 you have heard from all the testimony, he did
9 have a previous charge from which he was
10 sentenced by a Court. This respondent has
11 completed his sentence for that charge, and
12 the State is now alleging that he is a
13 sexually violent predator. The State has the
14 burden of proof and must prove its case beyond
15 a reasonable doubt. If you find the State has
16 not met this burden, the respondent will be
17 released. If you find the State has met its
18 burden and find that the respondent is a
19 sexually violent predator, he will not be
20 released, but will be committed to a secure
21 treatment facility in Columbia operated by the
22 South Carolina Department of Mental Health.

23 To determine the facts in this case, you
24 have to evaluate the creditability, which
25 means believability of each witness. You may

1 believe as much or as little of each witness'
2 testimony as you think proper. You may
3 believe the testimony of a single witness
4 against that of many witnesses or just the
5 opposite. You may believe part of a witness'
6 testimony and disbelieve the remainder. The
7 fact that testimony is not contradicted
8 directly does not render it undisputed as you
9 must first gauge the credibility and
10 believability of the witness from which such
11 testimony comes.

12 You may also consider inconsistencies in
13 testimony of a witness; however, two -- I
14 charge you that two or more witnesses to an
15 occurrence may see it differently. Innocent
16 misrecollection, like failure to remember, is
17 not an uncommon experience. You may consider
18 whether a discrepancy pertains to an important
19 matter or an unimportant detail. You should
20 also consider whether the discrepancy results
21 from an innocent error or an intentional
22 falsehood. A witness may be discredited by
23 contradictory evidence, may also be
24 discredited by evidence that some other time
25 or place the witness has done something that

1 is inconsistent with the present statement.
2 It is your exclusive providence to give
3 witnesses the credibility or believability you
4 determine they deserve.

5 Our Rules of Evidence ordinarily do not
6 permit witnesses to testify to opinions or
7 conclusions. An exception to this rule exists
8 for witnesses we call "expert witnesses." A
9 witness who by education, experience, and
10 training may -- and has become an expert may
11 give an opinion as to the subject the witness
12 claims to be an expert in, and they also give
13 the reasons for the opinion.

14 Ladies and gentlemen, you should consider
15 any expert opinion provided by a witness like
16 all other evidence, give it the weight you
17 believe it deserves. If you decide an expert
18 witness' opinion is not based on sufficient
19 education or experience, or if you decide the
20 reasons given in support of the opinion are
21 not sound, or that the opinion is outweighed
22 by other evidence, you may disregard the
23 opinion in its entirety. An expert witness'
24 testimony is to be given no greater weight
25 than that of other witnesses simply because

1 that witness was qualified as an expert. And
2 you do not have to accept the opinion of the
3 expert even if uncontradicted.

4 Now, you may have heard about evidence --
5 that evidence may be direct or circumstantial.
6 Direct evidence is testimony by a witness
7 about what the witness personally saw, heard,
8 or did.

9 Circumstantial evidence is indirect
10 evidence. It is proof of one or more facts
11 that indicate the existence of another fact.

12 In your deliberations, you are to
13 consider all the evidence, both direct and
14 circumstantial. Our law does not require a
15 greater degree of certainty for one type of
16 evidence over the other, and permits you to
17 give equal weight to both, but it is for you
18 12 to decide how much weight to give any
19 evidence.

20 The same constitution and law, which
21 designates and makes you 12 the finders of the
22 facts makes me the instructor and finder of
23 the law. You must accept it now as I give it
24 to you, and if I am wrong, there's another
25 place and time for that error to be considered

1 and, if necessary, corrected. You must accept
2 the law as I give it you, and this means you
3 should not be concerned with what you think
4 the law is or what the law ought to be or
5 could be, but only what I tell you that it is.

6 Now, while arguments of the lawyers is a
7 beneficial part of every trial, you should
8 remember, as I told you in the opening, that
9 the statements made by lawyers are not
10 evidence. In presenting arguments, the
11 lawyers often refer to evidence; however, you
12 should base your verdict on the evidence as
13 you remember. If there are any conflicts
14 between the recollection of a lawyer about the
15 evidence and your own recollection, you should
16 rely upon your own understanding of the
17 evidence.

18 Ladies and gentlemen, in most civil cases
19 tried in this courtroom, this Court of Common
20 Pleas, the burden of proving a claim is by the
21 preponderance or greater weight of the
22 evidence; however, in this particular case,
23 our state law says that the burden is on the
24 State, and it is beyond a reasonable doubt
25 that must be applied.

1 As already stated to you, the State has
2 the burden of proof. And under our law,
3 according to the Sexually Violent Predator
4 Statute, the State must prove its case beyond
5 a reasonable doubt. If the State fails to do
6 so, you must find that Mr. Daily is not a
7 sexually violent predator.

8 Now, what is reasonable doubt? Proof
9 beyond a reasonable doubt is proof that leaves
10 you firmly convinced that this respondent is a
11 sexually violent predator. There are very few
12 things in this world that we know with
13 absolute certainty. And in this type of case,
14 the law does not require proof that overcomes
15 every possible doubt. Based on your
16 consideration of the evidence, if you are
17 firmly convinced that Mr. Daily is a sexually
18 violent predator, then say so, and return a
19 verdict for the State. But if you think there
20 is a real possibility he is not a sexually
21 violent predator, you must give him the
22 benefit of the doubt and return a verdict for
23 the respondent. Reasonable doubt may arise
24 from the evidence in a case or from lack of
25 evidence in a case. It is up to you 12 to

1 determine whether or not reasonable doubt
2 exists in this case.

3 Now, the elements which the State must
4 prove beyond a reasonable doubt are, number
5 one, that the respondent has been convicted of
6 a sexually violent offense. I charge you and
7 tell you that lewd act on a minor is defined
8 by our law as a sexually violent offense.
9 Number two, that this respondent suffers from
10 a mental abnormality or personal disorder that
11 makes him likely to engage in acts of sexual
12 violence if not confined in a secure facility
13 for long-term care, control, and treatment.
14 Inherent in these two elements is that the
15 State must prove the requirement that this
16 respondent's mental abnormality or personality
17 disorder causes him serious difficulty in
18 controlling his behavior. The State must
19 prove beyond a reasonable doubt that this
20 individual that it seeks to commit suffers
21 from a mental illness, which he cannot
22 sufficiently control without the structure and
23 care provided by a mental health facility
24 rendering him otherwise likely to commit a
25 dangerous act.

1 In order for you to better understand the
2 elements of the State's cause of action, I
3 will define some of the terms that I just
4 used. Mental abnormality means a mental
5 condition affecting a person's emotional or
6 volitional capacity that predisposes the
7 person to commit sexually violent offenses.
8 This mental abnormality or personality
9 disorder must cause Mr. Daily serious
10 difficulty in controlling his behavior.

11 Likely to engage in acts of sexual
12 violence means that the person's propensity to
13 commit acts of sexual violence is of such a
14 degree as to pose a menace to the health and
15 safety of others so that he is dangerous to
16 others. I remind you that the burden of proof
17 is on the State to prove to your satisfaction
18 beyond a reasonable doubt that this respondent
19 has been convicted of a sexual violent offense
20 as I have instructed, and also suffers from a
21 mental abnormality or personality disorder
22 that makes him likely to engage in acts of
23 sexual violence if not confined to a secure
24 facility for long-term care, control, and
25 treatment.

1 If the State carries this burden of proof
2 and convinces you beyond a reasonable doubt as
3 to each of the two elements of its cause of
4 action, the State is entitled to a finding
5 that Mr. Daily is a sexually violent predator.
6 If the State does not meet that burden of
7 proof as to one or both of those elements, the
8 respondent is entitled to a finding he is not
9 a sexually violent predator.

10 Ladies and gentlemen, your verdict must
11 be unanimous. Mr. Foreman, when the jury
12 agrees on the verdict, you will indicate your
13 verdict in the space provided on the verdict
14 form, sign your name as the foreperson of the
15 jury, knock on the jury room door, and inform
16 the bailiff that you have reached a verdict.
17 At that time, we will return the jury to the
18 courtroom to receive the verdict.

19 Mr. Foreman, during deliberations, you
20 may -- the case may only be discussed in the
21 jury room while all 12 are -- are present. If
22 someone needs to excuse themselves to refresh
23 themselves, Mr. Foreman, or to smoke a
24 cigarette, but they're absent themselves --
25 and -- you're welcome to take breaks in the

1 jury deliberation room -- but if someone is
2 not there to participate, all deliberations
3 must cease. All 12 must be together during
4 jury deliberations at all times. So if
5 someone needs to refresh themselves, the
6 deliberations must cease until that person has
7 rejoined the group.

8 Now, this is the verdict form, Mr.
9 Foreman, and will come back with the evidence.
10 It has the caption of the case, it has a
11 number, and that only means that -- that --
12 that it goes with this particular case; that's
13 all it does. My law clerk has prepared this.
14 It has one question. It says, "Has the
15 petitioner, the State of South Carolina,
16 proved beyond a reasonable doubt that Shawn
17 Daily is a sexually violent predator under the
18 South Carolina Sexually Violent Predator Act?"
19 Then it says, "We the jury unanimously
20 answered the question as follows: Yes. Shawn
21 Daily is a sexually violent predator," or,
22 "No. Shawn Daily is not a sexually violent
23 predator." It has a place for a foreperson to
24 sign. Mr. Foreman, you would sign your name,
25 and put whatever date that the verdict is

1 reached right here.

2 Now, Mr. Foreman, there are two lines
3 here. It matters not to the Court or to the
4 clerk's office if you use a checkmark, an X-
5 mark, an initial, it does not matter. But it
6 does matter that it be unambiguous. It must
7 be clear to the Court and to the clerk
8 whatever the decision of this jury is and that
9 it's a unanimous decision. There is no
10 significance to whether yes comes first or no
11 comes second. They merely have to be on the
12 piece of the paper in one order or the other.
13 But whatever the unanimous verdict of this
14 jury is, please make that an unambiguous
15 answer to the question.

16 Mr. Foreman, I'm getting ready to send
17 you and your -- all 14 jurors out. I'm gonna
18 ask the lawyers to come forward and ensure
19 that the exhibits are here. It won't take but
20 a few seconds for them to do that because
21 there are only three, I think. Three or four.
22 THE COURT REPORTER: Mr. Runyan has them.
23 THE COURT: Okay. Mr. Runyan has them.

24 I've practiced law in this courtroom and
25 others across this State for a long time

1 before coming up here. It is so very easy to
2 be making a closing argument to a jury, pick
3 up the evidence, walk around with it, go back
4 to my table, lay it down facedown, and now
5 it's missing in action and it belongs to you.
6 Now, in a murder case we might have 200 plus
7 pieces of evidence that they would have to go
8 through. It would take a few minutes to do
9 that. In this case, you only have three or
10 four items, so the lawyers will quickly
11 determine that it's there.

12 Mr. Bailiff will -- or Madam Bailiff --
13 one of the bailiffs will bring that evidence
14 to you, Mr. Foreman, along with this sheet of
15 paper, your verdict form. When the bailiff
16 comes to bring that to you, the bailiff will
17 secure my two alternates, okay? So the
18 alternates, you will leave with the bailiff
19 when the bailiff brings this to Mr. Foreman.
20 You will return to my courtroom, and I will
21 dismiss you here on the record for your
22 jury -- and thank you for your jury service in
23 here, okay? Because it's not proper for you
24 to be with the 12 at that point in time, okay?

25 Mr. Foreman, if you'll take the jury out.

1 Do not begin deliberations until you get this
2 and the evidence and secure the two
3 alternates.

4 (WHEREUPON, the jury was excused at 3:36
5 p.m.)

6 THE COURT: Exceptions from the State?

7 MR. RUNYAN: Nothing, Your Honor.

8 THE COURT: From the Defense?

9 MR. THOMPSON: No, sir.

10 THE COURT: Thank you. Ladies and gentlemen,
11 if you'll make sure that the exhibits are
12 here.

13 MR. THOMPSON: That's it.

14 MR. RUNYAN: That's it.

15 THE COURT: Give that to Mr. Bogan, please.

16 THE COURT: Mr. Bogan, if you'll bring the two
17 alternates back. And they may begin.

18 (WHEREUPON, the alternate jurors entered
19 the courtroom at 3:39 p.m.)

20 THE COURT: Lady and gentleman, thank you so
21 very much for your service. This is going to
22 conclude your service this week. There's not
23 another trial behind it. We have some non-
24 jury work to do, and so after your brothers
25 and sisters reach a verdict and we release

1 them and we will work without a jury. So
2 thank you for your help.

3 I'm going to release you now, and you can
4 turn your badges in. Oftentimes, I have an
5 alternate ask me, because they want to see
6 what happens, if you -- you are more than
7 welcome to sit in the courtroom. If you want
8 to see what happens, you just have a seat back
9 there somewhere. We have open courtrooms in
10 this State, and you're always welcome here.
11 Do you need work excuses? Madam Clerk is
12 asking me.

13 JUROR JOHNSON: We've got them.

14 THE CLERK: They have them.

15 THE COURT: You've got them?

16 JUROR JOHNSON: Yeah.

17 THE COURT: All right. Anybody need anything?
18 Thank you again for your service. You can
19 turn those in to Mr. Bailiff.

20 JUROR DUCKETT: Okay. Thank you.

21 (WHEREUPON, the alternate jurors left the
22 courtroom at 3:40 p.m.)

23 THE COURT: Okay. We'll be in recess until we
24 have a verdict.

25 (Off the record at 3:41 p.m. until

1 4:06 p.m.)

2 THE BAILIFF: Court, come to order. Remain
3 seated, please.

4 THE COURT: The jury has sent a question and,
5 "Define long-term committed (inpatient). How
6 long?" Signed by James Brown, who I
7 understand is the foreperson. And we are
8 answering, "I cannot provide information that
9 is not in the record." I have signed it.
10 It's marked as Court's Exhibit Number 1.

11 (To the Bailiff) Mr. Bogan?

12 (WHEREUPON, Court's Exhibit No. 1 was
13 marked into evidence.)

14 THE COURT REPORTER: Thank you, Judge.

15 THE COURT: Thank you.

16 (Off the record from 4:07 p.m. until
17 4:22 p.m.)

18 THE COURT: Everybody ready?

19 MR. RUNYAN: Yes, Your Honor.

20 THE COURT: We'll have the jury.

21 (WHEREUPON, the jury enters open court at
22 4:24 p.m.)

23 VERDICT

24 THE COURT: Okay. Please be seated. Mr. (as
25 spoken) Bailiff, has the jury reached its

1 verdict?

2 THE BAILIFF: Yes, Your Honor.

3 THE COURT: And, Mr. Foreman, has the jury
4 reached its verdict?

5 MR. FOREMAN: Yes, we have, Your Honor.

6 THE COURT: If you'll give that to Madam
7 Bailiff, please.

8 MR. FOREMAN: (Complies.)

9 THE COURT: Thank you. Madam Clerk will
10 publish.

11 THE CLERK: The State of South Carolina in the
12 County of Spartanburg, the Court of Common
13 Pleas, Case Number 2019-CP-42-03230, in the
14 Matter of Care and Treatment of Shawn Torlif
15 Daily, Respondent, "Has the petitioner, the
16 South Carolina -- the State of South Carolina,
17 proved beyond a reasonable doubt Shawn Torlif
18 Daily is a sexually violent predator under the
19 South Carolina Sexually Violent Predator Act.
20 We the jury unanimously answered the question
21 as follows, "Yes. Shawn Torlif Daily is a
22 sexually violent predator." Signed by the
23 foreperson, March the 16th, 2022.

24 Ladies and gentlemen of the jury, is this
25 your verdict, and still your verdict?

1 THE JURY PANEL: (All agreed.)

2 THE CLERK: So say you all. Your Honor, this
3 is your verdict.

4 THE COURT: Polling of the jury?

5 MR. THOMPSON: No, sir.

6 THE COURT: Polling of the jury?

7 MR. RUNYAN: No, Your Honor.

8 THE COURT: Okay. Anything else from the
9 jury?

10 MR. RUNYAN: Nothing from the State.

11 THE COURT: Mr. Foreman and ladies and
12 gentlemen, thank you so very much. This
13 concludes your service for jury duty this
14 week. There's some stuff for us to do non-
15 jury, but I don't need a jury for tomorrow and
16 Friday, so this concludes your service of --
17 for jury duty this week. Again, thank you for
18 your service. We couldn't do what we do
19 without your help.

20 I'm gonna turn you back over to the
21 bailiffs. They're gonna collect your badges.
22 They have some work excuses if you need a --
23 an excuse for your employer. And, once again,
24 thank you so much for your help this week.

25 Mr. Foreman, if you'll take the jury out.

1 MR. FOREMAN: Okay.

2 (WHEREUPON, the jury was excused at 4:27
3 p.m.)

4 THE COURT: Matters from the State?

5 MR. RUNYAN: Your Honor, just -- we have
6 submitted a -- a proposed order of commitment
7 that we need to have signed, but we need this
8 filed today to give to the sheriff's
9 department to give them custody while he is
10 arranged to be transported to the Department
11 of Mental Health.

12 MR. THOMPSON: Same order.

13 MR. RUNYAN: Same one. Approach?

14 THE COURT: Yes, sir.

15 MR. THOMPSON: And, Your Honor, just for the
16 record, I guess, I need to make a motion for a
17 new trial.

18 THE COURT: Yes, sir. Go right ahead.

19 MR. THOMPSON: Well, I will simply move for a
20 new trial that the finding of the jury doesn't
21 support the evidence of the case.

22 THE COURT: Anything from the State?

23 MR. RUNYAN: No, Your Honor. We would -- we
24 would just say that the -- the support clearly
25 -- the evidence clearly supports the elements

1 that we have to meet.

2 THE COURT: Yes, sir. The -- the motion for a
3 new trial is denied. There was evidence and
4 questions of fact that went to the jury, and
5 they have rendered a verdict of -- that he is
6 a sexually violent predator. And that's --
7 this evidence supports that.

