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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County

Honorable Michael S. Holt, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF WILEY L. CHAPMAN,

APPELLANT.

APPELLATE CASE NO. 2022-000956

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHESTERFIELD) COURT OF COMMON PLEAS

3
4 IN THE MATTER OF THE CARE AND) TRANSCRIPT
5 TREATMENT OF:) OF
6 WILEY L. CHAPMAN,) RECORD
7 _____) 2020-CP-13-764
8 RESPONDENT.

9 June 6th - 8th, 2022

10
11 B E F O R E:

12 THE HONORABLE MICHAEL S. HOLT, JUDGE; and a jury.

13
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22 Transcribed by Pamela E. Green, from
23 Digital Court Reporting Project
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1 would you like the state to go first or defense counsel?

2 THE COURT: You can. You're standing. I'm happy to
3 hear from you.

4 MS. SHAW: No problem. Thank you.

5 we filed three motions in limine prior to trial. The
6 first one would be to prohibit any reference to where
7 Mr. Chapman would be receiving sex offender treatment. This
8 is a historical one.

9 Originally, when the SVP Act was enacted, the housing
10 location for these individuals was on row -- Death Row. It
11 is no longer there. So -- and so it, it would really be
12 highly prejudicial if there were to be some sort of a
13 reference to he would be continuing to be incarcerated on
14 those grounds, which is where the current SVP treatment
15 program is.

16 So, we would just like to prohibit any sort of
17 references to that cause it would unduly prejudice the jury
18 and it's likely to create confusion in the minds that he may
19 be getting sent back to prison when, in fact, Mr. Chapman is
20 not going to be going to prison at all if he is committed.

21 THE COURT: All right. Mr. Falk.

22 MR. FALK: Yes, Your Honor. I certainly have never
23 mentioned the term the old death row in any of these cases
24 that I've done. But I think it's fair to say that they will
25 be in a facility that it's with -- it's inside the

1 original -- the first wire at the Broad River campus. I
2 mean you have to go through the same security.

3 So saying that it's on this -- on property owned by
4 South Carolina Department of Corrections I don't think is
5 misleading or it's prejudicial cause I certainly want the
6 jurors to make sure that they understand that there's a
7 difference between somebody going to this facility and
8 somebody going to Craft Farrow Road facility which is more
9 what is thought of as the state mental health where people
10 who, as you know, you know, people who are -- have been
11 determined not guilty by reason of insanity or incompetent
12 to stand trial, they go there.

13 And so I think it's, it's appropriate for this jury to
14 know that they're not going to that facility. I think it's
15 appropriate for this jury to know that it's gonna be a
16 secure facility.

17 MS. SHAW: Well, Your Honor, a secure facility is
18 exactly what it is, and if that is the reference that is
19 made, the State does not have an objection to that. But any
20 reference to prison, prison life setting, being civilly
21 committed for, for life, those kinds of things would
22 absolutely confuse the jury and potentially could prejudice
23 the jury in this -- Mr. Chapman's favor if some would feel
24 that, you know, that this may be an extension of a prison
25 sentence which it's not.

1 This is a civil commitment statute. This is a civil
2 proceeding and we're not here to punish Mr. Chapman. We're
3 here to try and get him treatment.

4 THE COURT: All right. So it's appropriate for us to
5 make reference to a secured facility. We want to avoid a --
6 using the term prison or imprisonment.

7 MS. SHAW: That is correct, Your Honor.

8 THE COURT: Okay. Mr. Falk, any objections to that?

9 MR. FALK: I have no objection to that.

10 THE COURT: All right. Okay.

11 MS. SHAW: Thank you, Your Honor. Petitioner's---

12 MR. FALK: She went on to another point, which we
13 usually do when we talk about this length of sentence.

14 MS. SHAW: For life, yes.

15 MR. FALK: Are you raising that---

16 MS. SHAW: Well, I mean that's part of the standard
17 motion is, is that these individuals, if they are committed,
18 are committed on an indefinite basis. There isn't any
19 overdue process that is permitted and it's actually mandated
20 in the statute for -- and residents of the program to
21 receive an annual review every year. So, this is not a for
22 life type of situation. The average time that an individual
23 spends in this program is about six years.

24 So, any reference to this being -- individual being
25 committed indefinitely or for life, that may highly

1 prejudice the jury and would confuse them because that's not
2 reality.

3 MR. FALK: well, unless they're gonna put on evidence
4 to show what the average length of stay is at the facility,
5 I think it's appropriate for me to say that it's gonna be
6 for an indeterminate period of time and that when -- if he
7 were committed to that facility, he would not -- the day he
8 walks in he does not know the day he comes out.

9 THE COURT: All right. I have no objections to
10 indeterminate or indefinite but certainly objections to life
11 or -- which would not be accurate anyway.

12 MS. SHAW: And, Your Honor, we do not -- and this, this
13 is another thing we should probably discuss at this point.

14 we do not make reference to the type of treatment the
15 individuals would receive. We do not make reference to
16 whether they would be receiving treatment at all because, if
17 he goes to the program, he is offered treatment but he's not
18 actually required to submit to it or to engage in it and the
19 other issue would be---

20 MR. FALK: I think we -- are we moving past that issue?

21 MS. SHAW: well, Mr., Mr. Falk just said if we intend
22 to bring in testimony about how long he's gonna be there, we
23 don't know that. So, we are not going to be bringing that
24 in. But that goes also to the type of treatment that he
25 would be receiving at the facility. Just my second motion

1 in limine.

2 MR. FALK: Okay. I'm sorry.

3 THE COURT: Did you have anything that you wanted to
4 go---

5 MR. FALK: I want to talk about treatment, but if
6 that's her second motion, that's fine.

7 THE COURT: That's the second issue.

8 All right.

9 MS. SHAW: Yeah, the second motion, Your Honor, would
10 prohibit any reference as to the details or type of
11 treatment that Mr. Chapman will be receiving at the program.
12 That is not relevant to the question of whether he has a
13 mental abnormality and a qualifying conviction.

14 And also in Kansas v. Hendricks, which is one of our
15 seminal cases, it's 117 S.Ct. 2072, 1997, the Court itself
16 said it would be of little value to require treatment as a
17 precondition for civil confinement for (indiscernible)
18 insane where no acceptable treatment exists and to conclude
19 otherwise would obligate a State to (indiscernible) confine
20 individuals who are both mentally ill and dangerous simply
21 because they can't be treated.

22 So the likelihood of success in treatment and the type
23 of treatment is really not a question the jury needs to be
24 considering and it doesn't need to be put in front of them
25 because it will create some sort of confusion and these

1 people will be asked to make a decision about where this
2 individual is going to go long term. Naturally they will be
3 curious about what kind of treatment is he going to be
4 getting. But that's not a question they have to answer.

5 It's a question of does he have the qualifying
6 conviction, which we know he does, and does he have a mental
7 abnormality or personality disorder that makes it likely
8 that he's going to reoffend. The efficacy of treatment or
9 the type is just not a question they need to answer.

10 THE COURT: Mr. Falk.

11 MR. FALK: Your Honor, I think the end of that sentence
12 is if not confined to a secure facility for control,
13 custody, and treatment. I mean I think that it's in part of
14 the definition.

15 So, I think -- I -- to the extent that I, I have a
16 witness that knows anything about treatment, I think that's
17 fair for me to ask a question about that and I think it's
18 fair to know what -- generally what type of treatment is
19 used for sex offenders. That it's some form of talk therapy
20 with a psychologist as opposed to -- I mean I don't know
21 what these people -- what they think or some type of
22 chemical castration or what goes on, what the treatment is.

23 To the extent that we can talk about treatment by a
24 qualifying person who -- who's an expert and who knows
25 something about it, I think I can explore that because I

1 think there's also a question this jury could decide that he
2 could, he could -- you know, a jury's gonna say -- I think
3 jurors always use to say everybody can benefit from some
4 treatment. But, you know, does it need to be treatment in a
5 surfaced facility or can he get outpatient treatment.

6 So I think that, to the extent I've got a qualified
7 witness, I think I can explore that point.

8 MS. SHAW: And the problem with that argument, Your
9 Honor, is that he doesn't. Doctor Gillen is strictly an
10 evaluator. He was asked to opine on the same question my
11 expert was, was does this individual have a mental
12 abnormality or personality disorder that makes it likely
13 that he will reoffend and it's not her expert and Mr.
14 Chapman's certainly isn't qualified to discuss other
15 treatment. He hasn't (indiscernible).

16 But neither expert was asked to answer that question
17 and Doctor Gillen does not provide treatments at DMH. He
18 does not do anything other than these types of evaluations,
19 which is a very specific question, and he's not asked to
20 opine on whether treatment would be effective or not.

21 So, it's completely irrelevant to the question that he
22 needs to give the jury their -- jurors these -- their
23 information about. So I, I would request any reference to
24 the treatment or type thereof be (indiscernible). It's
25 confusing. It's prejudicial and the experts who are going

1 to be testifying have no basis to talk about it. They don't
2 have any experience.

3 MR. FALK: All right. Well, I'm not sure what my
4 expert has experience and what -- he has experience or
5 knowledge as to what is typical treatment for sex offenders.
6 I think he is able to opine on that subject.

7 MS. SHAW: I very much disagree, Your Honor. He is not
8 able to opine on it because he's not making a recommendation
9 for the type of treatment. He's just saying does he need to
10 be treated or does he not and is he likely to sexually
11 reoffend. That's it.

12 THE COURT: So if he can answer the question whether he
13 should be treated, he then can answer a question as to what
14 the type of treatment would be.

15 MS. SHAW: Well, it's not within the purview of his
16 evaluation.

17 THE COURT: All right.

18 MR. FALK: I, I should be able to ask whether or not
19 sex offender treatment needs to be in a secured facility.

20 MS. SHAW: Again, that's not the question that
21 doctor -- Doctor Gillen or Doctor Gottfried was asked to
22 answer is does he have the mental abnormality or personality
23 disorder and is he likely to reoffend. Not what type of
24 treatment should he have, not where should his treatment be.
25 It's, it's a very simple two prong question.

1 MR. FALK: But, again, that's if not confined. Likely
2 to reoffend if not confined for long term treatment --
3 control, custody, and care, whatever the three words are
4 they use. I mean it's in the, it's in the statute.

5 MS. SHAW: well, the statutory language does not inform
6 the expert's opinion of whether he has the mental
7 abnormality and whether he's likely to reoffend.

8 MR. FALK: I'm sorry. Did you say (indiscernible).

9 MS. SHAW: Because---

10 MR. FALK: Do you need to put that in form?

11 MS. SHAW: The statute doesn't control whether the
12 evaluator says what type of treatment. It says do they need
13 treatment.

14 MR. FALK: But the statute defines what the jury has to
15 determine.

16 MS. SHAW: And that's is he likely to reoffend and does
17 he have a personality disorder or, or mental abnormality.
18 It's not what kind of treatment does he need, where should
19 it be. It's not that. It's either he's got it or he
20 doesn't.

21 THE COURT: Yeah, interesting.

22 My concern is that it would confuse the jury if we got
23 into questions of treatment. I understand Mr. Falk's
24 legitimate desire to ask the question about can he get
25 treatment in or out or can he get it out just as well as in.

1 I'm afraid that would confuse the jury and confuse what
2 their role is here for this trial and I don't know how to
3 split the baby on that.

4 So -- all right. So I'll grant your request on that,
5 Ms. Shaw. Stay away from---

6 MS. SHAW: Thank you, Your Honor.

7 THE COURT: ---treatment once inside the facility.

8 MR. FALK: Your Honor, that would -- just so at the
9 appropriate time, I'm gonna proffer Doctor Gillen's
10 testimony on that point.

11 THE COURT: Okay. All right. Fair enough.

12 MR. FALK: I should of said I would like to proffer. I
13 shouldn't say I would.

14 THE COURT: No problem.

15 Ms. Shaw.

16 MS. SHAW: Oh, I thought he was going to give a
17 proffer.

18 Your Honor, and our third motion in limine which was
19 filed is to prohibit any reference to the total number of
20 days Mr. Chapman has been confined beyond his max out date.

21 As Your Honor probably has already noticed, this matter
22 was filed in 2020. That was right when the COVID pandemic
23 was -- came and, shortly thereof, the Courts were shut down
24 for approximately a year. There was no way to try this
25 case. It just couldn't be done.

1 And by making reference to -- oh, thank you. I'm sorry
2 about that.

3 By making reference to the total amount of time
4 Mr. Chapman has been incarcerated beyond his max out date
5 would, aside from confusing the jury, it could potentially
6 prejudice them against the State because he has been
7 incarcerated under our detainer. So, it, it would just
8 be -- it would be anathema to the fair trial of this matter
9 to start making accusations that the State has somehow kept
10 Mr. Chapman incarcerated beyond his max out date for some
11 sort of punitive purpose other than to get this matter tried
12 when we literally could not do it. And this matter was
13 prioritized for trial once they did start back up last year.
14 I believe it was continued---

15 MR. FALK: Twice.

16 MS. SHAW: ---at least once or twice. Yes, this was my
17 colleague's case but I took it over for him. So --.

18 THE COURT: Well --.

19 MR. FALK: Your Honor, if I could---

20 THE COURT: I think everybody knows we been dealing
21 with COVID and we're delayed and we always say that whenever
22 we do anything. I mean I, I make those, those remarks that,
23 you know, we have some cases cause the jury's are wondering
24 why we have three year old cases all the time. So, I think
25 it's -- I think as long as it's not put in the form of a --

1 nobody's accused -- Mr. Falk, is it y'all's position that
2 there's been some punitive or malicious dragging of their
3 feet?

4 MR. FALK: No. No. My whole point is that -- my point
5 is he's been at the Department of Corrections and he is now
6 in Chesterfield County Detention Center. Nobody has to know
7 when that -- when he was turned over there but just from the
8 date of his conviction to today he's confined in
9 (indiscernible).

10 THE COURT: Okay. How many (indiscernible) is that?

11 MR. FALK: When his max out day was.

12 MS. SHAW: That's fine, Your Honor, as long as there's
13 no reference to keeping him beyond the expiration of his
14 criminal sentence---

15 THE COURT: Okay.

16 MS. SHAW: ---or, or anything like that.

17 THE COURT: All right.

18 MS. SHAW: I mean it's understood that Mr. Chapman has
19 been totally confined since approximately 1991.

20 THE COURT: All right. So we're, we're all in
21 agreement on that.

22 MR. FALK: Yes, Your Honor.

23 MS. SHAW: All right. And, Your Honor, the last motion
24 in limine that I need to argue I'm actually going to put
25 before the Court on an oral motion. These have been coming

1 up more and more frequently in these types of cases. And I
2 would request that the Court prohibit Mr. Chapman and his
3 counsel from making any sort of reference to the underlying
4 conviction or the validity of it or the facts of those
5 convictions. I mean they are convictions. I believe he
6 pled guilty to one and was convicted of the other.

7 I understand Mr. Chapman denies having convicted --
8 committed certain offenses. But it's -- by allowing him to
9 testify that no, I just pled guilty because I was running
10 out of money and couldn't afford my representation anymore,
11 that is a collateral attack at the validity of the
12 underlying conviction which is I mean essential to our case.
13 We have certified sentencing documents and we intend to
14 introduce those into evidence.

15 So, I mean the conviction stands for what they are and
16 they, they are convictions. And so I would request that
17 defense be prohibited from making any attempt to re-litigate
18 that question. I mean we can't bring the witnesses in here.
19 We, we do not bring those witnesses in here specifically
20 because we don't want to re-traumatize them and the
21 conviction is what it is and the documents say what they
22 say.

23 THE COURT: Mr. Falk.

24 MR. FALK: My clients -- and I don't know what he's
25 gonna say to this, but if it's -- he gets to that point, he

1 says no, I pled guilty but I didn't do it, I think he should
2 be entitled to say that and that'd be as far as we would go.

3 MS. SHAW: I, I think that he should not be entitled to
4 say that, Your Honor, because he pled guilty and there's any
5 number of reasons he could of done that. It could of been
6 because he is guilty. It could of been for, you know,
7 reasons of financial limitations. I don't know. It doesn't
8 matter.

9 THE COURT: well, what did he plead guilty to?

10 MS. SHAW: Criminal sexual conduct third degree. I
11 think it was pled down from CSC first and I believe he was
12 convicted of CSC first by a jury.

13 THE COURT: And then that -- and that's the underlying
14 charge that he's been serving since or convictions been
15 serving since --?

16 MS. SHAW: He's been serving sentences on I believe the
17 CSC third for which he got 30 years. He also has the CSC
18 one. So those are the both qualifying convictions.

19 THE COURT: All right. So, one, he may say I pled
20 guilty but I wasn't guilty of it.

21 MS. SHAW: That's very likely. That's what he said to
22 both evaluators.

23 THE COURT: well, I mean---

24 MS. SHAW: And, and it doesn't matter.

25 THE COURT: well I think it makes -- I mean I don't

1 know. I'm not trying your case, but if, if he says that,
2 you're gonna show him --

3 MS. SHAW: Of course.

4 THE COURT: -- the sentence form.

5 MS. SHAW: I'll impeach him, Your Honor.

6 THE COURT: Show that to the jury --

7 MS. SHAW: Yes.

8 THE COURT: -- and ask me to instruct them that, you
9 know, plead guilty, the Court, you know, questions him.
10 You're pleading guilty because you are guilty. I mean
11 that's, that's a risk he takes. I don't know.

12 MS. SHAW: well, the, the problem, Your Honor, is that
13 he is attempting to basically impeach the statements of his
14 victims by claiming he didn't do it and he's gonna try and
15 re-litigate the actual offense to the jury---

16 THE COURT: well, I'm not gonna---

17 MS. SHAW: ---and ask them to---

18 THE COURT: ---let him get into --.

19 MS. SHAW: Okay. That's---

20 THE COURT: I mean---

21 MS. SHAW: That's our major concern, Your Honor.

22 THE COURT: If he says I pled guilty but, you know, I
23 didn't do it, and Mr. Falk doesn't really go beyond that
24 cause you're right. It wouldn't be fair to retry the old
25 case. But, you know, he may say this. He may not. But we

1 won't go any further with it if, if he does take that
2 approach.

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

4 THE COURT: Then I think you'll be ready for him if he
5 does do that.

6 MS. SHAW: Yes, sir. That's all we have, Your Honor.

7 THE COURT: All right. Mr. Falk.

8 MR. FALK: Yes, Your Honor.

9 In my motion in limine, the first point is that I don't
10 know if Doctor Gottfried's gonna plan on getting into this
11 or not but he was given the PPG test. I'm sure you know
12 something about that and the -- I think their terminology
13 was the -- he didn't meet the -- the response was not -- did
14 not meet the minimum requirements meaning, for whatever
15 reason, he did have -- let me get -- her terminology's the
16 minimum requirements were valid exam -- examination I think
17 was the terms that she used.

18 And to the extent that then she starts to speculate on
19 reasons why, I think that's -- I think that's highly
20 speculative testimony and then it can be extremely
21 prejudicial after she tries to convey to the jury that my
22 client was somehow trying to outsmart the test or do
23 something to try and circumvent the test from being
24 successful.

25 THE COURT: All right. So you have concerns about her

1 speculation that --.

2 MR. FALK: Yes, Your Honor.

3 THE COURT: Okay. Yes, ma'am.

4 MS. SHAW: Well, Your Honor, in the actual report, she
5 does not conclude why he actually did not meet minimum
6 requirements and there's only three questions that I plan to
7 ask about the PPG anyway because it really doesn't have much
8 in the way of bearing on the outcome of either evaluation.

9 Basically, did you do it, was it interpretable, and if
10 it was not interpretable, did you consider it. That's all I
11 plan to ask her.

12 I am not going to ask Doctor Gottfried about why
13 because they're any number of reasons why he could of not
14 responded on the PPG. I know he is on hypertension
15 medication as well as I believe cholesterol medication. So,
16 there's that but there was also evidence that he did attempt
17 to manipulate it. I don't plan to go there cause it opens
18 up way too many doors for cross-examination.

19 THE COURT: All right. So we're agreed.

20 MR. FALK: I think we're agreed.

21 THE COURT: Okay.

22 MR. FALK: Okay.

23 THE COURT: All right. Mr. Falk, what---

24 MR. FALK: And, Your Honor, this is a hard one. I mean
25 this is one of these bugaboos that I have in these cases.

1 One of the tests that they give is called the Hare and
2 that's named after a person, PCL-R, and I'm not sure what
3 PCL-R stands for. But it's a 20 question sort of test and
4 the, the person opines about whether or not the person -- if
5 you -- if, based on how they score the test, you hit a
6 cutoff level, it's defining whether or not the person is a
7 psychopath. And I know that, for medical professionals,
8 that probably has a -- sort of a discreet meaning. But for
9 this jury, I think psychopath, in common parlance, has -- is
10 a very charged term.

11 It's not unlike, I'm just thinking right now, I mean a
12 psychologist or psychiatrist can talk about somebody being a
13 credent or a moron and that could have a very specific
14 definition as to what somebody's IQ level is. You know, if
15 you're -- whether it's ask -- and asks you -- you know, in
16 the old days, there was a credent when -- and somebody was a
17 moron.

18 So, I mean just because they have sort of a specific
19 definition for it, it's just a very highly charged term and
20 I believe that she's going to, although he does not hit the
21 cutoff level for a psychopath, I think she's gonna talk
22 about, on different axes he has traits that, you know, go
23 towards psychopathy and I just think it's a very charged
24 term and I think we should try and figure out some way not
25 to use the term psychopath.

1 MS. SHAW: Your---

2 THE COURT: Help me out, Ms. Shaw.

3 MS. SHAW: Your Honor, the, the PCL-R is called the
4 Psychopathy Checklist Revised. We can call it the Hare. I
5 have no problem with that. It keeps -- Mr., Mr. Chapman is
6 not a psychopath and that's not what Doctor Gottfried is
7 going to testify to. She is going to discuss certain scores
8 and certain variations but this is one piece of a very
9 con -- comprehensive and large evaluation.

10 So, if, if Mr. Falk wants to limit the use of the word
11 psychopath, I have no problem with that. But I mean to
12 preclude Doctor Gottfried from being able to testify as to
13 the findings of that test, that would be inappropriate at
14 this point.

15 THE COURT: I don't think that's what he's asking. I
16 think he just wants to avoid the term psychopath which might
17 prejudice the jury. If we can do that, I think we're good.

18 MR. FALK: Thank you.

19 MS. SHAW: I have no problem with that.

20 THE COURT: Psychopathy.

21 MR. FALK: Well, you know, we tried that one time in,
22 in Beaufort and it still came out a psychopath. I mean
23 cause gen -- I presented this to Judge Mullens and she said
24 well, why don't you just pronounce it psychopathy but it
25 still came out, out of the witness' mouth as psychopath.

1 MS. SHAW: well, I, I think Doctor Gottfried is gonna
2 have to say what the test is. It's called the Hare
3 Psychopathy Checklist Revised but that's all. I mean --

4 THE COURT: Okay.

5 MS. SHAW: -- unless you want me to say -- have her say
6 he is not a psychopath. I have no problem with that either
7 cause he's not.

8 MR. FALK: We can live with psychopathy and as long as
9 we hit that just one time.

10 THE COURT: I can probably ask our bailiffs if anybody
11 in Chesterfield County would know what that word meant.

12 MR. FALK: Oh, I think everybody has an idea what a
13 psychopath is.

14 THE COURT: Psychopathy though.

15 MR. FALK: Oh, yes, granted.

16 THE COURT: So, our clerk and our former clerk and our
17 bailiff, Ms. Shilow, they say that people in Chesterfield
18 County will not be familiar with the word psychopathy. So
19 we'll avoid psychopath and we will have that brief reference
20 to psychopathy and cause she does have to identify the test.

21 All right.

22 MS. SHAW: That's not a problem, Your Honor, and just
23 let's see, before Mr. Falk gets into it, he does not want
24 any mention of annual review hearings or annual review
25 evaluations. I've no problem with that at all.

1 THE COURT: Okay.

2 MR. FALK: I talked to my, my witness because part of
3 his voir dire is gonna be that he performs these evaluations
4 and I asked him to use the terminology that he's conducted
5 other sexually violent predator evaluations. Not that --
6 made -- clearly making a distinction between precommitment
7 evaluations and other sex offender evaluations. Just the
8 term other as opposed to annual review.

9 MS. SHAW: Well, I'm, I'm actually not entirely clear
10 about why that is because Doctor Gillen primarily performs
11 annual review evaluations and he's only recently started
12 getting into doing the precommitment evaluations which are a
13 different question and that's -- I mean that -- I would
14 think that Mr. Falk would want to go into as part of
15 Doctor -- getting Doctor Gillen qualified that he's done
16 many of these evaluations but he is also been primarily
17 handling annual reviews, not precommitment.

18 So, I think that's a fair, fair place for me to go into
19 on voir dire in terms of cross-examining him as to his
20 qualifications to perform this particular type of
21 evaluation. But my, my understanding of Mr. Falk not
22 wanting to discuss annual reviews was more in the context of
23 he will get an annual review every year if he, in fact, is
24 committed.

25 So that could confuse the jury, but if he does not want

1 to be able to distinguish between annual reviews and
2 precommitment evaluations during Doctor Gillen's
3 qualification, I would object to that.

4 MR. FALK: I, I didn't say I wasn't gonna try and
5 distinguish the two. I, I said that there are precommitment
6 evaluations and he has however many he has. This is what
7 he's testifying today and then other relevant sex offender
8 evaluations just, again, trying to find some substitute for
9 the term annual reviews or the word review or periodic
10 review.

11 MS. SHAW: I, I don't think there is any sort of a
12 substitute, Your Honor. It's a very specific type of
13 evaluation that is done in an annual review. It's to -- it,
14 it operates from the prospective that this individual has
15 been committed and that they do have a mental abnormality or
16 personality disorder that makes it likely that they'll
17 reoffend. And the question in an annual review is has that
18 mental abnormality or personality disorder so changed that
19 the individual is no longer likely to commit sexual
20 offenses. That is the question that the annual reviews
21 answers. Not does he meet criteria in the first place.

22 So, the -- there's really no way to not use that, that
23 language itself.

24 THE COURT: All right. Anything else?

25 MR. FALK: Again, Your Honor, I think that there's got

1 to be some -- there's got to be some kind of terminology
2 that we could use that we don't have to say annual reviews
3 because of all -- if I'm forced to then -- if part of my
4 voir dire talks about that he's done annual reviews of them
5 when it should both -- the jury's smart. Now they know
6 well, he gets an annual review.

7 So I think there should be some way that we can come up
8 with something else. That's why I suggested, you know,
9 other evaluations as part of my other sex offender
10 evaluations as part of my employment with Department of
11 Mental Health, however vague you want to use it.

12 MS. SHAW: But, Your Honor, that -- I mean annual
13 review evaluations and precommitment evaluations are the
14 only types of sex offender evaluations that Doctor Gillen
15 does. He does competency evaluations for DMH but no --
16 there are no other types of sex offender evaluations that he
17 does. So I really don't see how we can not use the term
18 annual review evaluation.

19 MR. FALK: But the jury doesn't know that. The jury
20 doesn't know that there's only two kinds of evaluations.

21 MS. SHAW: I mean I'm gonna go into it on
22 cross-examination during the voir time. So, I mean it's---

23 THE COURT: So, hypothetically, what you anticipate
24 asking him is that -- I'm trying to follow you guys.

25 MS. SHAW: Well, what I'll be asking Doctor Gillen is

1 how many annual -- how many total sex offender evaluations
2 has he done and how many of those were precommitment
3 evaluations and how many of those were annual reviews cause
4 they are fundamentally different questions. One is
5 operating from the prospective of should this guy go in.
6 The other is operating from the prospective of should this
7 guy get out.

8 They're two totally different questions and that -- it
9 directly goes to Doctor Gillen's credibility as an expert in
10 this particular questioned area should he go in.

11 THE COURT: So, you're saying there's no way to avoid
12 it?

13 MS. SHAW: I don't really think there is.

14 THE COURT: Okay.

15 MR. FALK: I disagree that they're tote -- two totally
16 different questions like night and day. I mean certainly
17 the -- part of the evaluation process is he would look at
18 all of the same evidence that got the commitment because if
19 there's any in -- evaluation, they only start with the
20 reasons why they got committed and then they look at
21 progress and treatment notes.

22 But as far as making diagnoses, I mean I have been
23 to -- I have seen several annual review evaluations where
24 the person was committed, for example, saying that he had
25 antisocial personality disorder, and then, during the annual

1 review, they tagged three different types of diagnosis on
2 him.

3 So, I mean as far as dia -- coming up with a diagnosis,
4 that is certainly something that is part of the annual
5 review process just like it is part of the initial
6 commitment process, and I mean it's -- there is a difference
7 about whether or not his condition has so changed or whether
8 or not he poses a threat. But it's whether or not his
9 condition has so changed that he is not safe to be free in
10 the community.

11 I mean they're not diametrically opposed evaluations.
12 I mean they are related. I, I get that they're not the same
13 but I do think that they're related and they do deal with
14 diagnoses. They do deal with interviews with the client.
15 They do deal with record reviews. It's not like somebody --
16 you know, test somebody for tuberculosis and then also test
17 somebody for a broken foot or something. I mean they're --
18 they are similar.

19 MS. SHAW: well, of course they're similar but they're
20 asking fundamentally different questions. Should he go in
21 or should he go out.

22 MR. FALK: Based on fundamentally the same information.

23 MS. SHAW: I wouldn't say fundamentally. I'd say
24 precommitment evaluations are considerably more intensive
25 than annual reviews and you're operate from a different

1 standpoint.

2 It's does this person have a mental abnormality that
3 would get him into the program. If they don't have the
4 mental abnormality, then the, the, the answer to the
5 question that the evaluator has to answer stops right there.
6 From an annual review, they're already in. They've already
7 been found to have a mental abnormality or have voluntarily
8 committed. It's a different question even though it is
9 based on the same information, and the annual review process
10 is far more heavily weighted in favor of treatment.

11 What is this person done while they're in the program.
12 Are they showing meaningful change. Are they participating
13 in the treatment program. Are they acting out. You know,
14 are, are -- it's different. I mean and, and it is a very
15 valid point as to Doctor Gillen's expertise cause he's only
16 done I think five or six of these precommitment evaluations
17 and he's done probably 60 annual reviews. So he's use to
18 asking a different question.

19 THE COURT: Well -- all right. Anything else on this
20 issue?

21 MS. SHAW: No, Your Honor.

22 MR. FALK: No, Your Honor.

23 THE COURT: All right. I don't know what term to use
24 other than annual review that we could use to, to avoid any
25 confusion of the jury. I mean I, I -- I mean the request is

1 not to use the terminology and I don't know of appropriate
2 substitute terminology. So, I'm not going to limit the
3 reference to annual review if that's the issue as I
4 understand it.

5 MR. FALK: Well, the issue is also annual. So if, if,
6 if the question were posed so that these were reviews to see
7 if people were ready for release, I mean if, if that is
8 gonna be the Court's position, which I would try and -- note
9 my objection for the record but then I would at least ask
10 possibly that if you confine it to a discussion on reviews
11 to see whether or not people are ready for release.

12 MS. SHAW: I'm not quite sure what counsel is asking.
13 I mean does -- do you just want the term to be review
14 because --?

15 MR. FALK: We can call it a release review.

16 MS. SHAW: It's not a release review. That's not what
17 it is. It's an annual review.

18 MR. FALK: If we're gonna talk about annual, then, you
19 know, then we're gonna talk about how long people are in
20 there and --.

21 THE COURT: Well, let's just say review then. I
22 mean --.

23 MR. FALK: Thank you.

24 THE COURT: Annual seems to be --.

25 MS. SHAW: How about resident review?

1 I mean because -- I mean that -- that's the only term I
2 can think of that doesn't have the word annual in it even
3 though these are done ever year and every resident gets one.

4 THE COURT: So you suggest resident review?

5 MS. SHAW: I would say sexually violent predator
6 resident review and that -- that's, that's the only
7 innocuous word I can think of. But I mean, again, we have
8 to add sexually violent predator. I mean that, that, in and
9 of itself, is highly prejudicial. So I'm not really drawing
10 a distinction between annual review versus SVP review.

11 THE COURT: You just don't want them to think well,
12 he's gonna come up every year. So no harm.

13 MR. FALK: Exactly.

14 THE COURT: And I get that. And so if there's a
15 reference to review, I think that's fair. I mean --.

16 MR. FALK: I can live with resident review and as long
17 as we don't talk about how often they come.

18 THE COURT: All right. That's fine. That's not---

19 MS. SHAW: As long as it's SVP resident review---

20 MR. FALK: Absolutely.

21 MS. SHAW: ---cause they're specific to or I---

22 MR. FALK: Oh yeah.

23 MS. SHAW: ---sexually violent predator. I'd, I'd like
24 for that to be the qualifier because that's the only context
25 in which that particular type of review is done by Doctor

1 Gillen or DMH evaluators.

2 MR. FALK: Fine.

3 THE COURT: Okay.

4 MS. SHAW: It, it seems like we're splitting hairs but
5 it is---

6 THE COURT: All right. We're agreed.

7 MS. SHAW: All right.

8 THE COURT: What's next?

9 MR. FALK: Your Honor, there are -- he's got SCDC
10 disciplinary charges for which there is no record of an
11 adjudication. Some of the charges were dismissed and
12 there's one other charge that shows that he -- it was
13 dismissed or otherwise not punished. Some say they were
14 dismissed and some say they were otherwise not punished.

15 So I -- I mean I don't even know what that terminology
16 means. But I don't want the -- Doctor Gottfried to talk
17 about charges for -- that have been dismissed. I do not
18 think that that is fair. I, I think it's, it's -- anything
19 that he's admitted to. You know, if he admitted that he was
20 charged with something, then, I guess, you know, that's an
21 admission and that comes in and that's, that's the
22 purpose -- that's the way around the hearsay exemption.

23 But anything, if they're relying on SCDC records about
24 charges that were dismissed, I, I think that's hearsay. I
25 think it is much more prejudicial than it is probative.

1 In order for it to be probative, Doctor Gottfried has
2 to assume that he was, in fact, charged with those things.
3 Absent proof, certified Court records, whatever it was, that
4 he was actually charged, then, you know, it, it has no
5 probative value and I think there's -- the State's gonna
6 rely on the Ettel case. They're gonna rely on Corley and
7 they're gonna rely on White and I can distinguish those
8 three cases.

9 White was a case where there was an issue that was
10 brought up at a probable cause hearing, and certainly any
11 kind of prejudice that would come from discussions of other
12 outstanding charges at a probable cause hearing are much
13 different than any type of prejudice that would occur in a
14 commitment trial similar to, you know, it's kind of wide
15 open at a preliminary hearing in a criminal case versus a
16 criminal trial, and, and in the Ettel case, whatever that
17 is, the person admitted to the charges, and in the Corley
18 case, the reason why the Court said that it was admissible
19 was because it supported Doctor Maddox's opinion that the
20 similarity in the conduct for which was not charged was very
21 similar to the conduct for which he was charged.

22 So, I'm, I'm just, you know -- and the similarity
23 being, you know, the race and, you know, some of the
24 circumstances for the, the offense characteristics I guess
25 following something like a Lyle type of analysis on a prior

1 criminal offense. So, I, I think there are some recent
2 cases and there is a case that has -- that is unpublished.

3 MS. SHAW: Absolutely not, Your Honor. Mr. Falk knows
4 this.

5 MR. FALK: I can please.

6 MS. SHAW: He is not allowed---

7 MR. FALK: I can please---

8 MS. SHAW: ---to start making references to unpublished
9 cases. I know exactly where he's going with this and it is
10 improper.

11 MR. FALK: Your Honor, I can draw the Court's attention
12 that there's an unpublished case that is I think very
13 similar on point and you can care about it or not. But what
14 I think is telling about the case is that the Attorney
15 General's Office did not appeal the decision. They let the
16 remit issue---

17 MS. SHAW: What---

18 MR. FALK: They, they filed a -- there's no record that
19 there's an appeal filed. The remittitur was sent back to
20 the Court of Appeals. They asked for a rehearing. But it's
21 my understanding that the case is not under further review.

22 So, I mean if the Attorney General's Office decided
23 that, you know, they weren't gonna argue with the analysis,
24 I think that is somehow relevant.

25 MS. SHAW: And, Your Honor, there is---

1 MR. FALK: If, if I could finish?

2 THE COURT: Let him finish and then I'll get to you.

3 MR. FALK: The Court goes -- I mean the -- even if we
4 don't talk about the wilson decision, we can talk about all
5 the case law that it followed. For example, it, it talked
6 about the kromah case where, you know, they respect the
7 limitations on this use of the 703 exemption for allowing
8 hearsay evidence to come in. The case -- I mean I can just
9 take the wilson decision out and just cite you all the cases
10 that it cites inside that are published opinions that it
11 does not come in -- that the 703 exemption is not a -- just
12 an excuse or it's some kind of open the door for all types
13 of inadmissible hearsay testimony.

14 The wilson case I think cites kromah for the point of
15 view that it is specific -- it is a limited exception to the
16 hearsay rule, and that also -- if the Court would look at
17 State versus Jenkins, which is another recent decision
18 following the same type of analysis that just because an
19 expert relied on the testimony does not mean that the jury
20 gets to hear the hearsay testimony unless there's some other
21 kind of hearsay exception.

22 THE COURT: Okay.

23 MR. FALK: And, you know, anyways, I, I think that, you
24 know, the other cases I'm looking more, watson and kromah,
25 being more current decisions and may -- the Ettel decision

1 and the Corley decision not as current.

2 THE COURT: And the things you don't want to be brought
3 up are the, the offenses in the Department of Corrections?

4 MR. FALK: Right. For which he was not charged.

5 MS. SHAW: No, he was charged, Your Honor.

6 MR. FALK: Oh, excuse me. No.

7 MS. SHAW: He wasn't convicted.

8 MR. FALK: There's -- there is some information that we
9 could believe that he was charged but it's not like we've
10 got charging documents. If it's hearsay evidence, unless
11 she's got somebody from the Department of Corrections coming
12 in here --

13 THE COURT: Okay.

14 MR. FALK: -- it's hearsay. And if she has to rely
15 on -- if Doctor Gottfried has to rely on, you know, cause
16 she's gonna say -- I anticipate Doctor Gottfried's gonna
17 testify that well, you know, anytime somebody is charged
18 with something, that is somehow relevant cause it's a data
19 point or whatever she's gonna say. You know, if the Court
20 thinks that that's necessary, so be it but then she -- then
21 we don't have to know what he was charged with.

22 THE COURT: All right. Ms. Shaw, what do you want to
23 tell me?

24 MS. SHAW: Your Honor, notwithstanding the impropriety
25 of Mr. Falk arguing the, the wilson case, I would also point

1 to he just referenced watson which is factually
2 distinguishable. It's a product liabilities case involving
3 very, very tenuous expert testimony about a matter that the
4 man was not qualified to testify about.

5 what Mr. Falk would actually -- I believe that the, the
6 underlying motivation is to keep out any discussion of a
7 2015 charge for exhibitionism and public masturbation in
8 SCDC. Doctor Gottfried will be testifying that she received
9 those records, all of his disciplinary records, that they
10 were a factor and a data point in her evaluation. But no
11 one part of that evaluation is dispositive and no one fact
12 is dispositive in this matter.

13 It's a, it's a comprehensive evaluation of the
14 individual and their behavior over the long term. And the
15 fact of the matter is that Mr. Chapman was charged with
16 these offenses while he was in SCDC. He was not convicted
17 of them but there's many reasons he might not have been
18 convicted.

19 The fact that he was charged goes directly to the other
20 specified personality disorder with antisocial features.
21 Mr. Chapman meets criteria for antisocial personality
22 disorder but for the 15 year old conduct which is a
23 prerequisite. He has all of the other diagnostic criteria
24 and the disciplinary history is a -- while it is hearsay, it
25 is admissible under Corley, White, et al, and Griffin, which

1 is far more recent and it says that, under Rule 702 and 703,
2 experts are allowed to rely on hearsay that would otherwise
3 be inadmissible as long as it was a substantial factor in
4 rendering their opinion. They can rely on that information
5 and they can certainly testify to it. If Mr.---

6 THE COURT: How do you wish to identify that though?

7 I guess that's the -- how we identify the charges?

8 Are we gonna specifically say, you know, one charge he
9 was -- I mean are you gonna ask the, the witness?

10 MS. SHAW: I'm gonna ask her approximately how many
11 disciplinary charges he had while he was in SCDC --

12 THE COURT: Okay.

13 MS. SHAW: -- what were the nature of those charges,
14 not specific information, just, you know, was it possession
15 of contraband, was it public indecency, was it assaulting an
16 officer or another in---

17 THE COURT: How many were there?

18 There were five or something like that?

19 MS. SHAW: well, there's five that Mr. Falk is seeking
20 to keep out including the masturbation charge.

21 THE COURT: And that would be the -- but that would be
22 the one, the main one I would, I would --.

23 MR. FALK: Of course.

24 MS. SHAW: I would most respectfully disagree, Your
25 Honor --

1 THE COURT: Okay.

2 MS. SHAW: -- because antisocial personality disorder,
3 as Doctor Gottfried will testify about the diagnostic
4 criteria, involves a pervasive disregard for the rules, the
5 rights of other people. Essentially this individual doesn't
6 care who he hurts. He wants to do what he wants to do when
7 he wants to do it, and if he harms somebody else, it doesn't
8 matter to him.

9 And these disciplinary charges are direct evidence that
10 he can't comply with rules and, and supervision. He doesn't
11 comply and that is part of the disorder itself.

12 So, it's highly relevant to the formulation of her
13 opinion is that he can't control his behavior even in a
14 secure facility setting. I mean even in prison he's still
15 acting out and he is still engaging in conduct that would be
16 volitive of the rules, which goes directly to his propensity
17 for future behavior.

18 The best way to assess someone's likelihood to reoffend
19 is to look at what they've done in the past and I understand
20 that Mr. Falk wants to keep them out because they weren't
21 convictions and he -- and his client didn't admit to them.
22 But it doesn't mean that he wasn't charged. And we're not
23 gonna go into specifics of each individual charge. We're
24 just going to dismiss what the fundamental nature of them
25 were and how they relate to the diagnosis.

1 THE COURT: well, he's gonna get up there and say I
2 didn't do it and they didn't convict me of it.

3 MS. SHAW: But that -- I mean --.

4 MR. FALK: Your Honor, that's---

5 MS. SHAW: He can say that.

6 THE COURT: Do you have a problem with that?

7 MS. SHAW: I mean he can say that but then I can just
8 say well, were you charged, okay, fine, and let the jury
9 determine whatever they want. And these cases, you know,
10 that Mr. Falk is citing---

11 THE COURT: And I'm sorry to interrupt you cause -- and
12 I do apologize cause I don't want to mess up your train of
13 thought. But I might have limited bandwidth. So I need to
14 ask the question while it's on my mind.

15 Is there a distinction between being a criminal charge
16 versus an institutional charge---

17 MS. SHAW: Institutional infractions---

18 THE COURT: ---cause I mean I'm, I'm guessing
19 Mr. Falk's like this wasn't like he was out on the street
20 and picked up another criminal charge. This is stuff that
21 happened in the Department of Corrections which is---

22 MS. SHAW: well, the, the---

23 THE COURT: ---a different setting I guess.

24 MS. SHAW: well, the penalties involved in SCDC like
25 institutional charges are different because he's already in

1 prison. You know, you can't send him to prison twice. But
2 it goes to the rule violating behavior and the persistent
3 violation of those rules even in a setting where he should
4 be on his best behavior. And if he was, then he might of
5 been able to be eligible for earlier release. The fact is
6 he wasn't, you know.