8 Anything further from anyone?

9 MR. RUNYAN: No, Your Honor. Thank you.

10 THE COURT: Ladies and gentlemen, I have
11 enjoyed working with you this week.

12 MS. SHAW: Thank you, sir.

13 MR. RUNYAN: We've enjoyed it too.

14 THE COURT: Really have.

15 MR. RUNYAN: Thank you.

16 THE COURT: (To the Defendant) Sir, good luck
17 to you.

18 (Whereupon the within trial was

19 concluded at 4:29 p.m.)

20 (*This transcript may contain quoted material.

21 Such material is reproduced as read or quoted

22 by the speaker.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
State of South Carolina,	)	NOTICE OF MOTION AND MOTION
Plaintiff,	)	TO SUPPRESS TESTIMONY RELATED
-vs-	)	TO PPG TESTING AND RESULTS
Shawn Torlif Daily,	)	
Respondent,	)	2019-CP-42-03230
_____	)	

TO: Christopher S. Runyan, Assistant Attorney General

YOU WILL PLEASE TAKE NOTICE that the respondent, through his undersigned attorney, will move before this Honorable Court at 10:00 a.m. on January 4, 2022, or as soon thereafter as the same shall be heard, but before the start of respondent's trial on that date, for an Order of the Court suppressing and excluding any and all testimony or reference to the fact that part of the respondent's evaluation involved a penile plethysmograph (PPG) examination.

Respondent is informed and believes that any and all testimony as to the PPG examination and any results or conclusions derived therefrom should be excluded for the following reasons:

I.

The PPG examination does not meet the requirements of admissibility of scientific evidence pursuant to Rule 702, SCRE, because it does not meet the factors set forth in and pursuant to State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999), and State v. Jones, 273 S.C. 723, 259 S.E.2d 120 (1979).

2021 DEC 9 2:10:02
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMW, CLX

In State v. Council, 335 S.C. 1, (1999), the South Carolina Supreme Court directed that “the proper analysis for determining admissibility of scientific evidence is now under the SCRE. When admitting scientific evidence under Rule 702, SCRE, the trial judge must find the evidence will assist the trier of fact, the expert witness is qualified, and the underlying science is reliable. The trial judge should apply the Jones factors to determine reliability.” In the opinion the Court states “(i)n considering the admissibility of scientific evidence under the Jones standard, the Court looks at several factors, including: (1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures.”

First, Respondent is informed and believes that there is a lack of standardization relating to the test. There is a lack of standardization of stimulus sets and interpretation of results between testing sites,^{1 2} Depending on the testing site, “stimuli used to elicit arousal can include videos, still images, and audio materials. It can depict a variety (of) consenting and non-consenting sexual scenarios as well as neutral, non-sexual scenarios. Models in visual stimuli can be clothed, semi-clothed, or nude. Variation in stimuli modality and the type of sexual interest being tested can have a large impact on PPG outcomes.”³

¹ “Standardization of Penile Plethysmography Testing in Assessment of Problematic Sexual Interests”. L. Murphy, R. Ranger, P. Federoff, H. Stewart, R. Dwyer & W. Burke. Epub 2015 Sep 9.

² “Assessment of problematic sexual interests with the penile plethysmograph : an overview of assessment laboratories”. L. Murphy, R. Ranger, H. Stewart, G. Dwyer & P. Federoff. Curr Psychiatry Rep 2015 May.

³ “Stimuli used in the measurement of problematic sexual interests”. L. Murphy, S. Curry, K. Klapilova, R. Dwyer, T. Zikanova, J. Federoff. Int. Review Psychiatry 2019 Mar.

“This brings to light the great concern in both the courts and the academic community regarding not only the scientific validity of penile plethysmography testing, but also the complete lack of standardization in its administration.”⁴

“The test is controversial and has been criticized for a lack of standardization and for being subject to manipulation. See *United States v. Rhodes*, 552 F.3d 624, 626-27 (7th Cir. 2009); *United States v. Weber*, 451 F.3d 552, 565 (9th Cir. 2006).” In re *Bilton*, 432 S.C. 157 (S.C. Ct. App. 2020). “Courts have noted that PPGs are routinely used as a tool in treatment programs. *Weber*, 451 F.3d at 562-63 (citing *Berthiaume v. Caron*, 142 F.3d 12, 16 (1st Cir. 1998)). Even so, with limited exceptions, we will discuss later, courts have “uniformly declared that PPG test results are “inadmissible as evidence because there are no accepted standards for this test in the scientific community.” *Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1266 (9th Cir. 2000).” *Bilton*, 432 S.C. at 162-63.

Second, Respondent is informed and believes that the PPG test used in this case (developed by Dr. William Burke of Summerville) lacks adequate publication and peer review.

Third, Respondent is informed and believes that the PPG does not meet the third factor of the Council/Jones standard as there are no quality control procedures in place to ensure reliability. Studies have shown that the accuracy of the PPG can be influenced by many factors which can lead to false positives and false negatives. Respondent is further informed and believes that no method exists to determine if the results are accurate or a false positive or false negative. Each subject is unique from every other subject and Respondent is informed and believes that no secondary confirmatory testing of a subject is conducted to determine if the test results are consistent or could be false positives or false negatives.

⁴ “The Hard Truth About the Penile Plethysmograph: Gender Disparity and the Untenable Standard in the Fourth Circuit”. William & Mary Journal of Race, Gender and Social Justice March 2018.

Fourth, Respondent is informed and believes legitimate scientific testing has a margin of error that can be determined through repeated testing. Respondent is further informed and believes that no margin of error has ever been calculated for PPG - possibly due to the lack of standardization.

Fifth, Respondent is informed and believes that the PPG fails to meet the fourth factor set forth in the Council/Jones standard in that there is no consistency of the method with recognized scientific laws and procedures. As stated hereinabove, (1) there is no standardization of stimulus sets and interpretation of results between testing sites, (2) there are no quality control procedures in place to ensure reliability, as no method exists to determine if the results are accurate or a false positive or false negative, and (3) no margin of error has been established for PPG testing.

II.

In furtherance of the above that the PPG examination does not meet the requirements of admissibility of scientific evidence, and as a separate and stand-alone issue as to why testimony as to PPG testing should be suppressed and excluded in this matter the Respondent is informed and believes that the PPG test used in this case is one developed by Dr. William Burke of Summerville, S.C. Dr. Burke has restructured the testing procedure so that it is different from the PPG testing used in the past. This test now uses not only pictures (which are not standardized) but also differs from other PPG testing of the past. Unlike the PPG tests used in the past, Dr. Burke's test now incorporates Real Child Voices Stimulus (RCV), recorded, and placed into a scenario (again without standardization). The same issues and reasons set forth in Item I hereinabove apply here and are incorporated by reference.

III.

As noted in Item II hereinabove, Courts have recognized PPG testing as a tool used in the treatment of sex offenders but have found them to be inadmissible as evidence in court.

The purpose of PPG testing being used as a tool in treatment of sex offenders is for the initial test to establish a baseline which can be used in future PPG testing of the sex offender to determine if the treatment is being successful or if the other treatment should be employed.

PPG testing should not be used as a forensic diagnostic tool to determine sexual deviancy for purposes of predicting past or future actions of the person being tested.

IV.

The Court, in ordering Respondent to submit to PPG testing, failed to follow the instructions related to PPG testing when a party objects to such testing, as set out in the recent South Carolina Supreme Court opinion of Montgomery v. Montgomery, Appellate Case No. 2018-001233, at 1 (S.C. May 29, 2019). This opinion indicates that a subject, who was ordered to undergo a psychosexual assessment, and who objected to the PPG test, should “undergo the psychosexual assessment, not to include a PPG test. If - after performing the psychosexual assessment - the examiner determines that a PPG test is necessary”, and if the subject still objected to the test, the court should then “conduct a hearing at which all legal (including constitutional challenges) and factual matters should be addressed”. The court should then issue an order addressing all issues and determine whether a PPG test is proper and necessary under the circumstances.

In the case at hand, the Respondent objected to the PPG test and the Court ordered the matter to be briefed by both sides and issued a ruling based on the briefs. The State’s expert, Dr.

FILED
2021 DEC 29 AM 10:42
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Gottfried, of the Medical University of South Carolina (MUSC) submitted an affidavit to accompany the State's brief, in which she indicated that her "evaluation consists of multiple assessments. One of the assessments is the penile plethysmography (PPG)". She further indicated that at MUSC, the PPG "is standardly administered to all adult men referred for an evaluation of sexual behavior as one component of a comprehensive evaluation of sexual behavior that includes multiple assessments, test, record reviews and interviews." Dr. Gottfried did not indicate that the PPG was necessary to her rendering of an opinion in this matter, nor did she indicate that failure to conduct a PPG precluded her from rendering an opinion.

2021 DEC 29 AM 10:02
CLERK OF COURT
JANIS B. COOK
JANIS B. COOK
JANIS B. COOK

FILED

V.

In addition, respondent is informed and believes that such testimony is not relevant as defined in Rule 401 SCRE and should be excluded as inadmissible pursuant to Rule 402 SCRE.

Furthermore, should the court find the evidence to be relevant, the respondent contends that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury and should be excluded pursuant to Rule 403 SCRE.



Don A. Thompson (SC Bar # 5545)
Attorney for ~~Petitioner~~ *Respondent*
2131 Woodruff Road
Suite 2100, #292
Greenville, S.C. 29607
(864) 270-2831

December 28, 2021
Greenville, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	CASE NO. 2019-CP-42-03230
IN THE MATTER OF THE CARE	)	
AND TREATMENT OF	)	STATE'S MEMORANDUM IN
SHAWN TORLIF DAILY,	)	OPPOSITION TO MOTION TO
	)	SUPPRESS TESTIMONY RELATED
<u>RESPONDENT.</u>	)	PPG TESTING AND RESULTS

To: Don A. Thompson, Esq., Attorney for the Respondent

PLEASE TAKE NOTICE: The State, by and through the undersigned attorney, files this memorandum in opposition to Respondent's Motion to Suppress PPG Testimony. The following is submitted in response to the motion:

INTRODUCTION

After a probable cause hearing on December 19, 2019, Respondent was ordered to be evaluated pursuant to the Sexually Violent Predator Act ("SVPA"). On February 11, 2020, the Court appointed expert, Dr. Christopher Gillen, issued an evaluation finding Respondent does not meet the criteria for civil commitment under the SVPA. As allowed under S.C. Code Ann. Section 44-48-90 (C), the State sought an independent evaluation retaining the services of the Medical University of South Carolina's ("MUSC"). Dr. Emily Gottfried was assigned by MUSC to perform the evaluation.

On March 9, 2020, as part of the standard protocol of MUSC's Department of Psychiatry and Behavioral Sciences Sexual Behavior Clinic and Lab ("SBCL") for forensic psychosexual evaluations, Dr. Gottfried attempted to administer a Penile Plethysmography examination ("PPG"). Respondent refused to consent to the test. On or about May 6, 2020, the State filed a Motion to Compel Respondent's cooperation with the evaluation. The matter was set for a hearing on September 14, 2020; however, the court requested the parties submit briefs in lieu of a hearing.

Both parties agreed and submitted briefs on or about September 18, 2020. By order filed April 26, 2021, Judge Cole ordered Respondent to cooperate with Dr. Gottfried's evaluation including the PPG.

On or about July 14, 2021, Dr. Gottfried issued her evaluation concluding Respondent met the criteria for civil commitment under the SVPA. The evaluation included results of the PPG test. The results were interpretable, and indicated the Respondent experienced clinically significant sexual arousal to various scenarios including a female infant, persuasion of a grammar school female child, and persuasion of a preschool female child.

The test was administered by an individual technician employed by the SBCL, who is trained and certified to administer the PPG. The raw data was then reviewed and interpreted by Dr. Gottfried, who has received extensive training and education in the administration and interpretation of the PPG. Further, the SBCL is certified by the PPG manufacturer as a PPG clinical research lab, the highest level of certification.

Dr. Gottfried considered the PPG results as one data point in rendering her opinion, and Respondent now seeks to suppress all testimony concerning the results of the PPG testing. The State submits this Memorandum in Opposition to the Motion to Suppress PPG testimony. If the court orders a hearing pursuant to *State v. Council*, 515 S.E.2d 208 (S.C. 1999) and its progeny, the State will have Dr. Gottfried prepared to testify concerning the reliability of the PPG.

ARGUMENT

- I. Dr. Gottfried should be allowed to testify regarding PPG testing and results she used as a part of the basis of her opinion because the PPG is recognized and accepted in the field of sex offender evaluation and treatment as a reliable, objective measure of deviant sexual interests and meets the baseline standards for reliability under the *Council* standard.**

When there is a challenge to a particular type of evidence, the court must exercise its gatekeeping function to make a preliminary assessment of admissibility. *Watson v. Ford Motor Co.*, 699 S.E.2d 169, 174–75 (2010). Once the trial court makes a ruling that the particular evidence is admissible, then it is exclusively within the jury's province to decide how much weight the evidence deserves. *Id.*

The admission of expert testimony is governed by Rule 702, S.C.R.E., which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Further, under Rule 703, S.C.R.E.,

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Expert testimony may be used to help the jury to determine a fact in issue based on the expert's specialized knowledge, experience, or skill and is necessary in cases in which the subject matter falls outside the realm of ordinary lay knowledge. Stated differently, expert evidence is required where a factual issue must be resolved with scientific, technical, or any other specialized knowledge. *Watson*, 699 S.E.2d at 175. Under the *Watson* standard, and its progeny, when there is a challenge to proffered expert evidence, the court must first make the following findings:

- (1) The subject matter is, in fact, beyond the knowledge of an ordinary juror;
- (2) The proffered expert has the knowledge and skill to be qualified as an expert on

- the subject matter; and
- (3) The substance of the testimony must be reliable.

In determining the reliability of the testimony, the court should examine the following factors:

- (1) Publications and peer review of the technique;
- (2) Prior application of the method to the type of evidence involved in the case;
- (3) The quality control procedures used to ensure reliability; and
- (4) The consistency of the method with recognized scientific laws and procedures.

Council, 515 S.E.2d at 518.

The South Carolina Supreme Court and Court of Appeals have referenced testimony regarding PPG results in analyzing the sufficiency of evidence to support the verdicts in several SVP cases. *See In re Care & Treatment of Tucker*, 578 S.E.2d 719, 721 (2003) (“Respondent was administered a Penile Plethysmograph (PPG), which is designed to measure sexual responsiveness to a variety of stimuli across gender, age, and sexual activity. The PPG suggested female and male preschoolers (ages two to four years) aroused Respondent.”); *In re the Care and Treatment of Kennedy*, 578 S.E.2d 27, 38 (Ct. App. 2003) (In support of his argument, Kennedy asserts that because he passed the Penile Plethysmography (PPG) test, which is used to test sexual arousal to children, this was the best evidence that he would not re-offend.”). In addition, recent case law, reference books and treatises, indicate the PPG now has significant support in the mental health field.¹

1. History of the PPG.

The PPG’s history goes back to 1908, when a type of plethysmograph was used to check the effect of certain drugs on the vasomotor reflexes in dogs. Barker, James, and Howell, Robert, The Plethysmograph: A Review of Recent Literature, *Bull Am. Acad. Psychiatry Law*, 20(1): 13-

¹Like virtually all areas of expertise, mental health experts’ disagreement regarding the validity of particular tests/tools used by a significant number of practitioners to diagnose and/or treat mental health issues goes to the evidence’s weight rather than its admissibility.

25 (1992). In the 1930s, the medical community began using plethysmograph to assess erectile difficulties. *Id.*

Now, the PPG “is a widely recognized means of measuring male sexual arousal to given stimuli.” Murphy, L., *et. al.*, Standardization of Penile Plethysmography in Assessment of Problematic Sexual Interests, *J. Sex. Med.* 12(9): 1853-1861 (2015). It “has become a standard objective measure of arousal and is considered by some researchers and clinicians to be essential in the assessment and treatment of male sex offenders and men with paraphilic interests.” *Id.*; *see also* Murphy, L., *et. al.*, Assessment of Problematic Sexual Interests with the Penile Plethysmograph: an Overview of Assessment Laboratories, *Current Psychiatry Reports* 17(5):567 (2015) (PPG “is an objective assessment of sexual arousal based on the change in penis circumference and volume due to increased vasocongestion in the penis”); Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode: Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017) (PPG is “[p]erhaps the best means of objectively measuring deviant sexual interest”).

2. Purpose of the PPG.

The PPG’s general purpose is to measure male sexual arousal regardless of how the result is used, including assessing erectile dysfunction, checking function after a prostatectomy, or to determine the efficacy of sexual behavior treatment. The PPG is a physiological measure of physiological patterns of male sexual arousal.² W.T. O’Donohue & D.S. Bromberg (Eds.) *Sexually*

²There is a significant misconception regarding the PPG process. While the concept of the PPG is uncomfortable to many, the process is designed to protect personal privacy. The strain gauge (a small, rubber-like ring) is calibrated multiple times using licensed software prior to the examinee placing it on his penis. In fact, many PPG software calibration programs will not initiate a PPG test until the gauge has been properly calibrated. The examinee sits by himself in a private room and is presented with various stimuli. The stimuli are typically audio recordings and slides. In the United States, no child pornography is shown to the examinee via slides or video. The

Violent Predators: A clinical science handbook pp. 243-254. Cham, Switzerland: Springer, 2019 (Plaud, J.J., The use of penile plethysmography in SVP assessment and treatment decision-making.) As many individuals undergoing sexual behavior evaluations may be motivated to conceal arousal to deviant (i.e., nonconsensual/abusive) stimuli (i.e., sexual arousal to children), having a way to objectively assess this is vital for evaluations of future sexual dangerousness. Specifically, having deviant sexual interests, especially sexual arousal to children, is one of the strongest risk factors associated with sexual recidivism. Mann, R.E., Hanson, R.K., & Thornton, D., Assessing risk for sexual recidivism: Some proposals on the nature of psychologically meaningful risk factors, *Sexual Abuse: A Journal for Research and Treatment*, 22(2), 191-217 (2010); Hanson, R.K. & Morton-Bourgon, K.E., The accuracy of recidivism risk assessments for sexual offenders: A meta-analysis of 118 prediction studies, *Psychological Assessment*, 21(1), 1-21 (2009); Hanson, R.K. & Morton-Bourgon, K.E., The characteristics of persistent sexual offenders: A meta-analysis of recidivism studies, *Journal of Consulting and Clinical Psychology*, 73(6), 1154-1163 (2005); Hanson, R.K. & Bussiere, M.T., Predicting relapse: A meta-analysis of sexual offender recidivism studies, *Journal of Consulting and Clinical Psychology*, 66(2), 348-362 (1998).

3. Modern use and acceptance of PPG.

“Phallometric testing is currently used as a diagnostic, treatment planning, and risk management tool in a variety of jurisdictions” Wilson, R.J., The use of phallometric testing in the diagnosis, treatment, and risk management of male adults who have sexually offended, *The Wiley*

circumference of the flaccid penis at the start of each trial is compared to the maximum circumference during the trial. The PPG measures sexual arousal “by recording changes in the erectile tissue surrounding the penis as it becomes filled with blood” as “this is the most basic overt physiological manifestation of sexual arousal in the human male (Plaud, 2019, p. 244).

Handbook on the Theories, Assessment & Treatment of Sexual Offending: Volume 2. (p. 823-849), In L. Craig & M. Rettenberger (Eds.) (2016). The PPG has undergone Federal Drug Administration review, and the FDA has approved several PPG systems, including the Limestone system used by the SBCL. See 501(k) Summary–Limestone Technologies, Inc. (https://www.accessdata.fda.gov/cdrh_docs/pdf5/K052929.pdf). Further, the Medicaid/Medicare regulations provide coverage for PPG tests. See Federal Register Volume 72, Number 61, Addendum III and Addendum V (Friday, March 30, 2007) (<https://www.gpo.gov/fdsys/pkg/FR-2007-03-30/html/07-1414.htm>).

Blue Cross Blue Shield also recognizes the PPG as a medical procedure. See Blue Cross Blue Shield of Texas, Treatment of Male Sexual Dysfunction, Special Comment on Contract Exclusions(August 15, 2003)(<https://www.bcbstx.com/provider/pdf/medicalpolicies/medicine/202-018>). The Federal Government's and major insurance companies' recognition of the PPG as a valid medical device and procedure amply demonstrates its general acceptance.

4. PPG's use in the mental health field.

The PPG's principal purpose in psychosexual sexual offending behavior evaluations is determining an individual's level of risk to commit future acts of sexual aggression. The PPG measures the extent to which the individual is dominated by sexual arousal to deviant stimuli, and predictions of risk to re-offend "are rendered much more accurate by the inclusion of data from this technique." Howes, R. J., Measurement of Risk of Sexual Violence Through Phallometric Testing, *Legal Medicine* 11:368-369 (2009). "Although not universally embraced, there nonetheless remains widespread acceptance and recognition of the value of phallometric assessment," and it "is certainly an assessment procedure which has come a long way since it was first devised." Howes R. J. & Howes, S. E., Sexual Arousal as a Function of Stimulus Mode;

Implications for Phallometric Assessment, *J. Forensic Res.* 8(6):398 (2017).³ See also Dean Tong, The Penile Plethysmograph, Abel Assessment for Sexual Interest, and MSI-II: Are They Speaking the Same Language?, *35 Am. J. of Fam. Therapy*, 187, 190 (2007) (“The PPG, when administered properly, represents a direct and objective measurement of a man's level of sexual arousal to normal versus sexualized stimuli. Since there is a strong relationship between an individual's pattern of sexual arousal and the probability that he may or will act upon that arousal, an important first step in gauging one's propensity to sexual deviancy is to obtain an accurate assessment of that person's sexual arousal patterns, which is precisely what the PPG does.”); James M. Peters, Assessment and Treatment of Sex Offenders: What Attorneys Need to Know, *Advocate*, 23 (Dec. 1999) (PPG “is invaluable in the evaluation, treatment and management of known sexual offenders.”).

Further evidence of the PPG's general acceptance in the mental health community, and perhaps the most compelling evidence, is the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) (DSM-5), which mental health professionals often refer to as “the bible” for mental health diagnosis purposes. In the section regarding paraphilic disorders, the DSM-5 provides:

The most widely applicable framework for assessing the strength of a paraphilia itself is one in which examinees' paraphilic sexual fantasies, interest and behaviors are evaluated in relation to their normophilic sexual interests and behaviors. In a clinical interview or on self-administered questionnaires, examinees can be asked whether the paraphilic

³Both the polygraph and the PPG measure physical changes, but the PPG differs significantly in that it measures the size of an erection, which is either there or it is not. Unlike the polygraph, during which the examiner prepares and uses questions directly related to the matter under investigation, and makes subjective interpretations of responses as they occur, the PPG technician makes no such interpretation. The PPG results, *i.e.*, the size of the penis erection during certain stimuli, are recorded by the machine with the technician in a separate room. The evaluator then reviews the results and compares the level of arousal to one stimuli set versus another set, which is done by mathematical formula. Experts can disagree about the significance of one arousal over another, but that is no different from any other issue subject to expert opinion.

sexual fantasies, urges or behaviors are weaker than, approximately equal to, or stronger than their normophilic sexual interests and behaviors. The same type of **comparison can be, and usually is, employed in psychophysiological measures of sexual interest, such as penile plethymography in males** or viewing time in males and females.

DSM-5 ,p. 686 (emphasis added). It further provides:

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggest the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. **The most thoroughly researched and longest used of such measures is penile plethysomography**, although sensitivity and specificity of diagnosis may vary from one site to another.

DSM-5, p. 699 (emphasis added). Previous DSM versions did not recognize the PPG, however, by the time the DSM-5 was published in 2013, there was sufficient research indicating the PPG's validity as a tool to measure an individual's sexual interest.

The detailed analysis above demonstrates the PPG is a reliable test, is an accepted practice in the field of psychology, and should be admissible at trial. The admissibility of evidence at trial is a question for the trial court.

II. Respondent's assertion courts have uniformly found the PPG is inadmissible as evidence is factually incorrect and his reliance on *Bilton* is distinguishable in this case.

Some South Carolina circuit courts have admitted the PPG as evidence in sexually violent predator cases, while others have not. "The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a manifest abuse of discretion accompanied by probable prejudice." *Matter of Bilton*, 851 S.E.2d 442, 444 (Ct. App. 2020), reh'g denied (Dec. 22, 2020).

In 2018, *In the Matter of the Care and Treatment of Ronald M.J. Gregg*, a circuit court judge in Charleston County found the PPG admissible after a full *Council* hearing with expert testimony from two opposing experts, including Dr. Gottfried. *See EXHIBIT A*. Further, in June 2021, *In*

the Matter of the Care and Treatment of James Lewis Williford (See **EXHIBIT B**), and *In the Matter of the Care and Treatment of Andy Eugene Hyman*, circuit courts in Anderson and Florence Counties found the PPG admissible after a full *Council* hearing with expert testimony from Dr. Gottfried.

In August 2021, *In the Matter of the Care and Treatment of Leonard*, a Charleston County circuit court excluded the PPG, and in November 2020, *In the Matter of the Care and Treatment of Nichols*, a circuit court judge excluded the PPG. The *Nichols* case is readily distinguishable because it had the same issues the Court of Appeals addressed in *Bilton* specifically that the State's expert was testifying to PPG data supplied by another expert who performed the PPG in a different location. As in *Gregg*, *Williford*, and *Hyman*, the PPG in this case was ordered by Dr. Gottfried, performed in a lab under her supervision by a technician trained and certified to perform PPG tests.

Respondent cites *Bilton*, as standing for the proposition that the PPG is either inherently unreliable, and/or is not a test that is permitted to be used in SVP matters. This is factually and legally wrong. *Bilton* stands solely for the proposition that expert testimony concerning the results of PPG testing may not be elicited as "conduit hearsay"; an expert who relied on the conclusions of another expert in forming an opinion and who did not interpret or review the raw data, may not testify concerning the results of the expert's testing.

The Court of Appeals specifically noted the following "[w]e wish to emphasize that we are not called on to review whether some hypothetical procedure would qualify as a baseline demonstration that Bilton's PPG test results were reliable. We simply hold, as noted above, that due process does not allow a testifying expert to be a pipeline for someone else's scientific work to be admitted into evidence without a baseline demonstration of reliability." *Bilton*, 851 S.E.2d at 446. In short, an expert who did not administer or interpret PPG results for a given offender, may

not testify concerning the substance or interpretability of those results. In this case, Dr. Gottfried conducted the PPG in the MUSC lab and she interpreted the data, as she is certified and qualified to do, which readily distinguishes this case from *Bilton*.

Other jurisdictions have also recognized the general acceptance and admissibility of the PPG in sexually violent predator cases. In 2015, a Florida circuit court in a Seminole County case found, after receiving testimony from two opposing experts, the underlying principals and methods of the PPG reliable and admissible under *Daubert* standard. *See EXHIBIT C, In RE: Rivers-Finney*.

Further, *In re Detention of Halgren*, 132 P.3d 714 (2006), the Washington Supreme Court found PPG results were admissible as part of the diagnostic process, and the PPG testimony would assist the jury in understanding the expert's sexual deviancy diagnosis. *Id.* at 719. The court further found the issue of the PPG's reliability goes to the weight of the evidence rather than its admissibility *Id.*; *see also In re Detention of Herrick*, 393 P.3d 879, 885 (2017), *aff'd*, 412 P.3d 293 (2018)(same).

The Illinois appellate court also found PPG evidence was admissible in *In re Commitment of Sandry*, 858 N.E.2d 295 (2006). As to the admissibility of a particular test or methodology, the court stated: "once it is determined that a methodology is generally accepted, it follows that it has achieved a sufficient degree of reliability and validity to cross the threshold of admissibility." *Id.* at 309. The court then engaged in an exhaustive analysis of case law (use of PPG mentioned in at least 21 states, including South Carolina), statutes [eleven state statutes] and regulations). *Id.* at 310-313.

The court also discussed numerous academic articles, which it determined provided ample support "to conclude that PPG testing is accepted by a substantial number of experts in this field

such that it may be used to support a qualitative assessment of the future dangerousness of an individual.” *Id.* at 309-316. Acknowledging some experts have criticized and rejected PPG testing, the court noted the existence of contrary authority is not dispositive because many people could disagree on the acceptance of any given methodology, but those who accept it may still constitute a significant subset of experts in any given field. *Id.* at 316; *see also State v. Graham*, 61 P.3d 662, 667 (2003) (some disagreement in the scientific and medical community as to the reliability of a particular test method is a matter affecting the weight of such evidence and not its admissibility; such evidence is admissible if a qualified expert witness testifies the particular test method is reliable and accurate, and it is generally accepted as such by other experts in the field).

III. *Montgomery* has no precedential value, and does not apply in SVPA cases. Even if the court finds it does apply, the requirement in *Montgomery* was met because there was a judicial finding Respondent must comply with the PPG, and Dr. Gottfried indicated the PPG was necessary.

“Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” SCACR 268(d)(2). Respondent improperly relies on an unpublished South Carolina Supreme Court memorandum opinion which addressed compelled PPG testing in a family law custody case. *See Montgomery v. Montgomery*, Op. No. 2019-MO-027 (S.C. May 29, 2019).

Moreover, *Montgomery* is not applicable in a SVPA case because the SVPA is based on statutory law. *See* S.C. Code Ann. Section 44-48-10, *et seq.* Unlike the discretion afforded the family court to order evaluations, the SVPA statutorily requires a person undergo psychosexual evaluation to determine if meet the criteria for civil commitment. *See* S.C. Code Ann. Section 44-48-80 and 90. The father in *Montgomery* had only **allegations** of sexual misconduct; whereas the Respondent has multiple **convictions** for sexually violent crimes, and was subject to multiple findings of probable cause to believe he is a sexually violent predator.

The SVPA expressly states “[a]ll examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports.” S.C. Code Ann. § 44-48-90 (C). The SVPA does not define “reasonable access,” and the legislature’s failure to define a term reveals the obvious intent “to leave to medical professionals” the task of determining what access is necessary to complete an evaluation under the SVPA. *See Matter of Snow*, 425 S.C. 544, 823 S.E.2d 467, 469 (2019) (“The obvious intent in not defining the term [personality disorder] was to leave to medical professionals the task of determining what is—and what is not—a personality disorder.”) Likewise, the medical professionals performing psychosexual evaluations under the SVPA should determine what testing is necessary for a thorough psychosexual evaluation.

Even if the court finds *Montgomery* does apply to a SVPA case, the judicial finding in this case met the *Montgomery* requirement. In *Montgomery*, the Court dismissed the appeal and instructed the following:

If—after performing the psychosexual assessment—the examiner determines that a PPG test is necessary, and if Father objects to the PPG test, the family court shall conduct a hearing at which all legal (including constitutional challenges) and factual matters shall be addressed. The family court shall then issue an order addressing all issues and determine whether a PPG test is proper and necessary under the circumstances and law.

Montgomery v. Montgomery, Op. No. 2019-MO-027 (S.C. May 29, 2019).

In this case, the Respondent, like the Father in *Montgomery*, objected to the PPG. The State filed a Motion to Compel Cooperation. Due to courtroom shutdowns because of the novel coronavirus pandemic, the court requested the parties submit briefs, and the parties agreed to have the motion decided on the briefs in lieu of a hearing. All issues addressing the PPG, including

constitutional issues were briefed. Further, Dr. Gottfried's affidavit submitted as a part of the State's Motion to Compel Cooperation stated:

The results of other psychological assessments that have been performed as part of my evaluation of Mr. Daily indicated evidence of deceptiveness, that he was likely not being entirely forthcoming, and that his self-report may not be a valid indicator of his sexual arousal. Therefore, physiological data from the PPG becomes a valuable component in assessing whether Mr. Daily's risk of sexual recidivism and the potential presence of a mental abnormality could lead to his engaging in future acts of sexual violence.

Therefore, Dr. Gottfried indicted the PPG was necessary in light of Respondent's lack of candor.

When a party objects to a PPG test as a part of a court ordered psychosexual evaluation, *Montgomery* requires a judicial finding that the PPG test is proper and necessary. Judge Cole made that finding based on the issues as briefed stating in the order "Dr. Gottfried has advised the Court in order to conduct a complete evaluation, it will be necessary to utilize certain procedures, including but not limited to the Penile Plethysmograph "PPG". *See* **EXHIBIT D**.

IV. The PPG testimony is relevant and admissible under Rule 401 and 402, SCRE, and the probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Generally, all relevant evidence is admissible. Rule 402, SCRE. Evidence is relevant if it tends to establish or make more or less probable the matter in controversy. Rule 401, SCRE; *State v. Frazier*, 357 S.C. 161, 592 S.E.2d 621 (2004). Of course, relevant evidence may be excluded if the danger of unfair prejudice confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence substantially outweighs the probative value. Rule 403, SCRE.

The SVPA defines "[l]ikely to engage in acts of sexual violence" to mean "the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health

and safety of others.” S.C. Code Ann. §44-48-30 (9) Therefore, a person's dangerous propensities are the focus of the SVP Act. *In re Care & Treatment of Corley*, 577 S.E.2d 451, 453–54 (2003). Whether the offender is likely to reoffend is a significant element and highly relevant to the ultimate issue: whether the person is a sexually violent predator as defined by the SVPA.

Dr. Gottfried’s testimony will illustrate why evidence regarding the PPG results are directly relevant to the ultimate issue of this case. Dr. Gottfried will testify it is important if a person's past offending behavior is similar in nature to his current sexual arousal, then the similarity is significant because it is evidence of a pattern of behavior which indicates an increased risk to commit future sexual offenses. Dr. Gottfried’s interpretation of the PPG data point is relevant to her opinion regarding Respondent’s current sexual arousal. Determining current arousal patterns and comparing them to past behaviors is another data point on which Dr. Gottfried relies. Respondent’s sexual arousal is highly relevant to likelihood of re-offending and goes directly to the elements the State must prove. Thus, it is clear the PPG data Dr. Gottfried used in forming her opinion is relevant to the issue of whether Respondent suffers from a mental abnormality which makes him likely to engage in acts of sexual violence again.

As discussed above, the PPG results are relevant to the ultimate issue and highly probative is assisting a jury in determining if Respondent suffers from a mental abnormality and speaks directly to his risk of re-offending. “Unfair prejudice is the tendency of the evidence to suggest a decision based on *something other* than the legitimate probative force of the evidence.” *State v. Phillips*, 844 S.E.2d 651, 656 (2020) (quoting *State v. Gray*, 759 S.E.2d 160, 163 (Ct. App. 2014) (emphasis added). A court “must then consider how important the challenged evidence is to resolving the practically disputed questions.” *Id.* at 655.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 02-03-2010 BY 60322 UC/ALC

While the PPG data is prejudicial, it is not unfairly prejudicial. Respondent's current sexual arousal and how it relates to his offending history is directly related to the question the jury must answer, which is whether Respondent presently has a mental abnormality that makes him likely commit acts of sexual violence if left untreated. The direct, legitimate probative force of the PPG testimony is not outweighed by any unfair prejudice to the Respondent. Dr. Gottfried's testimony will be directly related to Respondent's sexually violent offenses and behaviors, the PPG is just another data point in her testimony.

Recidivism is at the heart of the SVPA law, and in order for the jury to determine whether Respondent is a sexually violent predator, as define by the SVPA, it must determine whether he suffers from a mental abnormality or personality disorders that makes him likely to commit acts of sexual violence if not confined for long term control care and treatment. This requires assistance from the professional mental health community. Dr. Gottfried is highly qualified to determine what tests are necessary to form her opinion in a psychosexual evaluation, and should be allowed to testify as to what data points, including the PPG, she utilized in forming her opinion.