7 THE COURT: While I was reading it, that's what I was
8 wondering about.

9 So these were not -- it was not as if he had additional
10 criminal -- got out and he had additional criminal charges
11 or something---

12 MS. SHAW: No.

13 THE COURT: ---or --.

14 MS. SHAW: No, this, this---

15 THE COURT: This was stuff that happened inside and was
16 not carried through with any kind of punishment. And so, in
17 my mind, I was wondering if there was a distinction.

18 MS. SHAW: There, there can be but I think it's a
19 distinction without a difference and just, you know, by way
20 of antidote, I have several individuals right now who are
21 sitting in county who've been exposing themselves and they
22 have caught new criminal charges as a result of these
23 indecent exposure charges. So, just because someone commits
24 an institutional infraction doesn't mean they can not be
25 criminally charged. If, if an inmate assaults an officer,

1 absolutely can be criminally charged for that in addition to
2 getting the institutional infraction.

3 So---

4 THE COURT: But that was my point was he didn't get
5 criminally charged.

6 MS. SHAW: He didn't but the, the institutional
7 infractions, the fact that he was charged by SCDC is
8 relevant to Doctor Gottfried's ultimate opinion.

9 Now, I don't need to go into detail about it and, you
10 know, simply because something is hearsay doesn't mean it's
11 inadmissible. That's what Corley, White, Ettel, and Griffin
12 all stand for is that this hearsay, which otherwise would be
13 inadmissible, is admissible here because it goes toward
14 propensity to behave in a certain way. And if Mr. Falk
15 wants to cross-examine Doctor Gottfried on that and say
16 well, isn't it true that he wasn't, in fact, convicted of
17 that institutional charge, that's perfectly fair game. He
18 can cross-examine her on that. But it's, it's a matter of
19 the weight that the evidence will be given rather than its
20 overall admissibility.

21 MR. FALK: Your Honor?

22 THE COURT: Yes, sir.

23 MR. FALK: He's not convicted of the charges. I mean
24 by allowing them to testify with specifics for what the
25 charges were, I mean you're taking away his entire

1 presumption of innocence on those charges. I mean if
2 they -- she wants to say there was five other institutional
3 infractions, I mean I guess I could live with that. But if
4 she doesn't -- I don't know how she's gonna bring in this
5 testimony about the masturbation charge without a witness
6 there.

7 I mean this is second or third party hearsay that we're
8 gonna be using here and it is -- I think it is much more
9 prejudicial than probative because it's only meaningful to
10 her if he did it.

11 MS. SHAW: No, it's not. It's meaningful that he was
12 charged in the beginning. If he hadn't been charged, there
13 would be less information for her to go on to be assessing
14 the personality disorder.

15 MR. FALK: So, I mean the, the witness in that case
16 then failed to come to Court. They couldn't find her. That
17 witness could of been lying. I mean I don't know the
18 reasons but it calls for a lot of -- it's gonna --.

19 MS. SHAW: That's fair game for cross-examination, Your
20 Honor. That's all I have to argue about this.

21 MR. FALK: Your Honor, if I could just read you this
22 paragraph from the Jenkins case where it says this Court in
23 our -- this Court, meaning Supreme Court and Courts of
24 Appeals, have made it clear that, in South Carolina Rule
25 703, allows the admissibility of otherwise inadmissible

1 evidence only in limited circumstances.

2 So I mean I think it's clear that the Courts are trying
3 to limit this back-door use of this fact that an expert
4 relied on it in order to get it before the jury.

5 THE COURT: All right. Let's do this then. She relied
6 upon this to make her, her report.

7 MS. SHAW: It, it -- she relied upon it in part but it
8 is an important piece.

9 THE COURT: In part. In part.

10 And so I will allow her to testify that there were some
11 offenses within the Department of Corrections that she
12 relied in part on in forming her, her opinion. I'm very
13 uncomfortable getting into specifics of -- especially the
14 masturbation matter which he was not criminally charged for
15 and there's no -- and, and there's really no record of it.
16 But I understand that's part of her basis but I do find that
17 to be prejudicial.

18 MS. SHAW: Would Your Honor permit her to discuss the
19 total number of charges even if you're not going to allow
20 her to---

21 THE COURT: Absolutely.

22 MS. SHAW: Okay. So total number of charge is okay but
23 the specific nature of the ones that were not convicted is
24 not okay?

25 THE COURT: That's correct.

1 MS. SHAW: Okay.

2 MR. FALK: And if I ask what -- how many were
3 dismissed, that's not opening the door then, right?

4 MS. SHAW: Well, of course, it is.

5 THE COURT: I'll, I'll be careful there, Mr. Falk. I
6 don't know. I don't, I don't because I don't -- is this
7 witness able to even answer that?

8 MS. SHAW: I don't think she is, judge.

9 MR. FALK: Well, it's the same records that she's
10 relying on for the one is the relying on for the other.
11 That there's the same SCDC records shows that there was five
12 charges that were dismissed and five charges that he was
13 convicted of, whatever the number is. But it's the same
14 information.

15 THE COURT: But he -- all right. So he was convicted
16 on certain charges?

17 MR. FALK: Yes.

18 THE COURT: Okay.

19 MS. SHAW: Yeah.

20 MR. FALK: And disciplined.

21 THE COURT: All right. And those were --?

22 MS. SHAW: I believe there were some assaults.

23 If Your Honor will give me just a moment I'll pull up
24 the information.

25 It's I think possession of contraband was one, a couple

1 of assaults. I think there was a fighting with an inmate.

2 Let's see. Striking an employee with or without a
3 weapon, refusing or failing to obey orders, and one sexual
4 misconduct.

5 THE COURT: And he's convicted of those?

6 MS. SHAW: No, the sexual misconduct was dismissed.
7 The refusing to or, or failing to obey orders, there were
8 two of those that were convicted I believe and an striking
9 employee with or without a weapon I believe was also
10 convicted.

11 THE COURT: So, hypothetically, if the witness says
12 there were X number of charges, and I took the totality into
13 consideration, some were convictions, the number is fine,
14 some were not prosecuted or not brought to disposition, I
15 don't think that's prejudicial. I just think that -- cause
16 I'm afraid we'll get into the weeds if we start talking
17 about individual ones and we don't have any witnesses and
18 she's not gonna know. This witness won't know any details.

19 MS. SHAW: Yeah. And, and I wasn't planning on doing
20 that anyway, Your Honor.

21 THE COURT: So --.

22 MS. SHAW: So -- all I was gonna ask was what were the
23 charges, what was the nature, and that's it.

24 MR. FALK: So, I just don't want her to ask what were
25 the charges. Say they were 10 charges, that's, that's fine.

1 Some were convictions -- some ended in sanctions or whatever
2 you want to say. Some did not.

3 THE COURT: That's -- and, and I'm agreeable with that,
4 Mr. Falk.

5 MS. SHAW: Okay. So the nature of the dismissed
6 charges is not a -- is not coming in?

7 THE COURT: Yeah, I think that, I think that prejudices
8 (indiscernible).

9 MS. SHAW: All right. I just want to make, make sure
10 I'm clear so I can tell Doctor Gottfried cause I don't want
11 a mistrial.

12 THE COURT: Okay.

13 MS. SHAW: So -- all right. Total number, okay.

14 Is the nature of the ones that he was convicted of, is
15 that acceptable to discuss?

16 MR. FALK: Your Honor, I think that's fair. I mean
17 even though it's hearsay, I'll, I'll --.

18 THE COURT: Okay.

19 MR. FALK: I'm not gonna fight every battle. I think
20 that one's fair.

21 MS. SHAW: Okay. So convicted nature is fine.

22 THE COURT: Yes, ma'am.

23 MS. SHAW: Thank you, judge.

24 THE COURT: All right. Do you have anything else?

25 MR. FALK: Let me see. I'm sorry, Your Honor. I've

1 got --.

2 MS. SHAW: I'm pretty sure that was it, Your Honor.

3 THE COURT: Okay.

4 MR. FALK: Well, let me -- I can speak for myself. Let
5 me just make sure.

6 THE COURT: Go ahead. Take your time.

7 MR. FALK: Yeah. No, that is -- that is, Your Honor.

8 THE COURT: All right. Okay. All right. So we worked
9 through that. If we need any clarification in the morning
10 we can, we can go over that. I, I plan to be here at nine
11 o'clock and I believe your witness will be here at 9:00.
12 We'll start -- I'll have the jury here at 9:30. I'll have a
13 preliminary charge then we'll jump into testimony -- well,
14 opening statements.

15 Do you -- how much do you allot for that you think?

16 MS. SHAW: I usually don't need more than 10 minutes.

17 MR. FALK: Opening statements, yeah, that's fine.

18 THE COURT: Ten.

19 Okay.

20 MS. SHAW: Judge, while we're all here today, we
21 typically do some arguments about the jury charge itself.
22 There's certain language in there that Mr. Falk and I
23 disagree on.

24 Do you want to address that today or do you want to
25 address that in chambers after we're closed?

1 THE COURT: As far as the jury charges, let's get into
2 the trial and then we'll, we'll, we'll take a moment to go
3 over that. Y'all probably know what -- y'all are familiar
4 with one other and what the objections are. we'll, we'll --
5 I'll have my law clerk here with me too to keep a watchful
6 eye over me, and we'll, we'll address those at a later time.
7 Likely tomorrow.

8 MS. SHAW: Okay.

9 THE COURT: I'd like to start at 9:30, run up to --
10 close to 1:00, as close as we can get to it, take a break,
11 and come back around 2:00. Anything -- we normally take a
12 break and go to no later than 5:00 --

13 MS. SHAW: Okay.

14 THE COURT: -- and if that helps.

15 MS. SHAW: I'm not---

16 THE COURT: Okay.

17 MS. SHAW: I'm not quite sure how much cross Mr. Falk
18 has for Doctor Gottfried but we can probably get through her
19 and at least some of Doctor Gillen's direct tomorrow.

20 THE COURT: Okay.

21 MS. SHAW: But my question actually was gonna be Mr.
22 Falk.

23 Does he want to have to kind of start in the middle if
24 we can only get through part of Doctor Gillen's testimony?

25 Like if we're at three o'clock and we know that

1 Gillen's gonna be on the stand for an hour and a half, two
2 hours, does he want to just instead start Wednesday morning?

3 THE COURT: We, we, we -- you can figure that out. I'm
4 not gonna tell you you got to go to 5:00. If you don't --
5 if you got a -- if you don't want to stop midstream on
6 somebody, I'm cool with that. We can, we can start back the
7 next morning and we got -- I do have a medical appointment
8 on Thursday I'd like to get to. But, you know, I'm gonna,
9 I'm gonna work with you guys to get your trial done.

10 MS. SHAW: Okay.

11 MR. FALK: I mean I got problems if I'm not back by
12 Thursday. I got other stuff that I haven't move around yet.
13 So --.

14 MS. SHAW: Yeah, we won't -- we shouldn't go Thursday,
15 Your Honor.

16 THE COURT: Okay.

17 MS. SHAW: These never take that long.

18 THE COURT: All right. All right. Anything else for
19 the---

20 MR. FALK: No, sir.

21 THE COURT: ---benefit of the Court?

22 MS. SHAW: No, sir.

23 THE COURT: All right. All right. Thank y'all then
24 and I'll see y'all in the morning then.

25 MS. SHAW: All right.

1 MR. FALK: All right. Are we off the record?
2 THE COURT: We are now.
3
4 (WHEREUPON, Court was in recess for the evening.)
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1 Tuesday, June 7th, 2022

2

3 (WHEREUPON, the following takes place within the
4 presence of the jury.)

5 THE COURT: Wanda, would you leave this last seat
6 vacant for me?

7 Yes, Ms. Sellers?

8 Where's Ms. Sellers?

9 Ms. Sellers, can I get you to come right down here to
10 the end?

11 THE BAILIFF: Ma'am, you can't sit there. The two
12 alternates sit there. Come down here. That's my seats for
13 my alternates.

14 THE COURT: You're not in trouble.

15 THE BAILIFF: You sit right there. Got it. First and
16 second.

17 THE COURT: All right. Court will Court to order.

18 Good morning, ladies and gentlemen of the jury. I
19 appreciate you being here on time this morning. We're gonna
20 begin this trial here shortly.

21 Ms. Sellers, I've asked you to sit right there because
22 I'm gonna give you the high honor of being the foreperson of
23 the jury. There will be some responsibilities to that, to
24 that, that job. I'll give those to you later but if I --
25 but if you would, if you could sit in that chair right there

1 throughout the trial.

2 I understand that, when we take breaks, that they'll
3 take you in and out the way that you came. There is a jury
4 room back here but it's -- this, this space is not adequate
5 for y'all.

6 So, when we do take breaks, they'll bring you in and
7 out. But if you just make sure you sit there and, my two
8 alternates, can always sit on the back, that back corner.

9 Thank you.

10 Madam Clerk.

11 THE CLERK: Yes, sir.

12 THE COURT: Would you please swear the jury at this
13 time?

14 THE CLERK: Yes, Your Honor.

15 (WHEREUPON, the jury was placed under oath at this
16 time.)

17 THE COURT: Let the record reflect that all jurors sat
18 down indicating they took the oath.

19 All right. Ladies and gentlemen of the jury, the case
20 that we're about to begin to try is a trial regarding the
21 care and treatment of Wiley L. Chapman.

22 The State is represented by Ms. Suzanne Shaw of the
23 Attorney General's Office in Columbia. The defendant, or
24 more accurately, the respondent, is represented by Mr. James
25 Falk. They will be more formally introduced to you, you in

1 a moment. However, before we get to that point, I do have
2 some preliminary hearing for you.

3 Before we begin this trial, I want to tell you that
4 this trial probably will be different from what you may
5 expect. Many people do not have the chance to attend actual
6 court sessions as you're doing now, and may think, from
7 watching television or movies or reading books, that trials
8 are always full of high drama, intense action, and rivetting
9 circumstances.

10 while all of these things may be true at times, this
11 trial is not for entertainment. It is a fundamental part of
12 our democracy, a search for the truth and an effort to make
13 sure that justice is done between the parties before the
14 court. Searching for the truth and making sure that justice
15 is done is often slow, deliberate, and repetitive, the
16 opposite of what you may have seen on television or in the
17 movies or read in books.

18 This courtroom is a place of honor dedicated to the
19 protection, protection and preservation of citizen's rights
20 through what many have called the greatest justice system
21 ever created. The attorneys appearing before you are
22 advocates for the parties they represent. But first and
23 foremost, they are officers of the court sworn to uphold the
24 integrity and fairness of our judicial system and to help
25 you in the search potential for the truth.

1 You should expect them to be professional, competent,
2 and ethical in the representation of their client's
3 interest. Remember that you have taken an oath to try this
4 case and reach a fair and just verdict and you're also
5 expected to be professional, reasonable, and ethical. Thank
6 you for accepting the important responsibility of jury
7 service and for your contributions today to our justice
8 system.

9 what I will now say is meant to serve as an
10 introduction to the trial of this case. Each remarks are
11 not a charge of the law in the case. I will instruct you on
12 the law at the end of the trial before you retire to decide
13 the case.

14 Before the trial begins, I want to explain the
15 procedure that we will follow so that you can better
16 understand what is happening. You have been selected as
17 fair and impartial jurors whose purposes is to find and
18 determine the facts. You are the sole judge of the facts.
19 If, at anytime, I make any comment regarding the facts, you
20 must disregard them.

21 You are to determine the facts from the testimony you
22 hear and any other evidence that is presented. You should
23 not be influenced by any opinions or statements you may have
24 heard outside this courtroom. It is especially important
25 that you perform your duty of determining the facts

1 diligently and conscientiously because ordinarily there is
2 no way to correct an erroneous determination of the facts by
3 a jury.

4 When you comply with your oath to impartially determine
5 the facts of the -- this case, you will have fulfilled your
6 duty as jurors and no one will have the right to criticize
7 your verdict. On the other hand, and with equal emphasis,
8 the same law that makes you the judges of the facts makes me
9 the judge of the law.

10 The law, as given by the Court, is the only law you may
11 consider. You must accept and follow it even though you may
12 disagree with it. I can not tell you what the facts are and
13 you can not disagree with me about what the law is or should
14 be. Your job is to take the law as I give it to you and
15 apply it to the facts as you find them from the testimony of
16 the witnesses and any other evidence that is presented.

17 After doing that, you will render your verdict, a true
18 and just verdict, under the solemn oath that you just took
19 as jurors. Until I advise you to begin your deliberations
20 you must not discuss this case with anyone including your
21 fellow jurors, friends, family members, and anyone involved
22 in the case. This includes discussions face to face and
23 those by telephone, email, text, or any other method of
24 communication.

25 You may not use a computer, a cellphone, or any other

1 electronic device at anytime while in the courtroom or
2 during deliberations.

3 During your break for meals or otherwise, if necessary,
4 you may use these devices. However, you may not, at
5 anytime, use these devices to get or send information about
6 the case. This includes information about a party, a
7 witness, an attorney, a court officer, news accounts about
8 the case, research on any topics raised, any topics you may
9 think would be helpful in deciding the case, or any
10 testimony presented by any witness.

11 During the trial, do not read, listen to, or watch any
12 news reports about this case. This includes in anything
13 that might be in the paper or on the Internet or otherwise.
14 You must not consider anything you may have read or heard
15 about the case outside of the courtroom whether before or
16 during the trial. After the case is submitted to you, you
17 must discuss it only in the jury room with your fellow
18 jurors.

19 The attorneys and parties in this case have been
20 advised that they are not to talk to you at all. So, if you
21 see anyone involved in the case and they do not even say
22 hello, they're not been unfriendly. They're just following
23 the Court's instructions.

24 It's important that you keep an open mind and not
25 decide any issue in the case until all the evidence has been

1 presented, the parties have made their closing arguments,
2 and I've instructed you on the law in the case.

3 Now, in just a moment, the attorney for the, for the
4 State will make what is called an opening statement. The
5 attorney will explain to you the issues in this case or at
6 least what the attorney thinks the issues are in this case.
7 The attorney for the defense will also make an opening
8 statement. What the attorney tells you during their opening
9 statements is not evidence in this case. It is only their
10 contention as to what the issues are. The evidence in this
11 case will be presented to you by the testimony of sworn
12 witnesses from this witness stand and/or by exhibits that
13 may be introduced into evidence.

14 From time to time during the trial you may hear one of
15 the lawyers say something like Your Honor, I believe we have
16 a question of law or matter of law to discuss with you or
17 Your Honor, may we approach the bench or sometimes I myself
18 might find it necessary to excuse you from the courtroom for
19 a short while so the attorneys and I can discuss a matter of
20 law.

21 The reason for this is because you are the judges of
22 the facts in this case and sometimes, when I'm discussing
23 matters of law with the attorneys, it may be necessary for
24 me to make some comment as to the facts in connecting with
25 ruling whether or not a particular law applies. I am not

1 suppose to tell you what I think the facts are. So I will
2 excuse you from the courtroom while these discussions take
3 place so that you will not be influenced by anything that I
4 might say or do in connection with the facts.

5 In determining what the true facts are in this case,
6 you must decide whether or not the testimony of the witness
7 is believable. It will be my responsibility to rule as a
8 matter of law as to whether certain testimony is admissible
9 at all or not. But once the testimony is admitted, whether
10 or not you believe it is solely for you to determine.

11 In deciding whether to believe a witness, you have the
12 right to consider whether the witness has an interest in the
13 result of the trial, whether the witness is prejudiced
14 toward either the plaintiff or the defendant, the
15 opportunity for the witness to see -- to have seen the
16 matters and things about which the witness may testify, and
17 the way the witness acts on the witness stand. You have the
18 right to consider anything that is in the record that will
19 help you evaluate the testimony of the witnesses.

20 That means that it is your duty to pay close attention
21 to these witnesses, to observe the witnesses, to listen to
22 the witnesses, and to pay close attention to the attorneys
23 and to the Court. Don't let your thoughts wonder but pay
24 attention to the testimony so that, at the end of the trial,
25 you'll be able to determine what the true facts are, to

1 apply the law to those facts, and render a true and just
2 verdict.

3 It is your added duty, Madam Foreperson, to preside in
4 the jury room and be the jury spokesperson here in the
5 Court.

6 In order to preserve everyone's rights, I'll give the
7 parties an opportunity to object to anything I've said.

8 Any exception to anything that I've said to the jury by
9 the plaintiff or the defendant?

10 No objections?

11 MR. FALK: No, Your Honor.

12 MS. SHAW: No, Your Honor.

13 THE COURT: Without objection.

14 All right. With that said, ladies and gentlemen of the
15 jury, we'll begin this trial. I'll call on Ms. Shaw at this
16 time.

17 Ms. Shaw.

18 MS. SHAW: Thank you, Your Honor.

19 Morning, ladies and gentlemen.

20 You've already heard my name a couple of times but I
21 will briefly introduce myself to you. My name is Suzanne
22 Shaw. I am an assistant attorney general with the South
23 Carolina AG's Office based in Columbia. And as you hear,
24 we're here for the matter of the care and treatment of Wiley
25 Chapman. Before I go into my opening, I actually am going

1 to apologize to you.

2 First of all, you are going to hear some very
3 unpleasant and very disturbing facts in this case and
4 they're going to be hard to hear. So, I'm going to
5 apologize for basically making you sit through that kind of
6 information.

7 Secondly, I'm going to apologize to you for myself. I
8 am actually a very soft spoken person naturally. I have
9 trouble sometimes keeping my voice up in the courtroom. I
10 will do so to the best of my ability. But if at any point
11 in time you can't hear me, just raise your hand, get the
12 judge's attention, get my attention, and I will be more than
13 happy to repeat whatever I've asked cause I want to make
14 sure that you have the benefit of all of the information.

15 Okay. All right. Great.

16 So, as you probably already guessed from the questions
17 you were asked yesterday, this is not an ordinary civil
18 case. When you got your jury summons notice, you probably
19 thought that you were gonna be just asked to decide a car
20 accident case or maybe a medical malpractice. This is very
21 different and as far as (indiscernible) in those types of
22 situations.

23 This is a matter brought under the Sexually Violent
24 Predator Act in the State of South Carolina. It was an act
25 designed to identify and civilly commit individuals who have

1 been convicted of certain sexual offenses and who also have
2 a relevant mental abnormality or personality disorder that
3 makes it likely that they will sexually reoffend. This law
4 was enacted in 1998 and we have reviewed approximately
5 10,000 individuals. To date, there are approximately 210
6 who have been committed to the program.

7 So it is designed to apply to an extremely small and
8 extremely dangerous subset of sex offender, and I'm gonna
9 say to you initially not every sex offender who has been
10 convicted of what would be a qualifying offense belongs in
11 this program. It is only for extremely dangerous people who
12 are likely to reoffend in a sexual manner.

13 It doesn't matter if they're likely to reoffend in a
14 nonsexual manner. But the sexual component is what I need
15 you all to focus on in this trial and that's what the
16 ultimate crux of this case is going to come down to is
17 whether you believe, after hearing the testimony of two
18 experts, that Mr. Chapman has a mental abnormality or
19 personality disorder, and that he is likely to sexually
20 reoffend. Those are the two questions you have to answer
21 and which are in dispute here.

22 So, naturally there are very significant consequences
23 in a court case like this. If you decide that Mr. Chapman
24 should be committed, he will be remanded to the custody of a
25 secure facility in Columbia where he will be offered long

1 term sex offender treatment. This is not prison. He will
2 not be punished.

3 This case, and I'm gonna underscore this very heavily,
4 this case is not about punishment. Mr. Chapman was
5 sentenced to 60 years in 1991 for two counts. One count of
6 CSC first, which is called criminal sexual conduct in the
7 first degree, and one count of burglary in the first degree.
8 He has served approximately 20 something years of that
9 sentence.

10 He's been incarcerated continuously since 1991. And if
11 you decide he is not a sexually violent predator, he will be
12 released to the community. There will be no supervision on
13 him and he will be only required to comply with standard sex
14 offender registrations profiles. So, if you do decide he is
15 a sexually violent predator, then he will be committed and
16 he will not be released.

17 So, there are very significant consequences to his
18 fundamental constitutional liberty interest. And so, as a
19 result of that, the burden that I must prove to you is
20 actually a criminal standard even though this is not a
21 criminal case. It is the highest burden our judicial system
22 allows for, and rightly so, because there's a significant
23 deprivation of liberty to an individual who has served his
24 prison sentence and served his debt to society.

25 So that's why this case is so very important. If he's

1 released, there's significant public consequences. If he's
2 committed, there are significant privacy consequences for
3 him. So, I do ask that you keep that in mind throughout the
4 course of this trial.

5 Now, the elements that I just went over briefly I'll
6 give you a little more detail about. The first element is,
7 number one, the individual must have at least one qualifying
8 conviction and a qualifying conviction is a type of criminal
9 conviction that actually is enumerated in the statute.
10 They're listed out, the different types of convictions which
11 qualify, and I will submit to you that that is not in
12 dispute here.

13 These are the sentencing sheets and indictment
14 information for Mr. Chapman. He was convicted of criminal
15 sexual conduct in the third degree in 1987 and he was
16 convicted of criminal sexual conduct and burglary in the
17 first degree in 1991. This has been established. These
18 documents will eventually be moved into evidence and you
19 will have them with you in the jury room.

20 I strongly recommend you read them, look at them,
21 analyze them. See what you think about them. But that is
22 not what's in dispute.

23 So, I'm gonna back up a little bit and just give you a
24 little procedural history to how -- to -- so, so you can
25 understand why you're going to be hearing from two different

1 experts.

2 So, when these cases come through, when an individual
3 is approximately nine months from release from total
4 confinement, SCDC, South Carolina Department of Corrections,
5 processes the case file through what's called the
6 multidisciplinary team. They review the file and they make
7 a determine whether to -- a determination, excuse me,
8 whether to refer the matter on to the prosecutor's review
9 commitment. The prosecutor's review commitment then reviews
10 the file and then makes a determination whether to refer it
11 on to my office.

12 Once that happens, either myself or my trial partner,
13 who is not here today, we then file an appropriate petition
14 and we go through the procedural safeguards to get to the
15 point where a judge orders an order for evaluation. And, at
16 that point, the individual is -- he is still incarcerated at
17 this point but we, we have an order requiring him to comply
18 with a psychosexual evaluation, which is conducted by a
19 court appointed expert. As you see Doctor Gillen in the
20 back of this courtroom, that individual is employed through
21 DMH and they conduct a standard evaluation and make a
22 recommendation.

23 Now, Doctor Gillen could of recommended to commit or
24 not to commit depending on his findings, and, at that point,
25 if either the respondent or the State disagrees with the

1 conclusion of the DMH evaluator, they're permitted to get a
2 second opinion and that's what's happened here.

3 Doctor Gillen issued his initial report and the State
4 disagreed. And so we sought a second opinion from the
5 Medical University of South Carolina, Doctor Emily
6 Gottfried, who is sit -- seated in the back and you will be
7 hearing from her first today. And she and Doctor Gillen
8 didn't come to very different conclusions.

9 She and Doctor Gillen both diagnosed Mr. Chapman with
10 other specified personality disorder with antisocial
11 features. You will hear about that. But Doctor Gottfried
12 went further. She conducted a far more thorough and
13 comprehensive evaluation which included not only assessment
14 of dynamic risk factors, which you'll get to know what those
15 are, and static scores, she also conducted a battery of
16 psychological tests, three separate interviews, and a, a
17 particular physiological test which you'll hear about all of
18 that during her testimony.

19 So, she also able -- was able to diagnose Mr. Chapman
20 with what's called Paraphilic Coercive Disorder otherwise
21 known as biastophilia. It is a sexual arousal to
22 nonconsensual sex.

23 So, that is where the two experts differ and Doctor
24 Gillen -- or Doctor Gottfried, excuse me, concluded that not
25 only does he have a relevant personality disorder, which is

1 not in disagreement, but he also has a paraphilia which
2 predisposes him to commit acts of sexual violence. He
3 enjoys nonconsensual sex. He has been convicted, not only
4 in this state, but in North Carolina as well, of
5 nonconsensual sexual acts and you will have to hear the
6 details of those offenses. So, again, I do apologize.

7 Now, those are the two elements I have to prove. But
8 that third element, likely to reoffend, is where you really
9 need to focus your attention is what do you ultimately
10 believe and I must prove that to you beyond a reasonable
11 doubt. If, at the end of this trial, you are not firmly
12 convinced that Mr. Chapman meets criteria as a sexually
13 violent predator, then you must make a finding of no, he is
14 not. If, at the end of this trial, you are firmly convinced
15 that he is, then you must render a verdict of yes.

16 So, I ask that you pay very close attention to both
17 experts. I ask that you take into consideration all of the
18 constitutional protections that we are trying to ensure
19 Mr. Chapman is afforded. He is a United States citizen. He
20 is entitled to due process of law and we intend to give it
21 to him.

22 So, that being said, I will hand it over to defense
23 counsel and I thank you for your time.

24 THE COURT: Mr. Falk.

25 MR. FALK: May it please the Court.

1 THE COURT: Yes, sir.

2 MR. FALK: Ms. Shaw.

3 Ladies and gentlemen of the jury, I'm really gonna have
4 more to say at the end of this trial. I just got a couple
5 of brief remarks to make at the beginning.

6 And the first thing that kind of struck me was a
7 comment that Judge Holt made yesterday afternoon. We were
8 just kind of talking. Y'all had already left and he was
9 reminding me that yesterday was June 6th, which is D-Day.
10 June 6th, 1944, that was -- that's the day that we all
11 remember, the D -- the Normandy invasion.

12 So that really sort of got me thinking well, what
13 happened in June of 1991 because my client, in June of 1991,
14 was 26 years old. That's the day -- that's the month that
15 he went to prison and he has not been out of prison, he has
16 not been out, out of confinement since June of 1991.

17 And sometimes, you know, it sort of get a -- I, I --
18 just so you can get a prospective of how long ago that was,
19 I just, just sort of looking around on the Internet,
20 Internet to sort of see some other things that happened in
21 '91.

22 Now, you'll remember, in 1991, George Herbert Walker
23 Bush was president. Carol Campbell was our governor. In
24 June of 1991, there was the celebration parade after the end
25 of the first Gulf war. Also, in June of 1991, the State of

1 South Africa officially outlied -- outlawed Apartheid. So,
2 I'm just trying to get you an idea of how long ago June of
3 1991 was.

4 I don't know if some of y'all -- I assume some of y'all
5 are sports fans. In June of 1991, or in that, in that
6 summer of 1991, Brett Favre was drafted into the NFL.
7 That's long before his football career ended. He was
8 drafted into the NFL. And, in June of 1991, Michael Jordan
9 played in his first NBA playoff game. I'm just trying to
10 get your prospective of how far back we go.

11 But here is the real point. As I played around on my
12 iPad looking for these facts, I found out that, in August of
13 1991, was the very -- that's the anniversary of the very
14 first website on the worldwide web. So now that's -- that
15 gives you kind of a prospective. So think about what you
16 were doing before there even was an Internet. I mean I
17 couldn't of found all these facts if there wasn't an
18 Internet.

19 I think that that's relevant for you to keep in mind
20 how you have changed. I'm sure all of you have gone through
21 a maturation process since June of 1991. I'm sure at
22 sometimes you probably are less reckless than you were in
23 1991. You're probably more responsible than you were in
24 1991. That's 20 -- and it's, you know, June of 1991 to June
25 of 2023, that's closer to -- I want to say that's 31 years

1 of incarceration if I did the math right.

2 So that's a long, long time. So I want you to keep in
3 mind that you're gonna have to determine not who my client
4 was in June of 1991. You have to determine who my client is
5 today in June of 2022.

6 I think that you're gonna hear testimony from him from
7 the stand and you're gonna see that he's a different person
8 than he was 30 years ago. A lot of people are different
9 people than they were 30 years ago. I mean imagine the
10 difference -- I don't know how many of y'all are, you know,
11 significantly over the age of 26 but people, when they're
12 26, are not the same type of people they were when, when
13 they're 56. They tend to be a little bit more reckless and
14 more careless.

15 The State said that, you know, she apologized cause
16 she's gonna have to go over some unpleasant facts with you
17 but remember these facts occurred over 30 years ago. Again,
18 you have to determine how relevant 30 year old facts are to
19 a determination today about whether or not my client is a
20 sexually violent predator and whether today or this week he
21 needs to remain in confinement or whether or not he can be
22 released after 30 years of imprisonment.

23 Again, I've got really more to say at the end. But
24 also keep in mind that this is a case where the Court
25 appointed an independent expert to do an evaluation. And so

1 that's kind of the unbiased expert, the Department of Mental
2 Health. The State wasn't happy with that evaluation and
3 they went and hired their own expert. And the reason why I
4 think that's important is cause, in a lot of cases like in a
5 automobile case maybe or some type of medical malpractice
6 case, defense counsel will, you know, the counsel for the
7 insurance companies, they've got their experts that they
8 rely on and plaintiff's counsel all have their experts that
9 they rely on.

10 I did not hire Doctor Gillen. The Court appointed
11 Doctor Gillen. Doctor Gillen made the first evaluation.
12 Then the State went and hired their expert. So, I think you
13 need to keep that in mind as you're considering the
14 testimony today.

15 Again, I'll have significantly more to say at the end
16 of this. But I just wanted you to please be thoughtful in
17 your deliberation here and in your evaluation of the
18 testimony. Don't make any decisions until the very end of
19 this case. It is an extremely significant decision for my
20 client and he -- he's entitled to your thoughtful
21 consideration of all of the evidence before you get to an
22 opportunity where you're called to deliberate.

23 So, appreciate your attention so far and I appreciate
24 your attention going forward. Thank you.

25 THE COURT: Thank you, sir.

1 Ms. Shaw.

2 MS. SHAW: Thank you, Your Honor.

3 State calls Doctor Emily Gottfried.

4 THE COURT: Doctor Gottfried.

5 MS. SHAW: Your Honor, may I move the podium so I'm
6 kind of facing her?

7 THE COURT: You do whatever you need to do.

8 MS. SHAW: (Indiscernible) see her from here, can you
9 hear me?

10 EMILY GOTTFRIED, being first duly
11 sworn, testified as follows:

12 THE CLERK: Thank you. Please take your seat.

13 THE COURT: Thank you, Doctor Gottfried.

14 Ladies and gentlemen of the jury, are y'all able to see
15 the witness okay?

16 The prior clerk to this clerk designed this courtroom
17 and I'm not satisfied where that witness stand is but I
18 wasn't here to, to have any say in that.

19 Doctor Gottfried, tell us your full name please.

20 THE WITNESS: Yes, Doctor Emily Gottfried.

21 G-O-T-T-F-R-I-E-D.

22 THE COURT: Thank you.

23 Your witness.

24 MS. SHAW: Thank you, Your Honor.

25 DIRECT EXAMINATION

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By Ms. Shaw

1 BY MS. SHAW:

2 Q. All right. Doctor Gottfried, can you hear me?

3 A. Yes.

4 Q. All right. Is the mic picking me up?

5 A. I'm sorry.

6 Q. Is the mic picking me up?

7 I can't quite tell.

8 A. I can hear you.

9 Q. All right. Great.

10 All right. So please tell us by whom you're employed
11 and in what capacity.

12 A. I work at the Medical University of South Carolina in
13 Charleston. I'm employed as an associate professor of
14 psychiatry and behavioral sciences.

15 Q. Okay. And in order to be employed in that capacity,
16 are you required to have certain education, background, and
17 experience?

18 A. Yes.

19 Q. Okay. Can you please go through your educational
20 background and then your professional background and
21 experience?

22 A. Sure.

23 So, I have an undergraduate Bachelor's Degree in
24 Psychology that I got from San Diego State University. I
25 then went to New York and I did a Master's in Psychology at

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1 Columbia University and then, following that, I went to
2 Florida State University where I got a Master's in Clinical
3 Psychology and then a PhD or a doctorate in clinical
4 psychology.

5 while I was doing my Master's in New York City I did
6 practicum experiences. So that's where you get practical
7 hours kind of practicing in the field. I worked for the
8 Federal Bureau of Prisons when I was in New York City and
9 then, in Tallahassee, I did a number of practicums at state
10 forensic hospital doing forensic evaluations of criminal
11 defendants, working at community mental health with the
12 police departments. So did that during my training.

13 And then prior to graduating with your PhD in a
14 clinical program, you have to do a one year full-time
15 predoctoral internship and I did mine in Southern California
16 at Patton State Hospital, which is a really large forensic
17 hospital that does treatment and assessment with individuals
18 who were convicted of sexual offenses and then the full
19 spectrum of offenses as well.

20 Following that year in my graduation with my PhD, I did
21 another year of a -- what's called a postdoctoral
22 fellowship. So that's an additional year after graduating
23 with a PhD and I did that in forensic psychology to really
24 specialize in that.

25 Q. Okay. Now, can you discuss the difference between

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1 clinical and forensic psychology?

2 A. So clinical psychology is an area of mental health
3 care, behavioral healthcare where we can diagnose patients
4 with mental illnesses, provide treatments, do research, do
5 testing and assessment. So it's really specialized in the
6 treatment of mental illness.

7 Q. Okay. Thank you.

8 And so describe your training in forensic psychology
9 specifically related to sex offenders please.

10 A. Sure and, and I'm sorry. You asked me the difference.
11 I didn't say what forensic psychology was. So --

12 Q. Yeah.

13 A. -- let me back up and say that and then tell you about
14 my training.

15 And so in contrast to clinical psychology, forensic
16 psychology are typically people who have a PhD in or
17 (indiscernible) in clinical psychology and then using that
18 information to assist the legal system. So forensic
19 psychologists might evaluate people who have criminal
20 charges or provide expertise to the Court in issues related
21 to mental illness.

22 And so for my forensic training, as I mentioned, I did
23 a number of practicum sites experiences across my training
24 in a variety of different forensic locations. And then I
25 did my predoctoral internship in forensic psychology and my

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1 postdoctoral fellowship. And then after graduating and
2 getting licensed as a psychologist, I continued to both take
3 trainings and give trainings and workshops a couple times a
4 year in forensic psychology.

5 Q. Okay. So you're required to have a license to practice
6 psychology to do your job, correct?

7 A. Correct.

8 Q. And you're licensed in the state of South Carolina?

9 A. Yes.

10 Q. Are you licensed anywhere else?

11 A. I'm also licensed in the state of Georgia.

12 Q. Okay. Thank you.

13 And how long have you held that license in South
14 Carolina?

15 A. Since 2015. Summer of 2015.

16 Q. Okay. And you are, in fact, the director of the sexual
17 behaviors clinic and lab at MUSC, correct?

18 A. Correct.

19 Q. Okay. Can you tell the jury a little bit about what
20 you do in, in the context of your employment, like what your
21 job duties are?

22 A. Sure.

23 So as the director of the sexual behaviors clinic and
24 lab, I oversee all the administrative tasks of our clinic
25 and lab. And so, in that setting, we perform evaluations of

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1 individuals who are either convicted of sexual offenses or
2 been charged with sexual offenses. We provide treatment as
3 well. So it's assessment, evaluation, and treatment.

4 We also do research on sexual behavior disorders,
5 people who sexually harm, and then I also have an
6 opportunity to supervise medical students, psychiatry
7 residents, psychology fellows, trainees in how to do this
8 kind of work.

9 Q. Okay. And does your lab have any special
10 certifications to perform certain kinds of tests?

11 A. Yes. So for a physiological measure of male sexual
12 arousal that we do penile plethysmography or PPG. We have
13 the highest level of certification to make us like a
14 research lab as well as a clinical lab. So meeting the
15 standards to be able to do research out of that lab as well.

16 Q. Okay. Great. Thank you.

17 So, as part of your research, have you published any
18 articles or peer reviewed literature?

19 A. I have.

20 Q. Okay. Can you tell the jury a little bit about what
21 you have published?

22 A. Yeah.

23 So, to date, I think between both book chapters and
24 peer reviewed journal articles, I have I think 37
25 publications primarily focused on assessment. So the

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1 assessment of symptoms and testing but really specific to
2 sexual behaviors. So, sexual arousal, the assessment of
3 that, and characteristics of individuals who engage in
4 inappropriate sexual behavior.

5 Q. Okay.

6 A. Is there a way to pull this chair up?

7 I feel like some people are leaning and can't see.

8 Q. If, if you reach underneath it, there might be one of
9 those little tabs that --.

10 A. Sorry.

11 Q. No problem.

12 Is that, is that better?

13 A. I think so. It needs to be better.

14 Q. Okay. Okay. Thank you.

15 All right. So you've got approximately 37 peer
16 reviewed articles and book chapters.

17 What else do you do in terms of your research?

18 A. I regularly present at scientific conferences. So I
19 think I've presented or been on presentations about maybe 60
20 to 65 times. I also go to other universities, right now
21 it's virtual, which is nice, and provide trainings to
22 students in other universities. And for licensed
23 professionals, we have to do what's called continuing
24 education to maintain your license. You have to keep, you
25 know, being up-to-date on the newest things even after you

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1 finish school.

2 So, I provide a lot of those kinds of trainings a year
3 as well regarding sexual behavior.

4 Q. Okay. And are you a member of any professional
5 organizations?

6 A. I am.

7 Q. And what organizations are those?

8 A. So, I'm a member of about 11 professional
9 organizations. American Psychological Association. We have
10 the Association for the Treatment of a -- Sexual Abusers.
11 And so that's the national organization that deals with this
12 specific type of work. I was recently elected to the board
13 of directors for that and the chair of their research
14 committee for that organization.

15 we also have a state chapter. It's kind of small.
16 It's the South Carolina Chapter of the Association for the
17 Treatment of Sexual Abusers. I'm the secretary of that.

18 For American Psychological Association, the assessment
19 section of APA, I'm the president elect of that. I do a lot
20 of work with American Academy of Forensic Sciences. Not
21 forensic sciences. Yeah, American -- AAFS, American Academy
22 of Forensic Sciences and other organizations.

23 Q. Okay. And so the Association for the Treatment of
24 Sexual Abuser is more commonly known as ATSA, correct?

25 A. Correct.

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1 Q. Okay. And is there anything particularly special about
2 ATSA and the rules that they and recommendations that they
3 make for the evaluation and treatment of sexual offenders?

4 A. Yes. They have different committees on their --- they
5 make practice guidelines. So the most recent ones for
6 adults came out in 2014. And so they issued -- it's a book
7 on how to do this work ethically, using the most empirically
8 supported or like research supported methods. And they
9 published a lot of guidance and then they can actually
10 sanction their members when you don't follow those
11 guidelines.

12 Q. Okay. And, and you adhere to their guidelines,
13 correct?

14 A. I do.

15 Q. Okay. Thank you.

16 So, in a context of a case like this, a specific sexual
17 violent predator case, can you tell the jury a bit about
18 your primary job function, the questions you're asked to
19 answer, and, and how you conduct your evaluations?

20 MR. FALK: Your Honor, may I approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held out of the
23 hearing of the jury at this time.)

24 Q. All right. Doctor Gottfried, we'll get back to what
25 you're asked to do in this type of an evaluation in a

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1 moment.

2 So, how many times have you been qualified or testified
3 in Court in any sort of criminal or SVP matter?

4 A. I think it's about 33. Between 30 and 35 times.

5 Q. Okay. And you routinely do second opinions for the
6 State of South Carolina, correct?

7 A. Correct.

8 Q. Okay. And you're compensated for that?

9 A. MUSC is but, yes.

10 Q. Okay. Is there any sort of incentive for you to come
11 down in any sort of way when you're asked to do one of these
12 evaluations?

13 A. No incentive.

14 Q. No.

15 Okay. So your salary isn't affected based on what you
16 recommend?

17 A. Correct. So MUSC gets the same rate no matter what I
18 recommend and my salary is the same no matter what my
19 opinion is.

20 Q. Okay. And how many second opinions have you been asked
21 to render for the State of South Carolina?

22 A. So cases referred to me just by the State of South
23 Carolina would be then 44 cases referred to me or 43 --

24 Q. Okay.

25 A. -- cause I have a few where the respondent's attorney

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1 has asked as well.

2 Q. Okay. So you do do defense evaluations as well?

3 A. Not as commonly but I have been asked to do that as
4 well. I do.

5 Q. Okay. And do you happen to know the approximate rate
6 that you agree with Department of Mental Health versus
7 disagree?

8 A. Yes, I mean---

9 MR. FALK: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 Q. All right. So you've been qualified I think you said
14 33 times?

15 A. I believe, I believe it's 33. It's between 30 and 35
16 times.

17 Q. Okay. And you've done approximately how many SVP
18 evaluations?

19 A. Forty-five total have been referred to me. They're in
20 various stages. So I haven't completed 45. Some are still
21 being worked on and pending.

22 Q. Okay. And how long have you been performing sex
23 offender evaluations in the context of SVP matters?

24 A. Independently in South Carolina since 2016.

25 Q. Okay. And you also do non SVP sex offender evaluations

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1 as well, correct?

2 A. Correct.

3 Q. And can you describe the scope and nature of those
4 evaluations?

5 A. Sure.

6 So, in the sexual behaviors clinic and lab, we get
7 referrals from public defenders and private attorneys for
8 individuals who are charged with offenses but haven't been
9 to court yet. So we do evaluations on a pretrial, before
10 they go to court, basis.

11 I have a contract with United States Federal Probation.
12 So individuals coming out of federal prison who are on
13 probation, I do all of their treatment assessments to
14 determine their level of risk and then identify really solid
15 treatment targets that they're -- need to work on to be
16 successful in the community.

17 I also provide individual treatment to people on
18 federal probation, and, about a year ago, last summer, MUSC
19 established an intensive outpatient treatment program for
20 individuals who sexually harm. So we do extensive,
21 comprehensive treatments with those individuals as well.
22 So, a mixture of evaluation and treatment.

23 Q. Okay.

24 Your Honor, based on that foundation, I'd like to offer
25 Doctor Gottfried as an expert in clinical and forensic

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1 psychology and specifically in sex offender evaluations.

2 MR. FALK: Without objection.

3 THE COURT: Without objection. So ordered.

4 MS. SHAW: Okay. Thank you.

5 So getting back to my previous question, Doctor
6 Gottfried, in the context of an SVP case, what is the
7 question you are asked to answer and evaluate?

8 A. So, whenever I'm asked to evaluate somebody for SVP,
9 it's a second opinion or it's an independent evaluation.
10 So, either side can retain their own independent expert.

11 And so I'm looking at if the person meets the statutory
12 criteria of being a sexually violent predator. That is do
13 they have a personality disorder or what they call a mental
14 abnormality that makes them likely to sexually offend.

15 Q. Okay. And that was the question you were asked to
16 answer in this matter, correct?

17 A. Correct.

18 Q. All right. Thank you.

19 So, you're familiar with Wiley Limuel Chapman, correct?

20 A. Correct.

21 Q. All right. Can you identify him please?

22 A. Yes, he's sitting next to Mr. Falk.

23 Q. Okay. Thank you.

24 And this is the individual you met with and
25 interviewed?

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1 A. Yes.

2 Q. Okay. So, what was -- well, describe how you handle
3 SVP case evaluations when you're asked to render a second
4 opinion.

5 A. So, the Attorney General's Office will contact MUSC to
6 request an independent evaluation, and in the process of
7 that request, they send us all the records. So those are
8 things like the court documents, the police reports, prison
9 records, the prior evaluation.

10 And so I review all of that. I look to see if there's
11 anything that I'm missing and then I request that. I review
12 all of the materials so I have a sense of the case before
13 meeting with the examinee. Then I bring the examinee in for
14 at least three appointments.

15 So I do a comprehensive clinical interview usually
16 ranges in the ballpark of about five hours and then two
17 separate days of psychological testing and physiological
18 testing.

19 Q. Okay. Thank you.

20 And what kind of information were you provided for --
21 with in this case?

22 A. So, in this case, I received documents from this court.
23 So Chesterfield County General Sessions Court. I got police
24 reports and all of the documents that were available from
25 Chesterfield Sheriff's Office. I reviewed the records from

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1 the South Carolina Department of Corrections, and I reviewed
2 the DMH report that Doctor Gillen authored as well.

3 Q. Okay. I'm gonna show you two documents which I'm going
4 to request that the Court mark as P-1 and P-2.

5 May I approach the witness, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. SHAW: Thank you.

8 All right. If you'll just hang onto these and can you
9 just take a quick look through those documents and identify
10 what they are?

11 A. So the first one includes the indictment and the arrest
12 warrants and the affidavit and the sentence sheet for a
13 conviction in 1988 from County of Chesterfield and then the
14 other---

15 Q. Actually, before you go on, what was the conviction
16 for?

17 A. Criminal sexual conduct in the first degree. That is
18 the description of the offense. But I think it's in the,
19 the third degree.

20 Q. If you just look at the sentencing sheet?

21 A. Criminal sexual conduct in the third degree.

22 Q. Okay. So he was charged with CSC first but he was
23 convicted of CSC third?

24 A. Correct.

25 Q. Okay. And does that document indicate whether it was a

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- 1 jury trial or a, a guilty plea?
- 2 A. Not that I see marked --
- 3 Q. Okay.
- 4 A. -- on the sentence sheet.
- 5 Q. Okay. But you spoke to Mr. Chapman about that
- 6 conviction, correct?
- 7 A. Yes.
- 8 Q. And did he indicate that -- whether he pled guilty or
- 9 was convicted?
- 10 A. He pled guilty.
- 11 Q. Okay. Now, the second document, P-2, can you identify
- 12 that document --
- 13 A. Yes.
- 14 Q. -- and answer those same questions please?
- 15 A. So it's also from County of Chesterfield. It's the
- 16 sentence sheet, the affidavit, the arrest warrants, and the
- 17 indictment for criminal sexual conduct in the first degree.
- 18 Q. Okay. And is there an additional charge in that
- 19 information?
- 20 A. Not in the paperwork but I know that he had two
- 21 convictions for this.
- 22 Q. Okay. So you're only being presented with the criminal
- 23 sexual conduct convictions?
- 24 A. Yes.
- 25 Q. And are you aware of whether Mr. Chapman was convicted

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1 of anything else at the time he was convicted of CSC first
2 degree in 1991?

3 A. He was also convicted of I believe burglary in the
4 first degree.

5 Q. Okay. And do you know what he was sentenced to
6 following those convictions?

7 A. Yes, he was sentenced to 30 years in prison on each to
8 be served consecutively. So one after the other.

9 Q. So an aggregate of 60 years?

10 A. Yes.

11 Q. Okay.

12 MS. SHAW: Your Honor, at this point in time I'd liked
13 to move the certified documents into evidence confirming
14 Mr. Chapman's qualifying convictions for criminal sexual
15 conduct first degree and third degree.

16 MR. FALK: May I briefly approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held out of the
19 hearing of the jury at this time.)

20 MS. SHAW: Thank you, Your Honor.

21 THE COURT: All right. Let the record reflect that
22 Plaintiff's 1 and Plaintiff's 2 have been entered into the
23 record and that the Court notes certain objections as to
24 those, those exhibits.

25 MS. SHAW: Thank you, Your Honor.

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1 (WHEREUPON, the documents were marked as Plaintiff's
2 Exhibit Nos. 1 and 2 and received into evidence at this
3 time.)

4 MS. SHAW: May I proceed?

5 THE COURT: Yes, ma'am.

6 Q. All right. So, in the context of this case, you
7 reviewed records. You met with Mr. Chapman. You conducted
8 physiological testing.

9 Did you conduct any other type of testing?

10 A. Yes, I administer a battery of psychological tests as
11 well.

12 Q. Okay. And did you collect -- conduct any collateral
13 interviews?

14 A. No collateral interviews. I called an attorney at
15 South Carolina Department of Probation, Pardon & Parole to
16 determine if Mr. Chapman would have any supervision
17 requirements when he was released. But other than that, no
18 other collateral interviews.

19 Q. Okay. And what did you learn from probation, pardon &
20 parole?

21 A. That he would not have any supervision requirements.

22 Q. So no GPS monitoring, no probation, nothing?

23 A. I don't think they delineated no to this, no to this.
24 They just said no. No, no requirements at release.

25 Q. Okay. Thank you.

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1 So what dates did you meet with Mr. Chapman?

2 A. So he was transported to our clinic and lab on
3 June 18th of 2021, June 25th of 2021, and July 15th of
4 2021.

5 Q. Okay. And can you describe his demeanor on each
6 occasion when you met with him?

7 A. Yeah, initially when he came in he was really -- he
8 seemed really polite and pleasant, easy going. So that was
9 during most of the testing and for about the first quarter,
10 half of the clinical interview. And then I observed his
11 demeanor changed pretty significantly.

12 So when I asked him about his sexual history and his
13 offense history, he got what we call like really emotionally
14 disliken, like unable to contain or control his emotions.
15 He got very angry. He was really guarded with the
16 information, defensive. He was a little bit combative and
17 like repeatedly said I don't know what that means, I don't
18 know what you're asking, and I was a little bit surprised by
19 that just kind of in contrast of how polite he had been
20 before that and kind of easy going with the questions.

21 Q. So, so presented well, but when you challenged him, he
22 changed?

23 A. Yes, it was pretty significant of a change from being
24 very pleasant and easy going to becoming seemingly very
25 angry like almost with the first question about his sexual

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1 history.

2 Q. Okay. So, initially when you meet with these
3 individuals, do you go through a release of information?

4 Do you discuss the limitations of confidentiality or
5 anything with them?

6 A. Yes.

7 So, in the sexual behaviors clinic and lab, we have a
8 consent form. I think it's five to eight pages long where
9 it goes over the purpose of the evaluation, who gets a copy
10 of the report, what we're looking at, all of the tests that
11 they could be administered, anything that we could do with
12 them.

13 We read over it together. They have an opportunity to
14 ask questions. Then they sign a copy of each section of it
15 and then they sign the consent form. And then each day that
16 they come back, they read that consent form again and sign
17 what we call a rereading of it. So, a form saying that I
18 went back over it and had all my questions answered to my
19 satisfaction and I again consent to every item on the
20 consent form.

21 Q. Okay. And he did that each time you met with him?

22 A. He did.

23 Q. Okay. And he agreed to participate?

24 A. He did.

25 Q. Okay. Now, you had mentioned that he was very polite

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1 until he was challenged about his sexual offending history.

2 would you say he was forthcoming with information
3 generally speaking?

4 A. I, I wouldn't say he was very forthcoming with
5 information.

6 Q. And that's not unusual in this context, is it?

7 A. No, I --.

8 Q. Okay.

9 A. We expect people to be protective of information that
10 could paint them in a negative late -- light or he's facing
11 civil commitment. So you wouldn't expect them to come in
12 and tell you things that could make them look bad.

13 Q. So it's a high stakes evaluation?

14 A. Uh-huh. (Affirmative).

15 Q. So -- okay. So, the relevant personal history that you
16 were able to learn about Mr. Chapman both from the record
17 review and from meeting with him, can you discuss that with
18 the jury?

19 A. Sure.

20 I mean we get a lot of information. So just kind of
21 briefly, I know that he was raised by his biological
22 parents. He was the oldest child in a family that had one
23 brother and three sisters. He described really significant
24 poverty and that family I believe lived in a two room house.
25 But I know that he shared a room with all of his other

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1 siblings and that they had no running water.

2 He reported that he was never the victim of abuse
3 himself. So physical or sexual abuse, he did not report any
4 of that. He graduated from high school. He reported never
5 being suspended or expelled from school. He wasn't in
6 special education. He worked in construction and he worked
7 in a yarn mill. I believe, over the course of his
8 incarceration since 1991, he had multiple jobs. I think
9 that he was terminated from two of them. But overall, the
10 other ones, look like he had good performance over those 20
11 to 30 year period.

12 Q. And just to clarify, those jobs were in SCDC, correct?

13 A. Correct.

14 Q. Okay.

15 A. Let's see. He's never been married. He doesn't -- he
16 does have children. He's never been married. He's never
17 lived with a partner.

18 He told me that he was dating multiple women at the
19 same time and that, for the most part, they didn't know
20 about each other. From Doctor Gillen's report, I noted that
21 he told him that he had 10 to 15 girlfriends at the same
22 time. He told me that he thinks he has one son and I think
23 he told Doctor Gillen that he thinks he has two sons.

24 Regarding his alcohol use, to me he reported that, from
25 his teens to 33 years ago, he consumed beer. He would drink

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1 a six pack to a case on the weekends. There was some
2 inconsistency about his alcohol and substance use between
3 myself and Doctor Gillen that he reported. But he's never
4 had any substance use treatment in the community.

5 On the one hand, he kind of minimized some problems
6 that he may of experienced with alcohol. But, on the other
7 hand, at times it seemed like he was blaming his sexual
8 offending on alcohol use.

9 Medically, he has hypertension or high blood pressure.
10 He reported no history of receiving any kind of mental
11 health treatment.

12 Regarding his sexual history, he told me that he had
13 five sexual partners and I believe that he told Doctor
14 Gillen that he had approximately 15 with most being one
15 night stands.

16 Regarding other parts of his sexual history, he told me
17 that he had only masturbated once in his entire life at the
18 age of 35, and he told Doctor Gillen that he masturbated
19 weekly in prison but not in 20 years, which would of made
20 him about 35 when he stopped.

21 Yeah, that's generally his, his history.

22 Q. Okay. Now, specifically related to the alcohol
23 question, he, Mr. Chapman, appeared to blame alcohol at
24 points and then appeared to not blame alcohol at points.

25 Is alcohol the cause of offenses of the type that

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1 Mr. Chapman has been accused of and convicted of?

2 A. No. So we know that alcohol use, drug use, doesn't
3 make somebody commit sexual offenses. It might kind of
4 lower your inhibitions or make it more difficult for you to
5 put on the brakes or stop your behavior. But it does not
6 cause somebody to sexually offend against somebody else.

7 Q. Okay. And were there any factors about Mr. Chapman's
8 personal history that were particularly salient or stood out
9 to you and were relevant to your analysis?

10 A. Yeah.

11 So I think a little later we'll talk about risk
12 factors. So, when I'm assessing the history, the reason for
13 that is I'm looking at diagnostic information from their
14 history and also risk factors across their lifetime.

15 So, for Mr. Chapman, I noted that there was some
16 history of impulsivity, irresponsibility, sexual
17 preoccupation like conning or manipulating or being
18 exploitative of others and some inconsistent information
19 between what he told me during my evaluation and what he
20 told Doctor Gillen.

21 Q. Okay. And those risk factors, Doctor Gillen found many
22 of those risk factors as well, did he not?

23 A. He did.

24 Q. Okay. So, let's go into Mr. Chapman's sexual offending
25 history.

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1 It does not begin with his first conviction in South
2 Carolina, does it?

3 A. No.

4 Q. Okay. Can you please discuss his first sexual
5 conviction and the information you have about that?

6 A. Yes.

7 So, in June of 1986, and I'm just gonna refer to make
8 sure I have the information correct, he was charged in I
9 think wadesboro, North Carolina. He was charged with rape
10 in the first degree and kidnapping in the first degree. He
11 ended up pleading guilty to assault of a female in 1986. He
12 was sentenced to two years in prison, which was actually
13 suspended to two years of probation. He had to pay a fine.

14 So, typically, when I am reviewing sexual offense
15 history, I want to look at a couple different sources. So I
16 want to look at the officially reported information from the
17 police reports and the victim's statements. I want to get
18 the examinee or Mr. Chapman's own account of what happened
19 and then I also want to compare that to any statements he
20 made to the police or statements that he made to other
21 people like another evaluator.

22 And so due to the, I believe the age of these records,
23 there was no officially reported information available. So
24 we know what he was charged with. But we don't know the
25 underlying facts of what happened in that case.

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1 Q. Okay. According to the records.

2 But you talked to Mr. Chapman himself about it?

3 A. I did.

4 Q. And did he make any admissions to you or any statements
5 to you concerning what happened and how he behaved on that
6 night?

7 A. He did. He provided me an account.

8 Q. Okay. Can you please tell the jury?

9 A. So, according to Mr. Chapman, he went with his cousin
10 to North Carolina for the night to meet up with his cousin's
11 girlfriend and the victim in this case was the 20 year old
12 sister of Mr. Chapman's cousin's girlfriends. And so
13 Mr. Chapman was also 20. They were both 20.

14 They were -- he took her in the car somewhere and he
15 said they got something to eat and that he was trying to, to
16 get some sex but it didn't work out is what he told me. He
17 said that they were parked in a car and police came because
18 of like the hour of night that the car was out there was
19 suspicious to police. And when approached by police, the
20 victim started crying and he said that they charged him with
21 assault.

22 And so, when I kind of followed up and asked what do
23 you mean it didn't work out, he said that she pushed his
24 hand away, told her no, that he tried to force himself on
25 her, tried to open her legs to have sex with her, and that

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1 he -- she kept resisting but he kept trying. In some of my
2 follow-up questions, I asked him what he thinks would of
3 happened if the police had not interrupted this and he told
4 me I probably would of ended up assaulting her, which he
5 clarified to me to mean raping her.

6 Initially kind of said he didn't really know the
7 reason. He thought it was because he wanted sex, that it
8 was the first time that he'd ever met her. Regarding the
9 reason she was crying, he said that she like wasn't ready
10 for sex. He was trying to force himself on her. He said
11 that he was sexually aroused during this assault and had an
12 erection at the time.

13 Q. Okay. And is that -- is, is his level of arousal
14 during a violent assault significant to your evaluation?

15 A. It's definitely a data point that I consider.

16 Q. Okay. why?

17 A. So, for an evaluation like this, we're looking to see
18 if the person has a mental abnormality or personality
19 disorder that makes them likely to reoffend. We know that
20 people have sexual behavior disorders related to arousal to
21 things other than consenting human adult partners, that that
22 could be a risk factor. And so I'm looking at level of
23 arousal while I'm assessing for the details of the offense.

24 Q. So you, you want to know level of arousal during the
25 commission of the offense itself?

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1 A. Correct.

2 Q. Okay. Thank you.

3 So, that's his first sexual conviction. Let's talk
4 about his second sexual conviction.

5 He was charged in 1987 with CSC first, correct?

6 A. Correct.

7 Q. All right. Can you tell me a little bit about the
8 facts of that situation?

9 A. Yes. So, he got the two years of probation in North
10 Carolina and so this was less---

11 Q. And actually just -- I'm sorry to back you.

12 Was he on probation at the time he committed the second
13 offense?

14 A. Yeah. So he got the two years of probation in 1986 and
15 then, about a year later, while he was on probation, he was
16 arrested again.

17 Q. Okay. And before we go into the details actually, can
18 you explain to the jury why being on probation, when you
19 commit a new sexual offense, is relevant to your inquiry?

20 A. I mean any new commission of a sex offense is relevant.
21 It's notable when somebody is breaking the terms of their
22 community supervision and probation when they know they're
23 being monitored. They know there's a stronger likelihood
24 that, you know, someone's monitoring them, that they're
25 going to get caught.

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1 So, it demonstrates an inability to follow the rules or
2 an inability to control that behavior.

3 Q. Okay. Thank you.

4 Please continue about the facts of the second sex
5 offense.

6 A. So, while he was on probation in South Carolina here in
7 Chesterfield, he was charged with criminal sexual conduct in
8 the first degree for an offense that happened I believe on
9 Halloween in 1987. So, he pled guilty to criminal sexual
10 conduct in the third degree and was sentenced to six years
11 in prison.

12 And so, for this offense, the victim was 15 years old.
13 She was walking down the street going to a baby-sitting job
14 and Mr. Chapman approached her, threw her to the ground, hit
15 her, choked her, threatened to kill her, and then raped her,
16 and she was taken to the hospital. So that was the
17 information that I had from the police reports and the
18 statements.

19 During my evaluation, he told me that this woman or
20 this girl, she's 15, he was dating her at the time. So he
21 was 21. He was dating her at the time and that she saw him
22 with another one of his girlfriends and was angry about it,
23 that he went to her house, got in the bed with her, tried to
24 have sex with her. She said no. She was still mad at him.
25 He said that he didn't take no for an answer and went ahead

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1 and raped her.

2 He -- regarding like what he actually did in that
3 situation, he said he grabbed her legs and pulled them apart
4 and he penetrated, got through, and got up and left. He
5 said that he ejaculated as a result of that sexual
6 encounter.

7 Let's see. When I asked him the reason why he raped
8 this victim, he said it was because she was mad at him and I
9 kind of asked for some clarification. And he said that she
10 didn't want to see him with his other girlfriends and that
11 he only saw her when he wanted to have sex. And when I
12 said, you know, did you -- are you meaning that you raped
13 her because you were mad at her or she was mad at you and
14 you were punishing her, he didn't really agree with that.
15 He said I just like wanted to have sex.

16 He didn't really look at it like that. And when I
17 asked if he was aroused by her kind of pushing him off,
18 trying to push him off, he said I didn't really look at it
19 like that. I just really wanted sex.

20 I had noted in Doctor Gillen's report that Hector
21 Gillian reported that he made disparaging remarks about this
22 victim, calling her a -- big and fat and unattractive and he
23 confirmed that with me as well.

24 He told a slightly different account to Doctor Gillen.
25 He said that they were having consensual sex for a while,

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1 and then she wanted to discontinue the consensual sexual
2 activity but he didn't stop at that time. And he also told
3 Doctor Gillen that he had intended to break up with that
4 victim on the day of the offense and it was the last time he
5 would have sex with her.

6 Q. Okay. And so if -- are his comments about that
7 particular victim in any way relevant to your assessment of
8 risk?

9 A. They can be.

10 Q. Okay. In this particular instance, would they be
11 relevant, how he referred to her as big and fat and
12 unattractive?

13 A. So we know that things getting a negative attitude can
14 be a risk factor. Hostility against women is mixed in
15 research studies. So some studies show that it's a
16 predictor of sexual reoffending. So it's kind of an
17 emerging risk factor. So it definitely can be relevant,
18 this hostility towards women and then raping multiple women.
19 It -- it's definitely something to consider as a data point.

20 Q. Okay. And is there anything in his childhood or
21 personal history that would support that there's some sort
22 of -- some hostility toward women in his personality
23 functioning?

24 A. I'm trying to think. I know he didn't leave home until
25 he was 21 I think because his parents were strict or his

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1 mother was strict. But I -- he didn't report any problems
2 with female teachers.

3 Q. Okay. But he specifically reported to you that his
4 mother was particularly controlling, correct?

5 A. I believe so. I, I know he, he reported his parents
6 being strict. I know he mentioned his mother as also being
7 strict. So --

8 Q. Okay.

9 A. -- I think so.

10 Q. All right. So, with that conviction, what other
11 factors about the facts were relevant to your formulation of
12 an opinion whether he has a personality disorder or
13 paraphilia?

14 A. So he denied using any violence against this victim.
15 He said that it happened at her home but she, in the police
16 report, reported---

17 MR. FALK: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 (WHEREUPON, a bench conference was held out of the
20 hearing of the jury at this time.)

21 Q. All right. So, Doctor Gottfried, understand we don't
22 want to know what the victim herself said.

23 So can you just please tell me the factual
24 circumstances surrounding the reports and what you
25 understood based on that information?

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1 A. Yes.

2 MS. SHAW: Your Honor, is that an acceptable --?

3 THE COURT: I'm satisfied.

4 Q. Okay. Please continue.

5 A. That it happened outside, that there was some level of
6 violence I think threatening to kill, hitting, choking.

7 When I evaluated Mr. Chapman, he said it occurred at her
8 house and that he didn't threaten to kill her or choke her.

9 Q. Okay. But he did admit to violating her once she told
10 him to stop?

11 A. Yes.

12 Q. Okay. Thank you.

13 And his level of arousal, I believe you testified that
14 he stated he did ejaculate during that offense?

15 A. That's what he reported to me, yes.

16 Q. Okay. And how is that relevant to assessing for a
17 paraphilia?

18 Does it go back to what we discussed earlier?

19 A. Yes. So, when we do these kinds of evaluations and
20 we're looking at all of these data points, we want to look
21 at the level of arousal as well. So, when somebody is
22 fighting you or crying or saying no, typical sexual
23 functioning, that should not be arousing. It's less likely
24 to be arousing. And so we're looking to assess if that was
25 arousing to the person you're evaluating.

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1 Q. Okay. And---

2 A. That could be a risk factor.

3 Q. Okay. And by virtue of the fact that he ejaculated,
4 that would indicate arousal to you?

5 A. Yes, I believe he stated he was aroused and ejaculation
6 would typically indicate a arousal as well.

7 Q. Okay. Thank you.

8 So, let's discuss -- well, actually what was he
9 sentenced to following his guilty plea in that matter?

10 A. He was sentenced to six years in South Carolina
11 Department of Corrections.

12 Q. Okay. And what was the date of that conviction?

13 A. The date was -- he pled guilty on January 18th of
14 1988.

15 Q. Okay. And he didn't serve that full six year sentence,
16 did he?

17 A. No.

18 Q. Okay. So let's talk about what happened in 1991.

19 Can you go to that third offense for CSC first?

20 A. Yes.

21 Q. Okay. Can you please discuss the facts surrounding
22 that offense?

23 A. Yeah. So that would be, I guess, a little more than
24 three years later. He reported to me that he had just
25 gotten out of prison and he was charged with criminal sexual

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1 conduct in the first degree, burglary in the first degree,
2 and kidnapping. He pled guilty to the first two charges in
3 1991, sentenced to the two 30 year sentences on each.

4 And so, in April of 1991, between 5:00AM and 5:30 in
5 the morning, Mr. Chapman broke into a stranger's house, a
6 woman. He, he reported her age was 60 something. He broke
7 into her residence. He hit her about the head. He took her
8 out of the house, put her in his car, took her about 4-miles
9 from the house, took her out of the car, was hitting her in
10 the head and the body. He raped her and then he took her
11 back close to her house.

12 She was taken to the hospital and then there were a
13 couple different police reports. It also was noted that he
14 hit her in the head and body with a flashlight and forced
15 her to have sex with him.

16 Q. Okay.

17 A. So --.

18 Q. And that's all according to the records?

19 A. Correct.

20 Q. Okay. And you spoke to Mr. Chapman about this
21 particular offense?

22 A. I did.

23 Q. Okay. And what did he admit to you?

24 A. So he told me that his brother-in-law woke him up one
25 morning and asked him to drive him to rob a lady. But she

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1 ended up not having any money.

2 He said that he ended up assaulting and raping her, and
3 when I asked how he assaulted her, he said that he had sex
4 with her. He held her down, got on top of her, held her
5 arms down and had sex with her and she was trying to fight
6 him off.

7 Let's see. When I asked, you know, when he had this
8 idea to rape her, he made a comment about like after seeing
9 her and he noted that she was wearing a nightgown. Not sure
10 if it's tied, but in the same kind of response, he noted
11 that as he didn't mention the, the kidnapping part, I asked
12 him about that and he said that they kidnapped her first but
13 took her home after about five minutes.

14 He was worried that his brother-in-law was going to
15 kill her because she didn't have any money. He confirmed
16 that he was sexually aroused, that he ejaculated at the
17 time. When I asked him if he was drunk from alcohol at the
18 time, he said I remember drinking. I don't remember if I
19 was drunk. And regarding the report of hitting her with a
20 flashlight, he said that he didn't have a flashlight on him
21 and that she wasn't hit with one.

22 Q. Okay. And this individual, he reported that he didn't
23 know her, correct, that he -- she was, in fact, a stranger
24 to him?

25 A. I believe that he said he might of seen her before but

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1 that he didn't know her.

2 Q. Okay. So he'd seen her in the neighborhood?

3 A. I suppose so.

4 Q. Okay. And how old was he at the time he committed this
5 offense against a 60 year old woman?

6 A. He was 25.

7 Q. Okay. How is that relevant to your analysis, the fact
8 that he would break into someone's house in the middle --
9 well, in very early hours of the morning to conduct a
10 robbery and then that robbery turns into a rape?

11 A. Well, comparing offenses, it seems escalated. So it
12 seems more violent than the prior one and more violent than
13 how he reported the first one was. It also kind of suggests
14 perhaps diverse victim pool. So a 15 year old girl versus a
15 60 year old woman. Those are some things that I'm taking
16 from it.

17 Q. Okay. As opposed to a 20 year old peer who was his
18 first victim?

19 A. Right. Uh-huh. (Affirmative).

20 Q. Okay.

21 A. Diverse ages.

22 Q. So how does a diverse victim pool affect risk?

23 A. There's some literature suggesting that that's a risk
24 factor for future offending. Also some research studies
25 suggesting that that can predict or look at severity of

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1 future crimes as well.

2 Q. Okay. So, since 1991 when he was convicted of this,
3 he's been incarcerated continuously. He has not been out in
4 the community.

5 A. Correct.

6 Q. Correct.

7 Okay. So while he was in SCDC, did he have any
8 behavioral issues?

9 A. He did.

10 Q. Okay. Can you discuss those please?

11 A. Yes, I don't have his behavior records from the first
12 period of incarceration in 1988. But since he's been there
13 since 1991, '92, he was charged with eight disciplinary
14 infractions between 1996 and 2015. He was convicted or like
15 it was founded, a founded complaint against him, of three of
16 them with the others being either dismissed or handled
17 administratively. So not like a formal sanction but kind of
18 handled on the unit or in-house.

19 Q. Okay. And the first major disciplinary infraction I'd
20 like to discuss with you would be striking an officer.

21 That was convicted when if you recall?

22 A. Let's see. It, it occurred August 20 of 1996 and he
23 was convicted September 25th of 1996.

24 Q. Okay. And do you have records related to that offense?

25 A. Yes.

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1 Q. Okay. And what do those records indicate?

2 A. That he pushed a female sergeant with the door trying
3 to keep her out. Like a -- whatever he was closing the door
4 to.

5 Q. Okay. So he, he impacted a female corrections officer
6 with a door?

7 A. That is what it says, yes.

8 Q. Okay. What did he tell you about that offense?

9 A. He told me that he hit an officer with a door not on
10 purpose, that he was waiting to see the office secretary and
11 the sergeant told him to go back to work, and that she
12 actually slammed the door but said that he slammed it.

13 Q. Okay. So it's conflicting version of events?

14 A. Yes.

15 Q. But at the end of the day he was convicted of that
16 offense, correct?

17 A. He told me that he pled guilty to it. But SCDC records
18 indicated that he was charged with two -- he was charged
19 with striking an employee with/without a weapon and refusing
20 or failing to obey orders. He pled not guilty but he was
21 convicted of both during a hearing.

22 Q. Okay. Thank you.

23 Now, did he also indicate anything about the eight
24 disciplinary infractions that he got?

25 Was there any particular class of officer or type of

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1 officer who was filing those complaints against him?

2 MR. FALK: Your Honor?

3 THE COURT: Yes, sir.

4 MR. FALK: May I approach?

5 THE COURT: Yeah.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 Q. So, Doctor Gottfried---

9 THE COURT: All right. During that (indiscernible) --
10 guys, are we okay?

11 we're gonna probably break here shortly.

12 Is everybody okay?

13 Thumbs up.

14 MS. SHAW: Okay. Your Honor, I have just this one more
15 question about the disciplinaries and then we can break if
16 that's---

17 THE COURT: Okay.

18 MS. SHAW: ---pleases the Court.

19 THE COURT: Go ahead.

20 Q. So, Doctor Gottfried, who was filing these complaints
21 against Mr. Chapman?

22 A. During my evaluation, he reported that the majority or
23 the most I think was the quote that he used were female.

24 Q. Okay. Was that at all significant to you?

25 A. Not necessarily on its own like in the absence of other

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1 information. But kind of with a lot of other data I had,
2 it, it was more significant than it might of been otherwise.

3 Q. Okay. Thank you.

4 MS. SHAW: Your Honor, do we want to break now?

5 THE COURT: All right. Do you have more questions of
6 this witness?

7 MS. SHAW: I do, yes.

8 THE COURT: Okay.

9 MS. SHAW: But I'm fine with whatever the Court wants
10 and what the jury wants.

11 THE COURT: Let's go ahead and take a break. Let these
12 folks stretch their legs.

13 Let's take a 10 minutes recess and then we'll, we'll
14 resume.

15 okay?

16 MS. SHAW: Thank you, Your Honor.

17 THE COURT: Doctor Gottfried, you can just step down
18 from the witness stand. But you can't talk to anybody.

19 THE WITNESS: Thank you.

20 (WHEREUPON, a short recess was taken at this time.)

21 (WHEREUPON, the following takes place outside the
22 presence of the jury.)

23 THE COURT: We have the jury out for the moment and Mr.
24 Falk wanted to be heard.

25 Mr. Falk.

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1 MR. FALK: Earlier I made an 4- I just wanted to
2 clarify. I made an objection to the introduction of the
3 affidavits that were attached to the certified records from
4 the Court. I objected to the introduction of the affidavits
5 but, but arrest -- not to the sentencing sheets and not to
6 the arrest warrants but to the affidavit---

7 THE COURT: All right.

8 MR. FALK: ---supporting that as being hearsay and it
9 being more prejudicial than probative.

10 THE COURT: Yes, sir.

11 MS. SHAW: Your Honor, the documents are certified
12 court records that are self-authenticating documents.
13 Therefore, they would qualify for an exception under the
14 hearsay rule and also any information contained in the
15 affidavit does nothing more than support the actual
16 indictment. They're not considerable number of details in
17 those affidavits which would go outside of the scope of the
18 witnesses testimony or which would not otherwise be
19 supported by the evidence that was in the record already or
20 will be in the record.

21 So, I would submit that the hearsay objection should
22 not be sustained and that the documents, as well as all of
23 their information that's contained in -- within them, should
24 be admitted considered admissible hearsay.

25 THE COURT: And I would agree, Ms. Shaw, and I would --

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1 as, as noted earlier, I overrule the objection and I
2 reviewed the -- I reviewed the documents and I did not find
3 that there was really anything additional in there that
4 would cause any -- either prejudice.

5 MR. FALK: I just wanted to make it clear to the Court,
6 I wasn't trying to argue after the objection. I just needed
7 to put my grounds on the record---

8 THE COURT: Absolutely.

9 MR. FALK: ---to preserve the issue.

10 THE COURT: I understand. Not a concern there.

11 MS. SHAW: Thank you, Your Honor.

12 THE COURT: Well, I don't have a clerk and I don't have
13 a jury.

14 I'll say this to the lawyers, one of the jurors
15 wandered in and I'm not sure how that happened. And I need
16 to make sure they didn't talk to anybody. I don't think
17 that that occurred.

18 Let me get---

19 UNIDENTIFIED SPEAKER: She walked in and I was dealing
20 with another matter --.

21 (Pause.)

22 THE COURT: Can we get our juror here?

23 UNIDENTIFIED SPEAKER: Yes, sir.

24 THE COURT: If the clerk wants to join us, she can join
25 us but --.

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1 MS. SHAW: Judge, there's some -- actually a question
2 that Doctor Gottfried had that I'd just like to clarify
3 between Your Honor and Mr. Falk and myself. I think it
4 would be appropriate if we could address it before we bring
5 the jury back in. It has to do with certain (indiscernible)
6 that defense counsel objected to.

7 THE COURT: (Indiscernible) for that.

8 MR. FALK: (Indiscernible).

9 THE COURT: In any event, we'll start as soon as we --
10 cause I don't know what's going on back there.

11 (WHEREUPON, the audio was turned off at this time.)

12 THE COURT: I apologize for singling you out. You had,
13 you had -- you were not with the rest of the jury and you
14 came in the courtroom and I just have to ask you, for the
15 record, nobody tried to talk to you about the case or
16 anything like that, did they?

17 THE JUROR: No.

18 THE COURT: Thank you, Ms. Moss. I appreciate and
19 appreciate your service.

20 THE JUROR: You welcome.

21 THE COURT: And I do not know -- typically you would
22 all file out into a jury room. They've made other
23 arrangements for you and I don't know where the restrooms
24 are when they take you out. They would just -- you, you --
25 when you, when you leave the courtroom, you would have to

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1 stay together.

2 So when, when, when I dismiss you or excuse you, you
3 all leave and then, when you come back, you come back
4 together and you, and you stay together. And if you need --
5 if there's some special arrangement to be made, just make
6 sure the bailiffs know where you are and the whole point of
7 that is just to make sure that nobody tries to influence you
8 in any way.

9 Okay. That's why we do that.

10 All right. Yes, ma'am.

11 THE CLERK: Your Honor, I believe Mr. Jarrett also
12 wondered just to -- was that correct?

13 THE BAILIFF: The green shirt.

14 THE BAILIFF: Yeah, I went, I went outside, sir.

15 THE CLERK: The green shirt as well. Yeah.

16 THE COURT: All right.

17 THE CLERK: Just, just for the record.

18 THE COURT: And, sir, tell me your last name.

19 THE JUROR: Ashworth.

20 THE COURT: Mr. Ashworth, and nobody tried to discuss
21 this case or influence you in any way during our break, did
22 they?

23 THE JUROR: No, sir.

24 THE COURT: Okay. And, and just for everybody's
25 benefit, in any other courthouses this really wouldn't

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1 happen because you wouldn't walk through the courtroom and
2 out. You would go to a chamber. You -- you're not allowed
3 to leave the group at any point unless given instruction by
4 the Court or, or, or approved by the clerk.

5 okay. All right. Ms. Shaw.

6 MS. SHAW: Thank you, Your Honor.

7 CONTINUED DIRECT EXAMINATION

8 BY MS. SHAW:

9 Q. All right. Doctor Gottfried, are you ready to proceed?

10 A. Yeah.

11 Q. Okay. Thank you.

12 So, start off -- so we just went through Mr. Chapman's
13 sexual offending history. I'd like to briefly now go
14 through his nonsexual offending history if you would please.

15 A. Yes. So he had just a, a couple relatively minor
16 nonsexual offenses and, and one assault. So one more
17 serious and the rest were pretty insignificant.

18 He was charged with assault and battery in July of 1986
19 for an assault I believe in Chesterfield County in which he
20 physically attacked a woman with his fist and beat her on
21 the head and upper part of her body. He was convicted of
22 that and he was ordered to pay a fine.

23 Q. Okay. And so basically his only criminal history at
24 this point appears to be relatively limited to assaults on
25 females and sex offense against adult females---

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1 A. And---

2 Q. ---and one minor?

3 A. Correct. And, and then the other one was he had
4 driving under the influence. So a DUI and a disorderly
5 conduct and at least one probation violation.

6 Q. Okay. So how is, how is that limited criminal history
7 to offending against women and sexual offenses relevant to
8 your inquiry?

9 A. So when individuals have sexual behavior disorders, one
10 piece of data that we're looking at is are they just kind of
11 criminal. Like are they just offending a lot in a lot of
12 different ways. And so he has some other offense history
13 besides sexual but the sexual offenses are close together,
14 significant, serious, notable. And so that's a data point
15 when you're looking at a potential diagnosis that the person
16 might have.

17 Q. Okay. Thank you.

18 So, we went through his disciplinaries and let's talk
19 about programming in prison.

20 Are prisoners in SCDC offered services while they're in
21 prison?

22 A. Typically sometimes there are services. COVID, short
23 staff, sometimes they don't get them. But they, they should
24 get services and frequently they're offered services.

25 Q. Okay. And has Mr. Chapman taken advantage of any

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1 services while he's been in prison?

2 A. Yes.

3 Q. Okay. Can you tell me what services he took advantage
4 of prior to 1991 and which he has taken advantage of since
5 1991?

6 A. Yes. I believe, in 1998, he did the class or the
7 treatment for sexual behavior. It's called See Star at the
8 prison. So he took that class I believe in 1988 during his
9 first incarceration. He may of had other treatment before
10 1991 but that was the only one that I had a record of or
11 that I spoke with him about.

12 Q. Okay. And so he actually had sex offender treatment
13 during his first prison sentence for the CSC third, correct?

14 A. Correct.

15 Q. Okay. And we know he reoffended after he had that
16 treatment and was released, correct?

17 A. Correct.

18 Q. Okay. How is that relevant to your inquiry?

19 A. I mean it's significant that he had the treatment and
20 then, by his account, he was freshly out of prison when he
21 came down immediately but soon thereafter offended. It
22 suggests that either the treatment didn't target what he
23 needed, he disregarded the treatment, he wasn't able to
24 control that behavior, it -- whatever the reason, the
25 treatment didn't work.

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1 Q. Okay. So, so the -- but that is relevant to your
2 overall assessment of risk, is it not?

3 A. Yes.

4 Q. Okay. How?

5 A. So he had the treatment. He should theoretically have,
6 have learned how to manage those behaviors, and despite
7 having the treatment, he still offended. He had been
8 sanctioned. So he was in prison. The justice system had
9 told him he wasn't suppose to do that and he also reportedly
10 had treatment about managing those behaviors.

11 Q. Okay. So, does that to be -- speak to his volitional
12 control or his ability to control himself?

13 He knows he's gonna go to prison if he does this again.
14 Yet he still did it.

15 A. Right. So it suggests that the treatment didn't work.
16 He wasn't able to control that behavior --

17 Q. Okay.

18 A. -- because he had it and then he got out and
19 reoffended.

20 Q. Okay. And did he also have any alcohol or drug
21 orientation or live in any sort of character based housing
22 units or anything like that?

23 A. Yes. He reported several treatment programs or groups
24 or classes that he took over the years of his incarceration.
25 I think one's related to substance use, victim impact, anger

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1 management. He was in a character dorm I believe he said
2 for about five years, and my understanding, I don't work for
3 the South Carolina Department of Corrections, but my
4 understanding is you have to demonstrate character.

5 So you, you know, can't be getting in trouble. You
6 have to follow the rules. Not everybody gets to go to this
7 type of dorm. He did some programming or programs related
8 to being in that dorm and then he also took See Star again,
9 the sexual behavior treatment, during his second
10 incarceration. He told me he took it.

11 Some records say he took it with good participation.
12 Some records say he terminated. But it looks like he did
13 some of that in 1991, 1993. I see another in 1995 but
14 there's conflicting things. So, in the early '90s he did
15 some more of that programming.

16 Q. Okay. So approximately 20 years ago was the last time
17 he had any sort of sex offender treatment in SCDC?

18 A. Yes.

19 Q. Okay. So, based on all of that information, the
20 criminal history, the SCDC history, his personal history,
21 the, the interview, did you come up with any sort of
22 preliminary diagnoses that you were considering?

23 A. Yes.

24 Q. Okay. And are those diagnoses contained in the DSM-5?

25 A. Yes.

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1 Q. Okay. Can you tell the jury what the DSM-5 is --

2 A. So I---

3 Q. -- and whether you have it in front of you?

4 A. That's this book here. It's published by the American
5 Psychiatric Association. It is the Diagnostic & Statistical
6 Manual that we use to diagnose all mental illnesses. So
7 it's -- gives you a list of symptoms and the number of
8 symptoms someone must have in order to meet a diagnosis and
9 you see it's really big cause it's all of the diagnoses.