CONCLUSION

Dr. Gottfried has extensive training and experience with the PPG, is certified to interpret its results, and will testify the PPG is reliable and generally accepted in the mental health community. The result of the PPG exam is only one data point for Dr. Gottfried's comprehensive psychosexual evaluation, but it is a valuable data point. It is particularly important in this case because of the nature of Respondent's offending patterns, and his claim that he is not aroused by coercive non-consensual sex. The results of Respondent's PPG examination directly contradict his claims, and reveal clinically significant sexual arousal to coercive sexual assaults of adult women which indicate it is still an active risk for him. In terms of his risk to recidivate, this is a

primary question to be answered by the jury. As such, the State respectfully requests the court to find the results of Respondent's PPG examination meets the threshold standard of reliability under *Council*, and allow the testimony to be heard by the jury, and for the jury to give the evidence whatever weight and credibility it finds most appropriate.

Respectfully submitted,

ALAN WILSON
ATTORNEY GENERAL

CHRISTOPHER S. RUNYAN
Assistant Attorney General

Attorney for Petitioner
S.C. Bar No. 104740
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
V: (803) 734-1173
crunyan@scag.gov

March 7, 2022
Columbia, South Carolina

10/10/2010 10:10:23
 10/10/2010 10:10:23
 10/10/2010 10:10:23

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF THE CARE AND
TREATMENT OF SHAWN TORLIF DAILY,

Plaintiff(s)

vs.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2019-CP - 42- 03230

Submitted By: Emily M. Sordian
Address: Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

SC Bar #: 100993
Telephone #: 803-734-8446
Fax #: 803-734-6679
Other:
E-mail: emilysordian@scag.gov

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Real Property ☐ Claim & Delivery (400) ☐ Contamination (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm (990)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☒ Sexual Predator (510)	☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Employment Security Comm (991) ☐ Other (999)

Submitting Party Signature: 

Date: September 5, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (06/2013)

Page 1 of 2

App'x 437

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

IN THE MATTER OF THE CARE)
AND TREATMENT OF:)

CIVIL ACTION NO. 2019-CP-42 - 03230

SHAWN TORLIF DAILY,)
RESPONDENT.)

PETITION PURSUANT TO THE
SEXUALLY VIOLENT PREDATOR
ACT

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (hereafter, the Act).
2. The South Carolina Department of Corrections (hereafter, SCDC) having determined that Respondent, Shawn Torlif Daily, (hereafter, Respondent), had been convicted of at least one Sexually Violent Offense, referred Respondent to the Multi-Disciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40. **Respondent's max-out date from SCDC is currently on or about February 16, 2020.** His SCDC Inmate Number is 339909, and he was born in 1972.
3. The Multi-Disciplinary Team (MDT) on July 18, 2019 determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30, and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 as to whether probable cause exists to believe Respondent is a Sexually Violent Predator (attached as **PETITIONER'S EXHIBIT A**). The assessment of the Multi-Disciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee (PRC) received the case from the MDT on July 22, 2019, and on August 20, 2019 determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute (**EXHIBIT B**). The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multi-Disciplinary Team including any information provided by the agency that prosecuted the qualifying offense.

5. SCDC records show no indication of military service that would require a separate court order to obtain (EXHIBIT C).
6. The Petitioner now alleges that Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30(1), to wit:

QUALIFYING CONVICTIONS (EXHIBIT D):

- A. Types of Convictions: Lewd Act on a Child under the age of 16 (2 counts).
- B. Date of Convictions: on or about March 18, 2009.
- C. Trials or Pleas: Plea and Direct Indictment on 3rd count
- D. Sentence Received: 30 years suspended to 20 years with 5 years probation.
- E. Original Charges: Lewd Act on Child under the age of 16 (2 counts)
- F. Brief Facts:

2019 SEP 10 AM 10:27
FILED
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. GDX

Victim 1: 11 year old female acquaintance (girlfriend's daughter) (9-10 years of age at the time of sexual abuse)

On or about March 9, 2009, after the news reported Mr. Daily's pending sexual assault charges, mother of V2 reported to law enforcement she believed Mr. Daily had sexually abused her daughter. The victim's mother stated she did not cooperate with the law enforcement investigation in 2008 because she did not want to believe Mr. Daily was capable of sexually abusing children. Furthermore, she had just gone through a divorce and did not want to get into a custody battle with her ex-husband over the sexual abuse. The victim's mother thought keeping the child away from Mr. Daily would be enough.

During separate forensic interviews, V2 reported Mr. Daily would rub her back and put his hands on her vagina. She further disclosed digital penetration.

Victim 2: 14 year old female acquaintance (7-8 years of age at the time of sexual abuse)

On or about April 6, 2008, V3's father reported to law enforcement he believed his daughter had been sexually abused by Mr. Daily. V3 disclosed to a church youth minister that she had been sexually abused when she was seven or eight years old by one of her mother's friends, later identified as Mr. Daily. V3 reported she was left alone with Mr. Daily while her mother was recuperating from a broken ankle. During that time, V3 stated Mr. Daily would take her to his camper in Myrtle Beach. She stated Mr. Daily would sexually touch her and hurt her. She stated he would

massage her back and her butt on top of and underneath her clothes. She stated she would wake up in his bed or on the sofa naked after having gone to bed fully clothed. She reported when she would wake up, she would feel sick and ask Mr. Daily what happened and he would tell her it must have been something she ate. She stated when she woke up naked, she would ask Mr. Daily what happened and he would tell her she "overheated." V3 further disclosed that when she woke up naked, Mr. Daily would only be in his boxers.

While in therapy, V3 reported Mr. Daily would insist on bathing her and he would wash between her legs for long periods of time. She stated he would expose his penis and tell her to sit on it. He would also put his hands down her pants and touch her vagina. She stated she would try to fight Mr. Daily off, would say no, and attempt to leave, but that he would not allow her to leave. She stated he would pull on her ankles to keep her from leaving as he would simultaneously pull down her pants. She stated on one particular occasion, he made her grab his private part and she begged him not to make her do it.

When Mr. Daily was interviewed regarding V3, he stated he would take her on vacation and they would spend the night together alone. When asked whether he ever did anything inappropriate to V3, he stated "not that he could recall."

Victim 3: 9 year old female acquaintance

In April of 2006, law enforcement completed an investigation in reference to inappropriate touching of a female at the YMCA. At the time, V4's mother would not let anyone interview V4. Mr. Daily was arrested on November 25, 2008 for lewd act with a minor. When mother saw the newspaper article, she contacted law enforcement. V4's mother reported she talked to her daughter about the incident at the pool but that her daughter denied any touching initially. However, several months later, the mother reported her daughter disclosed to her that Mr. Daily would take off his pants, sit naked on the sofa with only a blanket on his lap and have V4 sit on his lap. V4 also disclosed while Mr. Daily was bathing her, he rubbed her breasts.

**PRIOR OTHER SEXUAL OFFENSES/CONVICTIONS/REPORTS:
(EXHIBIT E)**

- A. Types of Convictions: Assault and battery of a high and aggravated nature.
- B. Date of Convictions: on or about April 6, 2010.
- C. Trials or Pleas: Plea
- D. Sentence Received: 10 years, concurrent sentence.

E. Original Charges: Lewd Act on Child under the age of 16.

F. Brief Facts:

Victim 1: 20 year old female acquaintance (4-5 years of age at time of sexual abuse)

On or about February 15, 2009, after the news reported there were pending sexual assault charges against Mr. Daily, V1's mother contacted law enforcement and reported she believed her daughter had been sexually assaulted by Mr. Daily approximately fourteen to fifteen years ago when she was working with Mr. Daily.

Law enforcement then interviewed V1, who reported there had been a time when she was in the bathroom at approximately four years of age, and Mr. Daily touched her vagina and placed her hand on his penis. V1 stated she was afraid to report the incident, but after seeing the news report she was sure the incident took place. She further reported there was a time when Mr. Daily came to visit her mother and he took her into the bathroom, pulled his pants down, and sat on the toilet. He then made her touch his penis while he rubbed her vagina. V1 stated she did not remember Mr. Daily penetrating her. However, during the news report when V1's mother asked V1 if she remembered Mr. Daily, she began to cry when she recalled what he had done to her.

Victim 2: Unidentified female victim (Incident Report from Public Safety)

On or about April 1, 2008, law enforcement responded to a report from the YMCA in reference to a sexual assault. The YMCA employee stated she believed an adult male, namely, Shawn Daily, brought a young girl, between the ages of eight and ten, to the pool area. The employee stated the child was seen crying and holding herself and the man was yelling at her.

It was further reported, an adult male took the child into the men's locker room and was spotted cornering the child and yelling at the child. The male suspect was asked to leave the locker room, and he took the child and exited the premises.

It was then discovered there were three other incidents, dating September 15, 2005, October 27, 2005, and another undated, occurring in March of 2008. The YMCA employees were unable to confirm whether all incidents involved the same victim child but stated they believed Mr. Daily was the adult male involved in all of the incidents.

On September 15, 2005, it was reported that an adult male was holding a child, between the ages of eight and ten, in the deep end of the pool, with her back to the wall and her legs wrapped around his waist for approximately ten minutes. It was reported he took four to five minutes helping the child adjust her bathing suit bottoms. It was also reported that he took the child to the metal bleachers to dry off and he sat down and she stood between his knees while he dried her off for thirty seconds or more. It was reported he was using a sea saw motion between her legs to dry her off.

On October 27, 2005, it was reported that an adult male brought a young child to the pool and that he touched and squeezed her butt several times as he played with her. It was reported he also put the girl on him where she was straddling him for about ten minutes as they walked around the pool. It was further reported they went into the family changing room together where they remained for approximately twenty minutes.

During the month of March of 2008, it was reported an adult male was seen playing with a little girl and touching her bottom and rubbing her body. This occurred several times often ending up with the child straddling the male. It was reported the male was seen rubbing her down with a towel for a longer period of time. It was then reported they went into the family changing room together where they remained for approximately ten minutes.

SCDC RECORDS: (EXHIBIT F)

- A. Disciplinary: (0)
- B. Work History: Canteen
- C. Intellectual Disabilities: None
- D. Chemically Dependent: No
- E. Mental Health Status: None

SEX OFFENDER TREATMENT WHILE AT SCDC:

No record of sex offender treatment on file.

GENERAL NOTES:

Risk factors common to cases of this nature appear to include, but may not be limited to: (1) not related to victim, (2) stranger to victim, (3) prior non-sexual convictions, (4) four or more prior sentencing dates, (5) prior sexual offenses, (6) length of offending history one to six years, (7) force or threat of force used (knife), (8) two or more age groups victimized, (9) more than one victim, (10) history of probation violation, and (11) history of physical injury to victim.

2019 SEP 10 AM 10:27
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

(a) Sufficient evidence exists or will exist to determine that Respondent suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, and that the Respondent has serious difficulty in controlling his behavior, or sexual desire impulses.

(b) In support of the State's allegations that the Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following for consideration:

i. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Pedophilic Disorder** are (this is being presented on the possibility that additional information about the juvenile convictions can be obtained, which might indicate underage victims):

A. Over a period of at least 6 months, recurrent intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).

B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.

C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A. (EXHIBIT G).

ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilic Disorder** are:

A. Any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners (EXHIBIT H).

- iii. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S. Ct. 2072, 2080 (1997). The Respondent's instances of violent and non-violent behavior are:
 - A. The basis of his 2009 convictions: lewd act on a child under the age of 16 (3 counts). (EXHIBIT D, *supra*); and
 - B. The basis of his other crimes and convictions: assault and battery of a high and aggravated nature and incident report in reference to sexual assault. (EXHIBIT E, *supra*).
- iv. The Respondent has never been married or lived with a lover for at least two years. His victims have not been related to him by blood or marriage. His sexual offending history is between one and six years. The Respondent has victimized two or more age groups.
- v. The facts of the Respondent's offenses indicate the existence of a mental abnormality in that they could involve recurrent sexual urges, or behaviors that could, depending on further research into his juvenile adjudications, have involved an underage child and possibly occurring over a period of at least six months.

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent Shawn Torlif Daily is a Sexually Violent Predator and order:

1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined, such as at SCDC or in a county detention center;
2. Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;
3. A hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, but only if he is not already in custody at SCDC or a county detention center as described *supra*;
4. Counsel be appointed for Respondent if necessary;
5. If probable cause is found at that hearing, that Respondent remain in

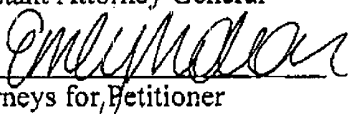
custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;

6. The Court appoint a qualified expert for such an evaluation if probable cause is found;
7. If probable cause is found a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator that he be committed to the custody of the South Carolina Department of Mental Health for long term control, care, and treatment, until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Sections 44-48-10 *et seq.*, and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

Emily Sordian
Assistant Attorney General

By: 
Attorneys for Petitioner
S. C. Bar Number 100993
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Direct: 803.734-1173
Office: 803.734-3970
FAX: 803.734-6679
emilysordian@scag.gov

September 5, 2019
Columbia, South Carolina

FILED
2019 SEP 10 AM 10:27
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

A

FILED

2019 SEP 10 AM 10:27

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

SEXUAL PREDATOR REFERRAL FORM

Offender Name: SHAWN TORLIF DAILY		Offender Number: 339909	Jurisdictional Agency: SCDC
Age: 47	County: SPARTANBURG	Qualifying Offense(s): Guilty Plea: _____ Trial: _____	
Gender: Male	No. of Incarcerations:	Lewd Act on Child Under 16 (3 counts)	
Adult 30 yrs ss to 20 yrs w/ 5 yrs prob	Parole Eligibility	Max-Out	
Sentence:	Date:	Date: 02/16/2020	
Juvenile	Parole	SFI	
Guidelines:	Release Date:	Date:	

The review of this case is based on the offender's records which include, but are not limited to, the following information: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors. Findings are strictly based on the legal criteria set forth in Section 44-48-30 of the Sexually Violent Predator Act, and are not to be interpreted as a clinical assessment.

VOTES TO REFER/NOT REFER TO PROSECUTOR'S REVIEW COMMITTEE:

YES	NO	ABSTAIN
<u>3</u>	<u>1</u>	<u>0</u>

The following Sexual Predator Multi-Disciplinary Team Members participated in the review process:

[Signature] SCDC -- CHAIRPERSON
[Signature] SCPPS
[Signature] DMH
[Signature] JDG
[Signature] ATTORNEY

2019 SEP 10 AM 10:27
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

FILED

MULTIDISCIPLINARY TEAM

The offender's records were assessed by the Multidisciplinary Team on July 18, 2019, and based upon that assessment, we find that:

- ☒ The offender satisfies the definition of a sexually violent predator and a review by the Prosecutor Review Committee is warranted.
- ☐ The offender does not satisfy the definition of a sexually violent predator and a review by the Prosecutor Review Committee is not warranted.

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

B

FILED

2019 SEP 10 AM 10:27

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

**PROSECUTOR'S REVIEW COMMITTEE
PROBABLE CAUSE DETERMINATION**

INMATE NAME:	INMATE NUMBER	PRC REVIEW DATE:
SHAWN DAILY	339909	AUGUST 20, 2019
		MEMBERS PRESENT:
		Barry Bernstein for Alan Wilson David M. Stumbo via telephone Beebe James via telephone

DATE RECEIVED FROM MULTIDISCIPLINARY TEAM: JULY 22, 2019

The Multi-Disciplinary Team referred this case to the Prosecutor's Review Committee pursuant to S.C. Code Ann. § 44-48-50, for review to determine whether probable cause exists to believe this person is a sexually violent predator. S.C. Code Ann. § 44-48-60. The Prosecutors Review Committee reviewed all information received from the Multi-Disciplinary Team, including without limitation: documentation of the qualifying offense as well as other sexual assault(s) or criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors.

PROBABLE CAUSE DETERMINATION:

By a vote of 3-0, the Prosecutor's Review Committee found probable cause to believe that this individual has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.


 Counsel for Committee

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

C

FILED

2019 SEP 10 AM 10:28

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

:16:26 Friday, June 28, 2019

SUMI200D

SCDC OFFENDER MANAGEMENT SYSTEM
GENERAL OFFENDER PROFILE06/28/19
C035477

SCDC ID...: 339909
 NAME: DAILY, SHAWN TORLIF
 OFFENDER TYPE...: ADULT-STRAIGHT SEN
 RACE...: W SEX...: M
 AGE...: 47 BIRTHDATE...: /72
 HEIGHT...: 6 FT 00 IN
 WEIGHT...: 162 LBS
 EYES...: BLUE HAIR...: BLOND OR
 SKIN...: FAIR BODY...: LARGE
 AIMS CATEGORY...:
 MILITARY BRAN...:
 OCCUPATION...:
 INTELLIGENCE...:
 READING SCORE...: 12.8 GED...: Y
 BIRTHPLACE...: TEXAS
 CURRENT ASSIGN: CANTEEN
 ADMISSION DATE: 03/22/10
 PAR ELIG. DATE: 09/21/15
 MAXOUT DATE...: 02/16/20

CURRENT LOC...: MCCORMICK
 CURRENT STATUS...: INCARCERATED
 FBI NUMBER...: 395201CD3
 SID NUMBER...: SC01854306
 U.S. CITIZEN...: CITIZEN - NATIVE B
 RELIGION...: BAPTIST
 MARITAL STATUS...: SINGLE
 MEDICAL STATUS...:
 SOCIAL SECURITY #...:
 DRIVERS LIC & STATE...:
 SECURITY...: MI2 BED TYPE...: F10144B
 COMMITTING COUNTY...: SPARTANBURG
 SENTENCE...: 02000000 YYYYMMDDDD
 SENTENCE START DATE...: 03/16/10
 MOST SERIOUS OFFENSE: LEWD ACT/CHILD UND
 SCDC CLASSIFICATION...: VIOLENT
 DETAINERS...: YES

VICT/WIT NOTIFICATIONS: YES

OFFENDER PROFILE DISPLAYED...

PF11-QUIT

CLEAR-OMS MENU

PF24-SIGNOFF SYSTEM

FILED

2019 SEP 10 AM 10:28

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

D

FILED
2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Minor 1

FILED

2019 SEP 10 AM 10:28

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

S.C. Attorney General
April 21, 2003
SCCA 118

ARREST WARRANT

M-111166

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Shawn Torlif Daily

Address: Glenwood Hills

Spartanburg, SC 29301-

Phone: _____ SSN: _____
Sex: M Race: W Height: 6 5 Weight: 105DL #: _____ Agency ORI #: SC0420000Prosecuting Agency: Spartanburg County SheriffProsecuting Officer: Nicole Cantrell - 0686Offense: Sex / Criminal sexual conduct with minor - victimunder 11 yrs of age - First degreeOffense Code: 0385Code/Ordinance Sec: 16-03-0655(A)(1)This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to

defendant

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

AUDIT COPY

AUDIT COPY

AUDIT COPY

AUDIT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

AFFIDAVIT

Personally appeared before me the affiant Nicole Cantrell whobeing duly sworn deposes and says that defendant Shawn Torlif Dailydid within this county and state on or about 07/01/2006 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

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

That on July 1, 2006 in the county of Spartanburg, one Shawn Torlif Daily did engage in sexual battery by digital penetration with a minor, the victim being less than eleven years old and the defendant being more than three years older.

warrant is based upon police investigation. mmh

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard StreetSpartanburg, SC 29303-

Affiant's Telephone _____

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/1/2006 defendant Shawn Torlif Daily

did violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:

☒ County/ ☐ Municipality of SpartanburgDESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

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

Sworn to and subscribed before me

on 02/09/2009

(L.S.)

Signature of Issuing Judge

David James Turner

Judge Code: 5079Judge's Address Spartanburg County Judicial CenterSpartanburg, SC 29306-5221Judge's Telephone (864)596-2228Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

AUDIT COPY

AUDIT COPY

AUDIT COPY

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT AND FINE CARD MADE ☒

ARREST WARRANT NUMBER
8. TRAFFIC VIOLATION COPY ☒

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

10-GS-42-1742

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 26 2010

TERM

THE STATE
vs.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

FILED
2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 22 2010

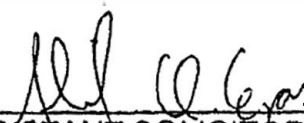
At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of July 1, 2006 and April 30, 2008, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one Minor 1, a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

FILED
2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

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



ASSISTANT SOLICITOR

P6 15-2
STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Shawn T Daily

AKA:

Race: W Sex: M Age: 38

DOB: 1972 SS#:

Address: N Hwy 14

City, State, Zip: Greer, SC 29651

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Lewd Act on a Minor (0-15 years)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS421742

A/W#: DIRECT INDICTMENT

Date of Offense: 7/1/2006

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or

☒ PLEADS ^{NO} _{CRIMES}

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST: Gray, Abel 12164 SC Bar# Defendant Rich Viera 5711 SC Bar#
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 47.12 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk A. Sealey

Court Reporter: P. Green

SCCA/217 (11/2009)

ACERTIFIED COPY
M. Hope Blackley
CLERK OF COURT

SPARTANBURG COUNTY

Obtain GED ☐ BY UPS D.C.

Attend Voc. Rehab. or Job COUNSELING DATED 9-18-10

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: sexual abuse conditions; GPS monitor

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge P. B. H.

Judge Code: 2096

Sentence Date: March 18, 2010

FILED
 2019 SEP 10 AM 10:28
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

5-18-09 ARREST WARRANT: *Non Collection*
M-113352 *Compl*
 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Spartanburg 44355
 THE STATE 05027809
 against

Shawn Torlif Daily
 Address: Hy 14
 Greer, SC 29651-
 Phone: SSN:
 Sex: M Race: W Height: 6 5 Weight: 105
 DL State: DL #: 1972 Agency ORI #: SC0420100
 Prosecuting Agency: Spartanburg Public Safety Department
 Prosecuting Officer: Juliene P James - 1071
 Offense: Sex / Criminal sexual conduct with minor - victim
 under 11 yrs of age - First degree
 Offense Code: 0385
 Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
 is to be arrested and brought before me to be
 dealt with according to the law.
 (L.S.)

Date: RETURN
 A copy of this arrest warrant was delivered to
 defendant 5/20/14
 5/17/14
 Signature of Constable/Law Enforcement Officer:

RETURN WARRANT TO:
 General Sessions
 180 Magnolia Street
 P O Box 3483
 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
 County/ ☐ Municipality of
 Spartanburg

AFFIDAVIT

Personally appeared before me the affiant Juliene P James who
 being duly sworn deposes and says that defendant Shawn Torlif Daily
 did within this county and state on or about 01/01/2005 violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg)
 in the following particulars:
 DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

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

That between January 1, 2005 and January 1, 2006 in the city of Spartanburg, one Shawn Torlif Daily did engage in sexual battery
 by digital penetration of the vagina upon a minor, the victim being less than eleven years old and the defendant being more than
 three years older. KPD

Affiant's belief is based upon police investigation.

MAY 19 REC'D

Signature of Affiant
 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Spartanburg

Affiant's Address 145 West Broad Street
 Spartanburg, SC 29306-
 Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2005 defendant Shawn Torlif Daily
 did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant, transporting him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of arrest, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 05/12/2009 (L.S.)
 Signature of Issuing Judge
 Charles William Jones
 Judge Code: 7084

Judge's Address Spartanburg County Magistrate
 Spartanburg, SC 29305
 Judge's Telephone (864) 596-2564

Issuing Court: ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL BY: 05-18-09 ORIGINAL

NO. **09-GS-42-3892**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 20 2009

TERM

THE STATE

VS.

Shawn Torlif Daily

Indictment for

**CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE**

SC Code: 16-03-0655(1)

CDR Code:0385

Class FEL-C(V)

WITNESSES

~~Spartanburg Public Safety Dept.~~

7.00 20.00

• • • • •

[illegible]

1990

ARREST WARRANT NUMBER

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

M113352

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: _____

VERDICT

Foreperson of Petit Jury

Not proved
Defendant pleads guilty / Alibi
to other charges

3-18-2010
JUL 27 PM 2:17
HARC KITCHENS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 MAR 18 AM 9:31

455

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 17 2009, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Shawn Torlif Daily, did in Spartanburg County, between the dates of January 1, 2005 through January 1, 2006, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim, Minor 1, who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of § 16-93-605 (1), CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

FILED
2009 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
SAM Y. W. COX

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

Amir Jordan
ASSISTANT SOLICITOR

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM						
	1. 11A FORCIBLE RAPE		☒ YES ☐ NO	☐ YES ☐ NO	APARTMENT		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.						
	2.		☐ YES ☐ NO	☐ YES ☐ NO									
VICTIM NO. 1	3. INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE	WEAPON TYPE						
	SOUTHPORT RD Spartanburg SC					29301-							
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.					
	01/01/2005	08:00		01/01/2006	08:00	05/12/2009	15:00	4					
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
	JAMES, JULIE												
	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.						
	BROAD ST		Spartanburg		SC	29306-	3						
	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE		
	Minor 1		AQ		S	W	F	11	N				
SUBJECT NO. 1	WEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.					
					Roebuck	SC	29306-	3					
	VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN--				COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO								
	VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE:				DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:								
	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMIT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				* J—This Jurisdiction. S—State. O—Out of State. U—Unknown								
	NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	DAILY, SHAWN TORLIF				W	M	37	N	/1972				
	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.												
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.					
NARRATIVE	GLENWOOD HILLS DR				Spartanburg		SC	29306-	S		209 SEP 10 AM 10:28		
	SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE:				ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
	DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE:				TOTAL # ARRESTED		01/01/2005 08:00		CLERK OF COURT SPARTANBURG COUNTY AM W. COX				
	ORIGINAL - CJAMES, J P												
	I RECEIVED A REPORT FROM LT. CANTRELL IN REFERENCE TO FOLLOWING UP ON CASE NUMBER 04-0095-06												
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY												
	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY												
	TOTAL VALUE												
	TYPE (GROUP)												
	STOLEN												
DAMAGED													
BURNED													
RECOVERED													
SEIZED													
SUBJECT IDENTIFIED													
SUBJECT LOCATED													
ACTIVE ☐ ADM. CLOSED ☐													
UNFOUNDED ☐													
ARRESTED UNDER 18 ☐													
ARRESTED 18 AND OVER ☐													
EX-CLEAR UNDER 18 ☐													
EX-CLEAR 18 AND OVER ☐													
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY													
REPORTING OFFICER(S)													
DATE													
UNIT NUMBER													
JAMES, J P													
05/12/2009 08:00													
0046													
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO ☐													
OFFICER													

SC0420100
05027809

Additional Narrative

SUPPLEMENTAL - JAMES, J P

ON 3-9-09, I RECEIVED A FORENSIC ASSESSMENT FROM THE CHILDREN'S ADVOCACY CENTER OF SPARTANBURG. Minor 1 WAS REFERRED BY THE SPARTANBURG COUNTY SHERIFF'S OFFICE IN REFERENCE TO THEIR CASE. IT WAS DETERMINED PART OF THE INCIDENT OCCURRED AT SOUTHPORT RD. APARTMENT . THE ASSESSMENT STATED THE SUSPECT IS SHAWN DAILY, Minor 1 MOTHERS BOYFRIEND AT THE TIME OF THE INCIDENT. MR. DAILY WOULD RUB HER BACK AND THEN RUB FURTHER DOWN. HE WOULD ALSO PENETRATE HER VAGINA WITH HIS FINGERS. CAC REPORT PLACED INTO EVIDENCE. WARRANT WILL BE SOUGHT.

FILED

2019 SEP 10 AM 10:28

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

INCIDENT TYPE		COMPLETED		ED ENTRY		PREMISE TYPE		UNITS ENTERED		TYPE VICTIM	
1. Lewd Act w/ Minor		☒ YES	☐ NO	☐ YES	☒ NO	Residence				☒ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Religious Org ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
2. CSC w/ Minor 1st degree		☒ YES	☐ NO	☐ YES	☒ NO	"					
3.		☐ YES	☐ NO	☐ YES	☐ NO						
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE		WEAPON TYPE			
Cromer St. Roebuck, SC						29376		none			
INCIDENT DATE		24 HR. CLOCK		TO		DATE		24 HR. CLOCK		DISPATCH DATE/TIME 24 HR. CLOCK	
06/01/06						12/31/06				DISP. DATE 01/21/09 DISP. TIME TIME ARRIVED DEPART TIME LOCATION NO. 12	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		*RESIDENT		RACE		SEX	
H. Jennifer				#1 AQ		☒ J ☐ S		W		F	
ADDRESS				CITY		STATE		ZIP CODE		LOCATION NO.	
Cromer St.				Roebuck		SC		29376		12	
VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		*RESIDENT		RACE		SEX	
Minor 1				#1 AQ		☐ J ☐ S		W		F	
HEIGHT				WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
503				100		BLN				97	
ADDRESS				CITY		STATE		ZIP CODE		LOCATION NO.	
Cromer St.				Roebuck		SC		29376		12	
VISIBLE INJURY (MCT. 1) ☐ YES ☒ NO EXPLAIN -											
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☒ NO											
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:											
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG. ☐ OTHER ☐ ALONE ☐ ASSISTED * J - This Jurisdiction S - State O - Out of State U - Unknown											
SUBJECT NO. 1		NAME (LAST, FIRST, MIDDLE)				RACE		SEX		AGE	
☒ SUSPECT		Daily, Shawn T.				W		M		36	
☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
☐ WANTED											
☐ WARRANT		ADDRESS				CITY		STATE		ZIP CODE	
☐ ARREST		Glenwood Hills Dr.				Spartanburg		SC		29301	
☐ JAIL		SUSPECT (NO. 1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST	
☐ SUMMONS		DRUGS: ☐ YES ☒ NO ☐ UNK TYPE:				TOTAL # ARRESTED					
The victim disclosed to her mother that Shawn T. Daily rubbed her front private part. Shawn did have access to the victim at his house and the victim's residence. The incident occurred in 2006. The victim just now disclosed after Shawn has been out of her life for awhile. The victim's mother made a report about the disclosure. The victim was scheduled for a forensic assessment at the Children's Advocacy Center. Further investigation required.											
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
TYPE (GROUP)										TOTAL VALUE	
STOLEN											
DAMAGED											
BURNED											
RECOVERED											
SEIZED											
SUBJECT IDENTIFIED		SUBJECT LOCATED		☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18			
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY											
REPORTING OFFICER(S)				DATE		BADGE #		APPROVING OFFICER		DATE	
Nicki Cantrell				01/21/09		686					
								FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		OFFICER	

FILED
 SEP 10 AM 10:28
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL

☒ SUPPLEMENTAL REPORT
☒ CASE STATUS CHANGE

☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS

☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			*RESIDENT	RACE	SEX	AGE	D.O.B.	ET	
	☒ VICTIM # 1	Minor 1		#1 AQ #2 #3			☐ J ☐ O ☐ S ☐ U	W	F	11	/97	N	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS	503	100	BLN									
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE				
	Cromer St.		Roebuck	SC	29376	12	C						
	☒ VICTIM NO. 1	VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		☐ TWO-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG.					
	EXPLAIN:				DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK		☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED ☐ ALONE						
	☒ SUBJECT NO. 1		USING ALCOHOL ☐ YES ☐ NO		USING DRUGS ☐ YES ☐ NO TYPE: ☐ UNK								
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT			*RESIDENT	RACE	SEX	AGE	D.O.B.	ET	
	☒ VICTIM # 1	Daily, Shawn T.		#1 #2 #3			☐ J ☐ O ☐ S ☐ U	W	M	36	/72	N	
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
	☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS	605	105	BLN	BRO								
	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE				
	Glenwood Hills Dr.		Spartanburg	SC	29301	14	same						
	☐ VICTIM NO. 1	VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		☐ TWO-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG.					
	EXPLAIN:				DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK		☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED ☐ ALONE						
	☒ SUBJECT NO. 1		USING ALCOHOL ☐ YES ☐ NO		USING DRUGS ☐ YES ☐ NO TYPE: ☐ UNK								

The victim was seen at the Children's Advocacy Center. She made a clear, credible disclosure of sexual abuse by Shawn Daily. She disclosed digital penetration on a number of occasions at two incident locations in Spartanburg County and one location in Spartanburg City limits. The incidents in Spartanburg County spanned from July 2006 until April 2008. I presented this case to Judge Turner, who issued warrant Mill 66 on Shawn Daily for CSC w/ Minor 1st degree.

FILED
SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
STATUS		TYPE	
☐ STOLEN	☐ VEHICLE		
☐ RECOVERED	☐ GUN		
☐ FOUND	☐ BOAT		
☐ TOWED	☐ LICENSE PLATE		
☐ SUSPECT	☐ SECURITIES/BOND, STOCKS		
☐ VICTIM	☐ ARTICLE		
VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
SERIAL AND/OR OWNER APPLIED NO.		STATE	
YEAR OF REGISTRATION		YEAR OF EXPIRATION	YEAR
MODEL		STYLE	COLOR
NIC NO.		DENOMINATION	ISSUER
MISCELLANEOUS		SECURITIES DATE	
TYPE (GROUP)		TOTAL VALUE	
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO	
☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18	
☐ UNFOUNDED		☐ ARRESTED 18 AND OVER	
☐ EX-CLEAR UNDER 18		☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY			
REPORTING OFFICER(S)		DATE	BADGE #
Nicki Cantrell		02/09/09	686
APPROVING OFFICER		DATE	BADGE #
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER	

02/24/09
17:43

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
2

Investigation Report
Spartanburg County Sheriff's Department

Case Number: 2009011388
Incident Type: CSC w/ Minor 1st degree
Victim: Minor 1
Location: Cromer St. Roebuck, SC 29376
Incident Date: 07/01/06 - 04/01/08
Patrol Officer:
Investigator: Cantrell, Nicki

01-21-09 / 1700 hours

I had been contacted by attorney John White. He requested that I come to his office to meet with Jennifer H because she needed to talk to me. I stated that she felt more comfortable talking with me in his presence. I had not seen Jennifer and Minor 1 had been seen at the Children's Advocacy Center one time and her mother refused to cooperate with the investigation any further back in April 2008. She had been dating Shawn for a while and he had access to Minor 1. When I arrived at Mr. White's office, he informed me that Minor 1 had disclosed to her mother that Shawn Daily had sexually abused her. I spoke to Jennifer for awhile. She stated that she had not allowed Minor 1 around Shawn since April 2008. However, she had some contact with him since then. She stated that it mainly consisted of telephone conversations. Jennifer said that after Shawn was arrested this second time, she asked her daughter if Shawn ever did anything that made her feel uncomfortable. She stated that her daughter disclosed that he would rub her back and then put his hand on her front private area. Jennifer stated that Minor 1 had told her a long time ago about Shawn rubbing her back and she did not want him to. Jennifer told Shawn to stop rubbing Minor 1's back. She thought that was the end of it. Jennifer stated that Minor 1 did not tell her about Shawn rubbing her private area. Jennifer confirmed that Shawn would go in the bathroom while Minor 1 was taking a bath. He would go in there to wash the soap out of her hair. He would also lay with her at night in her bed until she fell asleep. Jennifer stated that he did that at her house and his house. Minor 1 did spend the night with Shawn a number of times alone at his house. Jennifer did not cooperate with the investigation in April 2008 because she did not want to believe that Shawn was capable of sexually assaulting children. She had gone through a terrible divorce with a man who had a lot of problems. She was afraid of getting in a custody battle over this and she did not want to even deal with it. She felt that she would keep her daughter from Shawn and that would be enough. However, when Minor 1 disclosed to her, she contacted John White and he advised her to report this to me. I asked Jennifer if Minor 1 had seen Shawn's arrest on the news or in the paper. Jennifer stated that she does not allow Minor 1 to watch the news or read the paper. Minor 1 was not aware of his arrest or the other girls. Jennifer stated that after Minor 1 told her, she called Shawn's mother and talked to her about it. She stated that Shawn's mom seemed to believe that this may be true. Jennifer then called Shawn. Jennifer stated that she was very angry and hostile with Shawn. She stated that she told Shawn what Minor 1 said. Shawn replied saying, I don't know what you want me to say. Jennifer told Shawn that she wanted him to tell the truth. Shawn stated that he was rubbing a cramp out of Minor 1's leg. Shawn told her that he could not discuss the case based on his attorney's advise. He did not deny the allegations during the conversation. I asked Jennifer if she would allow Minor 1 to be seen at the Children's Advocacy Center again. She agreed. I called the CAC. We scheduled a forensic for January 28, 2009 at 4:00 pm. I gave the appointment information to Jennifer.