10 Q. Okay. And did you use that in this context?

11 A. I used the DSM-5. This version, which is the DSM-5-TR,
12 the text revision, just came out this year.

13 Q. Uh-huh. (Affirmative).

14 A. So when I saw Mr. Chapman we were still on DSM-5, which
15 was published in 2013, but the criteria, at least the
16 diagnoses I considered, the criteria didn't change --

17 Q. Okay. So there were no---

18 A. -- between the two versions.

19 Q. So between the two versions of the DSM, there were no
20 substantive, substantive, sorry, I can't say that word,
21 changes to the diagnostic criteria?

22 A. That's correct. It mostly really was a text revision
23 where they added a word here and took a word away there.
24 But they didn't change the meaning of the diagnoses.

25 Q. Okay. So tell me what diagnoses you initially

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1 considered and where you ultimately came down in terms of
2 the personality disorder question?

3 A. So, when I do these evaluations, I consider the full
4 spectrum of mental illnesses. There are some that are more
5 likely to be related to an inability to control problematic
6 sexual behavior. But when they're asking me to do an
7 assessment, I'm not just gonna look for certain things. I'm
8 gonna look at the whole spectrum. So I consider all
9 diagnoses.

10 I do a comprehensive clinical interview where I assess
11 for all symptoms. I give a number of psychological tests
12 that's assessing for a wide range of symptoms. So I really
13 consider everything.

14 Most consistent with Mr. Chapman's like clinical
15 picture based on that information, I considered antisocial
16 personality disorder and I considered paraphilic disorders
17 related to arousal to rape or coercion.

18 Q. Okay. Now, let's just concentrate on the personality
19 disorder.

20 Can you find antisocial personality disorder in the DSM
21 please or discuss, if you need to, and discuss the criteria?

22 A. So generally personality disorders are these really
23 enduring patterns of maladaptive, so not adaptive, not
24 helpful traits, related to how you deal with other people,
25 kind of how you think about and conceptualize yourself and

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1 how you handle your emotions, your ability to function, and
2 cope.

3 So, for antisocial personality disorder, that is the
4 opposite of pro-social. So doing things against the rules
5 and what's normal for society.

6 So that might include, you know, not fitting into
7 society because you're getting arrested a lot. You're
8 breaking a lot of rules. It can include conning other
9 people, being manipulative, deceitful, lying a lot, being
10 impulsive, having a failure to plan ahead, irritability,
11 aggressiveness. So like really, really irritable or all the
12 way to getting into fights or assaulting other people.

13 This reckless disregard for your own safety or the
14 safety of people around you. Being irresponsible. So that
15 might mean, you know, your work history. You're getting
16 fired a lot. You're not keeping up with your obligations.

17 Lack of remorse. So being almost indifferent or like
18 being able to rationalize when you have hurt someone or
19 mistreated someone or stolen from them. And then the last
20 part of antisocial personality disorder is that there was
21 evidence of what's called conduct disorder before the age of
22 15.

23 And so conduct disorder is a mental illness and usually
24 diagnosed in childhood and those criteria include running
25 away from home overnight, setting fires you're not suppose

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1 to, cruelty to animals, hurting other people, property. So
2 kind of the same behaviors.

3 Q. Okay. So that juvenile conduct disorder, we don't have
4 that in this case, correct?

5 A. We don't. So per Mr. Chapman's self-report, he wasn't,
6 you know, setting fires. He wasn't stealing as a child. I
7 have no indication that he was arrested as a child or as a
8 teenager.

9 So, based on his self-report, he wouldn't meet for
10 chronic disorder and I usually don't get juvenile
11 information from other sources. But there's nothing to
12 suggest that he had conduct disorder prior to the age of 15.

13 Q. Okay. So given that he does not have the conduct
14 disorder prior to age 15, which is the prerequisite for a
15 diagnosis of antisocial personality disorder, did you
16 consider any other personality disorders that might apply to
17 Mr. Chapman given his presentation?

18 A. Yes, it was my opinion that he really clearly has
19 demonstrated characteristics of antisocial personality
20 across his at least adult lifetime. And so I diagnosed him
21 with an other specified personality disorder with antisocial
22 traits.

23 So, if he had had the conduct disorder, he would of
24 clearly met for antisocial personality disorder. So, in the
25 absence of that prerequisite, the diagnosis was other

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1 specified personality disorder with the antisocial traits or
2 features.

3 Q. Okay. And that, in fact, is what Doctor Gillen
4 diagnosed Mr. Chapman with as well, correct?

5 A. Yes, he did.

6 Q. Okay. So, in that respect, you and, and Doctor Gillen
7 agree?

8 A. Yes.

9 Q. Okay. Now, in addition to the clinical interview, the
10 records review, and all of the other things we've already
11 discussed, you administered a battery of tests to
12 Mr. Chapman, correct?

13 A. Yes.

14 Q. Okay. And did Doctor Gillen do those tests?

15 A. He, he scored him on risk measures.

16 Q. Uh-huh. (Affirmative).

17 A. We did the same risk measures but he didn't do other
18 testing.

19 Q. Okay. So first things first. Let's go through the
20 risk measures that you and Doctor Gillen both scored
21 Mr. Chapman on.

22 So, can you tell us what those are?

23 A. Yes, we both scored him on the Static-99R and the
24 Static-2002R.

25 Q. Okay. And what are those tests?

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1 What do they look for and how do they inform your
2 assessment?

3 A. So those are very commonly used measures looking at
4 risk factors that have been shown in studies to be related
5 to sexual reoffending. So, how they do that is they take
6 really, really large numbers of people. So people who are
7 in lots of different studies where they looked at their
8 offense history and looked to see what was similar between
9 the people who went on to be arrested for a new sexual
10 offense.

11 Q. Okay. And so you and Doctor Gillen actually came to
12 the same conclusions on your Static scoring.

13 Is that correct?

14 A. Yes, we had the same score on both of the Statics, the
15 99 and the 2002.

16 Q. Okay. So, let's start with the Static-99.

17 What score did you and Doctor Gillen assign to Mr.
18 Chapman?

19 A. His score was a six.

20 Q. And what does that correlate to in terms of risk
21 category?

22 A. That is the well above average risk level.

23 Q. Okay. Can you describe in a little more detail what
24 that actually means for the jury?

25 A. Yeah.

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1 So there are different levels and it is -- there's, you
2 know, a lower -- low risk, average risk, high risk, well
3 above average risk. So individuals who are in the well
4 above average risk category typically have a rate of sexual
5 reoffending that's like three to four times the average rate
6 of individuals who have prior sexual offenses.

7 Q. Okay. And actually I'm just gonna back you up for one
8 moment.

9 On the Static-99, what do the score ranges go from?

10 A. They go from negative three to 12.

11 Q. Okay. So it's not just a one to ten. It's, it's a
12 wider range.

13 A. Correct. There are -- there's an item you can get
14 negative points on and that's age.

15 Q. Okay. All right. So, you gave him a six on the
16 Static-99.

17 On the 2002R, what did each of you give him?

18 A. Also a six.

19 Q. Okay. And understanding that the tests are slightly
20 different and look for different things, can you tell the
21 jury what the Static-2002R focuses on as opposed to the
22 Static-99 and why they're important to be used together?

23 A. So, the 2002 is looking at sexual and violent
24 reoffending. It's looking at some of the meaningful risk
25 characteristics that have been identified in the literature.

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1 That goes further than what's on the Static-99R.

2 So, for the 99, it's looking at what we call static
3 factors and those are things that you can't change. So, you
4 know, your age. You're always gonna get older but there's
5 no treatment I can give you that's gonna make you younger.
6 Having a male victim, a history of having a male victim, I
7 can treat you so you never have a male victim again but I
8 can't treat you to take that male victim out of your
9 history.

10 And so the Static-99 is just looking at those things
11 that are unchangeable where the Static-2002 is also
12 incorporating some what's called dynamic risk factors, which
13 means that it might be difficult to treat them, that they
14 could be treatable like deviate sexual interests.

15 Q. Okay. All right. So, on the Statics, you both came
16 up -- on the 2002R you both came up with a score of six.

17 A. Yes.

18 Q. That places him in what risk category?

19 A. The above average risk.

20 Q. Okay. And what does that correlate to in terms of his,
21 his percentage likelihood to reoffend and his average risk
22 related to other sex offenders?

23 A. So, no, there's no test in the world that's gonna tell
24 you the person sitting in front of you what the likelihood
25 is that that person, you know, is definitely gonna reoffend.

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1 And so the best thing that we can do is identify individuals
2 who we know have reoffended, look at those characteristics,
3 and then see how many the person sitting in front of you
4 also has.

5 And so, for other people in the comparison groups or
6 the normative samples when they were developing these tests,
7 individuals who had a six on the Static-99R in 20 -- 20
8 percent, 20.5 percent of them reoffended over a five year
9 period.

10 And so when you look at percentiles, so looking at how
11 he compares to other people in that normative sample, he was
12 in over the 94th percentile. So just to break that down
13 what that means is if we had a hundred people, 92 of those
14 people would have a lower score than Mr. Chapman. Four
15 would have the same score and four would have a higher score
16 because he's in that well above average risk on the
17 Static-99.

18 Q. Okay. And so -- and can you just explain what
19 actuarial measures are perhaps using a real world example
20 just to help the jury understand what they actually do?

21 A. Yeah.

22 So I like to compare this to like life insurance. So I
23 don't know if anyone's applied for life insurance.

24 But when you apply for life insurance, you know,
25 they're gonna send you for a physical. They're gonna get a

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1 lot of information. They want to know, you know, are you
2 male or female because we know men, on average, die at a
3 younger age by a couple years than women. They want to know
4 if you smoke. They want to know how many speeding tickets
5 you've had.

6 And so the insurance company can't predict when you
7 personally are going to die or if you're going to die from
8 an early death or, you know, heart attack but they can look
9 to see things that are related to risk for an early death
10 like smoking and, and unlike career choices and things like
11 that. And then, if you have enough of those risk factors
12 that makes it look like you're at risk for having an early
13 death, then they're gonna charge you more for that premium.
14 That's how they're gonna decide your rate.

15 And so this test is like that where, like I said, we
16 don't know anything about the person. But we're looking to
17 see the number of characteristics that we know are
18 associated with sexual reoffending.

19 Q. So characteristics that the individual has in common
20 with the group that's been known to reoffend?

21 A. Yes.

22 Q. Okay. So, the static, do they take into account
23 undetected offenses or uncharged offenses?

24 A. There would be no way to do that. So when they
25 developed the test, the---

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1 MR. FALK: Your Honor, may I approach?

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 Q. Okay. So I will ask the question again, Doctor
6 Gottfried.

7 The Statics, they only take into account reported and
8 charged offenses, correct?

9 A. Yes.

10 Q. They do not take into account unreported or uncharged
11 offenses?

12 A. There would be no way to do that. So, we only know who
13 had a detected sexual offense, and because sexual offenses
14 are the least likely of all offenses to be reported to
15 authorities, we know that not all of them are detected but
16 the best we can do is look at the ones that were. There'd
17 be no way to factor in like if someone had a, a bunch of
18 undetected sexual offenses.

19 Q. Okay. So, in, in theory, the Statics could actually
20 underestimate an individual's risk?

21 A. It could because it's only comparing them to people
22 with known, known re-offenses. Not people who never were
23 caught.

24 Q. Okay. Thank you.

25 So, those were the two -- that's -- that was the

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1 actuarial measure that you and Doctor Gillen conducted in
2 common.

3 what other testing measures did you do that Doctor
4 Gillen did not do?

5 A. I did a battery of tests. So I did the Minnesota
6 Multiphasic Inventory Version 3. I did the Personality
7 Assessment Inventory. I did the Substance Abuse Subtle
8 Screening Inventory Volume 4. I did the MIDSA, which is --
9 let me check the name of it. It's a long name. It's the
10 Multidimensional Inventory Development of Sex and
11 Aggression. I then scored him on the Hare Psychopathy
12 Checklist Revised, a Sexually Violence Risks 20 Version 2,
13 and penile plethysmography.

14 Q. Okay. So, before we get into what these tests actually
15 revealed about Mr. Chapman's personality and possible
16 paraphilic functioning, did you diagnose ultimately
17 Mr. Chapman with a paraphilia?

18 A. I did.

19 Q. Okay. And what was that paraphilia?

20 A. So I want to explain first what a paraphilic disorder
21 is --

22 Q. Please do.

23 A. -- if that's okay?

24 Q. Thank you.

25 A. So, paraphilic disorders are sexual arousal or sexual

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1 interests into or sexual arousal of something other than a
2 human physically mature adult consenting partner. So, an
3 example of a paraphilic disorder might be sexual arousal by
4 shoes. So having a fetish disorder or sexual arousal to
5 children, having pedophilic disorder. So those are all
6 under the category of what we call paraphilic disorders
7 which are sexual behavior disorders related to inappropriate
8 arousal.

9 So, for Mr. Chapman, I diagnosed him with other
10 specified paraphilic disorder, paraphilic coercive disorder.
11 And so the paraphilic means that he has this sexual arousal
12 to something other than the human consenting adult partner
13 that either causes him distress or impairment or causes harm
14 to another person. So that's the paraphilic part and then
15 the coercive disorder is that Mr. Chapman demonstrates and
16 experiences sexual arousal to coercion.

17 So that's like sexualized power over another person.
18 Not just a means to an end to have sex with somebody who
19 doesn't want to have sex with you, it's the actual arousal
20 to the acts of having that power over someone, that arousal
21 to raping someone.

22 Q. Okay. And, and he actually, in fact, admitted that the
23 controlant (sic) and power over these victims was arousing
24 to him, correct?

25 A. He, he did. He kind of went back and forth when we

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1 discussed the power aspect of it. He did make a statement
2 saying like yeah, I think that is what's behind all of this
3 but couldn't really fully explain it. So, when I asked him
4 to give me more information, he said oh, yeah, I learned
5 about that in class. So, kind of went back and forth
6 between I just wanted to have sex to yes, I think it was
7 about the power.

8 Q. Okay. And would any of the factual information about
9 the offenses and the specific offense pattern, because
10 that's what you're looking for, correct, would that give you
11 any insight into the actual arousal pattern?

12 A. Yes.

13 Q. Okay. So can you tell the jury what the -- those facts
14 would be and how they relate to identifying this pattern of
15 arousal?

16 A. Yes. So he reported being aroused during each of the
17 rape offenses. He ejaculated and had sexual arousal during
18 sexual situations that were clearly nonconsensual. Between
19 the three that he describes, he -- they had a really similar
20 pattern. So very similar behaviors when he was committing
21 the offense.

22 Another thing that we look at is the whole criminal
23 history. And so individuals with this disorder might have
24 some minor nonsexual offenses. But you're gonna see an
25 overrepresentation of the sexual offenses, which we see in

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1 this case. Having -- raping somebody who previously
2 consented to sexual activity with you or would be a willing
3 participant also suggests that arousal. So his 1987, the
4 middle victim, the 15 year old, he reported he was dating
5 her, that he had had consensual sex with her before.

6 So, the act of raping somebody who has previously
7 consented to having sex with you suggests a level of arousal
8 to that behavior. Individuals with this disorder
9 demonstrate a short period of time after the consequence.
10 So going to prison, and then raping someone again,
11 demonstrating arousal to rape and inability to control that
12 arousal.

13 He also raped individuals that he had a high likelihood
14 of getting caught. So, the victim in North Carolina was
15 reportedly the friend of his cousin's girlfriend. And so
16 she would of been like readily able to identify him.

17 And then, if the 15-year old was his girlfriend, again
18 he -- that's a really high risk situation of that person
19 being able to clearly identify you to the police. So that
20 also suggests an arousal to that behavior.

21 He committed the rapes, for at least two of them, where
22 he had consenting partners who would have sex with him. So
23 if it were just a means of, you know, having sex, he had
24 partners. He said that sometimes he had 10 to 15 partners
25 at the same time dating multiple women. So, the fact that

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1 he raped people even though he had willing sexual partners
2 suggests arousal to that behavior.

3 Q. In addition---

4 A. Yeah.

5 Q. ---was there any sort of gratuitous violence about the
6 offending patterns?

7 was there violence in excess what would of been needed
8 to achieve compliance from the victim?

9 A. Potentially. So records from the '80s are not that
10 extensive. So, we don't have any -- really anymore than it
11 saying like hit, choked, and, and things like that, and
12 Mr. Chapman said that he wasn't violent with them.

13 And so that's kind of -- that can go on the side or
14 that side. So, if somebody's aroused by violence, sexual
15 violence, that's sadism and that is kind of on the spectrum
16 of being aroused by rape but, but farther on the other side.

17 Q. It's more extreme?

18 A. Yes.

19 Q. Okay. All right. So now that we have our paraphilia
20 and we have our personality disorder, I'd like to go into
21 the additional information that you were able to glean and
22 I'd like you to tell the jury how that impacted your overall
23 conclusions because this is a comprehensive evaluation,
24 correct?

25 A. Yes.

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1 Q. Your conclusions are not based on one data point, are
2 they?

3 A. Definitely not.

4 Q. Okay. So let's start with the MMPI-3.

5 Can you tell the jury what that test looks for, what it
6 assesses, and what Mr. Chapman's particularized results
7 were?

8 A. Yes. So in the battery of tests that I gave
9 Mr. Chapman, some of them, he reported them himself. So
10 they're self-report. He -- these are on a computer where it
11 will, you know, be true or false or you can say false,
12 sometimes true, very true, mainly true. And so he's kind of
13 reporting on his own symptoms.

14 For the MMPI that is looking at adult personality and
15 it gives you information on their personality functioning,
16 any symptoms of a mental illness, how they get along with
17 other people, and also like their approach to testing.

18 So, we know that people aren't always completely honest
19 or forthcoming. So, the test that I give have what's called
20 validity indicators to look to see how valid of a test it
21 seems like it is when he takes it.

22 And so, kind of a cross test, but, on this test
23 additionally, there were concerns that he was
24 underreporting, unwilling to report things that could paint
25 him in a negative light, you know, painting himself in a

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1 very positive light, denying minor fault that most people
2 would admit.

3 And so, on that test, he didn't really endorse any
4 symptoms at all. It was completely within normal limits as
5 would be expected if you were trying to minimize anything
6 that could be going on with you. He -- the only elevation
7 that we saw was that he was reporting a really high level of
8 life satisfaction and morale. But, otherwise, really
9 nothing came out of that test.

10 Q. Okay. And, and reporting a high level of life
11 satisfaction when you've been incarcerated for the past 30
12 years, would that be consistent with, with reality?

13 A. You would think it wouldn't. I, I, I don't know. I,
14 I, I couldn't say for a fact what your life satisfaction is
15 like in prison but you would think that it wouldn't be---

16 MR. FALK: Your Honor, may I?

17 A. ---very high.

18 MR. FALK: I think we got speculative testimony here.

19 MS. SHAW: Your Honor, I'll, I'll withdraw that part of
20 the question.

21 THE COURT: Thank you.

22 Q. So, Doctor Gottfried, what did those validity
23 indicators indicate in Mr. Chapman's particular results?

24 was he responding definitively?

25 was he -- well, you already said he was attempting to

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1 present himself in an overly positive light.

2 what does that mean?

3 A. Minimizing negative things about yourself. So being
4 reluctant. Even minor things that most people will admit
5 to, like that you read every piece of junk mail that comes
6 to your house, things like that that -- that's what it
7 showed, that he was probably minimizing anything negative
8 about himself.

9 Q. Okay. And that wouldn't be unexpected?

10 A. No.

11 Q. Okay. So, let's go to the SASSI. That is -- what is
12 that test for?

13 A. So that's a shorter true/false test that it's looking
14 at the probability that somebody either currently has or at
15 some point in their life had a substance use disorder and
16 that could include alcohol, all the substances.

17 Q. Okay. And what were Mr. Chapman's results?

18 A. So, again, the validity scales on that test indicated
19 that he likely approached the test defensively. So wasn't
20 open with information. But despite that level of
21 defensiveness, there was a high probability that he has or
22 have had a substance use disorder.

23 Q. Okay. And he self-reported considerable alcohol use,
24 correct?

25 A. He reported drinking I believe a six pack to a case of

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1 beer on the weekends.

2 Q. Okay. So, let's move on to -- well, actually -- and
3 you said that alcohol can lower your inhibitions, correct?

4 A. Correct.

5 Q. And while it doesn't cause sexual offending, it can
6 certainly contribute.

7 so, if Mr. Chapman were to be released to the community
8 and started drinking again, could that be problematic?

9 A. Yes, that could certainly increase risk. So, like I
10 said, that's not gonna make somebody offend. But if
11 somebody has a history of offending and they're using
12 substances or alcohol, that is a risk factor because you're
13 lowering inhibitions, taking away some of those breaks that
14 you need to kind of stop yourself from doing a behavior that
15 you're aroused by or interested in.

16 Q. Okay. So let's move on to the PAI. It's the
17 Personality Assessment Inventory.

18 Can you talk to us about what that assesses for and
19 Mr. Chapman's results?

20 A. Yes, that's another objective inventory of adult
21 personality. It looks at psychological symptoms and can
22 screen for certain psychological disorders like depression
23 and anxiety and things like that. From the PAI, it seemed
24 like he was responding in a way that like minimize anything
25 negative like about him again.

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1 So, people who respond in the manner that he did are
2 basically saying that they don't have any like shortcomings.
3 So like they're never inpatient, things like that, that most
4 people enjoy a trip to the dentist. So, there's questions
5 like that.

6 From the PAI, he reported -- well, his, his results
7 suggested that he would likely report a history of consuming
8 alcohol regularly and having had some negative consequences
9 from alcohol use, that he might have little capacity to like
10 recognize his own limitations, that he might think that
11 he's -- it -- it's getting not necessarily a narcissism but
12 like very high self-esteem. It's getting at -- and then his
13 response also suggested that he perceived a -- like a lot of
14 difficulty in his functioning and a need for help with these
15 problems.

16 So, when I do testing, I always follow up with the
17 person I'm testing at the end of the evaluation, give them
18 all their test results, and ask them, you know, do you agree
19 with this, what do you make of this. So, regarding the
20 finding that he perceives needing help with some problems,
21 he told me that we always have room for improvement and I
22 asked him specifically what he thought he needed help with
23 and he said there's courses out there for drinking, sexual
24 wise, even mental health. And I said okay, which of those
25 do you need and he said maybe like to see if prison effected

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1 me since I was there for 30 years. So---

2 Q. Okay.

3 A. ---that was kind of the acute need for treatment that
4 was being picked up on this test.

5 Q. Okay. So, despite the fact that he's been convicted of
6 two rapes and one attempted rape, he did not identify
7 needing sex offender treatment as something important to
8 him?

9 A. He mentioned it in the list of things that people might
10 get services for. But when directly asked which of those do
11 you need, he didn't include it in that response.

12 Q. Okay. So, let's move on and, and actually this
13 defensive response style, did that give you any indicators
14 into his personality or paraphilic functioning like this
15 overall, these three different tests, all showed a lack of
16 disclosure?

17 How does that impact your opinion if at all?

18 A. Well, as -- I think you mentioned it's not unexpected
19 that people are not going to want to report really negative
20 things about themselves in an evaluation like this. So it's
21 not an unexpected finding.

22 Related to personality, it could be getting at things
23 like being really oppositional. So not being cooperative
24 with the testing. A symptom of antisocial personality
25 disorder is, you know, being deceitful or lying. Perhaps

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1 it's getting -- it could get at that as well.

2 Q. Okay. Thank you.

3 So, let's move on to the MDSA.

4 Can you discuss that test and what it revealed about
5 Mr. Chapman?

6 A. Yes. So that's a self-report risk management
7 instrument that was designed specifically to identify target
8 domains like for interventions. So things that could be
9 target treatments for people who have a history of being
10 sexually coercive.

11 Q. So---

12 A. And so again---

13 Q. So just to, to clarify, it specifically applies to
14 individuals who have committed rape as opposed to
15 specifically applying to individuals who have pedophilic
16 disorders or something else?

17 A. No. No, it assesses for pedophilic disorder as well.

18 Q. Okay.

19 A. So -- but you can be sexually coercive with pedophilic
20 disorder.

21 Q. Okay.

22 A. So it's looking at hands on sexual offenses.

23 Q. Okay. Thank you.

24 Please continue.

25 A. And so this test also looks at how valid the

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1 administration was and he had pretty high scores on the
2 validities.

3 So, one scale, the positive image scale, he was in the
4 97th percentile. That scale might indicate like an
5 inclination to exaggerate like your positive traits. So
6 like overreport positive things about yourself.

7 He scored in the 99th percentile in the negative
8 emotions denial scale, which suggests that, in testing, he
9 may of been like unwilling to admit having undesirable
10 reactions to things. So like getting angry about things or
11 impatient.

12 And then his score on the sexual lie scale was also in
13 the 99th percentile. So high scores on that scale indicate
14 that the person taking the test is denying engaging in
15 sexual behaviors, having any sexual thoughts, and that
16 they're exhibiting defensiveness about their sexual
17 behavior.

18 And so, based on that, I wanted to interpret the rest
19 of the test with some caution because it seemed like it
20 wasn't a valid approach, and indeed he -- I don't know if he
21 purposefully put incorrect information or was tired from
22 testing but he put his age wrong. He marked that he had
23 never ever been to prison even though he is currently in --
24 serving a sentence when I tested him. He marked a box
25 saying that he'd never been arrested for a sexual offense.

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1 So, at the end of the day, I mean it's not correct
2 information. So that test, to me, is not interpretable.

3 Q. Okay. Other than the validity scales which were cause
4 for concern?

5 A. Yes.

6 Q. Okay. Now, you also conducted the Hare Psychopathy
7 Checklist.

8 Can you describe what that assesses for and
9 Mr. Chapman's results?

10 A. Yes. So that is clinician rated. So that means that I
11 scored Mr. Chapman on a list of characteristics associated
12 with psychopathy. And so, based on my scoring, he did not
13 meet full criteria for that disorder. But he had some
14 traits and that includes having a lack of remorse or guilt,
15 having a lack of empathy, having many short term what he
16 called serious relationships before he went to prison,
17 having failed on community supervision, so probation, and
18 that there was some evidence of having a really high sense
19 of self-worth. So like overly high self-esteem,
20 pathological lying, conning, and manipulating other people,
21 a history or promiscuous sexual behavior, being impulsive,
22 being irresponsible, and failure to accept responsibility
23 for his own actions.

24 So, while his score didn't rise to the level as being
25 classified within psychopathy, he had some of those

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1 characteristics.

2 Q. Okay. And specifically it was in the interpersonal
3 style where his elevations were most significant.

4 Is that correct?

5 A. Yes, I believe so.

6 Q. Okay. Can you just discuss a little bit more about
7 that and what that actually means when it comes to either
8 paraphilic coercive disorder or other specified personality
9 disorder with antisocial features?

10 A. Yes. Let me just confirm that it is the antisocial or
11 the interpersonal. Let me see.

12 So there were a couple different areas. So, the, the
13 first factor which is looking at interpersonal and
14 effective. So that's how you relate to other people.

15 So do you con them and manipulate from that and steal
16 from them and then like effective. Like how -- that's
17 regarding your emotions and your reactions to things. So,
18 that was the highest part of that test.

19 Q. Okay. What does that indicate?

20 A. So there is overlap between psychopathy and antisocial
21 personality disorder. So it's not surprising that he would
22 have some of those traits and the overlap are the traits
23 that we discussed regarding his personality disorder.

24 So, I meant to say sorry. The -- like the lack of
25 remorse, the lack of empathy, the impulsiveness, the

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1 irresponsibility. It's the overlap between those two
2 conditions.

3 Q. Okay. And you observed the lack of remorse and the
4 lack of empathy during your, your interviews with him,
5 correct?

6 A. Yes, there was indication of that.

7 Q. Okay. And how does that relate to risk?

8 was it -- specifically the lack of empathy.

9 A. So, we know that having negative attitudes about sexual
10 offending can be related to, to risk and it's difficult to
11 assess attitude because often people know what they're
12 suppose to say. But it can -- it, it can be a risk factor.

13 Q. Okay. All right. So you also scored him on the Sexual
14 Violence Risk-20.

15 Can you discuss that, what it looks for and how, how it
16 informs your overall decision making?

17 A. Yes. So, the Sexual Violence Risk-20, again is a
18 clinician rated score. So that means he didn't fill out
19 test questions. I filled it out based on his history.

20 And so what it's -- it's called structured professional
21 judgment. And so this is looking at the dynamic risk
22 factors and remember those are the things that could be
23 changed but they're hard to change. That's things like
24 being aroused to something other than normal consenting
25 human adults. Maybe something like substance use. It's

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1 really hard to treat substance use disorders but you can
2 treat them.

3 And so, when I'm thinking about risk factors, I want to
4 really think about them in a structured way. I don't want
5 to just try to think from my memory or read an article of
6 what the risk factors are. I want to use a tool that's
7 gonna make sure I don't miss any and that I'm critically
8 thinking about each of his risk factors.

9 And so the literature suggests that using this measure
10 is a good predictor of future sexual violence and that it's
11 at least as accurate or more accurate than using the
12 Static-99 and the Static-2002R.

13 Q. Okay. And what did your scoring of the SVR-20 reveal
14 about Mr. Chapman, and if you'd like to break it down into
15 the individual components, I think that would be helpful.

16 A. So there's three -- on this measure, there's three
17 categories of risk factor. There are the psychosocial
18 adjustment, the sexual offending, and the future planned
19 risk factors.

20 And so, as a result of looking through each of these
21 risk factors, interviewing Mr. Chapman, going through all of
22 his collateral information, it appears, from the scoring,
23 that he has a significant number of dynamic risk factors.

24 So for the psychosocial adjustment, he has problems
25 with what they call sexual deviation. And so that means he

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1 has this stable pattern of sexual arousal to nonconsent or
2 to rape based on the previous charges that he has with very
3 similar patterns of the offense, actions, his self-report
4 that he was aroused by the power, the script like that he
5 was following, the reporting that he was aroused, ejaculated
6 during these offenses.

7 He also has sexual health problems. Specifically
8 preoccupation with sex. He identified that this was a risk
9 factor for him, that he had at the time of offending, that
10 all he did was think about sex, that he was having sex with
11 multiple people. And so, on the SVR-20, it's looking at
12 things related to antisocial personality disorder. They
13 call it more related to psychopathy. But they're looking at
14 antisocial.

15 And so he has multiple traits of antisocial personality
16 disorder and he has some features of psychopathy, substance
17 use history problems. So, he has a history of alcohol use
18 that, at times, he attributed to be the reason that he was
19 sexually offending.

20 He also has relationship problems. So he had many
21 short term relationships and unhealthy maybe toxic
22 dysfunctional relationship with other people.

23 For nonsexual offending risk factor, he had that
24 assault charge. He had the DUI, disorderly conduct. So
25 more minimal stuff and then some of the disciplinary times

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1 he got in trouble within the prison.

2 For relationship problems, twice he had, you know,
3 unstable romantic relationships and some negative social
4 influences. So people he hung out with perhaps are also
5 getting into trouble. So that's the psychosocial adjustment
6 risk factors.

7 For the sexual offending risk factors, he has a history
8 of problems with physical harm in sexual offending. So,
9 beating a victim with a flashlight, threatening to kill a
10 victim, that's a risk factor. He demonstrated escalation in
11 sexual offending. So he offended against a girlfriend and
12 then against a stranger and he had escalated violence
13 between the three offenses and then some chronic sexual
14 offending.

15 So, we had multiple sexual offenses from 1986 to 1991.
16 Extreme minimization and denial of sexual offending. So
17 frequently he said that alcohol was the reason that he was
18 engaging in all of this behavior. And then some attitude
19 that support sexual offending, for example, hostility
20 towards women.

21 For the future plan risk factors, he had some lack of
22 realistic plans, which I think we'll probably talk about in
23 more detail, but generally had this plan to move to Georgia
24 with his brother and mentor youth. So kind of unrealistic.
25 And then negative attitude toward supervision as noted by

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1 his probation violations. So, those were the risk factors
2 identified on SVR-20.

3 Q. Okay. And Doctor Gillen didn't score the SVR-20,
4 correct?

5 A. No.

6 Q. Okay. But there is a, a fair amount of overlap between
7 an assessment of dynamic risk factors and the risk factors
8 identified in the SVR-20, right?

9 A. Yes, he considered the risk -- dynamic risk factors
10 just not maybe using a checklist.

11 Q. Okay. And, and he, Doctor Gillen, in fact, came up
12 with many of the same risk factors you were able to
13 identify, correct?

14 A. Yes.

15 Q. Okay. Thank you.

16 So, in addition to the SVR-20, you also did what's
17 called penile plethysmography, correct?

18 A. Yes.

19 Q. Okay. And what is the PPG test?

20 A. So that's a physiological measure of male sexual
21 arousal. It's measuring changes in blood flow to the penis.
22 So looking at erection or arousal in response to stimuli.

23 So usually like audiotapes of sexual situations,
24 situations that they're listening to. They can describe
25 sexual situations with children, rape scenarios, consenting

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1 adults, and we're looking to measure sexual arousal in that
2 way.

3 Q. Okay. And, and the PPG in Mr. Chapman's case was not
4 interpretable, correct?

5 A. Correct.

6 Q. All right. And did you consider that information in
7 your final calculus?

8 A. I, I didn't. So it's -- he completely flatlined. So
9 it would be meaningful if she showed sexual arousal with
10 consenting adults and nothing else. But because there was
11 no arousal to anything, then it's neither a data point for
12 or a data point against.

13 Q. Okay. Thank you.

14 So, going through all of these considerations including
15 the additional testing, the SVR-20, and all the things we've
16 previously discussed, did you assign any sort of a need for
17 treatment to Mr. Chapman?

18 A. Yes.

19 Q. Okay. And what was that using the SVR-20?

20 A. So, for the SVR-20, it kind of guides you through
21 thinking about this person's individual level of risk based
22 on the risk factors that they identify. And so, the summary
23 risk rating from the SVR-20 was that he was in the high
24 range because a high level of effort or intervention is
25 required to prevent future acts of sexual violence.

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1 And so you also look at risk for future serious
2 physical harm and that also was a high risk based on his
3 prior violent offenses in which, you know, threatening to
4 kill somebody, hitting them with a flashlights, choking
5 them, and additionally he also had the escalation in
6 violence. So that made him a significant risk.

7 And then thinking about the need for like immediately
8 taking action, that was rated high to moderate because
9 currently he is incarcerated. So he doesn't pose a risk --
10 as much of a risk but he would be high risk if he was in the
11 community. And so, basically he demonstrates a risk level
12 that would require intervention.

13 Q. Okay. Now, what protective factors?

14 A. So protective factors is like an emerging field. It's
15 kind of in its infancy of what's looking at -- what's looked
16 at in the research literature. And so, theoretically,
17 protective factors lower the risk of reoffending.

18 And so there have been some studies but there have been
19 no risk factors that have demonstrated consistent protection
20 against reoffending. Also we don't exactly know what is
21 meant by a protective factor. Is it like the opposite of a
22 risk factor or is it the absence of a risk factor.

23 So the literature's -- is mixed but hopefully we get
24 more studies on that because it is important to know what
25 protects somebody from reoffending.

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1 Q. Okay. And Mr. Chapman was -- you discussed
2 Mr. Chapman's plans if he were to be released with you,
3 correct, or with him, correct?

4 A. Yes.

5 Q. And what did he indicate to you?

6 A. So he told me that his plan is to move to I think
7 Clayton, Calhoun -- Clayton County, Georgia to live with his
8 brother, that he wants to have a car business or expand his
9 brother's car business. He wants to have as many car
10 companies as he can. He wants to have like 10 lots of cars.
11 He wants to help mentor children in Georgia. That's
12 basically what he told me. I followed up with some
13 questions but that was his plan as reported to me.

14 Q. Okay. Did he also report any sort of treatment plans
15 with Sheriff Victor Hill?

16 A. So I asked him about his plans for the treatment -- for
17 treatment and initially he said that he wanted to get into
18 college and get an associates degree in business. But when
19 I asked really more specifically about sexual behavior
20 treatment, he said that, you know, if I need it to learn a
21 little more about it, prevent me from coming back, what the
22 problem is, that he would ask Sheriff -- is it Victor Hill?

23 Victor Hill in Georgia for his help, that Victor Hill
24 had a program that he could set him up with.

25 Q. Okay. And, in fact, Doctor Gillen did some research

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1 into that, correct?

2 A. Yes.

3 Q. And what did you learn?

4 A. From Doctor Gillen's reports -- because, to Doctor
5 Gillen, Mr. Chapman reported that he was going to live in
6 Sheriff Victor Hill's group home for six months.

7 Q. Uh-huh. (Affirmative).

8 A. So when I met with him later, he was gonna live with
9 his brother. But Doctor Gillen looked into this further
10 because the plan was to live in this group home for six
11 months and Doctor Gillen called the Sheriff's Office and was
12 informed that like no such group home exists. Doctor Gillen
13 couldn't find any additional information about this
14 placement and noted that the United States Department of
15 Justice had released a statement indicating that Sheriff
16 Victor Hill of Clayton County had recently been charged with
17 violating the civil rights of several people in jail.

18 I also looked into this. Did not call but looked at
19 it on the Internet before today and it looks like there's a
20 trial date set. So nothing is come from that but somebody
21 who has been charged with federal offenses.

22 Q. Okay. So, so that plan to attend Sheriff Hill's
23 program doesn't actually even exist, does it?

24 A. To my knowledge it does not exist.

25 Q. Okay. And Sheriff Hill is under indictment for

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1 violating the rights of his prisoners?

2 A. That's what it appears.

3 Q. Okay. Thank you.

4 And with respect to owning 10 car businesses and
5 expanding his brother's business in Georgia and mentoring
6 youth, does that seem realistic to you.

7 A. Not necessarily. I don't know how realistic it is to
8 think that you can have access to children after you have
9 sexual offenses. It seems a little grandiose, a little
10 inflated. Not the most unrealistic I've, I've heard but
11 maybe not very realistic.

12 Q. Okay. And would that be consistent with the
13 personality pathology that you were able to identify?

14 A. Yes.

15 Q. Okay. That grandiose I'm gonna get out there and do
16 all these wonderful things but that's just simply not
17 realistic?

18 A. That would be more related to psychopathy. But that
19 kind of impulsiveness, failure to plan ahead is antisocial.

20 Q. Okay. And, in fact, Mr. Chapman admitted that he had
21 no reasonable plan the first time that he was released from
22 prison and he failed.

23 Is that accurate or no?

24 A. That's right. He, he mentioned that he failed before
25 because he had like no set plans.

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1 Q. Uh-huh. (Affirmative).

2 A. And so I, I -- as identified by him, having set plans,
3 realistic plans is really important for him to not set
4 himself up to fail.

5 Q. Okay. So, at this point, given the unrealisticness of
6 his plan, is it your opinion that he would be being set up
7 to fail if he were released?

8 A. I think that is a strong potential based on the plan
9 that he reported to me.

10 Q. Okay. Now, you asked him about his plan how not to
11 reoffend.

12 Can you discuss what he told you and whether you think
13 that's actually realistic given all the information that you
14 have about him and about sex offenders in general?

15 A. Yes.

16 So, I kind of go through like an interview that I asked
17 everybody that I evaluate for this kind of an evaluation of
18 how they're gonna prevent themselves from reoffending. Like
19 how are they gonna stop themselves. How are they going to
20 not create any new victims. And one thing that I have them
21 do is I have them rate like how risky they think they are on
22 a, a scale of one, being like almost no risk, to 10 like I'm
23 gonna offend the day I get out.

24 And so he rated himself as a zero initially. And so
25 when I, you know, told him nobody's at a zero, I'm not at a

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1 zero, anybody can potentially offend, one is the lowest
2 score, he revised that to a five which is in the middle of
3 that risk range. But so he doesn't have any strategies for
4 how he's going to manage this arousal that he has and
5 prevent reoffending.

6 So he told me that he doesn't ever think about sex,
7 that he hasn't masturbated in years and years, and that he,
8 he would stop himself -- like he won't even think about sex.
9 When I asked him like what could put you at risk, he said
10 thinking about sex could put him at risk for sexually
11 offending.

12 This is particularly concerning to me because, during
13 my evaluation, Mr. Chapman did not discuss his current
14 sexual fantasies or arousals. So we don't actually know
15 what he -- what he's doing, what he's thinking about when
16 he's thinking about sex. And so we know that sexuality is a
17 natural, normal part of human functioning. So, it's really
18 unlikely that he has no thoughts at all about sex and the
19 fact that he believes that just thinking about sex would put
20 him at risk is really concerning.

21 And so he has really limited insight into the reasons
22 that he offended, his risk for offending, how he's going to
23 manage this arousal that he has.

24 He also told me that he's just going to avoid people
25 who aren't positive people by having these long term plans

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1 and that he's not gonna look at women as sex objects. But
2 some of this is concerning because, although he reported
3 offending against the last victim with his brother-in-law,
4 there's no other person mentioned in the police reports that
5 I reviewed and no other negative influences for the first
6 two offenses.

7 So, it's my opinion that he doesn't have a realistic
8 strategy for how he's going to prevent this in the future
9 and that, if just thinking about sex is a risk factor,
10 that's concerning because we don't know what he's thinking
11 about when he thinks about sex.

12 Q. Okay. And he, in fact, reported to you that he still
13 does not know why he offended the 60 year old victim, the 15
14 year old, or the 20 year old?

15 A. What was---

16 Q. Is that accurate?

17 A. Yes, yes and no. He was inconsistent and changed it a
18 few times. When I brought up power, he said oh, I think --
19 yeah, that's exactly it. But then he also said like it
20 was -- he just wanted sex. But he couldn't or didn't
21 explain why he would rape that victim when he was like was
22 with his girlfriend, a different girlfriend like at the same
23 time or earlier that day. So he could of gotten sex in that
24 way.

25 Q. Okay. And so he wasn't able to explain to you why he

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1 chose to rape individuals when he had more than enough
2 willing consensual partners, correct?

3 A. Right.

4 Q. Okay. So, did you come to any conclusions, having
5 diagnosed Mr. Chapman with both a personality disorder and
6 paraphilic coercive disorder, did you come to any
7 conclusions regarding his risk to reoffend?

8 A. Yes.

9 Q. And what were those conclusions?

10 A. So it's my opinion that he is at high risk to reoffend.
11 I think that his offense behaviors were driven by a
12 combination of him having antisocial personality disorder
13 where he doesn't, you know, care about the safety,
14 wellbeing, desires of his victim coupled with arousal to
15 coercion or rape.

16 And so we know that both of those things, on their own,
17 are significant risk factors for sexual violence. And we
18 know that, coupled together, that can increase the risk like
19 when you put them together. So, he has this arousal to
20 nonconsent and he has a personality disorder where he
21 doesn't care about other people.

22 So, I think that that is what was driving his offenses
23 that he had, and when we score him on risk measures, he's,
24 he's a significantly high risk on those risk factors. So he
25 has a lot of characteristics associated with reoffending.

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1 He's had treatment before. It's been a while but he
2 had treatment and he's still reoffended a while ago. And he
3 has a number of other risk factors besides the ones scored
4 on the Static.