FILED
2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG
AMY W. BOYD

02/24/09
17:43

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 3
643

01-28-09 / 1600 hours

I went to the Children's Advocacy Center to observe the forensic interview. I sat in on the parent interview between Tabitha and Jennifer H. Jennifer stated that Wednesday, January 14, 2009 after dance practice she was taking Minor 1 home. She asked Minor 1 about Shawn and that is when Minor 1 disclosed to her. Jennifer stated that shortly after moving into their house is when she remembers Minor 1 telling her about Shawn rubbing her back and not liking it. Jennifer stated that they moved into their residence June 2006. She stated that they were on vacation half that month and then the second half of that month, Minor 1 was at her father's visiting. Jennifer stated that it would have occurred between July 2006 to December 2006 is when Minor 1 told her. Jennifer stated that when Minor 1 disclosed to her she stated that it happened in her bed and in the bathtub. Minor 1 stated that she did not tell about it before because she thought that since she told her mom in 2006. Jennifer stated that Shawn called her after his second arrest. Jennifer stated that she asked him about it and all he would say was that it was about Claire. Jennifer stated that Shawn showed up at Minor 1's dance recital in May 2008 after I had already began my investigation. Jennifer stated that she did not allow him to have any contact with Minor 1 though. Jennifer stated that she saw Shawn about two times over the Summer 2008 and then rest of their contact has been telephone contact. However, she has not talked to him much lately. The victim spoke to Tabitha. I observed a portion of the interview before I was called away on another case. The victim disclosed numerous incidents. She disclosed digital penetration. She described the incident locations. She stated that she thought she told her mom about Shawn touching her vaginal area. The victim made a clear credible disclosure. Tabitha Weber scheduled follow up appointment with Minor 1 for 3:45pm on Friday, February 6, 2009. Tabitha asked that I get pictures of the victim's residence so she could show them to the victim.

02-06-09 / 1300 hours

I went to the victim's residence. Jennifer H was home and Minor 1 was still at school. I took pictures of the outside and inside of the residence.

02-06-09 / 1500 hours

I arrived at the Children's Advocacy Center for another case as well as this one. I provided pictures to Tabitha of the victim's residence. Tabitha followed up with the victim. We then spoke to Jennifer H. Minor 1 had disclosed three different incident location and went through a timeline. We had Jennifer help us with the incident locations. Jennifer stated that they lived at Oak Forest Apartments from 2003 - 2005. After that they moved to some apartments behind Fudruckers (That is Spartanburg Public Safety jurisdiction). They lived there from 2005 until 2006. In 2006 is when they moved into their house. They moved in the summer for every move. I asked Jennifer if she could find paperwork to show when and where they lived. She stated that she would look for it and fax it to me. Tabitha scheduled Minor 1 for a medical exam on Tuesday, February 17, 2009 at 8:30 am. I told Jennifer that I would obtain a written statement from her at that time. She needed to leave the CAC on this date because she had to take Minor 1 to her father's house for the weekend.

02-09-09

I presented this case to Judge Turner. He issued warrant M-111166 on Shawn Daily for CSC w/ Minor 1st degree.

02-09-09 / 1415 hours

I called Shawn Daily's cell phone
called Shawn's mother's cell phone

It had been disconnected. I
There was no answer. I called

02/24/09
17:43

Spartanburg County Sheriff's Office
Deputy Supplemental Report

643
Page: 4

Shawn's parents' residence ,). There was no answer.

02-09-09 / 1430 hours

I received a call from Jeff Merriam. He stated that Shawn's mother called and stated that she had received a phone call from me. He wanted to know why I was calling. I explained that I had another warrant for Shawn's arrest. He asked what the warrant was for. I told him the charge. He asked who the victim was. I told him that Shawn should know because the victim's mother had contacted him in January. I told him that it was in reference to the 's. He asked what Shawn's bond would be. I told him that a circuit court Judge had to set the bond. He stated that he had a lot to do today and asked if Shawn could turn himself in later this week. I told him that I needed Shawn to turn himself in today. He stated that he would call me back.

02-09-09 / 1500 hours

Jeff Merriam called me back. He stated that Shawn intended to turn himself in this afternoon. I told him to go to the warrant office at the county jail.

Shawn Daily did turn himself into the Detention Center on the warrant.

02-09-09 / 2000 hours

Jennifer H. called and stated that she received a phone call from the Detention Center stating that he was arrested. I told her that I would need to obtain a written statement from her about Minor 1 's disclosure. I told her that I could meet her Tuesday, February 17, 2009 at the CAC when Minor 1 was having a medical to get a statement. She stated that would be fine. She stated that she found her deed to her house that shows the date she moved into the residence to help establish a timeline of the abuse. I told her that we would be referring this case to Spartanburg Public Safety as well because some of the incidents happened in their jurisdiction.

02-18-09 / 1128 hours

I left a message for Lt. Ron Cantrell with Spartanburg Public Safety to notify them of the case that occurred in their jurisdiction.

02-18-09 / 1330 hours

Lt. Cantrell contacted me back. He stated that Detective James was handling the case. They were looking into the incident they had in the past at the YMCA with Shawn Daily. I told him that the CAC explored those possible incidents with the victims and nothing came of it at that time. However, there were incidents with this victim that occurred in the city limits. He stated that he would give Detective James my contact information so she could get copies of my case file.

02-19-09 / 1100 hours

Tabitha Weber at the CAC called and stated that Detective James had been in contact with her about this case.

02-24-09 / 1130 hours

I went to [REDACTED] Middle School to meet Jennifer H. to pick up a statement she prepared about incident locations and dates. She also provided me with an email and a copy of her deed to show the dates of the incidents occurred at her current residence.

02/24/09
17:43

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
5

[Handwritten Signature]

Responsible LEO:

Approved by:

Date

FILED
2019 SEP 10 AM 10:28
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Minor 2

FILED
2019 SEP 10 AM 10:29
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

5. CHECKED WARRANTS

M184282 6. CHECKED SIGNATURE

7. ASSESSMENT
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 1-09-09

VERDICT

Foreperson of Petit Jury
Date:

09-GS-42-0261

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 19 2009

TERM

THE STATE
vs.

Shawn T. Daily

Indictment for
SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140
CDR Code: 2468
Class FEL-D

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2009 JAN 16 AM 11:22
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 6 9 2009, the

Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn T. Daily, did in Spartanburg County, between the dates of September 1, 1999 through September 1, 2000, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one Minor 2, a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

FILED
 2019 SEP 10 AM 10:29
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

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


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Shawn Torlif Daily

AKA:

Race: W Sex: M Age: 38

DOB: -1972 SS#:

Address: N. Hwy 14
City, State, Zip: ORRER, SC 29651

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996) ☐ CONVICTED OF or ☒ PLEADS
in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: ALICIA C. GIBSON 7705 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 10 days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 5months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2010GS42-1742
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$500.00
§ 14-1-212 (Law Enforce. Funding)	\$25 \$25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$5.00
3% to County (if paid in installments)	\$18.90
TOTAL	\$648.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (1/2009)

IN THE COURT OF GENERAL SESSIONS

469

INDICTMENT/CASE#: 2009GS4200261

A/W#: M184282

Date of Offense: 9/1/1999 - 9/1/2000

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. 3-18-10

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: sexual abuse condition; GPS Moni
I have accepted this plea to the level of it can
defer sentencing to the judge who hear
the CSC plea.☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2096

Sentence Date: March 18, 2010

App'x 473

470

(01/29/99) : 00055

I-29

AGENCY I.D.
SC0420000

INCIDENT REPORT

SPARTANBURG COUNTY SHERIFF'S OFFICE

CASE NUMBER

2008040363

NCIC

INQ. INTD.

INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM																																																													
1. Criminal Sexual Misconduct w/Minor 318				☒ YES ☐ NO	☐ YES ☒ NO	Residence/Home		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Religious Orgn ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off.																																																													
2.				☐ YES ☐ NO	☐ YES ☐ NO																																																																
3.				☐ YES ☐ NO	☐ YES ☐ NO																																																																
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)						ZIP CODE	WEAPON TYPE																																																														
Glenwood Hills Spartanburg South Carolina						29301																																																															
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK			LOCATION NO.																																																													
09/01/99	18:00		09/01/99	19:00	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART TIME	21																																																												
					04/06/00	20:13	20:13																																																														
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		*RESIDENT	RACE	SEX	AGE	ETH																																																												
G: Shawn			#1 FR #2 #3		☒ J ☐ O ☐ S ☐ U	W	M	34	N																																																												
ADDRESS			CITY		STATE		ZIP CODE	LOCATION NO.																																																													
Markham Cir.			Moore		SC		29369	32																																																													
VICTIM'S NAME (LAST, FIRST, MIDDLE)			RELATIONSHIP TO SUBJECT		*RESIDENT	RACE	SEX	AGE	ETH																																																												
Minor 2			#1 FR #2 #3		☒ J ☐ O ☐ S ☐ U	W	F	14	N																																																												
HEIGHT			WEIGHT		HAIR		EYES		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																																																												
505			90		BRO		BRO																																																														
ADDRESS			CITY		STATE		ZIP CODE	LOCATION NO.																																																													
			Moore		SC		29369	32																																																													
VISIBLE INJURY (MCT. 1) ☐ YES ☐ NO EXPLAIN -					COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO																																																																
VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE:																																																																					
☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG. ☐ OTHER ☐ ALONE ☐ ASSISTED					* J - This Jurisdiction S - State O - Out of State U - Unknown																																																																
☐ SUSPECT					NAME (LAST, FIRST, MIDDLE)																																																																
☐ RUNAWAY					Daily, Shawn T.																																																																
☐ WANTED					FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																																																																
☐ WARRANT					ADDRESS																																																																
☐ ARREST					Glenwood Hills																																																																
☐ JAIL					CITY																																																																
☐ SUMMONS					Spartanburg																																																																
SUSPECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO					DATE/TIME OF OFFENSE																																																																
DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE:					DATE/TIME OF ARREST																																																																
TOTAL # ARRESTED 0					09/01/99 18:00																																																																
On 04/06/08 Mr. G came into the Sheriff's Office to report a Criminal Sexual Misconduct with a Minor. Mr. G along with his wife, daughter Minor 2 and their Pastor. Mr. G stated that Minor 2 came to them (he and his wife, and the pastor), and told them that while she was at Mr. Shawn Daily's home of Glenwood Hills around September of 1999, while her mother had a broke ankle. Minor 2 stated that Mr. Daily would sexually touch her and hurt her. Ms. G also stated that when she would wake up, she would be unclothed and in his bed or on the couch. She also stated that Mr. Daily would watch her take a bath and repeatedly try to clothe her. I notified the On-call Investigator (I-8 Lindsey) by telephone. He spoke with Mr. G and they decided to do the report, and wait for an assigned investigator to contact the G																																																																					
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY																																																																
<table border="1"> <tr> <td>TYPE (GROUP)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>TOTAL VALUE</td> </tr> <tr> <td>STOLEN</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>DAMAGED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>BURNED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>RECOVERED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>SEIZED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>										TYPE (GROUP)									TOTAL VALUE	STOLEN										DAMAGED										BURNED										RECOVERED										SEIZED									
TYPE (GROUP)									TOTAL VALUE																																																												
STOLEN																																																																					
DAMAGED																																																																					
BURNED																																																																					
RECOVERED																																																																					
SEIZED																																																																					
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER																																																													
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY																																																																					
REPORTING OFFICER(S)		DATE		BADGE #		APPROVING OFFICER		DATE																																																													
Graham, L.		04/06/08		029		Herns, Sgt. DM		04-06-08 236																																																													
		20000		FOLLOW-UP INVESTIGATION		YES ☐ NO ☒																																																															

(01/29/09) : 00056

AGENCY I.D.
SC0420000

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

2008040363

NCIC

INQ. ENTO.

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE <u>1</u> OF <u>2</u> PAGES
☐ MODIFIES ORIGINAL	☒ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

VICT/SUBJ. I.D. OVERFLOW

VICT/SUBJ. I.D. OVERFLOW

NARRATIVE

VEH. / GUN / ETC. 1

PROPERTY EST.

ADMINISTRATIVE

☐ COMPLAINANT		NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT				*RESIDENT	RACE	SEX	AGE	D.O.B.	ETH		
☒ VICTIM # <u>1</u>		Minor 2				#1 AQ #2 #3				☐ J ☐ O ☐ S ☐ U	W	F	15	93	N		
☐ SUBJECT #		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.											
☐ RUNAWAY		505	90	BRO	BRO												
☐ WANTED		ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE					
☐ WARRANT		Markham Circle				Moore	SC	29369	32			same					
☐ ARREST		☒ VICTIM NO. <u>1</u> VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK		☐ TWO-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG.		☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED ☐ ALONE					
☐ JAIL		EXPLAIN:															
☐ SUMMONS		☒ SUBJECT NO. <u>1</u> USING ALCOHOL ☐ YES ☐ NO USING DRUGS ☐ YES ☐ NO TYPE: ☐ UNK															
☐																	
☐ COMPLAINANT		NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT				*RESIDENT	RACE	SEX	AGE	D.O.B.	ETH		
☐ VICTIM #		Dally, Shawn T.				#1 #2 #3				☐ J ☐ O ☐ S ☐ U	W	M	36	/72	N		
☒ SUBJECT # <u>1</u>		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.											
☐ RUNAWAY		605	105	BLN	BRO												
☐ WANTED		ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE		EVENING PHONE					
☐ WARRANT		Glenwood Hills				Spartanburg	SC	29301	14			same					
☐ ARREST		☐ VICTIM NO. <u>1</u> VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		DRUGS: ☐ YES ☐ NO TYPE: ☐ UNK		☐ TWO-MAN VEH. ☐ DETECTIVE/SPECIAL ASSG.		☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED ☐ ALONE					
☐ JAIL		EXPLAIN:															
☐ SUMMONS		☒ SUBJECT NO. <u>1</u> USING ALCOHOL ☐ YES ☐ NO USING DRUGS ☐ YES ☐ NO TYPE: ☐ UNK															
☐																	
The victim disclosed initially at the Children's Advocacy Center. However, it was thought that she had not disclosed everything. She was referred to therapy. It was determined at that time to continue the investigation and wait to see if the victim disclosed more before pursuing charges. The victim wrote a detailed account of several incidents that occurred at the suspect's residence. Her disclosure consisted of the suspect exposing himself to the victim in his residence and asking her to sit on his penis. Other incidents consisted of the victim waking up naked in the suspect's bed. She stated that on some of those incidents, Shawn would start rubbing her back in his bed. He would proceed to putting his hand down her pants and rubbing her. She stated that she would fall asleep and wake up naked with her clothes in a pile on the floor. She reported waking up feeling sick and asking him what happened. He would tell her that it must have been something she ate. The victim was 6 and 7 years old during the incidents. Shawn would																	
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY											
STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.									
☐ STOLEN		☐ VEHICLE															
☐ RECOVERED		☐ GUN		SERIAL AND/OR OWNER APPLIED NO.				STATE									
☐ FOUND		☐ BOAT		YEAR OF REGISTRATION				YEAR OF EXPIRATION				YEAR		MAKE		TYPE	
☐ TOWED		☐ LICENSE PLATE		MODEL				STYLE				COLOR		BRAND NAME		CALIBER	
☐ SUSPECT		☐ SECURITIES/BOND, STOCKS		NIC NO.				DENOMINATION				ISSUER		SECURITIES DATE			
☐ VICTIM		☐ ARTICLE		MISCELLANEOUS													
TYPE (GROUP)		TOTAL VALUE															
STOLEN																	
DAMAGED																	
BURNED																	
RECOVERED																	
SEIZED																	
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18									
				☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER									
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY																	
REPORTING OFFICER(S)				DATE		BADGE #		APPROVING OFFICER				DATE		BADGE #			
Nicki Cantrell <i>MC</i>				11/25/08		686											
								FOLLOW-UP INVESTIGATION ☐ YES ☐ NO				OFFICER					

00000 : (60/62/60)

472

(01/29/09)

: 00057

CASE NUMBER

NCIC

NO. ENTD.

SUPPLEMENTARY REPORT

2008040363

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL
☒ SUPPLEMENTAL REPORT
☒ CASE STATUS CHANGE
☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS
☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 2 PAGES

insist on bathing the victim even though she was old enough to bath herself. She reports that he would wash her between the legs for long periods of time with the wash cloth in a slow manner. I presented this case to Judge Paslay, who issued warrant M-184282 on Shawn Daily for Lewd Act w/ a Minor.

FILED
 2019 SEP 10 AM 10:29
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER		
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES PROSECUTION 5. ☐ JUVENILE - NO CUSTODY										
	REPORTING OFFICER(S)		DATE	BADGE #	APPROVING OFFICER		DATE	BADGE #			
	Nicki Cantrell <i>UNC</i>		11/25/08	686							
				FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		OFFICER					

10000 : (09/29/09)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
2

Investigation Report
Spartanburg County Sheriff's Department

Case Number: 2008040363
Incident Type: CSC w/ Minor
Victim: Minor 2
Location: Glenwood Hills Spartanburg, SC
Incident Date: 09-01-99
Patrol Officer: Graham, L.
Investigator: Cantrell, Nickl

04-08-08 / 0845 hours

I spoke with the victim's father, Shawn G. He was very concerned about the situation and wanted to know the next step in this process. I told him that I would refer Minor 2 to the Children's Advocacy Center for a forensic interview. I explained I would get back in touch with him at with that information.

04-08-08

I referred the victim to the Children's Advocacy Center by faxing the police report and referral form.

04-08-08 / 1111 hours

Tabitha Weber from the CAC called and stated that Michele would conduct a forensic interview on Thursday, April 10, 2008 at 11:00am.