5 He has the preoccupation with, with sex, the history
6 of. He has, you know, the negative influences. But it's
7 really his personality pathology, personality problems with
8 this arousal coupled with his extremely high risk scores.

9 Q. Okay. Thank you.

10 So, is it your opinion that Mr. Chapman's personality
11 disorder, in combination with the paraphilia, affects his
12 volitional control to the extent that he is predisposed to
13 commit sexually violent offenses?

14 A. Yes, I think that that -- those disorders, in
15 combination, account for his offenses.

16 Q. Okay. And do you believe he has serious difficulty in
17 controlling this propensity?

18 A. When it comes to the sexual behavior, I think that he
19 does, yes.

20 Q. Okay. And do you believe that he is likely to
21 commit a new sexually violent offense if he is not
22 committed for long term control, care, and treatment?

23 A. It is my opinion that he needs treatment to manage this
24 arousal especially in light of his personality disorder.

25 So, it is my opinion that he needs that treatment to prevent

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1 a new offense.

2 Q. Okay. And do you believe that that predisposition and
3 the need for treatment poses a menace to the health, safety,
4 and welfare of society at large?

5 A. Again, I think that it -- putting it all together, he
6 represents a high risk.

7 Q. Okay. Thank you.

8 And are use of the record review, the interview, the
9 PPG, the standardized testing that you conducted, as well as
10 the actuarial instruments and assessing Doctor Gillen's
11 report and his assessment of dynamic risk factors in
12 combination with the SVR-20, is that all standard practice
13 and generally accepted in your field?

14 A. Yes.

15 Q. Okay. And did you draw all of your conclusions to a
16 reasonable degree of psychological certainty?

17 A. Yes.

18 Q. All right. Thank you, Doctor Gottfried. I have
19 nothing further. Please answer any questions Mr. Falk has
20 for you.

21 THE COURT: Mr. Falk.

22 MR. FALK: May I approach, Your Honor?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, now would be an appropriate time for us to break for
3 lunch. It's about 12:26.

4 I would ask that you get back here by 1:45 and we'll
5 start back at 2:00. That should give you ample time to make
6 arrangements, to get something to eat.

7 The bailiffs, they'll escort you out. You're free to
8 leave the campus of the courthouse. You're not allowed to
9 talk to anybody about your testimony. Don't discuss among
10 yourselves or with anyone else. And then, when we come
11 back, I'll ask you if anybody did have any contacts with
12 you. I'm not suggesting that they did. I just have to
13 cover those bases.

14 All right. So we'll see you back at two o'clock then.
15 Madam Bailiff.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Madam Clerk.

19 THE CLERK: Yes, Your Honor.

20 THE COURT: So when the jury leaves out, the audience
21 can't walk out with them. Somebody has to walk with them.
22 I mean you've got to kind of get control on this thing.

23 THE CLERK: Yes, Your Honor.

24 THE COURT: All right. Okay. So we are -- the jury's
25 been excused for lunch.

1 Doctor Gottfried, I'm gonna ask that you stay with us a
2 little bit longer. We're gonna break for lunch and we'll
3 come back and we'll resume with your, your testimony.

4 THE WITNESS: Sure.

5 THE COURT: Appreciate you being here. You can step
6 down. Obviously you can't talk to anybody about your
7 testimony midstream and while on the witness stand.

8 All right. Mr. Falk.

9 MR. FALK: Your Honor, I'd like the Court to consider
10 about whether some of Doctor Gottfried's testimony opened
11 the door to me being able to ask questions about treatment.

12 Let me say that she had testified that she's
13 responsible for -- she's in charge of the SVP, whatever the
14 sexual offender. I mean she's responsible for treatment
15 there. She said that she's a member of the organization for
16 the association for the -- whatever the, the -- ATSA,
17 whatever that was, the psycho treatment association. So she
18 said that she was a member of that.

19 But, more importantly, she said that she is starting an
20 intensive outpatient treatment center. She also testified
21 at one point in this stage when we're talking about maybe
22 risks, she said I can treat somebody about not being
23 attracted to maybe it was children and I could treat
24 somebody about not being attracted to this. I think she
25 certainly has thrown out there that she knows some stuff

1 about treatment and I think it's unfair, especially when she
2 said that she could do outpatient treatment, why I cannot
3 ask her some questions about that.

4 MS. SHAW: The reason, Your Honor, is because she was
5 not asked to opine on what kind of treatment Mr. Chapman
6 needs. That's not why she's here. She's only here to ask
7 the question of does he have a mental abnormality or
8 personality disorder that makes it likely that he will
9 reoffend. She's not here to assess what the appropriate
10 modality to deal with him is gonna be. That is up to the
11 staff at wellpath where he will be committed if this jury
12 finds he's a predator.

13 So, so I'll just reiterate my previous arguments on
14 this topic. I don't think that there's been any door opened
15 for discussion of any treatment that would be relevant to
16 Mr. Chapman nor is it appropriate in the context cause it
17 would confuse the jury about can he get inpatient or
18 outpatient rather than should he be inpatient to begin with,
19 like does he qualify.

20 MR. FALK: She said that she treats sex offenders.

21 MS. SHAW: She's not treating Mr. Chapman. There is no
22 treatment relationship here. She only conducted an
23 independent evaluation to determine if she thinks he needs
24 to be in the program or not.

25 MR. FALK: She gave an opinion that he needs treatment.

1 So, I think I'm unreasonably handcuffed if I can't ask her
2 about what kind of treatment. I mean she said right from
3 the stand, last thing, he needs treatment and she also said
4 I do treatment. I can treatment somebody not to be
5 attracted to this. I can treat somebody not to be attracted
6 to that. I have an intensive outpatient treatment program.

7 MS. SHAW: which she did not say was appropriate for
8 Mr. Chapman nor was she asked to opine whether it would be.

9 MR. FALK: well---

10 MS. SHAW: She was asked a very specific statutory
11 question. That's what she answered. She thinks he needs
12 treatment and that meets criteria as a predator.

13 So I mean the, the record is pretty clear on this, Your
14 Honor. So, I'll defer to the Court's wisdom.

15 THE COURT: All right. You know you had to ask her
16 whether he needed treatment or not. She said yes. She
17 offers treatment but she hasn't come up with a treatment
18 plan for him.

19 MS. SHAW: Correct.

20 THE COURT: So I'm reluctant, Mr. Falk, to get into
21 that. I, I, I, I hear you and you make a very good
22 argument. But I don't believe the door's been opened and I
23 think that, should we go down that road, we're gonna go -- I
24 think we're gonna go far afield if we go down that road. I
25 just -- so I'm, I'm -- I would respectfully overrule your

1 request and I agree with Ms. Shaw.

2 MR. FALK: Your Honor, again, I, I think, think, in
3 order to preserve, could I proffer some questions from her?

4 MS. SHAW: No, Your Honor. I would not, I would not
5 even consent to hear the proffer. Your Honor has ruled that
6 we're not going to be discussing treatment or type, and
7 that, that is the Court's ruling and I don't think it's
8 appropriate.

9 THE COURT: So, you're suggesting, when we come back
10 from lunch, you ask her some questions outside the presence
11 of the jury covering this area.

12 Is that right?

13 MR. FALK: Yes, cause I mean obviously you and I
14 didn't -- respectfully disagree with your decision there,
15 and in for me to show -- I think in order for me to preserve
16 that issue on appeal, I would have to show -- we'd have to
17 know what she would testify to and then it would be up to
18 the Court to determine whether or not that information
19 was -- should have been heard by the jury.

20 THE COURT: All right.

21 MS. SHAW: Judge, she---

22 THE COURT: The only question before the Court is
23 whether or not we'll -- we'll allow the proffer and let me,
24 let me think about it over lunch. And when we come back,
25 we'll -- I'll address that on the record outside the

1 presence of the jury.

2 MR. FALK: Thank you.

3 MS. SHAW: Your Honor, just before we, we adjourn and,
4 and break, I do need to put a concern of mine on the record
5 just to preserve the, the concern and memorialize it in the
6 transcript.

7 THE COURT: Please do.

8 MS. SHAW: Thank you, Your Honor.

9 Earlier this morning I noticed there is at least one
10 relative of Mr. Chapman in this courtroom and also there's
11 another individual who was on the jury panel yesterday but
12 who was not ultimately selected to be a juror who is sitting
13 in the back. And yesterday I also heard that individual
14 speak to Mr. Chapman, as he was exiting, saying good luck,
15 man.

16 So, I have a very big concern that that individual is
17 now here today, observing this trial. He's a family member
18 of Mr. Chapman and I'm just concerned that there may be some
19 sort of impropriety going on with that individual being
20 here.

21 I mean certainly it's an open courtroom and he is
22 allowed to be here. But him saying on the record yesterday
23 that he could be fair and impartial, and now showing up as a
24 family member for the respondent is extremely concerning.

25 THE COURT: I share those concerns. However, I don't

1 know, at this juncture, what's available to the Court. I, I
2 could question him as to his truthfulness when we were
3 qualifying the jury but I -- he was not selected.

4 MS. SHAW: I believe he was actually stricken by me,
5 Your Honor.

6 THE COURT: You, you, you did use a strike for him?

7 MS. SHAW: I, I believe I did. I'd have to doublecheck
8 the paperwork, but I believe he was on there, and I was
9 concerned about having a family member on the jury.

10 THE COURT: And I recognize those concerns that you
11 have and you had the Court question him I think on at least
12 two occasions.

13 MS. SHAW: Yes, Your Honor.

14 THE COURT: And the first time you indicated that there
15 was, there was some cousin relationship. It did not sound
16 like they were close in that he said I can be fair and
17 impartial. And then it came up again under another question
18 and he indicated the same thing. I didn't hear the comment
19 when he was leaving the courtroom but I did note his
20 presence for the Court earlier. I'll think about that, Ms.
21 Shaw, as to what I think's appropriate but --.

22 MS. SHAW: I'm not asking that he be excluded from the
23 courtroom, Your Honor. Like I said, we are in open court.
24 But I'm concerned about the appearance of impropriety with
25 him being here being a family member and our jurors knowing

1 that he's a family member. They, they were all here
2 yesterday. They all heard that.

3 So it just, to me, is very concerning. And as an
4 officer of the Court, I will go on the record as saying I
5 heard that man, Mr. Nivens, say good luck man to his cousin,
6 Mr. Chapman, yesterday as he was walking out of the
7 courtroom.

8 THE CLERK: Your Honor, I'm looking at the strike sheet
9 from yesterday and I do not see him on the strike sheet.

10 MR. FALK: Mr. Nivens I don't think made the list, did
11 he?

12 MS. SHAW: I thought he did.

13 THE CLERK: He was not in the top 26.

14 THE COURT: Yeah, I didn't remember him being---

15 THE CLERK: There one that---

16 MS. SHAW: I could of sworn he was on his list.

17 THE CLERK: Ms. Shaw, the ones that you struck was 40,
18 124, 144 --.

19 MS. SHAW: You're right, Madam Clerk.

20 THE CLERK: Three---

21 MS. SHAW: I'm looking at my own strike sheet. So,
22 Your Honor, I take that back. I do apologize but I'm not
23 going to not let the Court know what I heard, what I
24 observed, and my serious concerns about that individual
25 being here.

1 MR. FALK: Your Honor, if I could respond?

2 THE COURT: Yeah, and just let me say something for the
3 record too, and I will, Mr. Falk, I was deeply concerned if
4 you used one of your strikes on somebody who may have given
5 false information to the Court.

6 MS. SHAW: Yeah, I -- that -- I apologize again, Your
7 Honor.

8 THE COURT: It doesn't appear that happened.

9 But, Madam Clerk, I appreciate you clarifying that.

10 But I share your concerns about his appearance, his
11 presence with a jury that he sat among. There was no
12 suggestion that he tried to influence anybody. But for him
13 to come and sit today -- at first I thought he was just a
14 curious observer.

15 But, Mr. Falk, go ahead.

16 MR. FALK: Your Honor, I think the attorney general's
17 suggesting that people can't have family members who are
18 supporting them in the courtroom.

19 MS. SHAW: That's not what I'm suggesting at all, Your
20 Honor. I'm suggesting that a member of the jury panel, who
21 was not selected, showing back up at court who claimed he
22 had little to no relationship, they're second cousins, now
23 being here to support his cousin in court in front of the
24 individuals who saw him and most likely spoke with him
25 yesterday.

1 Yeah, that's very concerning. Have no problem with the
2 other individual, the female who is here. I don't know her.
3 She wasn't on the panel. She can stay. There's, there's no
4 issue with that at all. It's Mr. Nivens who is the issue.

5 MR. FALK: Your Honor, again, if I finish my---

6 (WHEREUPON, the clerk made an indiscernible comment at
7 this time.)

8 MR. FALK: What's that?

9 MR. CHAPMAN: I need to let the Court know we's not no
10 second cousin. Me and him is third cousins.

11 MS. SHAW: Either way, it's a, it's a family
12 relationship, a blood relationship, Your Honor.

13 THE COURT: Okay.

14 MR. FALK: Your Honor, I, I still -- I don't see that,
15 provided that he's not communicating with the jury, in any
16 way mingling with the jury, I mean I think it's important
17 for the jury to know that my client has supporters in this
18 community, that he's got family support that he can rely on.
19 The fact that he's coming back here to support somebody who
20 he knows, I, I just can't see how that's at anytime
21 prejudicial or it's gonna affect this jury.

22 MS. SHAW: I would most respectfully disagree.

23 THE COURT: (Indiscernible) though, Mr. Falk, cause
24 that's the problem is that he sat out there and said he can
25 be fair and impartial and he turns around here and he's, and

1 he's supportive and that's -- I'm not saying -- I'm not -- I
2 do not know that he gave me misinformation. But I -- Ms.
3 Shaw makes a good point. Let me -- I'm -- let me say this.

4 I'm not gonna exclude him from the courtroom but -- I'm
5 not gonna exclude him from the courtroom. I note Ms. Shaw's
6 concerns and objections and, and I'm trying to think.

7 But go ahead, Madam Clerk.

8 THE CLERK: Your Honor, may I make a suggestion that
9 Madam Bailiff make sure that the, the jury panel is
10 completely out of the way before the release of anyone from
11 the---

12 THE COURT: Now, I'm gonna get to that but that doesn't
13 really go to his point, which the, the -- so he's -- I'm not
14 gonna exclude Mr. Nivens from the courtroom. However, it's
15 got to be -- he's gonna have to be over there. So, I don't
16 want any contact.

17 Now, the second issue, been having trouble with the
18 jury all morning. When the jury left, the lady popped up
19 and took off right in behind them and filed out behind them.

20 THE CLERK: That's---

21 THE COURT: That can't -- that can not happen again.

22 THE BAILIFF: He stopped her.

23 THE COURT: The, the -- we're gonna have to figure out
24 a better solution or I'm gonna put them back here in this
25 room and that's what I'm gonna do because that's twice when

1 they left the courtroom, and twice when I saw things that
2 made me a little uncomfortable.

3 The first two had a question -- I don't know. The man
4 apparently went outside to smoke. That can't happen. But
5 then the -- as soon as they were going, I saw a lady pop up
6 and walk out right behind them and was not stopped. The
7 jury has to be completely sequestered away from everybody
8 else here.

9 THE BAILIFF: And Your Honor?

10 THE COURT: I don't know if counsel even -- I don't
11 know if counsel even saw that.

12 MS. SHAW: well, Your Honor, that's my concern and I'm,
13 I'm -- the more we talk about this, the more I am getting
14 concerned and I'm -- you know, that individual who I, like
15 yourself, have observed chasing the jury in and out, with
16 the other jurors coming back in, and all of the
17 irregularities that we have had so far this morning,
18 especially considering Mr. Nivens who, you know, I, I don't
19 know if he spoke to the jury yesterday or to the other
20 jurors and told them what he thinks of his cousin. I, I
21 have no idea.

22 But the fact is, is that they're very well could of
23 been some improper influence from Mr. Nivens and there
24 certainly appears to be an attempt to improperly influence
25 the jury by the female who is here and possibly also

1 Mr. Nivens. I don't know. But the fact is, is that I think
2 there is considerable risk here and I will be lying if I
3 didn't tell the Court I was prepared to ask for a mistrial.
4 But I would need to confirm with my boss before I actually
5 make that request.

6 THE COURT: Right.

7 MR. FALK: Your Honor, I think the remedy then, only
8 because I just went through this on a PCR where I did not do
9 this, is to voir dire each of the jurors separately, not in
10 the presence of the other jurors, and ask them whether or
11 not they talked to Mr. Nivens or if they talked -- who was
12 Veronica?

13 What was the---

14 MR. CHAPMAN: Vanessa.

15 MR. FALK: Vanessa.

16 MR. CHAPMAN: My sister.

17 MR. FALK: His sister.

18 MS. SHAW: Well, Your Honor, I think that there can be
19 an inference of impropriety at this point.

20 THE COURT: All right. You, you -- when we come back,
21 you tell me -- when you come back, you tell me what you want
22 me to do.

23 MS. SHAW: Yes, Your Honor.

24 THE COURT: If you want me to voir dire them
25 individually, I will. And if you -- and if that -- and, and

1 maybe that will then determine whether or not you make a, a
2 particular motion. But I'm going to -- instructions to
3 everybody here, his family members will not sit on that
4 front row. They're going to sit at least three rows back
5 and they will not get up at any point when this jury's
6 leaving this courtroom.

7 And when -- before that jury comes in, they're either
8 sitting there or they will not be able to come into the
9 courtroom. I don't want them coming, coming in and out.
10 It's not their fault that we have an, an imperfect system
11 here. I'm not suggesting that the lady did anything
12 improper. It's all about appearance.

13 Now, Madam Clerk, what did you to want to tell me?

14 THE CLERK: Your Honor, just for clarification of the
15 record, Sergeant Perry did go out and get the female before
16 she---

17 SERGEANT PERRY: I held her at the door.

18 THE CLERK: He held her at the door right there.

19 THE COURT: Thank you, Sergeant. That's---

20 THE BAILIFF: And, Your Honor, may I say something
21 while -- since they're here?

22 On behalf of this jury, they're the most unruly jury
23 I've ever had but that's why I lead them, and one comes
24 behind them, and they so -- I have already---

25 THE COURT: All right. We're adjourned---

1 THE BAILIFF: ---I promise you---

2 THE COURT: ---for lunch.

3 THE BAILIFF: ---told them to go to that room. Judge,
4 I---

5 MR. FALK: Thank you, judge.

6 (WHEREUPON, Court was in recess for the lunch hour.)

7 THE COURT: All right. Okay. Court will come to
8 order.

9 The Court had a conversation with counsel in chambers
10 and believe that Ms. Shaw would like to raise some issue
11 with the Court.

12 MS. SHAW: Yes, Your Honor.

13 After we broke for the morning session, I, I had the
14 opportunity to speak with my supervisor and my travel
15 partner back at the office. And given the irregularities
16 that have occurred with two of the jurors, and also with
17 Mr. Chapman's family, and certain conduct they engaged in,
18 we have serious concerns about potential juror misconduct
19 and not cooperating with our bailiffs and our sheriff's
20 officers and also potential jury intimidation by the family.

21 So we are requesting, at this point in time, a mistrial
22 and we are also requesting that the Court voir dire Court
23 staff as to what they observed with respect to the two
24 jurors that that were issues with as well as Mr. Chapman's
25 family. So, we would just ask that they be sworn and placed

1 their observations in the record so that, at some later
2 date, we can basically protect the record for purposes of an
3 appeal.

4 THE COURT: All right. Okay.

5 MR. FALK: Your Honor, we don't -- I don't -- we
6 don't -- I don't think a motion for a mistrial is, is
7 necessary under the facts so far and certainly I don't think
8 there's been any evidence of active jury tampering on the
9 part of my client's family.

10 So, I mean I, I don't think the motion for mistrial is
11 necessary. I certainly don't want -- I don't think it's
12 necessary to voir dire your staff because I would assume
13 that your staff would report any type of irregularity in
14 what they observed. So, again, we would just ask to be able
15 to go forward.

16 THE COURT: Okay. With regard to the two jurors
17 earlier, I did -- they were under oath and I did question
18 them following somewhat of a brief just a protocol and they
19 both indicated they had not been -- no one had spoke to
20 them. They had not been influenced by anyone and that they
21 had just a simple -- an innocent mistake. Not simple.

22 So, with regard to -- I believe we're specifically
23 speaking as to Mr. Nivens who was on the jury panel who was
24 not selected nor was his -- was a strike necessary and I
25 understand, as he was leaving the courtroom, when the Court

1 dismissed the jury panel, that he wished good luck to the
2 defendant and then Mr. Nivens came back today to observe and
3 presumably to lend support to the defendant.

4 But it's also another -- a, a lady that was with him.
5 She was never identified to the Court. I think I -- I think
6 in chambers I've heard her name but I don't, I don't recall
7 it. And the Court has expressed some concern earlier when I
8 dismissed the jury and the format, the way that the jury
9 leaves the courtroom, they sort of snake through the back of
10 the courtroom and then out the main door. She got up to, to
11 leave and the Court questioned some staff at that time, not
12 under oath, and they just indicated that she had no contact
13 with them and she was not allowed to continue walking with
14 them.

15 So, what I'll do, just for the benefit of the record,
16 is, is if our two bailiffs, I'm gonna place you under oath,
17 identify you, and you just answer just a couple questions
18 and I'll also do that with Sergeant Perry.

19 Madam Bailiff, you can raise your right-hand.

20 (WHEREUPON, the bailiff was placed under oath at this
21 time.)

22 THE COURT: All right. And Joy serves to one of the
23 exceptional bailiffs not just in Chesterfield County but the
24 entire Fourth Circuit.

25 You have -- you escorted them out. I believe you were

1 at the front of -- this -- and this was the first break that
2 we took.

3 THE BAILIFF: Yes, Your Honor.

4 THE COURT: And did you observe anybody talking to any
5 of the jurors as they were -- as, as -- in your presence?

6 THE BAILIFF: Your Honor, I was turned looking at them,
7 but with the drink machines, those two that slipped out, you
8 know, innocently. They thought they could. I saw them
9 coming.

10 Nobody talked to any of my jurors. They actually
11 wanted to go to the bathroom and I said not until they're
12 cleared. So they came on in their jury room. We cleared
13 the bathrooms and then we took them to the bathrooms. No
14 one has spoken to any member of my jury.

15 THE COURT: And, Wanda Miles, our former clerk, that's
16 your, that's your understanding as well?

17 THE CLERK: Yes, sir.

18 THE COURT: Okay.

19 THE CLERK: Whenever I had went to the restroom back
20 here and come out and noticed them leaving, and, you know,
21 there's two sitting there, and I asked them did they need to
22 leave and you said yes. So, I asked them to go out and I
23 was following them out.

24 THE COURT: Okay.

25 THE CLERK: So, I didn't even see the other two.

1 THE COURT: Okay. All right.

2 All right. And Sergeant Perry.

3 (WHEREUPON, Sergeant Perry was placed under oath at
4 this time.)

5 THE COURT: And, specifically, Sergeant Perry, at the
6 second break I, I, I dismissed the jury for lunch. You
7 were, you were at the door providing security and the jury
8 went through, and then the lady who is identified as being a
9 family member of the defendant, she got up to walk out and
10 did you observe that?

11 SERGEANT PERRY: Yes, sir, I did and I paused her at
12 the doorway. I made her stop up and wait till the jury
13 caught up and everybody was back up toward the entry door to
14 go into the jury room.

15 THE COURT: Did you observe any contact with any of the
16 jury or --?

17 SERGEANT PERRY: No, sir.

18 THE COURT: Okay. All right.

19 Okay. All right. And, and just for -- and in the
20 presence of everybody, during the testimony, when we were
21 dealing with the two wayward jurors, I, I was trying to
22 communicate with multiple people at one time and I believe
23 that my -- rightfully perceived that I was frustrated at, at
24 some of the bailiffs and I just want to express to them that
25 I was not and that I appreciate what they do, not just for

1 Chesterfield County, but for me personally and I don't want
2 them to think in any way, shape, or form that I was upset
3 with them about how things were being handled. I usually
4 just blame my law clerk for such things.

5 Okay. So, Ms. Shaw, I questioned them and I'm
6 satisfied to their responses.

7 Did you have any questions you wanted to ask?

8 MS. SHAW: Just one for Sergeant Perry.

9 Did he observe Mr. Nivens interact with any of the
10 jurors or attempt to interact with any of the jurors?

11 SERGEANT PERRY: I want to make sure, Mr. Nivens, would
12 that be the black male that has the blue shirt that's been
13 sitting in the courtroom?

14 MS. SHAW: Yes, sir, that's correct.

15 SERGEANT PERRY: I am---

16 MS. SHAW: He was a member of yesterday's panel but
17 was---

18 SERGEANT PERRY: I have not seen him with any direct
19 contact with any jurors.

20 MS. SHAW: Okay. And, and, Ms. Hurst, and Ms. Miles?

21 THE BAILIFF: Absolutely not. They have not had any
22 contact with any of my jurors.

23 MS. SHAW: Thank you, ladies.

24 I have nothing---

25 THE COURT: And just for the record, since the record

1 won't reflect who was closest, Sergeant, you're the closest
2 to that witness -- I mean to that -- to Mr. Nivens who we've
3 identified as sitting in the audience earlier?

4 He's not present now.

5 But you would of been -- you were closest to him.

6 Is that correct?

7 SERGEANT PERRY: At the time -- when they---

8 THE COURT: Well, throughout the trial, you typically
9 are in position near the door.

10 Is that right?

11 SERGEANT PERRY: Yes, sir.

12 THE COURT: Okay.

13 SERGEANT PERRY: Yes, sir.

14 MS. SHAW: The only other thing I would ask that the
15 record reflect is that Mr. Chapman himself indicated that
16 Mr. Nivens is his third cousin.

17 THE COURT: Okay. Thank you. I do believe he did
18 mention that earlier.

19 MS. SHAW: Thank you, Your Honor.

20 THE COURT: Mr. Falk, you want to be heard?

21 MR. FALK: Just for window dressing.

22 Also the record should reflect that the lady who got up
23 and left, she wasn't really violating any kind of Court
24 order. There was no instruction please remain seated until
25 the jury gets out or anything like that. So it -- yeah.

1 THE COURT: In fairness to her, you're right and, and I
2 take responsibility for that. She didn't do anything. The
3 appearance was my concern and then our bailiffs and our, our
4 deputy, they, they, they've clarified any concerns that I
5 may of had.

6 MR. FALK: Thank you.

7 THE COURT: Okay. All right. Thank y'all for that.

8 The remaining issue, I believe I've addressed the,
9 the -- at least questioning of anybody and I'm, I'm going
10 to -- I am not going to individually voir dire any of the
11 jurors. I'm satisfied that they've been segregated or
12 sequestered away from, from any, any type of conflict or
13 influence with a third party.

14 We've referenced our third parties. Mr. Nivens and
15 the -- I believe the sister of the defendant is they've,
16 they've not -- I've, I've been able to observe them.
17 They've not done anything in my presence that would suggest
18 that they acted inappropriately or tried to influence the
19 jury.

20 I know there's some concerns that just Mr. Nivens
21 having been on the jury panel and then coming back today
22 lending support could send the wrong message. But I don't,
23 I don't have anything beyond that to, to substantiate. So
24 I'm not going to question that -- the, the, the, the jury
25 individually about that.

1 As it regards to the motion for mistrial, based upon I
2 think kind of questioning the, the courtroom staff, I'm
3 gonna respectfully deny the motion for mistrial. I'm
4 satisfied that there's no undue influence, no conflicts, and
5 that I'm satisfied with all responses we're provided.

6 Yes, ma'am.

7 MS. SHAW: I would just say thank you, Your Honor. I
8 appreciate the consideration in allowing me to make the
9 record.

10 THE COURT: All right. Thank you.

11 MR. FALK: Nothing further.

12 THE COURT: Doctor -- I'm sorry, Mr. Falk.

13 Did you have---

14 MR. FALK: Oh, I just was saying I have nothing further
15 on that.

16 THE COURT: Okay. All right. Doctor, if I could get
17 you to come back to the witness stand.

18 MR. FALK: Before we bring the jury in, the Court is
19 going to allow me to talk to -- proffer this witness?

20 THE COURT: Oh, I forgot about that.

21 And, doctor, once you're comfortable, if you'll just
22 state your name again for the record.

23 THE WITNESS: Sure.

24 Doctor Emily Gottfried.

25 THE COURT: And, Doctor Gottfried, you've not had any

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1 conversations with anybody during your lunch break that
2 could influence your testimony?

3 THE WITNESS: No.

4 THE COURT: Okay. All right. Mr. Falk has some
5 questions before we bring the jury in.

6 Mr. Falk.

7 PROFFERED EXAMINATION

8 BY MR. FALK:

9 Q. Doctor Gottfried, you had testified when -- I think
10 maybe part of your voir dire about the fact that you're the
11 head -- what is it, the SBCL?

12 A. SBCL.

13 Q. And that's -- y'all do treatment there.

14 Is that correct?

15 A. We do some treatment and evaluation and research.

16 Q. Okay.

17 A. Correct.

18 Q. And then also you had testified that you are starting
19 an intensive outpatient treatment program.

20 Is that correct?

21 A. Yes, we started it.

22 Q. Okay. Can you tell me what's involved with that?

23 A. It's primarily pretrial. Yeah, I'd say we've had a
24 couple people go through it. It's either been pretrial or
25 like part of a deal, a sentencing deal. It's intensive

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1 outpatient. So it started -- we initially started doing it
2 for five weeks. They would come to MUSC for two days and go
3 up to Doctor Burke's office for two days, and they'd have a
4 full day of treatment.

5 We've now changed it to 10 weeks where they come twice
6 a week and they do groups and they have individual treatment
7 typically related to child pornography or solicitation of a
8 child. Those have been the majority of the cases.

9 Q. What does the treatment consist of?

10 A. So it's individual treatment depending on their
11 specific treatment needs and treatment plan and then group
12 treatment.

13 Q. Okay. Can you give -- is it talk therapy?

14 Are you -- is it your -- is it somehow aversion therapy
15 where they're---

16 A. Yeah.

17 Q. ---you know---

18 A. All of the depending, depending -- paraphilic arousal,
19 we treat that with the aversion. We do some biofeedback.
20 We do -- so behavioral techniques, cognitive, a combination.

21 Q. And is that successful?

22 A. I think so. Seems like it's going well. Have -- we
23 haven't been doing it for long enough to have like outcome
24 data or, to my knowledge, that people have reoffended but
25 it's pretty new.

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1 Q. And you said it's pretrial?

2 A. It's primarily pretrial. The majority of the people
3 who have gone through the program so far.

4 Q. Are they Court ordered?

5 A. No, the pretrial ones are not Court ordered.

6 Q. So it's a -- voluntary?

7 A. Yeah.

8 Q. No further questions.

9 PROFFERED EXAMINATION

10 BY MS. SHAW:

11 Q. Doctor Gottfried, you were not asked to opine on any
12 sort of forms of treatment that may or may not be effective
13 for Mr. Chapman, correct?

14 A. Correct.

15 Q. That was not part of your inquiry?

16 A. Correct.

17 Q. And you have not formed any treatment plans with
18 respect to him nor would you?

19 A. That's -- no specific treatment plans. Correct.

20 MS. SHAW: Okay. Your Honor, I don't have anything
21 further. I think this witness has testified, you know, to
22 the nature of the IOP program that she offers. It does not
23 appear that it would be even relevant to Mr. Chapman since
24 he's post-conviction and has served out half of the 60 year
25 sentence.

1 So, at this point in time, I would renew my motion or
2 my request to disallow any discussion of treatment, whether
3 it be inpatient, outpatient, and what would be appropriate
4 for Mr. Chapman since this witness doesn't have the
5 requisite knowledge.

6 THE COURT: All right. Okay. You want to be heard,
7 Mr. Falk?

8 MR. FALK: Your Honor, you've already ruled. I'm not
9 trying to argue. I, I was just trying to make my record.

10 THE COURT: Thank you, sir. I appreciate that. Thank
11 you for reminding me.

12 All right. We're ready for the jury?

13 MS. SHAW: Yes, Your Honor.

14 THE BAILIFF: Your Honor, how about the people that are
15 out there?

16 Do they need to come first or last?

17 They're probably sitting out there.

18 THE COURT: All right.

19 THE BAILIFF: Not with my jury but in the lobby.

20 THE COURT: Well---

21 THE BAILIFF: Who do you want first?

22 MR. FALK: Jurors.

23 THE COURT: I want the jury and then nobody walking
24 with them.

25 THE BAILIFF: Okay.

1 THE COURT: And then once they're, they're seated, if
2 somebody wants to come in, I don't have any objection to
3 that.

4 THE BAILIFF: Yes, sir.

5 THE COURT: I trust that y'all can handle that.

6 MS. SHAW: And, Your Honor, just for the record, I
7 understand that they will be allowed but the State does
8 object given the irregularities with the two witnesses or
9 not witnesses but the two observers. So, just for the
10 record, we do object to their presence.

11 THE COURT: So noted.

12 MS. SHAW: Thank you, Your Honor.

13 SERGEANT PERRY: For the record, the jury is in route.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Welcome back, ladies and
17 gentlemen of the jury.

18 It's interesting, often times, people sit in the same
19 seat all week. So far, we -- Madam Foreperson, and then Ms.
20 Mullins. Now you moved over one. You were, you were
21 seated -- so y'all are defying that tradition.

22 I appreciate y'all's patience -- being patient with me.
23 I been trying to work through some issues that came up with
24 counsel and it's stuff that we have to do outside your
25 presence. So I don't want to confuse you with anything and,

1 and it's necessary. Sometimes it takes a little bit of time
2 to get through and you can't always predict it.

3 So, we just had to work through those, which is why you
4 had to wait a little bit longer and, and thank you -- but
5 thank you for, for bearing with us.

6 when we, when we took our break, Ms. Shaw had finished
7 with this witness and I believe Mr. Falk was ready for
8 cross-examination.

9 MS. SHAW: That's correct, Your Honor.

10 THE COURT: All right.

11 MR. FALK: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. FALK:

14 Q. I'm not really gonna have that really -- probably that
15 many questions. I just want to go over some of those tests
16 that you gave.

17 A. Sure.

18 Q. And how do you describe them?

19 A. The---

20 Q. How they dif -- they're not tests.

21 what are they?

22 They're---

23 A. Assessment measures.

24 Q. Assessment measures.

25 A. Some of them are tests---

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By Mr. Falk

1 Q. Fair enough.

2 A. ---but assessment.

3 Q. On the MMPI that -- that was the -- the way you
4 reported them in your report, is that the order that they
5 were given?

6 A. Typically the MMPI is first and then the SASSI and then
7 the PAI and then the MIDSA. That's the way typically that I
8 can tell you the exact order.

9 Q. Well, it does -- I mean it -- we'll, we'll talk with
10 those four first then.

11 A. Okay.

12 Q. All right. So the MMPI you -- and can you just repeat?
13 What is the purpose of that test?

14 A. So the -- like what it measures.

15 Q. Yes.

16 A. So it's looking at adult personality and psychopathy.
17 So symptoms -- interpersonal functioning and response style.

18 Q. Okay. And you had said that after -- I think one of
19 your quotes from your report was, you know, he has a
20 potential for, for underreporting psychological dysfunction
21 and, you know, portraying him -- and resistance of
22 portraying himself in a negative light.

23 Does that sound --?

24 A. Yes, underreporting.

25 Q. But you -- you had also testified earlier that you

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1 would sort of expect that with somebody in this situation.

2 Is that not true?

3 A. It's not unexpected. Not everybody -- some people
4 produce valid protocols. But it would be unexpected for
5 somebody to be like faking symptoms. So, it would be more
6 expected that they would be underreporting versus --.

7 Q. Maybe my question is you weren't surprised by that.

8 A. No.

9 Q. Okay.

10 A. Not surprised.

11 Q. And on the SASSI-4, that is strictly for substance
12 abuse.

13 Is that correct?

14 A. It, it is more what we call face valid. So what that
15 means is like if a question says do you have a problem with
16 alcohol, you know that it's assessing you for alcohol. But
17 it also has some less face valid or non face valid questions
18 that still look at substance, use problems without directly
19 asking but what it's asking.

20 Q. So the---

21 A. So primarily it's looking at substance use, correct.

22 Q. The goal of that test is to find out if there's
23 evidence of substance abuse?

24 A. Correct. Disorder. So symptoms related to substance
25 or alcohol use.

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1 Q. Okay. And you said that he had a defensive style of
2 reporting?

3 A. Yes.

4 Q. And does -- would that have surprised you?

5 A. No.

6 Q. And also though, as far as the SASSI goes, what was
7 your conclusion, that there was some evidence of --?

8 A. That there was a high likelihood that he has or has had
9 a substance use disorder which could include alcohol.

10 Q. So the substance abuse disorder could of been based on
11 conduct that happened in -- when she was 20 to 26.

12 Is that true?

13 A. Oh that -- yes. That's why I write it up like that.
14 It's not saying right now. It's saying a high probability
15 that he currently has or has had a problem.

16 Q. Cause you would agree that he has no record of
17 substance abuse while in the Department of Corrections.

18 Is that correct?

19 A. That's correct. I have nothing indicating that he was
20 using substances while in the Department of Corrections.

21 Q. Would you agree, maybe can't -- maybe you don't but
22 would you agree that it wouldn't be surprising to find
23 homemade wine and pills floating around the Department of
24 Corrections?

25 A. Sorry.

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1 That it would or wouldn't be surprising?

2 Q. would you be surprised to find that there was ample
3 substances to abuse inside the Department of Corrections?

4 MS. SHAW: Objection, Your Honor.

5 Side bar?

6 THE COURT: Yes, ma'am.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: Your witness.

10 Q. You have reviewed and evaluated people who have been in
11 prison?

12 A. Yes.

13 Q. And you've done forensic evaluations on people who have
14 been in prison?

15 A. Yes.

16 Q. And in the course of doing those evaluations on people
17 who have been incarcerated at South Carolina Department of
18 Corrections, have you found evidence that there is alcohol
19 and pills available on the inside?

20 A. Mostly from their self-report. Less likely that they
21 got citations or that it's in the records. But I've seen --
22 but definitely people that I evaluate report homemade
23 alcohol, passing pills around, smoking spice or K2 --

24 Q. Thank you.

25 A. -- per their self-report, yeah.

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1 Q. And that -- regarding the alcohol, there were two
2 times, both I think in, in your report, when you're talking
3 about the PAI and then when you were discussing the MIDSA,
4 and I assume that his responses at those times are -- that's
5 sort of chronological, that when -- in one conversation
6 during the PAI test, he had said -- he had denied -- he had
7 said that -- I think maybe you asked the question about
8 whether or not alcohol causes problems and that's why he's
9 in jail and he said no, I really ended myself up in prison.

10 Is that not correct?

11 A. That is correct.

12 Q. So that's accepting responsibility for the alcohol,
13 right?

14 A. Right. As I previously testified to, there were
15 sometimes where he said alcohol was responsible but he
16 didn't say that every time. He kind of went back and forth
17 to how much a problem it was for him relating it to his
18 offending history. But, during the discussion of the test
19 results of the PAI, he did say that.

20 Q. And also during his discussion on the -- I think you
21 asked him that question during the discussion on the MIDSA,
22 and he also said no, he was not blaming it on alcohol?

23 A. Let me just look at that section.

24 (Pause.)

25 A. So that's kind of mixed. So, on the MIDSA, he endorsed

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1 a question or checked a box indicating that he had committed
2 a crime as a result of drinking alcohol. And when I
3 followed up with him during the follow-up interview, he said
4 that he was referring to the rape charges. And then I asked
5 him again, like did the alcohol make you rape people, and
6 that's when he said no, ma'am.

7 Q. Okay. Cause so you would---

8 A. So both ways.

9 Q. You would testify -- I mean it would be your opinion
10 that there is a relationship between alcohol and impulse
11 control?

12 wasn't that your testimony?

13 A. Disinhibition.

14 Q. What does disinhibition mean?

15 A. So, the ability to kind of put the brakes s on. So, I
16 think that it is getting at impulse control. I don't know
17 that they're necessarily like an overlap directly but
18 related. So being able to stop yourself from doing
19 something that you want to do and knowing that it's wrong.
20 So, alcohol kind of decreases your ability to put the brakes
21 on.

22 Q. So, isn't it fair to say what he was just responding to
23 was that, you know, he knew how alcohol affected him. Maybe
24 it would -- maybe he knew the word disinhibition or maybe he
25 had his own terminology for that. But, but he wasn't

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1 blaming it. But he knew that there was a connection.

2 A. Possibly. The way that it sounded to me during the
3 clinical interview was that he was saying that alcohol --
4 because the, the question was committing a crime as a result
5 of drinking alcohol. And when I said what crime he said the
6 rape charges.

7 So, to me, my impression was that he was making the
8 connection between alcohol and the offenses. Not that
9 alcohol, you know, prevented him from stopping himself.

10 Q. But I'm just -- I'm, I'm trying to get to the point
11 that he acknowledges that alcohol might have been involved
12 but that he's not putting any kind of responsibility on the
13 alcohol, that he took -- he's taking responsibility for his
14 crimes?

15 A. So that I don't agree with. So, when I say he went
16 back and forth on that, there were times where it seemed
17 like he was directly saying that the alcohol made him do it
18 and that's when I would follow-up and say alcohol made you
19 rape these victims and then he would say no, ma'am. But it
20 would -- he would say something and then I'd ask him a
21 couple more times.

22 But my impression was that he was saying that alcohol
23 caused the biggest problem for him because he had gotten
24 arrested because of it and appeared to be like saying that
25 was the cause of the crimes.

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1 Q. I notice a couple of times in your evaluation he said
2 he appeared confused with his answers?

3 A. Yes.

4 Q. Are you sure that he was always understanding your
5 questions?

6 A. Well, I don't think you can be a hundred percent sure.
7 But the, the reason that I think that he was understanding
8 my questions is he only kind of had that presentation when I
9 was asking him questions about his sexual history and his
10 sexual offenses.

11 So, I had talked to him for several hours before that
12 and there really was no indication that he couldn't answer
13 the questions or didn't know what I was asking. But when I
14 asked him, you know, when he started puberty, how often he
15 thought about sex and things like that, that's when he -- I
16 don't know if he was trying to think of like what is the
17 best way to answer this question. So I'm gonna ask what she
18 means or what she's looking for. But his response style
19 definitely changed for those kinds of questions.

20 So, I had no indication, prior to that, that he didn't
21 understand what I was asking.

22 Q. Well, for example, do you think he understood the
23 question about have you ever been to -- wasn't one of your
24 questions have you ever been to prison?

25 A. That was on the MDSA.

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1 Q. Okay. So, on part of the MIDSA, one of your questions
2 was had he ever been to prison, something like that.

3 Is that correct?

4 A. It -- he gave the wrong age on the MIDSA and he said
5 he'd never been incarcerated---

6 Q. Well---

7 A. ---as a juvenile or an adult.

8 Q. So was -- does the MIDSA have specific questions?

9 A. Yes.

10 Q. Okay. What was the question you asked?

11 A. The MIDSA he takes on the computer. So I didn't ask
12 him the question.

13 Q. Do you know what the question was?

14 A. How many times, like prior to the age of 18 and after
15 the age of 18, have you been incarcerated.

16 Q. Okay. So he was not even responding to you. He was
17 responding to the computer.

18 A. That's correct.

19 Q. How many of these answers was he giving though as a
20 result to the computer versus, you know, directly
21 conversation with you?