04-08-08 / 1125 hours

I called Shawn G. back. A man named Buddy answered the phone. He stated that Shawn was not there. I called Shawn on his cell phone. I gave him the appointment time and directions to the CAC. Shawn stated that Minor 2 originally disclosed Sunday night to the youth minister's wife at church (Jodi Hatchette). Jodi told her husband, Randy Hatchette (youth minister). Randy then told the pastor, Glenn Rusher. He notified the victim's parents and came to the Sheriff's Office to assist them in filing a police report. They attend Bethany Baptist Church in Spartanburg. I found out that Shawn G. is the victim's step father. The victim's legal name is Minor 2's mother, Cassandre G. , met Shawn Daily at Spartanburg Tech. They were in a class together. She was studying one night late and had Minor 2 with her in the library.. Shawn offered to take Minor 2 to his house while she finished studying. Cassandre stated that Shawn became almost a babysitter to Minor 2, Cassandre was a single mother at that time. Cassandre stated that she was only friends with Shawn Daily. They were never in an intimate relationship together. Cassandre was very upset about the incident. She did cry on the phone and stated that she has not questioned her daughter because she is having a hard time dealing with it. I told her that it was best not to question her daughter and not to allow anyone to question her daughter. I told her that I would meet them at the CAC on Thursday, April 10, 2008. The victim goes to Middle School. She gets good grades and is good in school.

04-08-08 / 1150 hours

I called the Youth Minister, Randy Hatchette (home, cell). I asked if he and his wife could come to the Sheriff's Office for an interview. He agreed. He scheduled it for Wednesday, April 9, 2008 at 4:30pm.

04-08-08 / 1620 hours

Randy and Jodi Hatchette came to the Sheriff's Office. Jodi Hatchette provided a voluntary statement in reference to her conversation with Minor 2 Jodi stated

50000 : 160/62/601

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
3

that they had been talking about fear in Sunday school and ^{Minor 2} told her that she needed a prayer because she was afraid to tell her mother something serious. Jodi asked ^{Minor 2} if she wanted to talk about it. ^{Minor 2} indicated yes. ^{Minor 2} later told Jodi that she had been sexually assaulted by Shawn Daily. Jodi notified her husband and then they notified the pastor. After that, ^{Minor 2} s parents were notified. The Hatchette's stated that they did not question ^{Minor 2} on any of the details of the abuse. They stated that ^{Minor 2} s mother got very upset and vomited when she found out. They stated that the family had been going to the church for about a year. ^{Minor 2} s mother did not do a lot of talking, ^{Minor 2} s step-father did because her mother was very upset. They stated that ^{Minor 2} is very close to her step-father though and calls him dad.

04-10-08 / 1100 hours

I went to the Children's Advocacy Center. I sat in on the parent interview with Michelle (the forensic interviewer) and Cassand a G (^{Minor 2} s mother). She stated that ^{Minor 2} s legal last name is but she chose to use ^{Minor 2} s biological father, Brad J. left when she was 4. She sees him at most twice a year because he lives in California. Cassandra married Shawn G on May 18, 2002. ^{Minor 2} typically calls Shawn G. "Dad". They have a 4 year old son together named Gabriel. Cassandra's father in law, Buddy, lives with them as well. ^{Minor 2} goes to Middle School and is the 8th grade. Cassandra stated that she had a friendship with Shawn Daily for a couple of years. She stated that she thought he was homosexual because he did not like to be touched by women. She felt it was a safe friendship. She stated that he was going to school to be a physician assistant. He worked at EMS. He volunteered at the deaf and blind school because he can sign fluently. She stated that he also worked as a guardian ad litem. Cassandra stated that when she met her husband, she and Shawn's friendship just fizzled out. She stated that she has seen the suspect once in the past 6 years. Cassandra also mentioned that she thought Shawn was watching other children as well. She stated that she knew he was really close with a family from Inman that had a child at the Deaf and Blind School. He watched their child a lot. Michele conducted a forensic interview with ^{Minor 2}. ^{Minor 2} disclosed that Shawn Daily would massage her back and her butt on top of and underneath her clothes. She stated that she spent the night with him a number of times, including the two of them going to Myrtle Beach in his camper alone several times. She stated that when she would spend the night, she would always wake up in his bed completely naked. She stated that her clothing would be in the corner closet. She confronted Shawn Daily about it and he would tell her that she was overheated. Shawn would be in his bed in only boxers when she would wake up naked in his bed. She also stated that one time he was sitting on his bedroom floor with only a t-shirt on. She saw his penis. She stated that he asked her to "Come sit on it" and he gestured to his penis. ^{Minor 2} was very clear about the incidents and the location. However, she stated that it was odd she woke up naked because she is a very light sleeper. Her mother reported that she wakes up a lot at night and is very restless in her sleep. ^{Minor 2} stated that she does not know what happened when she was sleeping. ^{Minor 2} disclosed that the same incidents about waking up naked occurred in the camper as well. Michele is going to see the victim again April 14, 2008 at 3:00pm.

04-21-08 / 1015 hours

I called Shawn Daily There was no answer or answering machine.

04-21-08 / 1115 hours

ent to Shawn Daily's residence. There was a white Jeep Laredo (SC tag [redacted]) in the carport. The residence is a brick ranch with a building behind he idence. The numbers are clearly marked on the mailbox to the right of the

90000: (60/67/60)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

643
Page: 4

driveway. It is the second house on the right side of road when turning off Hwy. 29. No one came to the door. I left a contact letter in the door.

04-22-08 / 1030 hours

Shawn never responded to my contact letter. I went by his residence again. No one was home and the white Jeep was gone. I called EMS to confirm his employment. They stated that he still worked there. He was currently working at the Cowpens Station (Medic 4). The phone number for that station is

I went to his work. I introduced myself. He visibly started shaking. I asked him if he was home yesterday. He stated that he was sleeping and then he went to pickup his girlfriend's daughter. I asked him if he received my contact letter. He said no. Although he went out the door that I put the letter in (the side door at the car port). I explained to him that a report was made and I needed to talk to him about it. I asked him if he could come to the Sheriff's Office to speak this week. He stated that he was not working Thursday, April 24, 2008. We scheduled the interview for 9:00am on that day. I gave him a business card and told him to ask for me and to call me if something came up and he was not coming.

04-24-08 / 0850 hours

Shawn Daily came to the Sheriff's Office for his interview. I spoke to him in an interview room. I explained that I wanted to talk to him about an allegation of sexual abuse made by Minor 2

Minor 2 He stated that he knew a . I told him that G is the last name she is currently using. I read him a pre-interrogation waiver form, which he also read and understood. He waived his rights, agreed to speak with me, and signed the form. I asked him how he knew Minor 2 He stated that he was friends with her mother. I asked him if Minor 2 would spend the night with him. He said that there were a number of occasions she spent the night. He stated that her mother did not spend the night, just Minor 2 He stated that he took her on vacation to Ocean Lakes several times. Minor 2's mother never went. I asked why Minor 2's mother never went. He stated that the invitation was open for anyone to go but her mother never wanted to go. I asked him if he ever did anything inappropriate with Minor 2. He stated, "Not that I recall." I explained to him that Minor 2 reported at the Children's Advocacy Center that every time she spent the night with him, she would wake up in his bed naked and her clothes would all be in the closet. I told him that Minor 2 said that he touched her inappropriately as well. Shawn replied, "I don't remember anything like that." I asked him why he thought Minor 2 would say something like that. He said that he was not sure. He wanted to see the police report. I allowed him to read the narrative of the police report. I asked Shawn why he would not remember if he did anything like that or not. he responded to that question by saying he loved Minor 2 and he would not want to hurt her. He explained that he met her mother at Spartanburg Tech. He said that he has been around children a lot. He stated that he volunteers at the Deaf and Blind School and was a Guardian Ad Litem. He said that his current girlfriend has a daughter. His stated that his current girlfriend is Jennifer Haney and she has a daughter, Minor 1 who is 11 years old. He stated that he has been with her for about 6 years. I explained to Shawn that I was concerned by his response that he did not remember sleeping in the bed with Minor 2 and having her naked and he did not recall touching her inappropriately. I explained that those were not common responses I receive from someone who was innocent. He nodded his head in agreement. I told him that he could take a polygraph examination if he wanted show that he did not do what he was being accused of. Shawn responded by stating that he wanted to speak to a lawyer before he did or said anything else. That was at 0918 hours. I ended the interview. Shawn told me that he did not have any money for an attorney and had never gone through this before

20000: (60/62/60)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

643
Page: 5

and was not sure how to get an attorney. He said he had never been interviewed by the police for anything before. He continued talking and stated that he thought he would have to put an attorney on a credit card and he would like to look at a phone book so that he could get a number for an attorney. I left the interview room (left the door open after leaving and from that point on the door was open). I returned with a phone book. I handed him the phone book. He stated that he would need a few minutes. I left the room. Sgt. Bobo contacted Shawn's supervisor, Jimmy Greene, to notify him of the situation. We explained to Mr. Greene that Shawn was not going to be arrested at this time. He asked that we tell Shawn to come see him immediately when he leaves the Sheriff's Office. I returned to the interview room, I asked Shawn if he was done with the phone book. He said yes. I explained to him that he was free to go and that Jimmy Greene wanted him to go see him immediately. Shawn said, "Okay." I walked him out of the Sheriff's Office.

04-24-08 / 1003 hours
I called Jennifer Haney
the answering machine.

There was no answer. I left a message on

04-24-08 / 1230 hours
I found out that Shawn Daily had not gone to work to meet with Jimmy Greene. They called his house and his cell phone and he did not answer. I had Sgt. Tim Metz drive by Shawn's residence to see if his vehicle was there.

04-24-08 / 1255 hours
Sgt. Tim Metz contacted me and stated that Shawn's vehicle was at his residence and there were no other vehicles there.

04-24-08 / 1330 hours
It was confirmed that Jimmy Greene had not had any contact with Shawn Daily yet.

04-24-08 / 1411 hours
Sgt. K. Bobo, Officer J. Knisley, and myself arrived at Shawn Daily's residence to check on him. When we were walking up to the house, I heard what sounded to be a motor running from behind the house. I immediately realized it was coming from inside wooden building behind Shawn's residence on his property. There are no windows in this building. I went up to the building and pull open the door that unlocked. We found Shawn sitting on the floor next to a riding lawn mower that was running and a generator that was running. The carbon monoxide in the shed was overwhelming. However, Shawn was awake and coherent. We ordered him to come out of the building. Once outside of the building, I patted him down to make sure there were no weapons on him. I had him sit on the ground. Sgt. Bobo called for an ambulance. I asked Shawn if he had done anything else other than sitting in the shed with the fumes like take any medication or poisonous substances. He said no. He stated that he wanted to die because he did not want his family to know about all this. He stated that he was embarrassed and ashamed. He said that he did not want to put his family through this. He continue talking and stated that Minor 2 sometimes slept in a sleeping bag and would get hot during the night. He stated that she would take off all of her clothes. Shawn's statement about that coincided with Minor 2's disclosure at the CAC because she stated that she would ask Shawn why she was naked. She stated that he would tell her she was overheating while she was asleep so he had to remove all of her clothes (that included her underwear). I never shared that detail of Minor 2's disclosure with Shawn. I asked Shawn if there was anyone or anything in his house we needed to know about that may be a danger. He stated

000000: (60/67/60)

12/02/08
13:24Spartanburg County Sheriff's Office
Deputy Supplemental Report643
Page: 6

that he had a handgun in the bedroom that was red. He said it was in a dresser drawer. I asked him if we could go in his residence and retrieve any weapons for his own safety. He stated that was fine and that it was loaded. He also stated that there was a lot of ammunition in a closet that his brother gave him. I asked him if he wrote any suicide letters or contacted anyone to notify them of his decision to try to kill himself. He said no. He stated that he paid all of his bills and put out his personal information next to his computer so that his parents would not have much to deal with. When we went into his residence, the information was by the computer like he stated. We found a Charter Arms revolver in the dresser drawer in the red painted bedroom. This gun did not match the description of the gun Shawn gave us. We then found a Ruger handgun in another dresser drawer. There was a lot of ammunition in a closet. There were computers in both bedrooms. The computer in the red bedroom was missing the computer tower. It was apparent that it had been removed very recently due to the dust on the computer stand. All of the wires were still attached, just the tower had been removed. There was a lap top and a desktop computer in the other bedroom that appeared to be Shawn's. There were digital camera's through out the residence. The personal paperwork was laid out like Shawn described. There were movies in the living room. All of the DVD's but two were kids movies. There was a hole in the living room wall that was above the couch and went into the closet in the red bedroom. We took the guns and the ammunition into evidence. We checked Shawn's vehicle to make sure that there were no weapons there. There were no weapons in the vehicle. There was a strong odor of gasoline in the vehicle. We locked the vehicle and locked the residence. I took Shawn's keys and cell phone (cell phone found beside him in the storage shed). We took the cell phone so that some family members could be notified. When we were leaving the residence, Shawn's girlfriend, Jennifer Haney called. I identified myself and explained the situation with her. I told her that I would like to speak with her the following morning in reference to this case. She agreed to come to the Sheriff's Office at 8:30am. She was unable to come on this date because she had a class.

04-24-08

Shawn's sister, Ellis, called. I explained that Shawn had attempted to commit suicide and was at Spartanburg Regional. She gave me her contact information of home and cell.

Shortly after that, Shawn's parents called me because Ellis gave them my information. I explained the situation to them. They stated that Shawn had not spoken to them that day. They gave me their contact information and asked that I call them when I found out anything. and . They asked if Shawn's girlfriend, Jennifer, had brought the charges about. I said no. They asked for Jennifer's contact information. I explained that I could not give them that information. They asked that when I speak to Jennifer to have her contact them. They did not even know Jennifer's last name or her daughter's name.

04-25-08 / 0900 hours

Jennifer Haney came to the Sheriff's Office. I explained the allegations to her that had been made. She asked who the victim was. I told her that I could not provide her with that information. She stated that about 3 years ago, Shawn was questioned about some inappropriate behavior with a girl at the YMCA.

She stated that she spoke to a Detective about the investigation and she was told the case was closed because Shawn did not match the description of the suspect. She stated that Shawn did go to the city to be questioned by law enforcement. Jennifer stated that she met Shawn 7 years ago on the internet (Christian Cafe). She was living in Burlington, NC at the time. She moved to

60000: (60/62/60)

12/02/08
13:24Spartanburg County Sheriff's Office
Deputy Supplemental Report643
Page: 7

South Carolina two years later to be near Shawn. She stated her daughter, Minor 1 was 4 years old when she met Shawn. That was when they moved to South Carolina. After living in South Carolina for 6 months, Jennifer allowed Minor 1 to be alone with Shawn. Jennifer stated that she has only spent the night with Shawn on one occasion and that was when she was still living in North Carolina. She stated that on that occasion, they slept in separate bedrooms. Minor 1 has spent the night with Shawn at least 3 times a year. I asked Jennifer if she or Minor 1 have ever been to the beach with Shawn. She said no. She stated that Shawn got rid of his camper the first year she was living in South Carolina because he had not used it much during the last two years. I asked Jennifer about her physical relationship with Shawn. She stated that they have only held hands, quickly kissed, and cuddled on the couch. She denied any intimate physical contact between them. She stated that Shawn told her that he had never been with a woman and was waiting until marriage. However, they have not talked seriously about getting married and they were not planning it. I asked Jennifer if she knew about a deaf girl that was close to Shawn. She stated that she thought either the child or her mother were named Clara. Jennifer stated that Shawn told her that he saw the child either the beginning of this school year or the end of last school year. I asked Jennifer about Shawn's family. She stated that she met them 3 months after she moved to Spartanburg. She sees them about 4 times a year. I asked her about Shawn's residence. She stated that she had not been there in several months. Minor 1 goes to Shawn's house but Shawn comes to Jennifer's house to see them. Shawn has a key to Jennifer's residence but Jennifer does not have a key to Shawn's residence. Jennifer asked me if I left a message on her home phone. I told her yes. She stated that it was gone when she got home yesterday. I told her that I was positive that I left a message. I asked Jennifer if she knew any other children Shawn was around. She stated that she knew a child named Minor 2. She stated that Minor 2's mother was Shawn's girlfriend. She said that Shawn told her about it. Jennifer said that Shawn told her he broke up with Minor 2's mother because she went to a party, got drunk, and was raped. Shawn blamed her for getting raped because if she was not drinking, she would not have been raped. Jennifer stated that Minor 2's mother wanted Shawn to help her with the rape situation. She stated that Shawn told her Minor 2's mom wanted him to be "a knight in shining armor." He was not willing to do that. I asked Jennifer if she would be willing to have her daughter, Minor 1, seen at the Children's Advocacy Center because it is unknown what may have occurred to her the times she was alone with Shawn. She agreed. I told her that I would get back in touch with her with the appointment date and times. Jennifer asked if she could see Shawn at the hospital. I told her that I was not sure if it was possible or not due to him being on suicide watch. I explained to her that Minor 1 should not be around Shawn at all and for her not to question Brittany about anything. She understood and agreed.

04-25-08 / 1100 hours

I called Tabitha Weber at the CAC. She scheduled Minor 1

a forensic

examination for
that day at 1:00 pm.

I notified Jennifer H: of the appointment, directions to the CAC.

04-25-08 / 1300 hours

Jennifer H brought Minor 1 to the CAC. An interview was done with Jennifer and then a forensic examination was done on Minor 1. I observed the interview with Minor 1. While I was observing the interview, Jennifer H was in the lobby calling my cell phone. I went downstairs. She was very upset. She stated that Shawn's parents showed her the pictures of her daughter that I thought were alarming. She stated that they were not disturbing to her.

01000: (50/62/60)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

643
Page: 8

at all. Tabitha scheduled Minor 1 another appointment. Jennifer had been in contact with Shawn at the hospital and with his family. It was apparent that he was confusing her and she was very defensive about her daughter because she was afraid this information would get back to her ex-husband and he would use it against her to get custody of Minor 1. I tried to reassure Jennifer that was not the purpose of this.

Jennifer H. called the CAC and canceled her appointment for Minor 1. Tabitha called me to notify me of this information. I called Jennifer. She stated that she needed to talk to her attorney, John White, before Minor 1 was seen again. She stated that she would call me after she met with attorney John White.