22 A. So, the clinical interview, like the five hour clinical
23 interview that I mentioned, that's all we're talking. The
24 MMPI, the PAI, the MIDSA, and the SASSI, those are
25 self-report. The PCL-R, the SVR-20, the Statics, those are

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1 clinician rated based on the information I have from him.

2 So, to the psychological measures on personality
3 functioning and symptoms, those are questions he's asked --
4 he's answering on a computer.

5 Q. And, and that's on the -- well, which two again, just
6 so I'm clear?

7 A. Well, the standardized tests are given on a computer.
8 So that is the PAI, the MMPI, the MIDSA, and the SASSI.
9 Those are the self-reports.

10 Q. Okay. But you said he was responding to this -- the
11 SVR-20, you said that was a response to a question on the
12 computer?

13 A. No, the SVR-20 is the clinician rated.

14 Q. Okay. Now, can you explain to me, cause I was looking
15 at your report last night, and I was going over some of your
16 comments in here and I'm not sure I understand them and I
17 was hoping that you could sort of help me out here and this
18 is -- let's talk about -- I want to talk -- when you were
19 giving your response to the PAI, so did you think his
20 responses were valid?

21 A. Did I think it was a valid administration?

22 Q. Yes.

23 A. Yes, his scores were not high enough to make it
24 invalid. I noted that, because it looked like he was
25 answering questions, trying to present himself in an overly

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1 positive way, that it might underestimate his current
2 functioning. And so, when something is in that range but
3 still valid, you talk about how you interpret it with a
4 degree of caution.

5 So it may not completely, accurately represent him but
6 it wasn't to the point that it would make it invalid.

7 Q. Do you have your report in front of you?

8 A. I, I do.

9 Q. Can you look at Page 25 of it, the second full
10 paragraph?

11 A. Yes.

12 Q. It starts with on the PAI.

13 A. Yes.

14 Q. Okay. What is going on there?

15 well, can you just read that paragraph?

16 A. The one on the PAI?

17 Q. Yeah.

18 A. Mr. Chapman did not report significant problems with
19 having unusual thoughts, problems with empathy,
20 suspiciousness, antisocial behaviors, problems with drugs,
21 suicidality, aggressiveness, stress, hostility, unhappiness,
22 or depression, overly elevated mood, market anxiety, or
23 health concerns.

24 Q. So what conclusions did you draw from that?

25 A. That he was not reporting problems in those areas on

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1 the test.

2 Q. And then if you look at the second paragraph -- the
3 paragraph right underneath there, there's a second sentence
4 in that paragraph where you talk about I guess distress
5 across many situations. It says individuals who obtain
6 similar test results report having few complaints about
7 unhappiness or distress and are typically seen as stable,
8 self-confident, active, and relaxed.

9 what does that mean?

10 A. So, sorry.

11 which part?

12 Like---

13 Q. Well, the seen. Who's seeing it?

14 Is that you saw or is that -- you said they are
15 typically seen as stable, self-confident, active, and
16 relaxed.

17 A. No, not what I saw. So, based on the normative data
18 when they make the test, so they're looking at different
19 properties of the test to predict certain personality
20 characteristics. And so you compare his scale scores to
21 comparison groups. So looking how high they are based on
22 the mean and centerivation (phonetic) of those scales. And
23 so people who obtain the same score often report these
24 characteristics.

25 So, not necessarily saying that that's applicable to

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1 him, but other people who score similarly, that's what they
2 report.

3 Q. And then the, the next sentence is they, I guess,
4 assume people who score similarly?

5 A. Yes.

6 Q. Also typically exhibit reasonable control over impulses
7 and behavior.

8 A. Yes.

9 Q. Does that---

10 A. So that means that the scale looking at impulses and
11 behavior control wasn't significantly elevated. And so
12 individuals who do not elevate that scale frequently report
13 or are seen as being able to control their impulses.

14 Q. So, the PAI, what personality deficit did that uncover
15 for you other than defensiveness?

16 A. Well, it -- he had some alcohol use problems that he
17 reported on it. I looked at interpersonal functioning.
18 It -- I mean he described himself as being really
19 unasserted, having trouble standing up for himself, being
20 meek even when situations warranted assertiveness. But that
21 was really contradictory with the history he gave me about
22 standing up for other people in prison and demonstrating
23 behaviors that would be inconsistent with meekness.

24 So I don't think we learned a whole lot from the PAI
25 based on his self-reports.

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1 Q. Well, I guess going -- doubling back, what did -- you
2 know, what did the MMPI tell you about the likelihood that
3 he would reoffend sexually, his results on that?

4 A. I don't think it gave us much. So, again, he
5 underreported. He wasn't reporting psychopathology and
6 that's what I was using it for.

7 Q. And, again, on the SS -- SASSI-4, what result from
8 report has any type of impact on your opinion about whether
9 or not he would reoccur -- that he would reoffend if he were
10 released?

11 A. Well, we know that somebody who has a history of sexual
12 offenses and then have problems with substances or alcohol,
13 that is a risk factor. So, it's looking at that specific
14 risk factor. Also looking at his response style. Also
15 looking to see if he was reporting acting out behaviors and
16 things like that on this measure.

17 Q. As part of your practice, do you ever deal with people
18 who are suffering from alcoholism?

19 Maybe you have a clinical practice.

20 I mean do you ever deal with people who would describe
21 themselves as alcoholic?

22 A. I, I don't have a general clinical practice. I only do
23 sexual behavior therapy. I certainly evaluate people who
24 would meet diagnostic criteria for an alcohol use disorder.

25 Q. I'm just wondering about a 30 year period of sobriety,

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1 how that would affect your thought that these -- that his
2 alcohol problems from 30 years ago would affect his
3 likelihood to reoffend?

4 MS. SHAW: Your Honor, objection. Side bar.

5 (WHEREUPON, a bench conference was held out of the
6 hearing of the jury at this time.)

7 THE COURT: All right. Mr. Falk.

8 Q. Do you have an opinion about, you know, somebody has 30
9 years of sobriety, the likelihood that they would revert to
10 some of their substance abuse addictions?

11 A. I mean I think generally I have an opinion. So, I
12 think there's a difference between being sober for 30 years
13 in a controlled environment to like being locked up where
14 you might have access to homemade alcohol, but it's not as
15 easy to get, and somebody who was out in the community with
16 access to alcohol and lived by a bar who was sober for 30
17 years. Excuse me.

18 So, I think those are two different things. I, I don't
19 know that there's anything indicating that he is going to
20 get out and start drinking again. But I think that that
21 increases his risk with that history if he were to start
22 drinking again.

23 Q. Thank you.

24 And if I can talk to you a little bit about your
25 results from the MIDSA and that's the -- may as well just

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1 use the -- for the court reporter's benefit, let's just use
2 the actual letters.

3 So it's the MIDSI?

4 A. S-A. It's the MIDSA.

5 Q. MIDSA.

6 Okay. What does it mean in your report where he said
7 that he had -- where you reported that his scores were not
8 elevated?

9 A. Can you direct me?

10 Q. Yeah.

11 MS. SHAW: If Mr. Falk would just give us a page
12 number?

13 MR. FALK: I will.

14 Q. All right. So on Page 27.

15 A. Yes.

16 Q. It would be the one, two, three, fourth and I guess
17 fifth full paragraphs.

18 A. The last two?

19 Q. Yes.

20 A. Okay.

21 Q. On that subject, yeah.

22 A. So, he -- on the MIDSA, Mr. Chapman, it was a
23 self-report measure. So it asks, you know, how many times
24 have you been incarcerated since you were 18, after 18, how
25 many times have you used marijuana, when did you start

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1 looking at pornography. So he sits in front of a computer
2 and fills this out as a questionnaire, and I like to ask
3 both ways, in the room, by himself, on the computer, and the
4 questions I'm gonna ask him in person because there's
5 research that suggest some people are more forthcoming when
6 you ask them directly and sometimes they're more forthcoming
7 to the computer.

8 So, for this, they were not -- those specific scales
9 were not significantly elevated because he didn't endorse
10 those things. So, that's based on his self-report. But,
11 again, those validity scales of the -- they, they all were
12 significantly elevated and this is the one where he wrote
13 his age as 24. He said that he had never been incarcerated
14 before or charged with or convicted of a sexual offense.

15 So, either he wasn't paying attention to those
16 questions. I, I don't know what explains it. But based on
17 his self-report, he didn't elevate those scales.

18 Q. Again -- and then his score was not elevated -- the
19 last sentence in that last paragraph on that subject, his
20 score was not elevated on life-style impulsiveness,
21 resistance to rules, and supervision, and dysfunctional
22 victim coping styles?

23 A. Correct. Because he didn't endorse having any problems
24 or issues or anything in those areas on those scales.

25 Q. Let me ask you a little bit about the Hare test, the

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1 PCL-R.

2 A. Yes.

3 Q. Can you explain what Facets 3 and 4 measure and I'm on
4 paragraph -- I'm on Page 30, the last paragraph on that
5 subject.

6 A. What they like measure?

7 Q. Yes.

8 A. So Facets 3 and 4 are part of Factor 2. So, Factor 2
9 psychopathy is, is -- has a different set of symptoms and
10 characteristics than being like a Factor 1 psychopath. So,
11 when you have Facet 3 and Facet 4, that is the life-style
12 and the antisocial.

13 So, the antisocial ones are revocation of conditional
14 release. So like, you know, being on probation and getting
15 violated, criminal versatility, committing crimes from
16 several different categories of crimes, juvenile chronic
17 problems, being arrested as a juvenile. So, it's, it's
18 looking at the questions, the 20 items that are associated
19 with symptoms of psychopathy. When you do a factor
20 analysis, when you do like statistical analyses on them,
21 they form four separate facets.

22 Q. Okay. So one of the facets under Factor 2 is
23 life-style.

24 A. Correct.

25 Q. And that is Facet 3.

Emily Gottfried - Cross-examination
By Mr. Falk

1 Is that correct?

2 A. Yeah, it's under Factor 2 and it's the third facet when
3 you do factor analysis.

4 Q. All right. And so this is -- and so what are you
5 looking for there?

6 A. For life-style?

7 Q. Yeah.

8 First of all, you scored this, right?

9 A. Correct.

10 Q. Okay. So, so unlike some of the other things, your
11 observation, his response to Facet 3, is based on your
12 opinion.

13 Is that corrects?

14 A. Yes. This is based on the clinical interview and
15 collateral records. So let me just find myself. So some of
16 the life-style ones are having a lack of realistic long
17 terms goals, impulsivity, irresponsibility.

18 what else is in there?

19 Need for stimulation. Proneness to boredom is a
20 life-style and parasitic life-style.

21 Q. Okay.

22 A. Those are the ones that form that facet.

23 Q. All right. And so that in -- you said that included
24 impulse control and lack of reasonable --?

25 A. Realistic---

Emily Gottfried - Cross-examination
By Mr. Falk

1 Q. Realistic---

2 A. ---long term goals.

3 Q. Realistic long terms goals.

4 And that was -- and so that's your -- and so his score
5 on this is your evaluation.

6 Is that correct?

7 A. It is, yeah, rating him based on everything I collected

8 --

9 Q. I'm just---

10 A. -- and then using that---

11 Q. ---trying to compare it cause, you know, you kind of
12 scored some of those other tests. They're all self-report
13 and you're determining whether or not those are valid
14 reports.

15 But this is -- the result on this are something that
16 you determined.

17 Is that correct?

18 A. Yes. But I didn't -- he wasn't scored very high on
19 Facet 3.

20 Q. Well, that's my question.

21 So, what does it mean that it's -- it is 19 percent?

22 A. So---

23 MS. SHAW: Your Honor, before we proceed, can Mr. Falk
24 just lay a foundation for these actual percentages that he's
25 referencing in the report and the jury has occurred what the

Emily Gottfried - Cross-examination
By Mr. Falk

1 percentages are and what they mean?

2 THE COURT: Mr. Falk.

3 Q. Okay. You score him on the Facet 3 and Facet 4.

4 Is that correct?

5 A. I scored him on the 20 items of the Psychopathy
6 Checklist Revised. And then, from those 20 items, when
7 you -- when the research studies and the test developers did
8 a factor analysis to look to see okay, we know that these
9 things are associated with psychopathy, to put them in the
10 Factor 1 and Factor 2, you're looking how statistically they
11 relate to one another, how they kind of hang together.

12 Q. Okay.

13 A. So, I rated him on the 20 items. Then you sum them
14 based on their facets and their factors.

15 Q. All right. So who computes -- and so, on the Facet 3,
16 you have a percentage listed in your report.

17 Is that correct?

18 A. Yes.

19 Q. And what is that percentage?

20 A. So you take the sum of their facet score and then you
21 compare it to either North American offenders score. So
22 you're looking to see like the percentile or forensic
23 samples. So somebody in an inpatient forensic hospital
24 versus an offender.

25 And so, I compared Mr. Chapman's scores to offender.

Emily Gottfried - Cross-examination
By Mr. Falk

1 And so you're looking at each individual's score for the
2 total score, the four facets, and the two factors.

3 Q. So if -- and you -- and what was his score for Facet 3,
4 the actual number?

5 A. Three. Three.

6 Q. On Facet 3, what was his score?

7 A. Three.

8 MR. FALK: May I approach the bench, Your Honor?

9 May I approach the witness?

10 THE COURT: Yes, sir.

11 A. Those are percentiles.

12 Q. Oh, I see.

13 Okay. You associated some percentiles with his, with
14 his scoring on Facet 3.

15 Is that correct?

16 A. Correct. Right, cause like a score of three doesn't
17 necessarily communicate anything. So, you want to compare
18 what this person that you're examining score is related to
19 a -- the general potential or the sample that you're
20 comparing them to on a whole.

21 Q. Okay.

22 A. The number three doesn't communicate anything.

23 Q. So -- and so how would you -- how would you explain to
24 the jury what the 19.5 percent means?

25 A. So, compared to people in the comparison group sample

Emily Gottfried - Cross-examination
By Mr. Falk

1 and the research studies, Mr. Chapman's score on that facet
2 was higher than 19.5 percent of that sample.

3 Q. So --.

4 A. So it means the majority of the sample scored higher on
5 that facet than he did.

6 Q. And that is the facet that includes impulsivity and
7 realistic goals.

8 Is that correct?

9 A. Correct.

10 Q. And then I'm gonna ask you about Facet 4.

11 So what are the -- what are the characteristics that
12 Facet 4 is suppose to describe if that's the right way to
13 ask the question?

14 A. So Facet 4 is antisocial.

15 Q. Yes.

16 A. So the items you mean?

17 Q. Well, when we talked about life-style, then you said
18 that included impulsivity and parasitic life-style and --.

19 A. So it includes poor behavioral controls. That's
20 looking at violence like getting into fights specifically,
21 and early behavioral problems, juvenile delinquency,
22 revocation of conditional release, and criminal versatility.

23 Q. And based on your score of that, you assigned a
24 percentage to his score.

25 Is that correct?

Emily Gottfried - Cross-examination
By Mr. Falk

1 A. Based on the score, yes, I compared that to the, the
2 comparison group of North American offenders that I was
3 comparing it to.

4 Q. And that score was what?

5 That, that percentage was what?

6 A. 23 percent.

7 Q. So, 75 percent of the people you compared it to scored
8 higher.

9 Is that the way to look at that?

10 A. Correct. So per his report, and I had no records
11 suggesting he had early behavioral problems, that he was
12 arrested as a juvenile, or that he was like getting into
13 fistfights everyday. So really he just got the points from
14 having the revocation of probation and then he got -- you
15 can either get a zero, a one, or a two. He got a one for
16 criminal versatility, because when you put them into the
17 categories, that would be scored a one.

18 Q. Yeah.

19 If you wouldn't mind again just could you repeat the
20 four ones that are included in antisocial?

21 One was conduct disorder under 15.

22 A. Oh, sorry. In conduct disorder?

23 Q. What were the -- you were---

24 A. In antisocial?

25 Q. In antisocial, yeah.

Emily Gottfried - Cross-examination
By Mr. Falk

1 A. On the PCL-R?

2 Q. Yeah.

3 A. They are poor behavioral controls. So that is specific
4 to violence. So not, not being able to control your
5 behavior. It's really specific to a lot of bar fights.
6 Just getting into fights all the time. Early behavioral
7 problems. So that's like getting into trouble in school,
8 things like that, stealing, juvenile delinquency, and that
9 is specific for arrests during the juvenile period.

10 Revocation of conditional release and criminal versatility.

11 Q. So is -- so there is a -- is it fair to say, when
12 you're looking at this facet for the antisocial, there's a
13 focus on conduct that occurs very young in the person's
14 life?

15 A. If they had significant arrest history or arrests -- a
16 juvenile arrest history and early behavioral problems, that
17 would give them four points on the PCL-R.

18 Q. Okay. Why is there this emphasis on conduct early on,
19 the -- that behavioral problems and juvenile records?

20 Why is, why is there a focus on that early -- their
21 early conduct when you're looking at this antisocial --?

22 A. So studies of people who meet criteria for psychopathy
23 typically exhibit early behavioral problems.

24 Q. And on that subject, I think you testified that he, he
25 graduated. He didn't have any truancy when he's in high

Emily Gottfried - Cross-examination
By Mr. Falk

1 school. There was a -- you, you didn't find any record of
2 any type of behavioral problems as a child, did you?

3 A. I had no records describing his behavior as a child and
4 he did not endorse any of those things. So I had no data to
5 say that he, that he had behavioral problems.

6 Q. Now, the SVR-20, that is a -- that is the test that you
7 did and one of the factors in there were his future plans.

8 Is that correct?

9 A. Correct.

10 Q. Are you familiar with a program called Jump Start?

11 A. Yes.

12 Q. What is your understanding of Jump Start?

13 A. I mean I think I said yesterday -- is Jump Start the --
14 it's the ministry or the group home?

15 Q. Well, I think it's both really.

16 A. Okay. Yeah, that's -- I think that the---

17 Q. It's in Spartanburg---

18 A. I've heard of it but that's the extent of my
19 familiarity.

20 Q. Okay. Have you had -- when you've been evaluating
21 other people's records, have you had people talk about going
22 to Jump Start?

23 MS. SHAW: Objection, Your Honor. Side bar.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

Emily Gottfried - Cross-examination
By Mr. Falk

1 MS. SHAW: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Q. Is it your understanding that Jump Start is a place
4 where people who have been released from prison can go?

5 A. So, while you were on the sidebar I was thinking about
6 it. I think I actually have heard of Jump Start because
7 they asked me if I wanted to serve on the board of Jump
8 Start and I had a phonecall with the person who made Jump
9 Start and I know they're reorganizing.

10 So he told me things about it. I'm not on the board of
11 Jump Start but I think that's how I know about it. And I
12 think he told me some of the services that they were like
13 planning to set up and they wanted to try to get more mental
14 health people on the board, which is why they had contacted
15 me.

16 But aside from that conversation, which I think was in
17 the beginning of COVID, so a couple of years ago, I, I don't
18 think I have any other information. So I, I, I think he
19 told me that it is a place where they help people who are
20 getting out of prison. But sexual behavior and things like
21 that, that I don't know about.

22 Q. So, do you have an opinion whether or not that's a
23 realistic plan for release, to go to Jump Start?

24 A. I don't have an opinion cause I don't, I don't know
25 what the plan is. I don't know if they take people with

Emily Gottfried - Cross-examination
By Mr. Falk

1 sexual offenses. I don't know either way.

2 Q. You said, you said there was a brief discussion --
3 description of some of the services that Jump Start
4 provides.

5 was one of them helping them find employment?

6 A. I don't think it was a description of necessarily what
7 they provide but what he envisioned, what he wanted to help
8 them provide. I, I could testify that I'm sure he said that
9 he wants to help them get jobs and set them with services
10 and we talked about trauma and things like that. But my
11 recollection, which might not be accurate is he was more
12 talking about like what he hoped to do---

13 Q. Okay.

14 A. ---in the program.

15 Q. Now, you had diagnosed him with a paraphilia and that
16 is the coercive.

17 Can you ex -- just give me the title again?

18 A. Paraphilic coercive disorder.

19 Q. Okay. Is it true that that specific diagnosis was in
20 the, was in the DSM-4 or was in the DSM-4-TR version?

21 A. To my knowledge, and I was trained on those versions,
22 that it was not.

23 Q. Was there something similar to that?

24 Wasn't it coercive paraphilic disorder or --?

25 A. Not that I'm aware of because I believe it's always

Emily Gottfried - Cross-examination
By Mr. Falk

1 been classified under paraphilia NOS or other specified
2 paraphilic disorder as, as long as I've been doing these
3 evaluations and thinking about these things. So, 2009,
4 2010, and that would of been DSM-4-TR.

5 Q. Okay.

6 A. It wasn't in there.

7 Q. Now, you don't have any information that -- as you had
8 said that this coerciveness or the force was a motivating
9 factor. You don't have any information that that's his
10 primary sexual motivation.

11 Is that correct?

12 A. And when you say motivation, I'm not sure --.

13 Q. Well -- all right. So, how do you describe how you say
14 the force plays into his sexual encounters?

15 A. I -- not that---

16 Q. You said -- all right. How does it -- well, how does
17 force relate to stimulation?

18 A. I don't know if I testified to force. So, it's the
19 coerciveness of it, the power.

20 Q. Okay. So that's -- coercive is -- I was probably
21 considering coercive and force as being the same type thing.

22 So what are you saying?

23 A. So, the power over somebody. So, it's sexualized
24 power. It's individuals who are aroused by the rape itself
25 and not like as a means just to have sex with someone.

Emily Gottfried - Cross-examination
By Mr. Falk

1 Q. Okay.

2 A. It's that they are aroused by that.

3 Q. So the arousal to the power.

4 You don't have any information that that is his primary
5 arousal for sexual interest?

6 A. Do you mean like the only thing he was aroused by or
7 his most preferential?

8 Q. You know, he can't get aroused unless it's there, yeah,
9 you know.

10 A. I would say I have evidence to the contrary. It sounds
11 like, per Doctor Gillen's report and some things that he
12 told me, he was engaging in sexual relationships with 10 to
13 15 different women, that they didn't know about each other.
14 So, there's nothing that suggests that those were not
15 consensual sexual experiences. So it sounds like he was
16 aroused by both of them.

17 Q. But there's nothing in the report to suggest that he
18 needs that in order to get aroused, the force, the coercion?

19 A. No, I have no data to suggest that that's the only
20 thing he's aroused by.

21 Q. You have done -- have you done any fitness to stand
22 trial evaluations or not guilty by reason of insanity
23 evaluations in the State of South Carolina?

24 A. I have.

25 Q. Is it true that people who are given a diagnosis in

Emily Gottfried - Cross-examination
By Mr. Falk

1 those types of cases, they go to a facility on Craft Farrow
2 Road or maybe it's called Craft Farrow?

3 MS. SHAW: Objection, Your Honor. This was the subject
4 of one of the motions in limine. This is an inappropriate
5 line of questioning.

6 THE COURT: Unless you need to talk to me, I'm gonna
7 sustain her objection.

8 Do you want to come up?

9 MR. FALK: Can --?

10 (WHEREUPON, a bench conference was held out of the
11 hearing of the jury at this time.)

12 Q. There's seven -- there's some evidence in the record
13 that he got a second dose or at least there's conflicting
14 evidence in the record that he got a second dose of sex
15 offender treatment while he was in the Department of
16 Corrections.

17 Is that correct?

18 A. Yes, there's conflicting information. He reported
19 1988, which I think is in the record, and then other
20 mentions of doing sex offender treatment, sometimes it says
21 terminated but then another note says good participation.
22 So, he has had it I'd say likely two to four times maybe.

23 Q. Okay.

24 A. Did some type of sex offender treatment in prison.

25 Q. And you had talked about one of his nonsexual offenses

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By Mr. Falk

1 was an assault and battery in 1986?

2 A. Yes.

3 Q. How old was he at that time?

4 would you -- is it -- is he about 20 or 21?

5 A. I believe if you told me he was.

6 Q. And the first time he went to treatment, and I guess
7 was -- the first time he went to treatment he was like 22 or
8 23.

9 Does that sound right?

10 A. I know that the, the offense against the 15-year old
11 occurred when he was 21.

12 Q. Okay.

13 A. So he was probably in prison at 21 or 22.

14 Q. So he was relatively young for the assault?

15 A. Sorry.

16 Q. And so he was relatively young for the assault in 1986,
17 and he was relatively young when he was first getting his
18 treatment, and at that -- his first trip.

19 Is that correct?

20 A. So, so he, in 1986, for the North Carolina rape, he was
21 20.

22 Q. Okay.

23 A. Is that what you're talking about or you're talking
24 about the assault and battery?

25 Q. You said that that -- that assault and battery. That

Emily Gottfried - Cross-examination
By Mr. Falk

1 was in 1986 I thought I wrote down or maybe I have it
2 backwards.

3 A. So, I think I'm confusing myself.

4 Q. Nonsexual offenses, it was listed as a
5 nonsexual offenses.

6 A. Okay. So let me get that one.

7 (Pause.)

8 A. So that occurred the mon -- it looked like the month
9 after the rape in North Carolina --

10 Q. Okay.

11 A. -- or the attempted rape in North Carolina.

12 Q. So that puts him at 21 then?

13 A. I think it puts him at 20.

14 Q. Twenty.

15 Okay. And the assault on the guard in the prison,
16 there's no evidence in the record that he put his hands on
17 that guard, right?

18 I mean he didn't slug -- there's no evidence in the
19 record that he slugged the guard or kicked the guard.

20 Is that correct?

21 MS. SHAW: Objection, Your Honor. This is an -- there
22 was no testimony about that at the very beginning. He made
23 it clear he closed a door on a female guard and that that
24 was the disciplinary.

25 MR. FALK: That's all I want to clarify.

Emily Gottfried - Cross-examination
By Mr. Falk

1 THE COURT: Okay. Go ahead.

2 Q. So, about the, the offense on the guard, it was just a
3 matter that a door was closed on the guard.

4 Is that correct?

5 A. From the record, it was in 1996. Noted that he pushed
6 a sergeant with the door trying to keep her out.

7 MR. FALK: Okay. One moment, Your Honor.

8 (Pause.)

9 MR. FALK: Your Honor, I have no further questions.

10 THE COURT: Ms. Shaw.

11 MS. SHAW: Thank you, Your Honor. I'll be relatively
12 brief.

13 REDIRECT EXAMINATION

14 BY MS. SHAW:

15 Q. All right. Doctor Gottfried, I, I just would like you
16 to clarify. You did -- actually -- can you hear me?

17 Okay. Thank you.

18 I'd just like you to clarify why is it that you do the
19 interview as well as the computer based testing as well as
20 the clinician scored assessments?

21 A. So best practices is a multi-method assortment and that
22 doesn't mean like giving two tests. It means assessing the
23 same constructs or the same thing you're trying to measure
24 in multiple different ways.

25 So, as I mentioned a little bit ago, the questions that

Emily Gottfried - Redirect examination
By MS. Shaw

1 I'm gonna ask during the clinical interview, I also want to
2 assess them on self-report measures. I want to look at the
3 same thing that I'm assessing. Like let's say I'm assessing
4 depressive symptoms or suicidal behaviors.

5 So, if I ask you are you having thoughts of suicide,
6 you may be more forthcoming when I ask you or you might be
7 more likely to report it to a computer. So, I'm looking at
8 consistencies between answers, looking to see corroborating
9 information, so data points that kind of hang together to,
10 to make a stronger case for what I'm looking at.

11 Q. Okay. And that's part of the point. You do all the
12 additional testing in addition to the Statics and the
13 clinical interview.

14 A. Yes. There are some risk factors we know are more
15 predictive of certain things but you never want to hang your
16 hat on one thing. You want to look -- you want to be sure,
17 or as sure as you can, you want to look at it multiple
18 different ways.

19 Q. Okay. Thank you.

20 Now I'm gonna refer you to Page 25 of your report. Mr.
21 Falk referenced it earlier when he was asking you questions
22 about what the PAI and the MMPI are looking for.

23 A. Yes.

24 Q. And I believe you testified that they're looking for
25 personality pathology, not sex offender specific behaviors

Emily Gottfried - Redirect examination
By Ms. Shaw

1 and thought patterns.

2 Is that accurate?

3 A. Correct.

4 Q. Okay. So, I'm gonna direct you to -- all right. The
5 first full paragraph on Page 25 where it says test results
6 suggested. He may have little capacity to recognize his
7 personal limitations.

8 Can you expound on that a little bit please?

9 A. I'm sorry. Page 25?

10 Q. 25, first full paragraph---

11 A. Oh, I see.

12 Q. ---at the bottom of it. Just discuss that a little
13 more detail for the jury.

14 A. The little -- capacity to recognize his personal
15 limitations?

16 Q. Yes.

17 A. So, for whatever reason, on this test he was denying
18 most of the symptoms. So he appeared to be trying to paint
19 himself in an overly favorable light. But that scale was
20 elevated and it looks at things like grandiosity, like how
21 you feel about yourself. And so that might be driven by him
22 trying to look very well adjusted, like there's nothing
23 wrong with him, or it might reflect antisocial personality
24 characteristics. Can't really say for sure. But that is
25 what that test item is looking at.

Emily Gottfried - Redirect examination
By Ms. Shaw

1 So like not seeing yourself as having very many
2 limitations is -- yeah, getting at like thinking you can do
3 anything because of who you are.'

4 Q. Okay. So, for an individual with Mr. Chapman's offense
5 history, that he has an attempted rape and two completed
6 rapes of a variety of different age groups, is him having
7 little capacity to recognize his personal limitations a risk
8 factor in that he may not understand when he is at risk to
9 reoffend?

10 A. It could and I agree with the second part. I don't
11 think he has good insight into or at least the ability to
12 verbalize his risk factors. But I don't know that that's
13 necessarily what's being assessed on this measure.

14 Q. Okay. But you -- it is your opinion though that he
15 would be unable to recognize, when he is at a high risk
16 situation, and potentially deescalation himself?

17 A. I think that he would have significant problems with
18 that. He wasn't able to explain how he would do that during
19 the evaluation. He said he's just not gonna think about
20 sex, and if he thought about sex, that could be a high risk
21 situation. So I don't think he has realistic strategies to
22 prevent himself from offending and I think that if he did he
23 would have verbalized those during the evaluation.

24 Q. Okay. Thank you.

25 All right. So, I'd, I'd like to draw your attention to

Emily Gottfried - Redirect examination
By Ms. Shaw

1 Page 27 of your report when Mr. Falk was going over the
2 MIDSA scores and you were indicating they were all
3 self-reports.

4 A. Yes.

5 Q. So, on the bottom paragraph right before you go into
6 the PPG discussion, it indicates, on the callousness scale,
7 there was evidence of having a lack of empathy but not lack
8 of guilt or failure to accept responsibility.

9 would that be consistent with the clinical presentation
10 you observed?

11 A. Yes, I, I mean I do think that, during the clinical
12 interview and based on collateral documents, that there was
13 some evidence of failure to accept responsibility. So I
14 don't think that this was an accurate presentation of him.
15 There -- I don't -- I, I think the lack of empathy might be
16 getting more accurate for him. But I don't think that he
17 was forthcoming when he took the MIDSA.

18 Q. Okay. And there was also evidence of internal
19 grievance thinking but not pervasive anger.

20 So can you, can you elaborate on that a little bit?

21 A. Yes. So he wasn't reporting like flying off the
22 handle, being really hot headed. He wasn't endorsing those
23 things. But he was endorsing some like hostile thoughts,
24 negative beliefs.

25 Q. Okay.

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By Ms. Shaw

1 A. But the pervasive anger is more of expressive anger.

2 Q. Okay. So with this lack of empathy, combined with the
3 internal grievance thinking, would that be relevant to your
4 risk analysis?

5 A. They're definitely data points that I for sure consider
6 and those are risk factors that he has.

7 Q. Okay. And how is lack of empathy relevant to a risk to
8 reoffend specifically?

9 A. Well, so actually the literature is mixed when it comes
10 specific to sexual offending. So, like common sense wise,
11 we want people to have empathy. And so a lot of treatment
12 programs are developed with having people or the treatment
13 program is to develop empathy but the literature suggests
14 that when people are sexually offending, they got -- like
15 they know it's wrong. It isn't that they don't know the
16 effect on the victims.

17 So like teaching someone to have empathy hasn't been
18 shown to necessarily be protective.

19 Q. Okay. But is that lack of empathy a problem to begin
20 with?

21 A. I mean yes, it, it could be. It's not the strongest
22 risk factor for recidivism but it's getting at things that
23 we know are related. So having antisocial attitudes, having
24 a lack of concern for other people, caring more about
25 your -- like what you want than other people's wants and

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By Ms. Shaw

1 needs. It's kind of getting at that factor.

2 Q. Okay. And that is entirely consistent with other
3 special -- other specified personality disorder with the
4 antisocial features which is the diagnosis both you and
5 Doctor Gillen gave him?

6 A. Correct.

7 Q. Okay. Thank you.

8 Now, I'm gonna briefly ask you to just go to Page, Page
9 30 again. We're gonna talk about the PCL-R very, very
10 briefly. I just want you to clarify one thing cause I was
11 getting a little confused during the discussion of Facet 3
12 and Facet 4. So let me ask you a question.

13 Facet 1 is its own facet, right?

14 A. Yes.

15 Q. Okay. Facet 2 is a combination of Facets 3 and 4 and
16 you get a, a combined score or a combined risk assessment.

17 How, how does that work?

18 Just remind me.

19 A. No. So they're four facets, one, two, three, and four.
20 And they factor load on to Factor 1 and Factor 2. So Facet
21 1 and 2 make up Factor 1 and Facet 3 and 4 make up Factor 2.

22 Q. Okay. Thank you for clarifying that.

23 Now, in Facet 2 or in Facet -- in Facets -- in Facets 3
24 and 4, you found that his scores were greater than
25 respectively 19.5 percent and 23 percent of the male sex

Emily Gottfried - Redirect examination
By Ms. Shaw

1 offender population specifically, correct?

2 A. No, not sex offender. Offenders in general.

3 Q. Okay. Just general offender profile?

4 A. Correct.

5 Q. All right. Now, those two scores combined to give you
6 the answer to Factor 2 and what were your scores on Factor 2
7 with regard to how the, the percentage of his scores being
8 greater than the other male offender populations?

9 So, how, how did those two combine to give you a score
10 on Factor 2 and what were those scores?

11 A. So you sum Facet 3 and 4.

12 Q. Uh-huh. (Affirmative).

13 A. That gives you Factor 2.

14 Q. Okay.

15 A. And you want to know the specific scores?

16 Q. Yes, please.

17 A. Okay. So---

18 Q. And just if, if you reference Page 30. It's right
19 above where you begin the discussion of the Statics.

20 A. Oh, the percent?

21 You want me to talk about the percentiles?

22 Q. Yes, please.

23 A. So, his Facet 3 score was greater than 19.5 percent of
24 the male offender population comparison group, and his Facet
25 4 score was greater than 23 percent of that offender group.

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By Ms. Shaw

1 Q. Okay. And what do those equate to in terms of the
2 total Factor 2 or Facet 2 cause you referenced his scores
3 were greater than 64 and a half percent and 74.8 percent of
4 male offender populations respectively.

5 Can you just clarify that?

6 A. That's for Facet 1 and Facet 2.

7 Q. Yes.

8 A. Okay.

9 Q. So can you just clarify that, why his scores would be
10 so high as related to certain male populations as in -- and
11 Facets 3 and 4 were a bit lower.

12 A. So, he has more of the interpersonal and effective
13 characteristics associated with psychopathy and less so with
14 the life-style and antisocial as what's measured on the
15 PCL-R. So, as I mentioned, antisocial on the PCL-R is
16 really driven by the early behavioral problems, the criminal
17 versatility, the juvenile arrests. But most of his history
18 are sexual offenses committed while he was an adult. So,
19 he's not gonna get those points for antisocial as measured
20 when you're looking at psychopathy.

21 Q. Okay. But with respect to male offender populations,
22 he was almost -- had almost 75 percent greater likelihood on
23 those scores of being -- of meeting criteria under the Hare.

24 Is that accurate?

25 A. No.

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By Ms. Shaw

1 Q. So just clarify it for me cause I'm not sure I
2 understand.

3 A. Let's see. So, when you look at his total score, which
4 is the sum of all those 20 items that, you know, you break
5 into it the facet and the factors, his total score was
6 greater than only 35 percent of male offenders.

7 Q. Uh-huh. (Affirmative).

8 A. But when you break it into the smaller pieces, when you
9 look at say Facet 1, which is the interpersonal facet, his
10 Facet 1 scores were greater than 64.5 percent of the male
11 offender population. And when you look at Facet 2, which is
12 the effective, his scores were greater than 74.8 percent of
13 the offender population.

14 Q. And that's significant, correct?

15 A. It's, it's a much larger percentage than some of the
16 others but the total score, which is what you actually look
17 at for psychopathy on this measure, was not significantly in
18 that range that you would classify.

19 Q. It still fell below the cutoff?

20 A. Yes.

21 Q. Okay. Thank you.

22 Now, you were asked -- and this is my last question or
23 two. You were asked about paraphilic coercive disorder in
24 the DSM-5 and 4.

25 Is paraphilic coercive disorder encompassed under other

Emily Gottfried - Redirect examination
By Ms. Shaw

1 specified paraphilic disorder?

2 A. Yes.

3 Q. Okay. How many paraphilias are there and actually I, I
4 know you went -- you discussed this earlier but just kind of
5 give me a brief summary of how many paraphilias would be
6 encompassed under that diagnosis and how many there are in
7 total?

8 MR. FALK: Your Honor, I think we're going beyond the
9 scope of my direct here.

10 MS. SHAW: He asked about paraphilic coercive disorder
11 in trying to suggest that it is not a DSM diagnosis.
12 Paraphilic coercive disorder falls within the paraphilic --
13 other specified paraphilia. That's what I'm trying to
14 clarify so our jury isn't confused.

15 THE COURT: Go ahead.

16 MS. SHAW: Thank you.

17 Q. Doctor Gottfried.

18 A. I mean there's thousands of paraphilias. So, literally
19 anything in the environment somebody can become aroused by.
20 So, I mean textures, rubber, certain smells. So any of that
21 would fit under other specified paraphilic disorder. People
22 have telephone scatologia where they are sexually aroused by
23 making obscene phonecalls. They have you fear -- like urine
24 and certain smells.

25 So they can't -- it would be an endless book cause

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By Ms. Shaw

1 pretty much anything in the environment somebody can develop
2 a paraphilic arousal to.

3 Q. Okay. But paraphilic coercive disorder is specifically
4 encompassed under, under this overall diagnosis?

5 A. It's a paraphilic arousal to coercion. So, it would
6 be -- it would fall under the other specified.

7 Q. Okay. Thank you.

8 And that is a DSM-4 and 5 diagnosis, correct?

9 A. In DSM-4 it would of been paraphilia not otherwise
10 specified.

11 Q. Okay. And in the DSM-5?

12 A. It would be other specified paraphilic disorder.

13 Q. And that's what you diagnosed him with?

14 A. Yes.

15 Q. Thank you. I have nothing further.

16 THE COURT: Anything else?

17 MR. FALK: No, Your Honor.

18 THE COURT: All right. Thank you. You can step down,
19 Doctor Gottfried. Thank you for your testimony.

20 Any objections with this being --?

21 MS. SHAW: No, Your Honor.

22 MR. FALK: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held out of the
25 hearing of the jury at this time.)

1 THE COURT: Ms. Gottfried, can I get you---

2 THE WITNESS: Stay, sure.

3 MS. SHAW: Thank you.

4 THE COURT: Sorry for the confusion.

5 Okay. Ladies and gentlemen of the jury, I believe this
6 is a good breaking point.

7 We're in agreement?

8 MS. SHAW: Yes, Your Honor. It's four o'clock. I
9 don't think we're gonna be able to get through Doctor
10 Gillen's direct today.

11 THE COURT: Okay. All right. So we're at a stopping
12 point for today. I'll need you to come back and visit with
13 us tomorrow for a little while.

14 If you can get here about 9:15 and we'll start back at
15 9:30. Certainly the earlier you get here we can get
16 everybody processed.

17 Tomorrow, it might be that we're gonna use this room
18 right here because they'll be some other activities going on
19 in the building but you will have instruction when you
20 arrive where to go.

21 Okay. And because of they'll be some other activities,
22 it might just, it might just be confusing outside for you.

23 Once again, you can't talk to anybody about your
24 testimony. If anybody does try to talk to you in the lobby,
25 contact you at home, let me know and we certainly don't

1 discuss this with any family or try to do any of your own
2 research. But otherwise I hope y'all a have good rest of
3 your afternoon and evening.

4 I want everybody else to stay in the courtroom seated
5 as this jury exits the courtroom.

6 All right. Y'all have a good evening. It is our
7 expectation to finish tomorrow.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Okay. Is the door closed?

11 All right. Okay. The, the jury has left the courtroom
12 now, and I believe doctor -- I believe Mr. Falk just had a
13 few questions for Doctor Gottfried on, on a matter that I
14 was not allowing him to go into. He just wanted to put
15 those questions and your answers in the record.

16 So --.

17 MR. FALK: Thank you, Your Honor.

18 THE COURT: How long do you anticipate, Mr. Falk?

19 MR. FALK: Five minutes maybe.

20 THE COURT: Okay. And I'm not cutting you off.

21 MR. FALK: No, I know. I just---

22 THE COURT: I just want to give everybody a break.
23 We've been going for a little while. So this is gonna be a
24 short period of time, then we'll go forward.

25 MR. FALK: In fact, I won't even lean. I'll stand up

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By Mr. Falk

1 if it will make me go a little quicker.

2 THE COURT: All right.

3 PROFFERED EXAMINATION

4 BY MR. FALK:

5 Q. Doctor Gottfried, what I was asking you before, you've
6 done not guilty by reason of insanity evaluations and you've
7 done not competent to stand trial evaluations?

8 A. Correct.

9 Q. Okay. And you've done those in the State of South
10 Carolina?

11 A. Yes.

12 Q. And I asked you if, if those people go to the Craft
13 Farrow Hospital, if you, if you knew that or not.

14 A. We call it Bryan Psychiatric Hospital. I don't know if
15 that's the same thing. They go to BHP.

16 Q. Is that the building that's kind of right next to
17 the -- where -- is that -- you know what road it's on?

18 A. I, I think it's close to the damaged forensic
19 evaluation office.

20 Q. Exactly.

21 A. But I've only been there once --

22 Q. Okay.

23 A. -- in my life. So --.

24 Q. But is it -- all I'm trying to ask you is people who
25 get a diagnosis that would put them in -- if, if people who

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By Mr. Falk

1 get a diagnosis that they're not guilty by reason of
2 insanity or incompetence to stand trial, they're gonna go to
3 a different facility than the facility that Mr. Chapman
4 would go to if he were found to be a sexually violent
5 predator?

6 A. In South Carolina, yeah, they would -- it's a different
7 --.

8 Q. Two different places?

9 A. To my understanding, yes. Yes.

10 Q. Are they both secure facilities?

11 A. To my understanding. I've not been on the new wellpath
12 building and I was in Bryan Psychiatric, their secure part,
13 one time for a competency evaluation. It was secure but I
14 don't work there. I've only been there one time.

15 Q. Thank you.

16 MS. SHAW: I have nothing.

17 THE COURT: All right. Now y'all ready to let her go?

18 MR. FALK: I'm ready.

19 THE COURT: All right. Thank you for your time today.

20 THE WITNESS: Thank you.

21 THE COURT: Safe driving.

22 THE WITNESS: Thank you.

23 THE COURT: All right.

24 MS. SHAW: Your Honor, I think that's it for today and
25 we'll start up with Doctor Gillen first thing in the

1 morning.

2 THE COURT: Okay. And how about what we'll do is we
3 will try to make some time maybe during the break tomorrow.
4 I think there might of be some -- y'all wanted to go over
5 some jury charges.

6 MS. SHAW: Yeah, we just need to go over some of the
7 language in, in certain areas of the charge. I mean these
8 are the same standard -- thank you.

9 These are the same standard arguments that we use every
10 time. Usually it's resolved within 10 to 15 minutes and
11 it's just the judge's discretion.

12 THE COURT: Okay. Fair enough.

13 All right. Then nothing further, I'll adjourn. We'll,
14 we'll start back at 9:30. If y'all need to talk to me, I'll
15 probably get here about 9:00.

16 Okay.

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

18 THE COURT: All right. Y'all have a good rest of your
19 afternoon and evening.

20 MS. SHAW: You too. Nice and quiet.

21 THE COURT: All right.

22

23 (WHEREUPON, Court was in recess for the evening.)

24

25

1 wednesday, June 8th, 2022

2

3 MR. FALK: Your Honor, just to eliminate some things,
4 the -- I believe the State wants to rest on the record and
5 that's fine.

6 Could I just reserve my motions so we don't have to
7 haul them back out but---

8 THE COURT: Yes, sir.

9 MR. FALK: ---I'll make them standard, you know,
10 directed verdict motion.

11 THE COURT: And we're on the record and I've noted that
12 and you can -- so you're protected.

13 MR. FALK: Thank you.

14 THE COURT: And we have a system in place. For our
15 midmorning break, women -- men there, women back here cause
16 they're two restrooms that they have back here.

17 THE BAILIFF: whichever way you say.

18 THE COURT: what -- whatever y'all think's gonna work
19 the best.

20 THE BAILIFF: Okay.

21 THE COURT: I can just step off the bench---

22 THE BAILIFF: Okay.

23 THE COURT: ---and out of the way.

24 THE BAILIFF: And I'll take them right back through
25 there?

1 THE COURT: Yeah.

2 THE BAILIFF: Okay.

3 THE COURT: And then I can, I can even actually go all
4 the way to Judge Henderson's office, have the door closed
5 and---

6 THE BAILIFF: Okay.

7 THE COURT: ---and then you just knock on the door when
8 you're ready for me.

9 THE BAILIFF: Okay. Thank you, sir.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE COURT: All right. Court will come to order.

13 Good morning, ladies and gentlemen of the jury. Thank
14 you for being prompt this morning. I appreciate it and
15 appreciate your attention this morning.

16 We're -- the next phase of this trial is that we
17 will -- I believe that the State has rested at this point?

18 MS. SHAW: That is correct, Your Honor. Doctor
19 Gottfried was our only witness. We rest.

20 THE COURT: Thank you.

21 And Mr. Falk have made -- had reserved some -- his
22 opportunity to make some arguments. And so rather than
23 excusing the jury, we'll, we'll wait and do that and that's
24 noted on the record.

25 Mr. Falk, are you ready to go forward at this time?

1 MR. FALK: I am, Your Honor.

2 THE COURT: All right. You can call your first
3 witness, sir.

4 MR. FALK: At this time we'd call Mr. Gillen, Doctor
5 Gillen to the stand.

6 THE COURT: Doctor Gillen, can I get you to come
7 forward?

8 Madam Clerk, do you need Annabelle to---

9 THE CLERK: No. No, sir.

10 THE COURT: Annabelle, you can swear him in. She can
11 deputy -- deputize you.

12 Doctor Gillen, if I can get you just to approach the
13 Bible there please, sir.

14 THE CLERK: If you'd like to put your stuff on the rail
15 it will be fine.

16 THE COURT: All right. Madam Clerk.

17 THE CLERK: Please place your left-hand on the Bible.
18 Raise your right.

19 CHRISTOPHER GILLEN, being first duly
20 sworn, testified as follows:

21 THE CLERK: Thank you, sir. You may take your seat.

22 THE COURT: Thank you, Madam Clerk.

23 THE CLERK: Yes, Your Honor.

24 THE COURT: You have to pull that chair all the way out
25 to be able to squeeze in there.

1 THE WITNESS: Yeah.

2 THE COURT: As noted yesterday, our previous clerk
3 designed that witness chair.

4 THE WITNESS: I feel very secure in that. So that's,
5 that's good.

6 THE COURT: Doctor Gillen, would you state your name
7 for the record please, sir.

8 THE WITNESS: Doctor Christopher Gillen. Gillen is
9 spelled G-I-L-L-E-N.

10 THE COURT: Thank you, sir.

11 Your witness, Mr. Falk.

12 DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. Doctor Gillen, where are you currently employed?

15 A. I'm currently employed through the South Carolina
16 Department of Mental Health.

17 Q. And what type of educational background do you have
18 that qualifies you to work for the South Carolina Department
19 of Mental Health?

20 A. I have a Bachelors of Science Degree in Psychology from
21 Carlton University as well as a Master's in Psychology from
22 Carlton University. I have a doctorate or a PhD in clinical
23 psychology from the University of Southern Mississippi.

24 Also completed training both as part of that degree
25 called the predoctoral internship. It's a year long

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1 requirement to get the degree for specialized clinical
2 training. Completed that at the University of Tennessee
3 Health Science Center. That included a variety of clinical
4 experiences in forensic psychological including juvenile
5 waiver or transfer evaluations for the courts, domestic
6 violence risk assessments, competency to stand trial as well
7 as criminal responsibility evaluations there.

8 Following completion of my degree, I also completed a
9 post doctoral fellowship in forensic psychology up in
10 Madison, Wisconsin. That was both at the Mendota Mental
11 Health Institute, which is the main forensic hospital in the
12 state, where I conducted competency to stand trial
13 evaluations as well as violence risk assessments on the
14 patients there. And then also at Sand Ridge Secure
15 Treatment Center, which is Wisconsin's sexually violent
16 person facility.

17 So I conducted treatment there for their SVP program as
18 well as sexually person or SVP evaluations there as well as
19 part of that training, yeah.

20 Q. Are you licensed to practice psychology in the State of
21 South Carolina?

22 A. I am, yes.

23 Q. And how long have you been licensed?

24 A. I believe my license -- I got my license January, 2020.

25 Q. Okay. And how long have you worked for South Carolina

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By Mr. Falk

1 Department of Mental Health?

2 A. Since October, 2019.

3 Q. Are you licensed in any other states?

4 A. I was licensed in Wisconsin. However, I let that
5 license end because I no longer work in the state and didn't
6 need to keep the license.

7 Q. And so you were asked to do a forensic evaluation on a
8 sexually violent predator for -- in this sexually predator
9 case.

10 Is that correct?

11 A. Yes, that's correct.

12 Q. And so, again, just so you, you could review for me,
13 what sort of specific background and training do you have in
14 forensic psychology with respect to sexually violent
15 predators?

16 A. So, as I mentioned earlier, with my postdoctoral
17 training, half the year was devoted to sexually violent
18 person evaluations. That's just the name of the statute up
19 in Wisconsin. They call it something slightly different but
20 it's the same sort of idea.

21 So, I have extensive training in evaluations, in risk
22 assessment methods specifically related to sexually violent
23 predator evaluations at that time. Also, as part of my
24 employment at South Carolina Department of Mental Health, we
25 have a -- we have our own fellowship program that we offer

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By Mr. Falk

1 trainees.

2 Part of my duties as a psychologist there with the
3 fellowship program is to help with our own didactic or
4 seminar series. So, six months of the year we put together
5 a seminar series covering various topics that are
6 specifically related to sexually violent predator
7 evaluations. So, in addition to coming up with the research
8 and literature to add to that seminar, we're always
9 reviewing those topics once a week for half the year while
10 the trainee is participating in that part of the fellowship
11 program.

12 So that allows discussion, consultation among
13 colleagues and other psychologists in the building
14 specifically dealing with relevant and new and emerging
15 research topics directly involved in this field.

16 Q. Just to explain to the jury cause I'm not sure I know,
17 what does didactic mean?

18 A. Seminar basically. So they'll be a group discussion
19 about various topics within the field that can include risk
20 assessment, volitional impairment, assessment of mental
21 abnormalities, for example, some of the controversies in the
22 field, different opinions about that, and it -- it's
23 basically a presentation of various peer reviewed scientific
24 articles that are published in the area and then discussion
25 about that amongst ourselves and the trainees that we have

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1 in our program.

2 Q. As part of your work history at the South Carolina
3 Department of Mental Health, have you done any evaluations?

4 A. Yes, that's -- that is primarily what I do. That is my
5 job description is to do forensic evaluations for the State
6 of South Carolina.

7 Q. And so the, the evaluation you were asked to do today
8 was for a -- this is an initial commitment hearing.

9 Is that correct?

10 A. Yes. Yeah, it's initial commitment trial.

11 Q. All right. So how many times have you done an
12 evaluation like that with the Department of Mental Health?

13 A. I've conducted a total of 69 sexually violent predator
14 evaluations in my capacity at South Carolina Department of
15 Mental Health.

16 Q. And how many of them have been devoted to an initial
17 commitment proceeding?

18 A. Nine.

19 Q. Okay. And have you ever been admitted as an expert in
20 the field of forensic psychology in a, in a court in South
21 Carolina?

22 A. Yes, multiple times.

23 Q. And have you ever been admitted as an expert in the
24 field of forensic psychology in a sexually violent predator
25 case in the State of South Carolina?

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1 A. Yes.

2 Q. Let me just briefly go over.

3 Are you a member any professional associations?

4 A. I am, yes.

5 Q. Can you tell me which ones?

6 A. The American Psychology law Society.

7 Q. And what does that do?

8 A. It's a national professional organization devoted to
9 the role of psychology and how the -- how psychology
10 interacts with the legal system generally. So, it's a broad
11 society which covers a variety of different types of
12 psychological questions and how that might interact with the
13 legal system beyond just sexual offending, for example.

14 Q. Have you contributed to any periodicals or done any
15 type of publication?

16 A. Yes, I've published 10 articles in peer reviewed
17 journals. Those are scientific journals that have been
18 through the rigors of other experts and colleagues in the
19 field which have reviewed that and deemed that it
20 contributes to the literature, contributes to the science in
21 any field. Five of which were first author publications.

22 Most of those publications have dealt with assessment,
23 including personality assessment, looking at -- psychopathy,
24 for example, has been a primary research interest of mine
25 throughout my training both as, as an undergraduate master

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By Mr. Falk

1 student as well as a doctoral student.

2 Q. I think Doctor Gottfried testified that she's a member
3 of ATSA?

4 A. I, I believe so, yes.

5 Q. And what is -- what's your understanding of that?

6 A. ATSA is a -- again, it's a similar professional
7 organization explicitly looking at treatment assessment of
8 sexual offenders. I believe there's also members of the
9 organization from Canada and other places as well similar to
10 APLS. It's not just America but other countries as well.

11 Q. Are you a member of that organization?

12 A. I am not, no.

13 Q. Why is that?

14 A. It's a combination of monetary reasons and need. So
15 one of the things about my position at Department of Mental
16 Health is I work with a variety of other psychologists. We
17 really work as a team in a lot of ways and one of my
18 colleagues is a member of ATSA.

19 So she gets access to the research articles that are
20 released through them and we consult and collaborate on
21 that. So she brings it to your attention.

22 So, in that sense, I'm able to get the information but
23 then I'm not having to pay out of pocket for that. So it's,
24 it's a combination of financial reasons and also need. I'm
25 able to get a lot of the information from my other

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By Mr. Falk

1 colleagues and team members.

2 Q. How much does it cost?

3 A. I'm not sure how much it costs.

4 Q. More than a hundred bucks?

5 A. It, it, it depends on the type of membership you get.

6 All I know is that, at this point, it's not something that
7 I'm, that I'm able or willing to, to afford at this time --

8 Q. You're a state---

9 A. -- given --.

10 Q. You're a state employee?

11 A. Correct, yes.

12 MR. FALK: At this time, we would offer Doctor Gillen
13 to testify in the field of forensic psychology and in
14 sexually violent predator assessments.

15 THE COURT: All right. Ms. Shaw.

16 MS. SHAW: Your Honor, I just had a couple of questions
17 for Doctor Gillen if that's all right.

18 THE COURT: All right.

19 MR. FALK: Do you want to go from here?

20 MS. SHAW: Yeah, that's fine.

21 CROSS-EXAMINATION

22 BY MS. SHAW:

23 Q. Good morning, Doctor Gillen.

24 A. Good morning.

25 Q. It's good to see you again.

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By Ms. Shaw

1 A. Yeah, it's good to see you as well.

2 Q. I just have a couple of quick questions for you.

3 So, as part of your -- well, in, in the context of your
4 employment with DMH, you're not solely evaluating sexual
5 predators, correct?

6 You're doing a variety of other types of evaluations in
7 addition to your SVP work?

8 A. So, yes, that -- that's in the job description.

9 However, almost exclusively on my work since I've come here
10 has been in SVPs outside of some psychosexual evaluations
11 that I've conducted over at the main forensic hospital and
12 civil hospital. So those are individuals who are, are not
13 being referred for sexually violent predator evaluations.
14 But they have engaged in sexually problematic behaviors in
15 the hospital.

16 And so some of the referring psychiatrists at the
17 hospital have asked our department to complete evaluations
18 for them and my supervisor has assigned some of those to me
19 as part of my work duties. But outside of those evaluations
20 and the SVP evaluations, that -- that's, that's essentially
21 been what I've actually done here since 2019.

22 Q. Okay. And testified that you've done 69 total SVP
23 evaluations?

24 A. Yes, that's correct.

25 Q. Okay. Now, once an individual is civilly committed to

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By Ms. Shaw

1 the program, there is an annu -- or there is a resident
2 review?

3 MR. FALK: Objection, Your Honor.

4 May I approach?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: All right. Ms. Shaw.

9 MS. SHAW: Thank you, Your Honor.

10 Q. Doctor Gillen, in the context of SVP evaluations, you
11 do both precommitment evaluations and resident reviews,
12 correct?

13 A. Yes, that's correct.

14 Q. Okay. And can you tell me the difference between the
15 question you were asked for the resident review as opposed
16 to the question you were asked for precommitment evaluation?

17 A. So, with a precommitment evaluation, what we're looking
18 at is whether the respondent has a mental abnormality or
19 personality disorder that predisposes them to commit acts of
20 sexual violence in that they are likely to commit acts of
21 sexual violence if not confined for long term control, care,
22 and treatment.

23 It's a similar question for the resident review.
24 We're, again, looking at to see whether that mental
25 abnormality or personality disorder has so changed that the

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By Ms. Shaw

1 individual isn't safe to be at large and is no longer likely
2 to commit acts of sexual violence.

3 So, in both cases we're looking at diagnostic issues
4 related to mental abnormalities and personality disorders as
5 well as a risk assessment in determinations of likely.

6 Q. Okay. But it is a fundamentally different question
7 you're asking, has someone changed versus does someone have
8 the mental abnormality that makes it likely they'll offend?

9 A. I don't know if it's fundamentally different cause the,
10 the methods involved in, for example, the diagnostic
11 assessment, that's gonna be very similar. The risk
12 assessment, that's also gonna be very similar.

13 So, I, I wouldn't say they're necessarily fundamentally
14 different. But yes, they are different statutes in terms of
15 the legal question that are being answered. But when it
16 comes to my role as a psychologist, I actually approach them
17 quite similarly.

18 Q. Okay. But of the total number of evaluations you've
19 performed, only nine of them have been precommitment?

20 A. Yes, that's right. Nine have been, have been
21 precommitments.

22 Q. Okay. And when did you start doing the precommitment
23 evaluations?

24 A. I think actually my first case when I came to the
25 Department of Mental Health in October of 2019 was a

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By Ms. Shaw

1 precommitment case. I think actually my first two were. I
2 believe the first one was assigned in November of 2019.

3 Q. Okay. And do you remember which one this particular
4 case was?

5 A. In terms---

6 Q. First, second, third, fourth?

7 A. ---of the order?

8 Oh, gosh. No, I don't know exactly when it was. I saw
9 Mr. Chapman in April of 2021. If I had to ball park it and
10 guess, probably somewhere in the middle but closer to the
11 end cause I haven't gotten a precommitment referral.

12 Probably -- I would say there was maybe a -- two or three
13 that came after I saw Mr. Chapman, a total of that nine.

14 Q. Okay. So maybe this was your fourth or fifth perhaps?

15 A. Probably closer to seventh if I had to guess.

16 Q. Okay.

17 A. But it could -- somewhere around there. I'm not a
18 hundred percent sure exactly where he would be in the line.
19 But just knowing the timeframe, it would of been near the --
20 more near the end than the middle or the beginning.

21 Q. Okay. And you said you've been qualified as an expert
22 multiple times in the State of South Carolina.

23 How many times have you actually been qualified?

24 A. I believe seven.

25 Q. Okay. And have all of those been precommitments or

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1 have they -- have others been other types of hearings?

2 A. I believe two were precommitment evaluations.

3 Q. Okay. So you've only testified in two precommitment
4 trials so far?

5 A. Yes, this is my third.

6 Q. Okay. Thank you.

7 No objection.

8 THE COURT: All right. Okay. So, the motion is for
9 the Court to declare him as an expert, correct?

10 MR. FALK: Yes, sir. That's right, Your Honor.

11 THE COURT: All right. So ordered.

12 CONTINUED DIRECT EXAMINATION

13 BY MR. FALK:

14 Q. So, you were -- this is a precommitment evaluation.

15 Is that correct?

16 A. It is, yes.

17 Q. And so you were trying to reach the decision about
18 whether or not somebody is a sexually violent predator?

19 A. Yes, that's correct.

20 Q. And what are the elements of being a sexually violent
21 predator?

22 A. Well, the first element is that they have to have been
23 convicted of a sexually violent offense. The second element
24 is that they have to have a predisposing mental abnormality
25 or personality disorder. And the third element is the

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1 predisposition condition has to make them likely to engage
2 in future acts of, of sexual violence. All three pieces are
3 needed in order for someone to meet that criteria.

4 Q. Does that mean that somebody could have a mental
5 abnormality or personality disorder but not be a risk to
6 reoffend?

7 A. Yes.

8 Q. I guess it could also have somebody who might be a risk
9 to reoffend but who doesn't have a qualifying mental
10 abnormality or personality disorder.

11 Is that correct?

12 A. Yes, that -- that's exactly correct and that's what the
13 research has, has said. In regarding this matter, it's
14 important to make sure that the individual has that
15 predisposing mental condition, a mental abnormality or
16 personality disorder, that makes them likely. So, again,
17 it's really the, the combination of those pieces which is
18 vital for -- vital for the commitment.

19 Q. So when you say that makes it likely, is it sort of
20 causal connection between the mental abnormality and the
21 risk to reoffend?

22 A. I, I think that's certainly part of it but likely's
23 also defined in statute as someone who's gonna be posing a
24 menace to the health and safety of others if released. So
25 when looking at the likely prong specifically, that's really

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1 the question that -- that's being investigated or, or that,
2 that I'm giving an opinion on in these cases.

3 Q. But is it safe to say that the potential offenses have
4 to be as a result of the mental abnormality?

5 A. Again, I, I think that's part of it. Assessing whether
6 something like a specific diagnosis or condition meets the
7 criteria of mental abnormality goes far beyond just
8 establishing a connection between condition and behavior.
9 In this case, sexual behavior.

10 Q. And when we're talking about likelihood to reoffend,
11 we're talking about likelihood to reoffend sexually violent
12 offenses.

13 Is that correct?

14 A. That is true, yes.

15 Q. So, a likelihood to commit an assault, is that -- would
16 that make somebody -- if you believe somebody was likely to
17 get into a fight, would that be something that would be a
18 concern of -- you know, would that fit the definition of
19 that third prong of the test?

20 A. So, an assault --.

21 Q. A nonsexual assault.

22 A. Yeah, a nonsexual assault would not be listed as one of
23 the qualifying sexually violent offenses for which the
24 statute is designed.

25 Q. So, we're not worried about somebody getting out and

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1 committing robbery or getting a DUI or something like that.

2 Is that correct?

3 A. That's correct.

4 Q. Now, can you walk me through kind of the review process
5 that you went through?

6 A. Yes.

7 So as part of my evaluation, I'll do a thorough review
8 of records. Those are gonna include a -- criminal history
9 records, victim statements, affidavits, indictments related
10 to both the sexual and nonsexual offending history of a
11 respondent. That will include a review of other records as
12 well. For example, Department of Corrections records.

13 It will also include an interview with the respondent,
14 a, a clinical interview.

15 I'll also reach out and contact multiple collateral
16 sources for my evaluations. Collateral sources are people
17 who know the respondent, have interacted with the respondent
18 in various contacts and situations. That's gonna be really
19 important cause they're gonna be able to speak to
20 personality functioning, emotional functioning, behavioral
21 functioning, a cross of wide range of settings.

22 So, for this particular evaluation, I contacted five
23 different Department of Corrections employees who have
24 interacted with Mr. Chapman again in a variety of contacts
25 while he's been incarcerated. Also reached out to some

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1 family members as well. Specifically his brother in
2 Georgia. The reason being to try and get an idea about the
3 quality of, of his release plans and community supports.

4 I believe that is most of the information I have. But
5 I also score objective measures as well. So that, that will
6 include the Static-99 and Static 2002R as part of the risk
7 assessment for the respondent.

8 Q. So, so far, doing the record review, and contacting the
9 collateral sources, is that, is that the standard practice
10 in your field?

11 A. It is, yes.

12 Q. And you said that you conducted the Static-99---

13 A. Yes, but the---

14 Q. ---R, or whatever---

15 A. Sorry.

16 Q. Static-99R and the 2000R.

17 Is that correct?

18 A. Yes, both the Static-99R and 2002R.

19 Q. And you would agree that that's also a standard
20 practice in your field?

21 A. Yes, I would.

22 Q. All right. So you were here yesterday when Doctor
23 Gottfried testified, were you not?

24 A. I was, yes.

25 Q. And you heard sort of a whole group of other types of

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1 assessments that she performed.

2 Is that correct?

3 A. Yes, that's correct.

4 Q. Okay. I don't want to lead you here.

5 So, what can you tell me about the PAI test?

6 A. So it's a broad band personality measure. It's gonna
7 be able to look at various types of personality traits,
8 emotional functioning, behavior functioning, as well as
9 response style. That's, that's generally what that test is.

10 Q. And are you familiar with that test?

11 I mean have you ever used that test?

12 A. Yeah. Yes, I have. I have used it -- I believe I've
13 used the adolescent version in a research context and then
14 the adult version, which we're talking about here, I've used
15 in clinical context specifically on individuals who have
16 been hospitalized in an inpatient setting.

17 Q. I think Doctor Gottfried's testimony was, when she gave
18 the, the PAI, she reached the conclusion that he wasn't
19 being necessarily forthcoming in his responses and he was
20 guarded in his responses?

21 A. Yeah, I'm not sure exactly which specific test that was
22 in reference to. But yes, I believe that was her testimony
23 in regards to some of his response styles on those, on those
24 measures.

25 Q. Okay. Were you anticipating whether or not he would be

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1 not forthcoming in his responses and reserved in his
2 responses?

3 A. Yes. So part of the evaluation that I'm looking at is,
4 again, is part of that thorough interview. But then also
5 looking at all the records and then all the different
6 collateral sources trying to match up and see if, you know,
7 the nature of consistencies and inconsistencies across
8 sources, how much is this kind of jelling or vibing together
9 across different sources.

10 And so, in, in that context, it -- it's not surprising
11 I also had very similar conclusion in my report related to
12 that based on the information that, that I collected for,
13 for my evaluation.

14 Q. And what about the MMPI and the MDSA?

15 Are you familiar with those tests?

16 A. Yes.

17 Q. Are you familiar with the types of questions that are
18 asked as part of those tests?

19 A. Yes.

20 Q. Do you use any of those questions as part of your
21 evaluation?

22 A. So definitely some of the questions and, and factors on
23 the MDSA, or the M-I-D-S-A, are factors that I look at in
24 my evaluation. These are concepts that I ask in my
25 interview, concepts that I'm looking for across the records

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1 in various collateral interviews and informants that I'm
2 talking to. And so, in that sense, yes, I was looking at
3 very similar content which captured by that.

4 In terms of the MMPI-3, that again is a measure that's
5 very similar to the PAI. They accomplish very similar
6 things. Again, what we consider broadband personality
7 measures that are able to get at a variety of traits,
8 functioning, response styles.

9 And, again, so very similar with the PAI. I, I was
10 able to gather that information about Mr. Chapman's response
11 style and about certain problems that he's had in the past
12 as well as potentially ongoing concerns and improvement that
13 he's had through the information that I covered in, in my
14 evaluation and the information I was able to, to gather in
15 those areas was, was quite similar to the reports that
16 Doctor Gottfried provided.

17 Q. So, was there -- you had read Doctor Gottfried's
18 report.

19 Is that correct?

20 A. Prior to the trial, yes.

21 Q. Right. Cause it came after yours.

22 I'm just saying, in preparation for your testimony
23 today, you read Doctor Gottfried's report?

24 A. I, I did, yes.

25 Q. And when she discussed her finding after giving the

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1 PAI, the MMPI, the MIDSA, and that -- whatever that violence
2 one was, the VR20 or do you know what I'm talking about?

3 A. Yeah, the SVR-20.

4 Q. SVR-20?

5 A. Uh-huh. (Affirmative).

6 Q. Did you learn anything from her report that was new
7 from what you found when you evaluated Mr. Chapman?

8 A. I, I don't believe so and I think what's most important
9 for me with this is getting back to my clinical training and
10 then how we're trained as clinical psychologist. One of
11 the -- I would say the most basic principles that we're
12 taught in, in school is that everything you add, that could
13 be a new question you ask, that could be a new measure you
14 want to add to your testing battery, it all must pass kind
15 of a basic sort of test what incremental value is that thing
16 giving because there's a recognition that, with everything
17 you do, every test you add, every question you add, it is
18 not just increasing the time of the evaluation but that's
19 adding costs to what's going on.

20 For instance, the bigger a battery is, the more test
21 you add, you run the risk of performance issues with the
22 examinee that, that you're evaluating. So, again,
23 everything needs to be viewed through the filter is this
24 giving me something important or can it give me something
25 important that I otherwise wouldn't get.

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1 And so that's why I did not choose to use those
2 particular evaluations in or those tests in this case
3 because I felt I was able to answer those questions, get
4 that information in a very thorough manner by talking to
5 Mr. Chapman, reviewing the records, and talking to other
6 sources that I didn't need to basically increase the cost of
7 the evaluation to get it. There wasn't anything more
8 incremental to gain from doing it.

9 It's kind of like going to the doctor's office. If you
10 come in with a -- flu symptoms, a cold, they might run a
11 couple tests to try and help answer that question. But
12 they're not gonna send you in for a CAT Scan and an MRI and,
13 you know, a bone graft or everything else they're gonna do.
14 They're gonna look at the tests, see what happens, and then
15 adjust accordingly from there. And that's very similar to
16 how I approach these evaluations. It's trying to make sure
17 that you're getting a thorough amount of information but
18 not, but not increasing the cost with -- without getting
19 something of value or something incrementally above what you
20 would of got before.

21 So that was the rationale for why I chose the testing
22 battery and the types of tests that I used in my evaluation.

23 Q. I think Doctor Gottfried testified that the reason why
24 she uses those tests is cause it adds to a multifaceted
25 approach and that's sort of a standard practice.

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1 A. Uh-huh. (Affirmative).

2 Q. What about your testing was -- would be similarly
3 multifaceted?

4 A. So, again, both relying on objective measures like the
5 Static-99R and Static 2002R, looking at multi-informant. So
6 that's a big piece of evidence. So I wasn't just---

7 Q. I'm sorry.

8 What does multi-informant mean?

9 A. Yeah. Multi-informant means talking to different
10 people that are gonna give you a different context, maybe a
11 different lense from which to view the person that you're
12 evaluating. Probably a great example is with children.

13 So when we're doing an evaluation with somebody that's
14 maybe having some school problems, we don't just talk to the
15 child. We talk to their parents. We talk to the teacher.
16 We talk to other people who interact with them in a variety
17 of contexts cause we want to know, you know, how's the kid
18 doing at home, how's he doing in the classroom.

19 Same sort of thing with this. We're trying to get an
20 idea about well, what was Mr. Chapman like before he came in
21 here. So I don't just ask Mr. Chapman that. I ask his
22 brother. I ask people who interacted with him at that that
23 can provide maybe a different lense from which to view the,
24 the records that I went through.

25 It's also important to talk to correctional staff,

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1 people who've worked with him in a variety of contexts. So
2 that includes people who've worked with him on-the-job when
3 he's in the Department of Corrections, case managers who
4 have interacted with him maybe in a different way in the
5 prison.

6 So that -- that's when I -- when I talk about
7 multi-informant approach, that's really what was happening
8 here in my evaluation to try and get a clearer picture about
9 what's going on with the person that I'm examining.

10 Q. You've only been at the Department of Mental Health for
11 what three -- since 2019 you testified?

12 A. Uh-huh. (Affirmative).

13 Yeah, it's been about -- just over -- I think just over
14 two and a half years now.

15 Q. They're people at the Department of Mental Health that
16 have more experience in this field.

17 Is that accurate?

18 A. Yes, that is accurate.

19 Q. You had talked about Doctor Carter.

20 Is that one of them?

21 A. Doctor Carter, yes.

22 Q. And there's other doctors there who have more
23 experience.

24 Is that correct?

25 MS. SHAW: Objection, Your Honor. Side bar.

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1 THE COURT: Yes, ma'am.

2 (WHEREUPON, a bench conference was held out of the
3 hearing of the jury at this time.)

4 Q. Now, I do not want to know what anybody else told you
5 at the Department of Mental Health because this is your
6 opinion.

7 Is that correct?

8 A. It is, yes.

9 Q. Nobody else at the Department of Mental Health signed
10 off on your opinion.

11 Is that correct?

12 A. That is correct, yes.

13 Q. But as part of your process, do you collaborate with
14 other people at Department of Mental Health?

15 A. Yes. So one of the things I mentioned earlier in my
16 testimony is that the other psychologists in the Department
17 of Mental Health in the forensic evaluation service where
18 I'm employed, we really do work as a team and what that
19 means is there's a consultation model that we use that's
20 standard within the field of psychology to consult on cases
21 with peers and other people. And so, yes, in the context of
22 this case, I, I did consult with other colleagues who also
23 have experience in this area on various topics and issues
24 related to the opinion that I gave.

25 Q. Thank you.

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1 One of the tests that Doctor Gottfried gave was the
2 Hare, the PCLR.

3 Is that correct?

4 A. Yes.

5 Q. And do you have some familiarity with that test?

6 A. I do, yes.

7 Q. And what is that?

8 what is your -- what is the basis for that?

9 A. The basis for my understanding?

10 Q. When have you used the Hare test before?

11 A. So, I -- so there's different versions of the Hare
12 Psychopathy Checklist Advised. There's the, the one I just
13 mentioned, the PCL-R. There's also the PCL, Psychopathy
14 Checklist Youth Version. There's also a PCL-SV, which is
15 the screening version. So, there's different tests that
16 have been developed all, all using the same sort of model.

17 My experience with those tests have been both in
18 research as well as clinical practice. So, when I was an
19 undergrad and a master's students up at Carlton University,
20 I worked with Doctor Adelle Forth. She was my supervisor.
21 She is the primary author on the PCL youth version. She was
22 also heavily involved in the creation of the Psychopathy
23 Checklist Revised as well with her mentor, Doctor Hare. So,
24 I worked alongside her for both those degrees in studying
25 psychopathy and using some of those measures in a research

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1 context.

2 Clinically, I've used the -- I don't think I've
3 actually used the youth version clinically. But I've used
4 the Psychopathy Checklist Revised which is the measure used
5 for adults in clinical context both within sexually violent
6 predator evaluations in Wisconsin as well as here in South
7 Carolina and on forensic patients primarily up in Wisconsin
8 when I was doing violence risk assessments on them. So,
9 I've used, used that measure in, in those contexts.

10 Q. And so that test, that's not one where they're asked
11 questions?

12 Is that correct?

13 A. So, all of the Hare tests, to kind of broadly label
14 them, there's gonna be an interview component and then
15 there's also gonna be a thorough record review that needs to
16 be conducted in order for the evaluator or the psychologist
17 to score that particular measure. So, what I do in my
18 precommitment interviews is I actually borrow questions from
19 the Psychopathy Checklist Revised interview, interview and
20 incorporate that into my own clinical interview.

21 The reason I do that is I'm trying to get at some of
22 those personality traits that are deemed important by that
23 measure through things like manipulation, callousness, being
24 glib or, or superficially charming, conning behavior, for
25 instance. So those are types of questions that I take from

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1 the PCL-R interview and incorporate into, into my own.

2 And then the record review that I can do is a standard
3 part of these evaluations would be the same sort of record
4 review that you would use in order to score the measure.

5 Q. So you, you know what the questions are for the tests?

6 A. Yes.

7 Q. And, and you conducted an, an evaluation.

8 Is that correct?

9 You, you, you, you conducted the interview first before
10 you -- I, I didn't say it -- and you conducted the interview
11 and you know what the questions are in the Hare test.

12 Is that correct?

13 A. Yes, that's correct.

14 Q. All right. So is there anything in Doctor Gottfried's
15 results that surprised you?

16 I mean I know you didn't score it and I didn't ask you
17 to score.

18 A. Uh-huh. (Affirmative).

19 Q. Does her scoring surprise you or would you agree with
20 it?

21 what---

22 A. I mean it's hard to know cause I mean I didn't look
23 through all of her individual scores and rationale for doing
24 that. So, you know, I certainly don't have that level of
25 detail from which to analyze it. However, there were, there

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1 were some things which were, I guess, initially surprising.

2 Someone that has a criminal history, not unlike
3 Mr. Chapman's, you would generally expect them maybe to have
4 higher Facet 3 and Facet 4 scores. Again, that's looking at
5 the life-style, impulsivity, and the antisocial component of
6 what's going on there in the assessment. Generally you
7 would think those might be a little higher.

8 I was also a little surprised with Facet 1, which is
9 the manipulation, conning piece, how high it was. It didn't
10 seem that it was necessarily consistent with the things that
11 I observed in both the records as well as my interactions
12 with Mr. Chapman and then some of the information that
13 Doctor Gottfried was talking about in her report.

14 So, initially, that was a little surprising. But,
15 again, I, I didn't have access to her scoring or, or the
16 rationale for it. So, again, I can't say one way or the
17 other about that. But I mean that was certainly initially
18 surprising to, to me looking through what she had in the
19 report.

20 Q. So, some of her scores were higher and some of her
21 scores were lower is what you're saying?

22 MS. SHAW: Objection. That's not the testimony, Your
23 Honor. Some of her scores were higher and some were lower
24 that -- Doctor Gottfried or Doctor Gillen didn't score the
25 Hare. So he wouldn't know.

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1 MR. FALK: Than he expected to see. I didn't get a
2 chance to finish my question.

3 MS. SHAW: All right.

4 THE COURT: All right. I'll respectfully overrule the
5 objection.

6 Q. So some of the scores were higher and some of the
7 scores were lower than you expected to see?

8 A. I would say that's fair, yes.

9 Q. Okay. Let's talk a little bit about the Static-99.
10 Doctor Gottfried testified that there's a possibility that
11 it can underestimate risk. You heard that testimony.

12 Is that correct?

13 A. Yeah, that's correct.

14 Q. Okay. Is there also a possibility that it can
15 overestimate risk?

16 A. Yes, that is true. There's several reasons for that.

17 There is research out of Texas and California on large
18 samples both of which found that Static-99R scores and the
19 absolute recidivism rates, so those are those kind of
20 percentage of people who reoffend, that in the samples of
21 released sex offenders in both Texas and California, that
22 their actual rates of recidivism within the same time period
23 were, were half that of what would of been predicted by the
24 Static-99R.

25 There's also the kind of relevant question for SVP

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1 proceedings. The Static-99R and 2002R both are looking at
2 sexual offending broadly. Includes a variety of different
3 types of contact and noncontact sexual offenses.

4 So, for example, someone might get charged with
5 exhibitionism for exposing themselves in a public area.
6 Maybe they're urinating at the football game, for example,
7 cause they don't want to wait for the, you know, the, the
8 portable toilets to become available.

9 That, you know, I know it's a little crude but, you
10 know, technically someone could be charged with a sexual
11 offense for that and, on the Static-99R, that would count as
12 a sex -- sexual recidivism. So it's, it's a broad net of
13 sexual crimes.

14 For the SVP evaluations, we're looking at a specific
15 subset of types of sexual crimes, sexually violent crimes
16 which are defined in South Carolina statute. It is a
17 smaller pool of crimes then what are actually captured
18 within the Static-99R and 2002R.

19 So, again, those percentages that we're talking about,
20 those are referring to a group of offenders, how many of
21 those reoffended based on the coding criteria of the Static.
22 It doesn't necessarily match on with the types of crimes
23 we're talking about for sexually violent predator
24 proceedings.

25 There's also been, and it's actually quite good,

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1 there's been, across jurisdictions, Canada, Western Europe,
2 United States, declining sexual recidivism rates. I mean
3 that's good. But what, what it means though is that some of
4 the percentages that are being reported in the normative
5 sample for the Static also potentially could overestimate
6 the rates of recidivism now given these historical trends
7 of, of recidivism happening at a less frequent rate.

8 Again, that's a good thing. We, we don't want people
9 to recidivate. So it's nice that that historical trend is
10 happening. But in terms of the tools we're using, it
11 prevent -- prevents or provides the opportunity that maybe
12 there's an overestimation of risk happening within some of
13 those absolute recidivism numbers.

14 Q. And you would agree with -- I mean you scored those
15 tests the same as Doctor Gottfried.

16 Is that correct?

17 A. Yes, we, we came to the same conclusion regarding the
18 scores on both those measures.

19 Q. Can you just go over one thing with me?

20 So, hypothetically, other than a change in his age, if
21 you would of given him -- if you would of done a Static-99
22 on him in 1991, would that have been -- how would that have
23 been different from a Static-99 conducted in 2022?

24 A. Huh.

25 well, so I think part of it was the test wasn't even

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1 around in the early '90s. So, I wouldn't of been able to
2 score it then.

3 Q. All right. So let's say you can go back in time. I'm
4 just trying to --.

5 A. Oh, okay. I mean outside of age, I don't believe,
6 believe really any of the items would of changed. You know,
7 in some cases, things can change based on someone's
8 institutional behavior. That might alter their score based
9 on that new data or that new information.

10 Q. would it go up or down?

11 A. well, it technically could be both cause the way it's
12 scored.

13 Q. Okay.

14 A. Traditionally it will go down. But I don't want to get
15 into all like the scoring rules. But it, it -- technically
16 it could actually affect it by going up or going down
17 depending on how the scores kind of go. But, generally
18 speaking, if someone does something in prison like a new
19 offense, for example, maybe they get charged with a new
20 crime while they're incarcerated, generally speaking that
21 could increase the point. But there's some circumstances
22 where it actually might decrease it cause it could also then
23 change other items that maybe were scored higher before.

24 But those are, those are kind of more strange, very
25 unique sort of cases that don't apply here with, with

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1 Mr. Chapman.

2 Q. Well, let me -- so you scored him with a six on the
3 Static-99?

4 A. Uh-huh. (Affirmative).

5 Q. Do you think he would of probably had close to a six
6 had you scored it based on -- had you gone back in time and
7 scored him in 1991?

8 A. It would of---

9 MS. SHAW: Objection, Your Honor. This is grossly
10 speculative. Doctor Gillen already testified that, in 1991,
11 the Statics didn't even exist. So he can't discuss how he
12 would of scored him in '91, almost 20 years ago, as opposed
13 to how he would of scored him today. I mean -- and he's
14 already testified that it could go up or it could go down.
15 So, I think we've covered this area.

16 MR. FALK: I think I can ask an expert a hypothetical
17 question.

18 THE COURT: Yeah, he---

19 MR. FALK: I'm not -- I'm just trying to --.

20 THE COURT: All right. I'll, I'll respectfully
21 overrule the objection. I'll allow him to ask a
22 hypothetical question cause I think you're getting close to
23 the end of that line of questioning anyway.

24 MR. FALK: I am.

25 THE COURT: Go ahead.

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1 Q. So, the score of a six in 2022 or 2021 when you did the
2 evaluation, hypothetically, had you -- were able to give the
3 evaluation in 2021, would it be close to the same score?

4 A. If I scored it in 2022?

5 Q. In 20 -- 2021 and going back to 1991.

6 A. I believe his score would of been higher because of
7 age.

8 Q. Okay. Without the age though.

9 A. Oh. No, I believe it would be the same.

10 Q. Okay. So I mean -- nevermind.

11 Now, you have agreed -- Doctor Gottfried gave him the,
12 the tests. She, she scored him on the Static-99 and the
13 Static-2002R, both of those tests, and you sort of agreed
14 with her same numbers.

15 Is that correct?

16 A. Yes.

17 Q. Okay. However, the conclusions you reached from that
18 are different.

19 Is that correct?

20 A. I, I believe, yes, our, our ultimate opinions in the
21 case were, were different.

22 Q. Okay. So, is the Static-99 -- it was referred to as
23 a -- let me go on. I'll withdraw that.

24 You had talked about some collateral sources that you
25 talked to.

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1 Is that correct?

2 A. Yes.

3 Q. And some of those sources were people from the
4 Department of Corrections.

5 Is that correct?

6 A. Yes, approximately five employees.

7 Q. I'm looking at you -- the sources that you put on your
8 evaluation and I'm -- one of them talks about a telephone
9 conversation with Leevander McRae.

10 So my specific question here and I'm looking at Item
11 16.

12 A. Uh-huh. (Affirmative).

13 Q. Did you have a telephone conversation with Leevander
14 McRae?

15 A. I, I did, yes.

16 Q. Okay. Now, why did you choose to call him?

17 A. So, McRae identified himself as --.

18 Q. Let me, let me back up. You had talked for a long time
19 with Mr. Chapman.

20 Is that correct?

21 A. Yes, approximately five and a half hours.

22 Q. Did he talk to you anything about his work history
23 while at the Department of Corrections?

24 A. He did, yes.

25 Q. And what did he tell you about work history?

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1 A. So, in talking about his work history, particularly his
2 more recent work history, he explained that he was working
3 in a highly special -- specialized job that required
4 multiple screenings involving I think it was airplane wiring
5 or something of that nature. I think it was -- he described
6 it as a governmental sort of contract.

7 The thing that I took away from that conversation was
8 that this was not just your ordinary prison job, that this
9 was something that, as he was explaining it, something that
10 required multiple rounds of review and certification from
11 various Department of Corrections employees to even be
12 eligible for that sort of employment. That's concerning his
13 more recent employment and then we also talked more about
14 his past employment I think prior to 2012 and we
15 specifically talked about some of those concerns that he had
16 with I think, for example, the issue with the door was one
17 that came up and then he said something about how he wasn't
18 always listening to some of the directives that were given
19 to him in the past, in the '90s and the early 2000s.

20 So, we really did cover his employment history
21 throughout his entire time within the de -- the department.

22 Q. And so when he discussed -- and what is your
23 understanding of what Leevander McRae's responsibilities are
24 at the Department of Corrections?