I called John White to advise him of the situation and see if he had any questions for me. He stated that he met with Jennifer and that he was not representing her in this matter.

I received a phone call from Jeff Merriam. He stated that he was representing Shawn Daily. He asked if there was anything I needed from him. I asked him if he was willing to allow Shawn to come in to answer some questions and possibly take a polygraph. He stated that he had not yet met with Shawn because he was still in the hospital. He stated that after he met with Shawn he would get back in touch with me.

I called Jennifer H. and stated that John White told me that he was not representing her. She stated that she needed to seek other legal advice and she would get back in touch with me.

Jeff Merriam called me back. He stated that he met with Shawn and he did not think that it would be appropriate for Shawn to take part in an interview or a polygraph. I asked him if Jennifer H. had been in touch with him. He said that he had spoken to her and he told her that he could not represent her in this matter.

I called Jennifer H. I asked her what she was going to do in reference to this case. She stated that she was retaining John White and she would set up a meeting with him and myself. She stated that she would get back in touch with me.

I never heard back from Jennifer H. I called John White. He was unavailable. I left a message.

John White returned my call. He stated that Ms. H. did retain him and he was under the impression that Minor 1 had resumed back at the CAC. I told him that had not happened. He stated that he would get back in touch with me.

06-03-08

I made an informative flyer for uniform patrol officers to be on the look out at Jennifer H.'s residence and Shawn Daily's residence so that we could attempt to monitor the situation because at this point, the case was getting cold.

06-13-08 / 0820 hours

Officer Hilton called and stated that he observed a white Jeep Laredo at Jennifer H.'s residence a few minutes ago.

06-13-08 / 0900 hours

I went to Jennifer H.'s residence. The Jeep Laredo was not there. A small

11000: (00/07/00)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 9 643

blue car was in the driveway. I went to the door. A woman came to the door. I asked if Jennifer was there. She stated no. She stated that she was Jennifer's mother and asked what she could help me with. I asked her if Shawn Daily had been at the residence this morning. She said not that she was aware of. She said that Jennifer drives a white Jeep Laredo as well. She asked what this was about. I told her that it was in reference to the child sexual assault allegations made against Shawn in April and that there was still an ongoing investigation. She stated that Jennifer had not told her anything about this. I explained to her the situation with the Children's Advocacy Center. She stated that she had talked to Jennifer in the past about how she felt Shawn was inappropriate with Minor 1. She stated that he touches her a lot, hugs her and picks her up which she is too big for now. Mary stated that she just did not feel comfortable with the situation. She stated that Shawn picks Minor 1 up from dance, school, and other activities. She could not be sure if he was still doing that or not. She stated that she has been helping Jennifer a lot more now. I told Mary that I thought it was appropriate that she know about the situation since she is a caretaker for Minor 1. She was very thankful for the information. She asked for a card. I gave her two business cards. I told her to have Jennifer call me when she returned home and I gave her one if she had anymore questions. I told her that it was good that she would be able to support Jennifer through this now since the only people helping her through this before were Shawn and his family and they did not have Minor 1's best interest in mind. Mary stated that she was going to talk to her husband Jack about how to approach this with Jennifer.

06-13-08 / 0956 hours

I received a phone call from Jack. He stated that his wife told him what was going on. He stated that there was an incident recently that he knew about because Jennifer told him. Minor 1 was at her paternal grandmother's residence. She was playing with Barbie dolls. Her grandmother thought that what she was doing with the two dolls was very inappropriate and spank for it. Jennifer talked her father about it because she was mad that Minor 1 was spanked. He stated that now after finding this information out, he concerned about Minor 1 and what was happening with the dolls. I explained that Jennifer needed to understand that I want Minor 1 to follow up with the CAC for Minor 1's best interest. Shawn and his family are going to protect Shawn and attempt to keep him from being arrested. Unfortunately, they were talking Jennifer into the same thing. He stated that they would talk to Jennifer and they would be back in touch with me.

06-17-08 / 1501 hours

I never heard back from Jack or Mary. I called them. There was no answer. I left a message on the answering machine.

06-17-08 / 1619 hours

Jack Ramsey left me a message returning my call.

06-18-08 / 0916 hours

I called Jack Ramsey back. There was no answer. I left a message on the answering machine.

11-07-08 / 1030 hours

Gina Otem is Minor 2's therapist. She stated that Minor 2 has given a lot of detail about the incidents that occurred. She stated that Minor 2 wrote about the incidents. I asked her if she could fax that information to me. She stated that she would do that immediately.

71000 (60/67/60)

12/02/08
13:24

Spartanburg County Sheriff's Office
Deputy Supplemental Report

Page: 643
10

11-13-08 / 1100 hours

I presented this case to Susan Reece with the Solicitor's Office. She stated that with the victim talking so detailed about the incidents, she felt there was enough probable cause for a lewd act warrant.

11-25-08 / 1430 hours

I presented this case to Judge Paslay. He issued warrant M-184282 on Shawn Daily for Lewd Act with a Minor. I contacted Sgt. Bobo to notify him of this. Sgt. Bobo contacted EMS to notify them because Shawn was currently working at the Woodruff Station at this time. They arranged it for us to pick Shawn up at the EMS station on Union Street to eliminate any type of problems.

11-25-08 / 1700 hours

Sgt. Bobo and I arrived at EMS. Shawn was in a conference room. I identified myself and Sgt. Bobo. Shawn was in the room with Rodney Mcabee. I told Shawn that I had a warrant for his arrest for Lewd Act with a Minor. I read the warrant to him. I read him his miranda rights. Sgt. Bobo patted Shawn down for weapons and placed handcuffs on him. We escorted Shawn to Sgt. Bobo's vehicle and put him in the back seat. We transported him to the jail. On the way to the jail I asked Shawn if he wanted to talk about the incidents. He stated that he wanted his attorney. I told Shawn that was fine. I did not speak to Shawn any further. We booked Shawn into the jail without incident. Sgt. Bobo notified the jail staff about Shawn's last attempted suicide so that they would monitor him.

[Signature]

Responsible LEO:

Approved by:

Date

FILED
2019 SEP 10 AM 10:29
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

ET000: (60/62/60)

CASE# 2008040363		VOLUNTARY STATEMENT		PAGE of	
STATEMENT OF: Minor 2		AGE: 14		DATE: 4-6-08	
ADDRESS: Markham Cir. Moore S.C. 29369		DOB: - - 93		SSN:	
PHONE #					

I was at Shawn Dailys house when I was a little girl staying when my mom broke her ankle or just being there for a sleepover when he would sexually touch me and hurt me. When I would wake up I would be undressed and in his bed or couch. He would also watch me while I took a bath and repeatedly try to clothe me.

FILED
2019 SEP 10 AM 10:29
CLERK OF COURT
SPARTANBURG COUNTY
ANY W COX

I have read this statement consisting of 1 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 8:30 P M. on the 6th day of April 20 08.

WITNESS: [Signature]

[Signature]
Signature of person giving voluntary statement

SWORN to before me this _____

day of _____, 20 _____

(Seal)

Notary Public of South Carolina

My Commission expires: _____

99000 : (60/62/60)

CASE# 2008040363	VOLUNTARY STATEMENT		PAGE of
STATEMENT OF: Jodi Hatchette	AGE: 30	DATE: 04/09/08	
ADDRESS: Hammett Bridge Rd. Greer SC 29650			
PHONE #	DOB: 1/77	SSN:	

This statement is written by Det. N. Cantrell to Jodi Hatchette's diversion. Sunday April 6, 2008 in the morning during Sunday school, Minor 2 asked for a prayer about something she was scared to tell her mother about. I asked her if she wanted me to talk to her before service that night so that we could talk alone. She said yes. That night before service (around 5:00pm) I got Minor 2 and we went in another room. I asked her what she needed to talk about. Minor 2 said that one of her mother's friends molested her when she was younger. I reassured her that it was not her fault. I asked her if she would be comfortable talking to Randy (my husband - youth minister) about that. She said yes. We went to Randy's office. Minor 2 told him she had been sexually molested when she was 7 or 8 years old by one of her mother's friends. No one questioned Minor 2 about it and we notified the pastor then Minor 2's mother. END OF STATEMENT

FILED
19 SEP 10 AM 10:22
CLERK OF COURT
HARRISBURG COUNTY
AMM W. CCX

I have read this statement consisting of 1 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement. This statement was completed at 4:50 P M. on the 9th day of April 2008.

WITNESS: Nicki Cantrell

Jodi Hatchette
Signature of person giving voluntary statement

SWORN to before me this _____ day of _____, 20__.

(Seal)

Notary Public of South Carolina

My Commission expires:

890000 : (60/62/60)

Another time would be when he tried to get me to sit on his private part with my clothes off. He would pull on my ankle when I told him no or if I tried to walk out of the bedroom. He told me that it would be fun and pleasurable, but I kept thinking to myself that there is no way that that thing could hold me up. And so I would try to leave but he wouldn't allow me to. I remember finally threatening to call my mom and that is when he finally let me go. When pulling on my ankle he would try to pull my pants off or get me to fall down so that he could start unclothing me. I would always fight to get my feet back on the ground and he would try to force me to stay down. That's when I

Information provided by Children's Advocacy Center
Spartanburg on 11/16/08
Spartanburg County Sheriff's Office
Dissemination, distribution or copying of
information in whole or part is strictly prohibited.

2009 SEP 10 AM 10:29
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

Minor 2

11/7/08

Fax from : 8645159919

11-07-08 10:55a Pg: 3

When I would wake up some nights with no clothes on in his room and he wasn't in there I would go looking for him. One time I found him in the computer room at the end of the hallway with the computer on. He wouldn't notice me at first standing in the doorway but when he did he would quickly turn off the computer and act like he was playing a game that had just started. He would tell me to come sit in his lap and I know he didn't have much clothes on. Normally when he went to sleep he would wear a plain white t-shirt and just boxers. That he was wearing those when he was in the computer room. The game he normally would play would be clue. I remember his mouse was not normal. It had a red ball on it that moved.

****PRIVILEGED AND CONFIDENTIAL****
 Information provided by Children's Advocacy Center
 of Spartanburg on 11/6/08
 only for use by SCSO
 Dissemination, distribution or copying of this
 information in whole or part is strictly prohibited.

FILED

2019 SEP 10 AM 10:29

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Minor 2

11/7/08

Fax from : 8645159919

This time when he touched me I was lying in his bedroom. My clothes would still be on and he would slowly be going up and down on my back. His hand would creep inside my shirt and he would trace outlines on my back. He would try to get me to roll over but I never would. When giving me back massages he would try to and sometimes succeed in putting his hands down my pants. I would ^{make} comments like that is not my back. Soon I would fall asleep on the floor of his bedroom with clothes on and when I would wake up my clothes would always be in a pile beside the closet and I would either be on the bed or floor. Sometimes he would be in the room. ~~as I~~ other times he would not be.

"PRIVILEGED AND CONFIDENTIAL"
 Information provided by Children's Advocacy Center
 of Spartanburg on 11/6/08
 only for use by SCSO
 Dissemination, distribution or copying of this
 information in whole or part is strictly prohibited.

CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

2019 SEP 10 AM 10:30

FILED

Minor 2

11-7-08

Fax from : 8645159919

07-08 18:55a Pg: 5

Another time Shawn Kelly touched me was also in his bathroom. I had to spend the night and I was taking a bath, but he wouldn't allow me to wash myself. He would always linger when washing me near my private parts, and he would try to make a joke about it but he still touched me. His hands were rough and he always had to come in close contact with me. He would also dry me off not allowing me to help. He would use his hair products and body wash when giving me a shower and his hair brush when brushing my hair. I remember he would use head + shoulders and that his hair brush was brown with thick bristles.

****PRIVILEGED AND CONFIDENTIAL****
 Information provided by Children's Advocacy Center
 of Spartanburg on 11/16/08
 only for use by SCSO
 Dissemination, distribution or copying of this
 information in whole or part is strictly prohibited.

FILED

2019 SEP 10 AM 10:30

CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

Minor 2

11/7/08

The first time I can remember him being with me or showing me anything was when I was in the bathroom of his house. He would always make me stand in front of the door and watch him while he was watching me. This time was different though. He had me come into the bathroom and go stand by the toilet which was in the corner and hold his private part. I remember that it was warm, and hard, and that I begged him not to make me do it. The smell was horrific. I finally left the bathroom after he made me stand there for a while longer. He told me that while I was doing it I would come to enjoy greater things than just holding his private part. I didn't understand what he meant. He would then make me go sit on the couch beside his lap in the recliner.

PRIVILEGED AND CONFIDENTIAL
 Information provided by Children's Advocacy Center
 of Spartanburg on 11/16/08
 only for use by SC50
 Dissemination, distribution or copying of the
 information in whole or part is strictly prohibited.

FILED
 2010 SEP 10 AM 10:30
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY G. COOK

Minor 2

11/7/08

Fax from : 8645159919

CONFIDENTIAL

02-18-10 05:09p Pg: 777

1-07-08 10:56a Pg: 7

The last time would be when he took the camper down to myrtle beach for the weekend. He would not allow myself to pick out my own clothes and then he would not allow me to dress myself. I would go to sleep on the fold out couch and when I woke up he would either be on the kitchen table watching me or I would wake up in his room. Anytime that I would stay with him I always would wake up sick to my stomach and he would tell me its because I ate something bad but he ate the same thing so why wasn't he sick? Didn't make sense.

PRIVILEGED AND CONFIDENTIAL
 Information provided by Children's Advocacy Center
 of Spartanburg on 11/16/08
 only for use by SC30
 Dissemination, distribution or copying of this
 information in whole or part is strictly prohibited.

FILED

2019 SEP 10 AM 10:30

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Minor 2

11-7-08

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

Minor 3

FILED

2019 SEP 10 AM 10:30

CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

M-110281 **Computer**
 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Spartanburg

THE STATE
 against

Shawn Torlif Daily

Address: **Glenwood Hills Drive**
Spartanburg, SC 29301-
 Phone: **SSN:**
 Sex: **M** Race: **W** Height: **6 5** Weight: **105**
 DL State: **DL #:**
1972 Agency ORI #: **SC0420000**
 Prosecuting Agency: **Spartanburg County Sheriff**
 Prosecuting Officer: **Nicole Cantrell - 0686**
 Offense: **Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)**
 Offense Code: **2468**
 Code/Ordinance Sec: **16-15-0140**

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

Signature of Judge **GARRISON** (L.S.)

Date: **1-13-09**

RETURN

A copy of this arrest warrant was delivered to
 defendant **Shawn Torlif Daily**
 on **1-13-09**

Signature of Constable/Law Enforcement Officer **1127**

RETURN WARRANT TO:

General Sessions
 180 Magnolia Street
 P O Box 3483
 Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of
 Spartanburg

65R **AFFIDAVIT**

Personally appeared before me the affiant **Nicole Cantrell** who
 being duly sworn deposes and says that defendant **Shawn Torlif Daily**
 did within this county and state on or about **09/20/2002** violate the criminal laws of the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Spartanburg**)
 in the following particulars:

DESCRIPTION OF OFFENSE **Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)**

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

That between September 20, 2002 thru September 20, 2006 in the county of Spartanburg, one Shawn Torlif Daily did willfully and
 lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of victim, being between 3 and 7
 yrs. of age, by having the victim sit on his lap while he was naked. The defendant is over the age of fourteen years. Affiant's
 belief based on police investigation. **vyk**

RECEIVED
JAN 16 RECD
 BY: **Signature of Affiant**

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 Spartanburg

Affiant's Address **8045 Howard Street**
Spartanburg, SC 29303-
 Affiant's Telephone

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **9/20/2002** defendant **Shawn Torlif Daily**

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of **Spartanburg**) as set forth below:

DESCRIPTION OF OFFENSE: **Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of the arrest, or as
 soon thereafter as is practicable.
 Sworn to and subscribed before me

on **01/12/2009**
 Signature of Judge **David James Turner** (L.S.)
 David James Turner
 Judge Code: **5079**

Judge's Address **Spartanburg County Judicial Center** **CLERK OF COURT**
Spartanburg, SC 29306-5221 **SPARTANBURG COUNTY**
 Judge's Telephone **(864) 596-2228** BY **DC**

Issuing Court: ☒ Magistrate ☐ Municipal **DATED** **1-13-09**
ORIGINAL **ORIGINAL** **ORIGINAL**

WITNESSES

Spartanburg Co. Sheriff's Office

J. J. Jolley

1. SENTENCE MADE ☒

2. REPORT ENTERED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

ARREST WARRANT NUMBER

M110281 7. ASSESSMENT FINE CARD ☒

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

True Bill

D. J. Jolley

Foreperson of Grand Jury

Date: 5-7-09

VERDICT

Foreperson of Petit Jury

DOC#

09-GS-42-2645

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAY 11 2009

TERM

THE STATE

VS.

Shawn Torlif Daily

Indictment for

SEX/LEWD ACT, COMMIT/ATTEMPT
UPON CHILD <16

SC Code: 16-15-0140

CDR Code: 2468

Class FEL-D

492

MARC KITCHENS
2009 MAY 13 PM 4:42
CLERK OF COURT
SPARTANBURG COUNTY

App'x 496

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

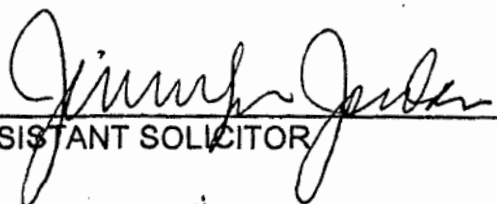
At a Court of General Sessions, convened on MAY 07 2009 the
 Grand Jurors of Spartanburg County present upon their oath:

SEX/LEWD ACT, COMMIT/ATTEMPT UPON CHILD <16

That Shawn Torlif Daily, did in Spartanburg County, between the dates of September 20, 2002 through September 20, 2006, he being over the age of fourteen (14) years, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of one **Minor 3**, a minor under the age of sixteen (16) years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child, of in violation of §16-15-0140, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended).

FILED
 2019 SEP 10 AM 10:30
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX

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


 ASSISTANT SOLICITOR