25 A. So, my, my understanding of that, that information was

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By Mr. Falk

1 that it was consistent with what was reported by---

2 Q. No.

3 what -- what's his job?

4 A. whose job?

5 Q. McRae, who you talked to.

6 A. McRae is the case manager for Mr. Chapman or was at the
7 time that I committed the or that I authored the evaluation.

8 Q. And you had a 10 minute conversation with him.

9 Did that confirm the statements that Mr. Chapman gave
10 you about his work history?

11 A. Yes. So in forming my opinion, those accounts were
12 consistent in terms of talking about his, his current
13 employment, in terms of the level of screening that was
14 required, that it was a specialty position, that it was not
15 a position that all inmates were eligible for. So, it's
16 definitely described as a more, a more kind of specialized
17 sort of employment position within the department.

18 Q. Did -- do you have any information about whether or not
19 non-prisoners work in that facility?

20 A. Yes, various staff will also work in the facility
21 outside of just inmates. So, yes, that, that, that is true.

22 Q. And this work history covered about 12 years?

23 Is that what your -- you said?

24 A. So I think it was around 2012 I think he was first
25 employed in this, this specific position and it's been held

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1 fairly consistently over that period of time.

2 Q. All right. So, 10 years I guess. So really kind of
3 unto this point with my questioning, you have, you, you have
4 a similar opinion to Doctor Gottfried in that you scored the
5 static the same, and you've -- and you believe he has the
6 same or similar diagnosis for the personality disorder.

7 Is that correct?

8 A. Yes, that is correct.

9 Q. All right. But then Doctor Gottfried also gave him
10 another diagnosis.

11 A. Yes.

12 Q. Are you familiar with that diagnosis?

13 A. I am, yes.

14 Q. Okay. And I think one of the terms she used is
15 biastophilia?

16 A. I'm not sure if that's the term that she used in, in
17 her report but I, I have heard of that term before.

18 Q. So whether it's some type of nonconsensual -- some type
19 of arousal to nonconsensual sex, is that -- is that a --
20 sort of a layman's definition of biastophilia?

21 A. Yes.

22 Q. Okay. Now, you have given opinions in the past in sex
23 eval and predator cases.

24 Have you ever used that definition?

25 A. Yes, I've provided that diagnosis before in other

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By Mr. Falk

1 cases.

2 Q. Okay. And so what is your understanding of that
3 diagnosis -- they're -- first of all, are there any
4 diagnostic criteria for it in the DSM-5?

5 A. So it isn't specifically listed as one of the diagnoses
6 in, in the DSM-5. This, this diagnosis though is somewhat
7 different from some of the others. So---

8 Q. Let, let me just back---

9 A. Oh.

10 Q. ---you up here.

11 A. Okay.

12 Q. Just -- you also diag -- you considered a diagnosis of
13 antisocial personality disorder, did you not?

14 A. I, I did, yes.

15 Q. Okay. And does the DSM-5 sort of list things that
16 you -- sort of a checklist to help you in making that
17 diagnosis?

18 A. Yes, it does.

19 Q. So that's what I meant by diagnostic criteria.

20 A. Oh, yeah. So, generally speaking, part of the best way
21 to answer this is that are various types of paraphilic
22 disorders. So, before I can say what a paraphilic disorder
23 is for the DSM I think it's important to say well, what is a
24 paraphilia cause they're slightly different. A paraphilia
25 is going to be like an intense and sustained sexual arousal

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1 in something other than consenting physically mature human
2 partners.

3 It becomes a disorder, for the DSM, when that
4 paraphilia or that sexual interest is causing severe harm or
5 distress to the person who has the paraphilia or it can
6 cause harm or risk of harm to other people, and then it
7 needs to have a sufficient duration of time and that is six
8 months. When those elements are met, then there can be
9 support for the diagnosis of a paraphilic disorder, whatever
10 the specific type of paraphilic disorder, you know, that's,
11 that's being examined.

12 Q. And so you would agree that he has been convicted of
13 sexually -- criminal sexual conduct in the third degree and
14 criminal sexual conduct in the first degree?

15 A. Yes.

16 Q. But you did not diagnose him with the biastophilia?

17 A. That is correct. I did not provide that diagnosis.

18 Q. Okay. So now when I was asking you about that, is the
19 word biastophilia specifically, is that in the DSM-5?

20 A. No.

21 Q. How about coercive paraphilic disorder?

22 A. No, that is not listed in the Diagnostic & Statistical
23 Manual.

24 Q. Have you, based on your review of scholarly
25 publications, do you have an understanding why it's not?

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By Mr. Falk

1 A. So, as I was testifying slightly earlier, this is, this
2 is the one disorder which is kind of unique amongst the full
3 variety of paraphilic disorders. Just as Doctor Gottfried I
4 believe testified yesterday, you know, there are almost an
5 infinite number of paraphilic disorders that can be out
6 there and that's certainly true. So you can't put them all
7 in the book or else you'd have the never ending book and I
8 think that is certainly true.

9 But this specific disorder is unique from those other
10 types of paraphilic disorders that weren't included and why
11 I say that is, before DSM-5, so Diagnostic & Statistical
12 Manual Fifth Edition, was released in 2013, when they're
13 moving from four to five, the committee, which was on the
14 DSM working group, so these are experts in the field,
15 psychiatrist, psychologist who study paraphilic disorders,
16 they got together and they considered a proposal to add that
17 into the DSM. And they came to the conclusion that it
18 should not be included in there.

19 They explicitly excluded it. So, unlike some other
20 diagnoses that they just didn't have the room for, they
21 actually made a decision to not include that in and the
22 rationale for that was they were concerned that such a
23 diagnosis would pathologize, or a better way to put that is,
24 make a mental illness of what is truly criminal behavior,
25 the rapes. So, they deliberately excluded that.

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By Mr. Falk

1 They even went a step further. They actually excluded
2 it from warranting future study and that, that is fairly
3 significant. This isn't just the DSM, which is primarily
4 used in the United States. Other countries around the
5 world, for example, in Europe, they're gonna use a different
6 diagnostic classification system. Those experts reviewing
7 that panel as well on paraphilic disorders came to a similar
8 conclusion about including that in their diagnostic manual.

9 And so, again, I have provided that diagnosis. I, I
10 don't agree that it doesn't exist. It certainly can but the
11 reason why I bring that up is because I think it's
12 incredibly important to know just how controversial this is
13 within experts in the field in that it's incredibly
14 important, as evaluators, to make sure that we are 100
15 percent certain about this, that you really need to know
16 that this is truly what's going on, and that it's not
17 attributable or due to something else.

18 And in Mr. Chapman's case, I really do believe that his
19 multiple rapes are due to something else other than that
20 paraphilic or that deviate sexual interest motivation.

21 Q. would you agree that there's a difference if somebody
22 walks into a grocery store and steals a candy bar -- let me,
23 let me take the -- steals a loaf of bread from a grocery
24 store, would you agree that there can be numerous
25 motivations for somebody to commit that offense?

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1 MS. SHAW: Objection, Your Honor. Side bar.

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, a bench conference was held out of the
4 hearing of the jury at this time.)

5 MS. SHAW: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury, we're
7 gonna take a break here shortly. So just hang on with me.

8 Okay. All right. Mr. Falk.

9 Q. Would you agree that some criminal conduct is motivated
10 because somebody has a pathology, whether it is a
11 personality disorder or, or psychological or mental
12 abnormality, and some criminal conduct is not?

13 A. Yes, I would agree with that.

14 Q. Okay. And, again, can you then explain further why you
15 don't think that Mr. Chapman's conduct back when he's 20 and
16 26 years old was driven by having some type of coercive
17 paraphilic disorder?

18 A. So the, the short answer of that is that I think his
19 repeated sexual offenses were due to other, other problems.
20 I think it was a combination of factors.

21 when going through the records and really looking at
22 the offense patterns and dynamics that were at play, it's
23 seen that it was a combination of his entitlement towards
24 sex, callousness towards victims. So, for instance, not
25 particularly caring how his impact -- how his behavior

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1 impacted his victims.

2 Quite frankly, it sounds like he wanted what he wanted
3 and he didn't care how he got it. I think that is
4 consistent with the nature of his dynamic risk factors,
5 which I can talk about later, and it's also consistent with
6 the personality disorder that I, that I believe he has. So,
7 it's really that combination of those things that I believe
8 were related to his sexual offending at the time as opposed
9 to a drive or motivation that was due to a specific deviant
10 interest in rape.

11 We see that in the offense dynamic. So, for example,
12 Mr. Chapman, there's no indication that he had what some
13 people referred to as a rape kit. Basically some sort of
14 preparatory materials that could help facilitate committing
15 a rape. Rope, knife, gun, things like that. So, he doesn't
16 have that. That might be an indication that someone might
17 have that sort of paraphilic motivation.

18 Again, another thing is that the majority of his
19 criminal behavior, approximately 50 percent of his charges
20 and convictions, were nonsexual in nature as opposed to
21 being predominately sexual. That's another sort of data
22 point speaking against that sort of paraphilic motivation.
23 To me, I think probably the most important thing is that
24 there was no indication that these particular people that he
25 offended against would have been willing participants.

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By Mr. Falk

1 And, to me, that's kind of the, the lense I really view
2 all these cases from. If that victim would have consented,
3 would the offender have been just as content to go along
4 with the consensual sex. I believe, in each case, the
5 answer is yes for Mr. Chapman. I don't think he was aroused
6 particularly by the fact they were non-consenting. I think
7 this is a man who had very high sexual preoccupation, sex
8 was on his mind, and he was getting it from as many outlets
9 as he could and he didn't care how he did it, and he didn't
10 care that they consented or not.

11 So, to me, that is why he committed his offenses and
12 that is why I don't believe he meets that, in my opinion, a
13 very high threshold to get that diagnosis, that paraphilic
14 coercive disorder diagnosis. He's not someone who's
15 stalking outside victim's home with rope. He's not saying
16 certain things from the records during the offense that
17 would indicate that he's turned on or aroused by the fact
18 that they're not consenting like other offenders who do have
19 this disorder will do.

20 There -- there's -- it's just not as clear that he
21 actually displays the behaviors, based on his report and the
22 records, to, to meet that high standard for that sort of
23 diagnosis.

24 Q. Thank you.

25 Now, I want to go on sort of to your ultimate

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By Mr. Falk

1 conclusion here and your conclusion was that he does not
2 meet the criteria as a sexually violent predator.

3 Can you explain, you know, when you have so much
4 overlap with Doctor Gottfried's opinions, how y'all went two
5 different ways?

6 A. Yes.

7 So, really the, the disagreement between Doctor
8 Gottfried and myself is gonna be on that paraphilic coercive
9 disorder. She felt that he did meet criteria for that. I,
10 I, I felt he didn't. But we both agreed on the personality
11 disorder.

12 So, in my evaluation, what I'm looking at to see does
13 this personality disorder that Mr. Chapman has, does that
14 personality disorder affect his emotional or volitional
15 capacity and predispose him to commit acts of sexual
16 violence.

17 Now, this is, this is important in the field of
18 sexually violent predator examinations. Specifically we're
19 looking at personality disorders. There's a lot of research
20 out there that says simply having a personality disorder in
21 and of itself, even if someone has committed sex crimes
22 multiple times even after being caught and sanctioned
23 multiple times, that's not enough for that personality
24 disorder to rise to that level of threshold. More
25 information and more evidence is needed.

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By Mr. Falk

1 And so this is where the bulk of my assessment really
2 went into in trying to determine whether Mr. Chapman's
3 personality disorder meets those criteria, and there are
4 certain -- there are some things which suggest that yes, at
5 the time of -- that the offenses were happening in the '80s
6 and '90s, that there does seem to be potential for
7 predisposition there.

8 So, that's the fact that he offended while on
9 probation. He offended shortly after sanction. So that
10 could suggest that, at that time, he was having a
11 difficult -- he's having a difficult time controlling his
12 sexual behavior. That could speak to what is known as a
13 volitional impairment.

14 Basically what that means is they're having a, a very
15 difficult time struggling controlling their sexual arousal
16 and behavior. That's essentially what it means. So, at
17 that time back at the time of the offending, there's some
18 indication of that.

19 The second piece, as I already testified to, is that
20 the callousness, the impulsivity that's directly related
21 with his personality disorder, seems relevant in
22 understanding his sexual behaviors. That can also speak
23 towards volitional impairment and towards someone being a
24 sexually violent predator.

25 However, there's also a lot of evidence against that

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By Mr. Falk

1 and the most important thing, and the research is fairly
2 consistent on this, is that you have to look at the whole
3 body of evidence of the person that you're evaluating.

4 Q. Let me just interrupt you for a second and I don't want
5 to run you off your train of thought but just can you
6 explain what volitional and -- volitional---

7 A. Sure.

8 Q. ---impairment means?

9 A. Sure. So volitional, you know, your basic definition
10 is that it's someone's willful choice, that they're able to
11 knowingly make a choice.

12 So, when I go to the store, usually I will buy the
13 Doritos when they're on sale and I will make a volitional
14 choice to put them in my shopping cart. I'm knowingly doing
15 that because I like that snack food.

16 In volitional impairment in sexually violent predator
17 proceedings, really what it is is it's been defined by the
18 courts as a serious difficulty being able to control your
19 sexual behavior. And so, yes, that -- that's what
20 volitional impairment as it relates to this evaluation
21 means.

22 Q. So then I guess we're going on. So what you were
23 looking at. I think maybe you were talking about looking at
24 the bigger picture or --?

25 A. Yes. So this is specifically related with personality

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By Mr. Falk

1 disorders. There's a lot of research that comes out with
2 trying to figure out does someone's personality disorder
3 rise to the level of volitional impairment because there's
4 this -- well, there's, there's really kind of two camps.
5 There's one camp that says a personality disorder can never
6 be predisposing, that someone with a personality disorder
7 can never be committed. I don't agree with that. I, I do
8 think that people with a personality disorder can be
9 committed as sexually violent predators and I've offered
10 that opinion before.

11 But there's an other group of people with personality
12 disorders that are -- sorry. There's an other group of
13 experts researching this that say you have to take a look at
14 the whole body of evidence particularly when someone's been
15 incarcerated for a long period of time. You can't just go
16 back and look at how they were when they were a teenager or
17 in their early twenties when assessing someone's current
18 volitional impairment. They explicitly say that you need to
19 take a look at the whole body of evidence including lengthy
20 periods of incarceration. So that's what I did when looking
21 at volitional impairment in Mr. Chapman's case.

22 The reason for this is that we know, with personality
23 disorders specifically, they don't go away. There's no
24 cure. But the research says that, in the fifth decade, so
25 once someone hits about 40, a lot of the problems start to

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By Mr. Falk

1 go down. So, some of that impulsivity, irresponsibility,
2 some of those criminal attitudes, they start to, for lack of
3 a better term, mellow out as someone gets older. I'm sure
4 we all know people like that that, as they've gotten older,
5 they've gotten more mature. And that's what the research
6 says about personality disorders.

7 So, because of that, the research says that you really
8 got to take a look at the full body of what's going on. So,
9 with that, it's exactly what I did with Mr. Chapman.
10 There's certain indicators to look for when saying does
11 someone's antisocial personality traits, or personality
12 disorder, does it rise to that threshold looking at the
13 whole body of evidence.

14 So to look at is the person still engaging in impulsive
15 and aggressive sexual behaviors. Mr. Chapman has not
16 engaged in any of those behaviors despite having access to
17 his preferred victim or preferred sexual interest I should
18 say, adult women. He's had access and has not offended or
19 committed any sexually problematic behaviors in 30 years.

20 The second piece is well, are they still impulsive and
21 aggressive in other ways. Mr. Chapman has made improvements
22 in that. Specifically I don't believe he's been infracted
23 in over 12 years for anything. He has improved his impulse
24 control. He's improved complying with rules and directives.
25 So we're seeing a decrease in overall impulsive and

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By Mr. Falk

1 aggressive behavior. That also speaks against
2 predisposition and volitional impairment.

3 The third piece is also really important, which is
4 okay, well maybe they stopped doing some bad things but have
5 they started doing good things and generally that's referred
6 to as pro-social behaviors. I believe there are -- there is
7 evidence that he has started to engage in some pro-social
8 behaviors within that time over a decade.

9 So this includes in improving relationship with his
10 brother. It includes being able to maintain that employment
11 position I testified to earlier, which, again, is a high
12 security sort of work program. He's also been living in a
13 character based unit dorm. In talking with some of the
14 correctional staff as part of my evaluation, they informed
15 me that people who get to that dorm and stay in that dorm,
16 they need to show a variety of pro-social behaviors in order
17 to stay on that dorm. And, from those accounts, not just
18 the absence of problematic behavior, but the account that
19 he's been living on that unit for a while suggests again
20 that there's pro-social behaviors in a variety of contexts
21 and situation.

22 Again, coupled with, with Mr. Chapman's increasing age,
23 again he's now in his fifties, so, again, we're seeing some
24 improvement in those areas, which is, which is expected with
25 someone with a personality disorder. And when you factor

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By Mr. Falk

1 all that evidence together, it's just that, at this moment
2 in time, Mr. Chapman's personality disorder is not severely
3 impacting his emotional or volitional choices that he's
4 making. He's making choices to not commit sexual offenses
5 or sexually problematic behavior and he's been doing that
6 now for over 30 years.

7 He's also been making choices to not engage in
8 aggressive impulsive sorts of behaviors. At least the
9 frequency of which has, has gone down for over a dozen
10 years. And so, again, this is all evidence that speaks
11 against someone's personality disorder being a qualifying
12 predisposing condition for civil commitment in an SVP case.

13 Q. And I guess you kind of talked about the dynamic risk
14 factors. You introduced that subject.

15 Is there anything more on that subject that helped
16 influence your opinion?

17 A. Yes.

18 So I -- probably the short answer for that is that I, I
19 used a peer reviewed journal article identifying dynamic
20 risk factors that have been found to be related to sexual
21 reoffending in people who've committed sexual offenses. So,
22 there's about 17 different factors that have been identified
23 and I did an examination of each of those 17. I believe
24 that, at this present time, he has some degree of eight of
25 those factors but I think he's also made progress in each of

Christopher Gillen - Direct examination
By Mr. Falk

1 those eight as well to varying degrees.

2 So, for example, I think, you know, he has shown that
3 he can control his sexual preoccupation in a secure
4 environment. He started to improve his relationships. For
5 example, he's distancing himself from negative peers while
6 trying to approach more positive people in his life like his
7 brother, for example. He's also made some improvements on a
8 rape supportive attitudes.

9 So back in, you know, at the time he was offending,
10 there seemed to be a thought process -- processes or types
11 of thinking that were justifying in excusing the offenses.
12 He's -- I think he's made progress in identifying some of
13 those as incorrect sort of beliefs. An example is that he's
14 able to recognize what would constitute a consensual sexual
15 behavior, how that is different from a nonconsensual sexual
16 behavior, various verbal and nonverbal types of cues which
17 might, which might -- signifies someone's consenting versus
18 not consenting. He was able to talk about that in the
19 interview.

20 He's also made some progress on developing, you know, I
21 would say a very initial form of insight into how his sexual
22 preoccupation influenced his risk to reoffend. But, as I
23 testified earlier, I still believe each of those are still
24 ongoing risk factors for him. They are not fully managed
25 and there are still concerns with each of those too.

Christopher Gillen - Direct examination
By Mr. Falk

1 Q. And so the opinion that you reached today or a year ago
2 is based on your record review, your conducting the static
3 assessments, your communication with collateral sources, and
4 your experience in this field?

5 A. Yes, to all those.

6 Q. Okay. And do you have an opinion to a reasonable
7 degree of certainty whether or not Mr. Chapman suffers from
8 a mental abnormality or personality disorder that makes him
9 likely to engage in acts of sexual violence if not confined
10 such that respondent's propensity to commit acts of sexual
11 violence is of such a degree as to pose a menace to the
12 health and safety of society?

13 A. Yes, I have formed an opinion on that question.

14 Q. And what is that opinion?

15 A. My opinion is that Mr. Chapman does not have a
16 personality disorder or mental abnormality that impacts his
17 emotional and volitional impairment and that predisposes him
18 to commit those acts, and, as a result, he does not have a
19 qualifying mental condition, a mental abnormality or
20 personality disorder that makes him likely to commit future
21 acts of sexual violence.

22 Q. So, what is your opinion about whether or not he meets
23 the criteria as a sexually violent predator?

24 A. I believe he does not meet criteria as a sexually
25 violent predator.

Christopher Gillen - Direct examination
By Mr. Falk

1 Q. And are you expressing those opinions within a
2 reasonable degree of psychiatric certainty?

3 A. I would express those opinions within a reasonable
4 degree of psychological certainty.

5 Q. Excuse me. Excuse me. Psychological certainty.

6 A. Yes.

7 Q. I have no further questions. Thank you.

8 THE COURT: All right. Ms. Shaw, before we get to
9 cross, I'm gonna give the jury a midmorning break.

10 Madam Bailiff, I believe we're gonna do this a little
11 different, folks, because I believe there are a number of
12 people in the lobby and we want to try to sequester you away
13 from, from, from all that. We believe the bailiffs are
14 gonna have the men retire to the jury room and the women
15 retire to some facilities back here. There's some room back
16 behind the bench.

17 And what I will do, at this time, is step off the bench
18 and I'll be further back. So I won't be in any contact with
19 the jury.

20 And then, Madam Bailiff, just alert me whenever you
21 have everybody back in the courtroom.

22 THE BAILIFF: Yes, sir.

23 THE COURT: Okay. Let's take a, take a 15 minute
24 break.

25 (WHEREUPON, a short recess was taken at this time.)

Christopher Gillen - Cross-examination
By Ms. Shaw

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. Court will come to order.

4 I hope everybody's refreshed and I think we're ready to
5 start with cross-examination of Doctor Gillen. Your
6 attention to Ms. Shaw.

7 Ms. Shaw.

8 MS. SHAW: Thank you, Your Honor.

9 THE COURT: Your witness.

10 CROSS-EXAMINATION

11 BY MS. SHAW:

12 Q. Good morning again, Doctor Gillen.

13 A. Good morning.

14 Q. Just give me one moment to set up here. So I hope
15 you'll forgive me. I'm gonna jump around a little bit with
16 your direct testimony.

17 You indicated -- obviously you and Doctor Gottfried
18 agree that Mr. Chapman has a personality disorder?

19 A. Yes.

20 Q. Okay. And you agree that or, or do you agree that he
21 would meet criteria for antisocial personality disorder but
22 for the lack of a conduct disorder at -- by age 15?

23 A. I would agree with that.

24 Q. Okay. And just describe for the jury again what the
25 actual diagnostic criteria for antisocial are.

Christopher Gillen - Cross-examination
By Ms. Shaw

1 If you need the DSM, I have one. I'll be more than
2 happy to give it to you.

3 A. Sure. So it's a combination of different sorts of
4 traits that can include aggressiveness, physical violence,
5 rule violating behavior. So like breaking the law.
6 Impulsivity, irresponsibility. So, for example, having
7 problems at work. Recklessness. So, for example, putting
8 themselves or other's lives in danger because of their
9 conduct. Manipulation or deceit, lack of remorse or
10 callousness.

11 Those are the ones off the top of my head that I
12 believe are the symptoms of antisocial personality disorder,
13 in addition to the conduct disorder specifier, which is the
14 juvenile conduct problems before age 15 is of the other
15 necessary components for that disorder.

16 Q. Okay. And are -- I think we agree that there's no
17 evidence in this record to suggest that there were conduct
18 issues before age 15?

19 A. Yes, that's correct.

20 Q. Okay. And Mr. Chapman reported to you that he was
21 raised in the home with his parents.

22 He was never removed or placed in state custody, right?

23 A. That's correct, yes.

24 Q. Okay. And can you tell me exactly how he described his
25 upbringing?

Christopher Gillen - Cross-examination
By Ms. Shaw

1 Was it strict, permissive --

2 A. I---

3 Q. -- bounce---

4 A. Yeah, he, he described it as a, as a strict upbringing
5 also with pretty extreme poverty was, was how he described
6 it to me.

7 Q. Okay. So his parents kept, kept rules and regulations
8 on him as a child?

9 A. That's how it was described to me by both Mr. Chapman
10 as well as his brother who I talked to.

11 Q. Okay. So, would you agree that prison is also a
12 controlled environment?

13 A. Yes, it is definitely a structured, secure environment.

14 Q. Okay. And just like, as a child, there would be
15 limited opportunities to act out in prison?

16 I mean sometimes people do but, generally speaking,
17 it's a more secure environment where there's less
18 opportunity to commit criminal acts?

19 A. Relative to out in the community, yes. But there is
20 still ample opportunity to become -- get infracted, engage
21 in rule violating behaviors, and it's not, it's not uncommon
22 to see disciplinary records for people within incarcerated
23 settings.

24 Q. Okay. And, and, in fact, Mr. Chapman does have a
25 disciplinary record in an incarceration setting?

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1 A. Yes, that's true. So, between '91 and 2005 there were
2 a few different citations for rule violating behaviors. For
3 example, noncompliance with a staff directive. There was
4 the incident where he pushed the door onto the other staff
5 member I believe around '96 or somewhere in that ballpark.

6 Q. Uh-huh. (Affirmative).

7 A. But, yes, there's been no infractions since about 2005
8 I believe.

9 Q. Well, Doctor Gillen, I would most respectfully disagree
10 with you.

11 Isn't it true that he was actually infracted in 2015
12 even though he wasn't convicted?

13 A. No, I don't consider that an infraction.

14 Q. So -- okay. He, he was infracted for a particular
15 offense but he wasn't convicted.

16 So you don't consider that an offense?

17 A. So what I would say is that there was a writeup in 2015
18 but it was dismissed. There was no finding of culpability
19 or guilt in that particular infraction.

20 Q. Okay. And, in fact, there have been other infractions
21 that he was not convicted of after the most recent
22 conviction, correct?

23 A. I believe so. There might of been one other, if memory
24 serves, around 2009 I think. I think it was a stealing
25 citation which was dismissed.

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By Ms. Shaw

1 Q. Okay. And you would agree that individuals breaking
2 prison rules are not always formally infracted, right?

3 A. Sure. Yes, that's true that infractions might not
4 always or citations -- or sorry. Problematic conduct might
5 not always result in a formal sanction within the prison.

6 Q. Okay. Great.

7 So as part of your evaluation, it is important to you
8 to consult collateral sources, right?

9 A. It is, yes.

10 Q. Okay. Great.

11 And you did so?

12 A. I did.

13 Q. All right. Now, let's start with the SCDC employees
14 that you spoke to. You spent -- spoke to Leevander McRae.

15 who else did you talk to?

16 A. A few others.

17 May I refer to the report?

18 Q. Absolutely. Please do.

19 A. So, in addition to Leevander McRae, I also talked to
20 Roland McFadden, who's a mental health worker at the
21 institution Mr. Chapman was at, Lieutenant Connie Taylor was
22 in the education department at -- I believe that was at
23 Evans as well. Telephone interviews also with an
24 institutional plant man -- two different institutional plant
25 managers, Deressa Roberts, as well as Sabrina Dowdy.

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1 Q. Okay. Great.

2 And in your interviews, it was, in fact, related to you
3 that Mr. Chapman's reputation in the prison was as a stalker
4 and that he had had repeated infract -- well, repeated
5 conduct issues related to stalking a very particular
6 employee, correct?

7 A. So, yeah, in talking to these five individuals, they,
8 they provided a very different -- basically a very different
9 presentation depending on who you talked to. So, some
10 people said that he was the exemplary, I think that was
11 the -- even the term they used, exemplary prisoner. Talked
12 about how there -- they hadn't observed or even heard of any
13 sort of rule violating behavior in the time that they knew
14 him.

15 So that would of been consistent with the records that
16 were reviewed. However, there were a couple employees who
17 did mention some concerning behaviors. The term that one of
18 them used was stalking. Specifically what she described was
19 that he would walk by her office and kind of wait there or
20 near the office until she got there.

21 Also some accounts that he would try and sit at a
22 computer as part of his job close to that but there was no
23 indication from any of their accounts that he had engaged in
24 any forms of sexual misconduct. So, for example,
25 masturbating in public areas like the canteen or lunchroom

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1 or masturbating during count at a specific person, for
2 example.

3 And so, none of the accounts that I got from any of the
4 five sources indicated there was any sort of sexually
5 problematic behavior or sexually rule violating behavior
6 that was occurring.

7 Q. Okay. But would you disagree that stalking a female
8 employee while in SCDC is problematic?

9 A. Oh, it most definitely is and it certainly factored
10 into not just my risk assessment in looking at some of those
11 risk factors. For example, resistance to rules and
12 supervision and impulsivity, which I believe he has not yet
13 fully managed. But I think it also plays a role into why I
14 diagnosed him with a personality disorder.

15 Personality disorders are going to be chronic. They're
16 ongoing. You see them across a variety of settings. Of
17 course, we see the frequency of those problems starting to
18 go down around age 40, which is consistent with the
19 research. But there was still some indication from some
20 sources of, I guess best way I would describe it, are kind
21 of some of these more isolated incidents which I think
22 reflect impulsivity and, to some extent, aggression as well.

23 Q. Okay. Well, but that business manager who you spoke to
24 who reported that he was stalking her, she reported that she
25 was, in fact, intimidated by that behavior, was she not?

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1 A. I'm not sure if she reported being intimidated. But
2 she certainly reported it being concerning. That, that I
3 can say.

4 Q. Okay. And, and other employees also reported that you
5 had to "watch yourself" around him, correct?

6 A. Yes. So I believe about two of the five were, were
7 reporting some form of problematic conduct whereas three of
8 the five were giving, you know, a very different picture.
9 And, again, I think that speaks to the importance of
10 contacting lots of different people in lots of different
11 settings to try and get a complete picture of what's really
12 going on with someone you're evaluating.

13 Q. Absolutely, Doctor Gillen, and just clarify for me, the
14 two individuals who reported the problematic stalking type
15 behaviors, those were both female employees, correct?

16 A. They were, yes.

17 Q. Okay. And the individuals who reported no concerns
18 were all males, correct?

19 A. I believe so although I think one of the other
20 employees was female. Let me just refer to the report.

21 Q. Please do.

22 A. Yes, I believe one, one of the individuals providing
23 more of those positive accounts was female.

24 Q. Okay. And she didn't have any direct contact with him
25 though.

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1 She was familiar with his record but she didn't
2 interact with him on a daily basis, did she?

3 A. I'm not sure about that cause I, I remember the one
4 person who made that very clear to me, I do remember that it
5 was one of the males that I talked to.

6 Q. Okay. All right. So, did you ask that question?

7 A. Yes. Yes. So, I wanted to know how they knew
8 Mr. Chapman, what was their relationship with him like, how
9 did they come to know him.

10 Q. Oh, no, I'm sorry, Doctor Gillen. I'm not meaning to
11 cut you off. I -- you may of misunderstood my question.

12 Did you ask that particular female employee who did
13 report positive information about him if she had any daily
14 contact or if she had regular contact with him?

15 I'm sorry.

16 A. Yes. Yeah, I -- each of these five individuals I
17 actually explicitly asked them about some of these
18 allegations of, of stalking, potential aggression that may
19 of come up.

20 So, yes, I, I asked all, all of these individuals about
21 those concerns because, as I testified earlier, I mean
22 those, those are concerning. So, I wanted to ask everyone I
23 talked to about those and their nature of whether they had
24 personally experienced that or whether they had heard that
25 cause I wanted to kind of get a sense of, you know, is this

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1 something that people are talking about within the
2 Department of Corrections. Is this someone who maybe they
3 hadn't seen it but, you know, they hear stories like that in
4 the break room.

5 So, I'm asking both have you heard about it, have you
6 seen it to each of these individuals that I talked to.

7 Q. Okay. And you're familiar with the disciplinary for
8 assaulting an officer, correct?

9 A. Yes. Yeah, that was I believe around '96 with the
10 door. I testified about that earlier.

11 Q. Okay. And did you talk to that officer?

12 A. No, I, I did not.

13 Q. Okay. Do you know the gender of that officer?

14 A. I believe she was female.

15 Q. All right. Thank you.

16 And, in fact, Mr. Chapman reported to you the majority
17 of the disciplinary infractions he got were filed by female
18 employees, correct?

19 A. Yes, I believe that is true.

20 Q. Okay. Great. Now, let's back up a little bit to his
21 early history. You know, you testified, and, and I believe
22 Mr. Chapman admitted that he was raised in a very strict
23 household. He wasn't allowed to leave home until 21.

24 Do you recall that?

25 A. Yes.

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1 Q. Okay. Do you also recall where in your report it
2 indicates that, once Mr. Chapman got out from under his
3 parent's roof, he quote "went wild."

4 Do you remember him saying that?

5 A. I can't remember if it was him or his brother.

6 Is there a -- you know in the report where it says
7 that?

8 Q. It would be on Page 3 and 4.

9 A. Okay. Okay. Yes. So that was Mr. Chapman who, who,
10 who used that language, yes.

11 Q. Self-described, he went wild once he was outside of
12 that controlling environment of his parents?

13 A. Yes, that were, that were his words---

14 Q. Okay.

15 A. ---or those were her words -- his words I should say.

16 Q. All right. And it's -- you went through -- actually
17 I'll back up.

18 And you were talking about that he has an excellent
19 work history in SCDC, right?

20 Do you remember that?

21 A. Yeah, I believe I said, since about 2012, there's been
22 a fairly consistent engagement in that speciality work
23 position that I testified to earlier.

24 Q. Okay. But you were also aware that he was terminated
25 from his SCDC work positions for unsatisfactory performance

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1 or following a major disciplinary citation in 1996, '98, and
2 again in 2015, right?

3 A. Yes, I note each of those in the report.

4 Q. Okay. So, he doesn't actually have a stellar work
5 record at SCDC, does he?

6 A. Well, like I testified to earlier, I believe his work
7 improvement has, has certainly improved since 2012. Even in
8 the 2015 incident, what ended up happening was he still was
9 able to maintain that high security, that special job, just
10 at a lower level, and he was since able to earn that back to
11 the level that he had before with his good conduct.

12 So, I would say certainly there's been some isolated
13 incidents over 30 years related to employment. Certainly
14 factored that into my decision in diagnosing a personality
15 disorder. But, no, I would disagree. I, I would say that,
16 since about 2012, his -- kind of looking at the whole body
17 of evidence, his, his work conduct has certainly improved.

18 Q. Okay. So, is there any indication that, prior to his
19 incarceration in '91, that Mr. Chapman had worked related
20 problems meaning it doesn't seem that there were issues with
21 his work?

22 A. Yes, that's, that's correct. By, by all accounts -- so
23 there's been no obviously records of any sort of community
24 based employment problems. Both his account and his
25 brother's account, when I was talking to him over the phone,

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1 were very consistent that he, he did have a, a very good
2 employment history when he was out in the community.

3 Q. Okay. And that, and that would make sense to maintain
4 that even in a controlled environment once you're back in
5 prison, right?

6 A. I, I believe so, yeah.

7 Q. Okay. So, Mr. Falk was asking you about the additional
8 testing that Doctor Gottfried did but that you did not do.

9 A. Uh-huh. (Affirmative).

10 Q. would you agree that -- and, and just to, to make sure
11 that we're all clear, you met with Mr. Chapman on one
12 occasion for approximately five hours, right?

13 A. Yes, one occasion in April for five -- approximately
14 five and a half hours.

15 Q. Okay. And you're aware that Doctor Gottfried met with
16 him on three separate occasions, right?

17 A. I believe that's what she testified to yesterday, yes.

18 Q. Okay. And so, administering all these additional tests
19 in one day, that would be a lot and do you think that that
20 would affect performance?

21 A. Yes, I think quite -- yeah, I think that's a
22 possibility.

23 Q. Okay. But administering them on two or three separate
24 days, that may not be problematic, right?

25 A. Again, not necessarily. From my own experience with

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1 those measures, especially those self-reports, that is a --
2 that is a lot of questions to do for one person in one
3 period of time. The MMPI, for example, has over 300
4 questions. The PAI has -- I'm sorry. That -- I think close
5 to 200, maybe even more than -- alone and those are just
6 those two right there. That, that is a lot of, of work to
7 give someone at one period of time. That, that -- that's my
8 opinion on that.

9 Q. But Doctor Gottfried didn't do that.

10 A. Well, I, I -- well, I'm not exactly sure. I wasn't in
11 the room with her. But my understanding from her testimony
12 yesterday was that he completed the computer based tasks
13 sequentially based on how they were in her report.

14 Q. On three separate occasions?

15 A. So, as -- I believe her testimony was that the
16 interview was on the first occasion and then there was the
17 testing, those measures I just mentioned on the second
18 occasion, and I believe there was a physiological measure
19 which was used on a third or separate occasion. So, there's
20 a variety of different testing protocols that were used
21 across various dates. Again, that is a, that is a
22 lengthy -- that is a lengthy testing battery.

23 Q. It's comprehensive, right?

24 A. No, I would not use that term.

25 Q. Okay. So, the PAI and the MMPI, those both have

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1 validity scales, right?

2 They look for faking good, faking bad. They look for
3 random responding indicating the individual's not paying
4 attention or doesn't understand, correct?

5 A. Yes, both the MMPI and the PAI have those scales built
6 in.

7 Q. Okay. And according to the information you've got,
8 there was no indication that those random responding or, or
9 fatigue related validity scales were elevated, is there?

10 A. I'm not sure about any fatigue specific related scales.
11 There were some indications I believe she testified to
12 yesterday about trying to present in a more favorable light
13 with certain common characteristics that others might more
14 readily admit to. I believe I remember hearing that from
15 her testimony yesterday.

16 Q. Okay. And do -- would you agree with that, that he
17 presented himself to you in a favorable light or attempted
18 to?

19 A. Yeah, I would say yes. I think that's consistent with
20 the interview and that's, again, one of the reasons why I'm
21 not using a lot of those measures is a lot of those issues,
22 response styles, any sort of indication of psychopathology,
23 so mental illness, for example, that those scales pick up,
24 I'm able to assess all of that in other ways through a
25 thorough record review as well as interviews with both the

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1 respondent and then as well as collateral sources.

2 So, again, those are similar things that I was able to
3 pick up from my own evaluation.

4 Q. Okay. And you indicated you actually incorporated some
5 of the questions from the Hare into your own interviews.

6 So, you, you incorporate questions from these other
7 measures, right, but not the entire thing?

8 A. Yeah. So I -- so with the psychopathy test in
9 particular, I think it's important because there are gonna
10 be some risk relevant pieces of information that the
11 interview will give. As I testified to earlier, there's
12 gonna be questions about conning and manipulative behaviors,
13 callousness, lack of remorse, kind of a glib or superficial
14 style. There's questions within that protocol which, which
15 I incorporate in cause I think it's still important to
16 assess for that and then incorporate that into my own
17 dynamic risk assessment.

18 Q. Okay. So it's, it's not your testimony that the
19 information sought by these additional testing measures is
20 not relevant to your inquiry?

21 It's just you choose to do it in a different way?

22 A. Yes, definitely and I think---

23 Q. Okay.

24 A. ---that's important to note. You know, I don't think
25 there's inherently anything wrong at all that was done with

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1 using any of these. They are -- they're fairly good tests.
2 The ones that we've talked about, the PAI, MMPI-3, these are
3 things that I also use in my practice when I deem it's
4 necessary or relevant.

5 Again, getting back to that kind of guiding principle
6 that I learned very early on in clinical psychology, does
7 the thing -- is the cost of adding the new thing, is it
8 worthwhile. Does it add incrementally above what you
9 already have and that is kind of a guiding principle for
10 clinical psychology in general, including forensic
11 psychology, and that's why, in this particular case, I
12 didn't choose that those were, that those were relevant
13 tests to add. In other words, the cost, in terms of the
14 time, and, and the actual cost of the measures themselves
15 isn't, isn't worth the potential benefit that they'd give in
16 this particular case.

17 Q. Okay. So you have to be concerned with not only does
18 this person have a mental abnormality or personality
19 disorder that makes them likely to reoffend -- reoffend, you
20 also have to be concerned with how much time it's going to
21 cost you cause you're a very busy man, correct?

22 A. No, that's, that's not it. So, again, as I was kind of
23 talking about earlier, this is kind of a guiding principle
24 for, for clinical psychology and I -- when I say costs, I
25 mean it in a very broad sense. It's not just a financial

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1 cost. It's, it's the time for the evaluatee that's doing it.
2 It's the time for the evaluator that's doing it and,
3 ultimately, it's does it add incrementally above what you
4 already have.

5 We have all those measures actually at my disposal. I
6 could choose to use them. The department would pay for it.

7 So, in that sense, it's not coming out of my pocket to
8 do them. It very much is a decision of am I getting
9 something relevant, something incrementally important that I
10 already don't have from talking to collateral sources, doing
11 a thorough record review, requesting other records, talking
12 to the respondent. Again, I feel that I was able to
13 evaluate and talk about a lot of those same concerns.

14 So, in that sense, in my opinion, doing more testing
15 for the sake of doing more testing, you weren't getting any
16 bang for your buck. Again, to boil that down, that medical
17 example, it's nothing wrong with CAT scans and MRIs. Those
18 are great tests. But you don't always use them when you
19 already have the answer that you're looking for, when you've
20 already made a, you know, a medical diagnosis, for example.
21 You don't go ahead and ship someone off to do a CAT Scan
22 after you've already finished your work.

23 You might use that if the test you've already
24 administer don't really tell you much or maybe didn't answer
25 the question that you had. Then maybe you refer from more

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1 advanced testing, more specialized testing to figure out
2 what's going on. It's the same case here.

3 I, I truly believe that I was able to assess all the
4 relevant domains and do it thoroughly with my evaluation
5 protocol.

6 Q. Okay. And there are multiple ways to do these types of
7 evaluations.

8 Your way and Doctor Gottfried's way are not the only
9 ways, correct?

10 A. Sure. There's lots of way to do it. I will say I have
11 experience in sexually violent person or predator
12 evaluations in both Wisconsin and South Carolina. I also
13 have colleagues that I consult with regularly about their
14 practice in both the State of New York as well as Washington
15 State.

16 I, I have never heard of such a testing battery as
17 Doctor Gottfried has used in sexually violent predator or
18 person evaluations. That's -- that is definitely an unusual
19 sort of battery for this specific sort of evaluation based
20 on individuals that do this work in multiple states across
21 the country.

22 Q. In your opinion.

23 So, the battery of testing revealed some additional
24 information that you actually didn't get from Mr. Chapman
25 himself. For starters, he reported to you that, during the

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1 two rapes, he did not ejaculate and he did not have an
2 erection.

3 A. Yes, that is---

4 Q. Isn't that correct?

5 A. ---what he reported.

6 Q. But he reported that differently to Doctor Gottfried.
7 He reported that he did have an erection and did ejaculate
8 to her in both of the completed rapes.

9 A. And I think that's a great illustration of sort of the
10 inconsistent responding that I noted in my report.

11 Q. Okay. And, hypothetically, if he had admitted to you
12 that he was aroused, just like he admitted to Doctor
13 Gottfried, if he'd admitted to you that he enjoyed that
14 power and control he had over his victims, just like he did
15 to Doctor Gottfried, if you had had that information,
16 hypothetically, would that have affected your ultimate
17 determination of whether he had a paraphilia or not?

18 A. Actually it wouldn't cause I did consider that even
19 through he was claiming he didn't have an erection and
20 didn't ejaculate. I'm not just relying on Mr. Chapman's
21 self-report here. As it -- and, again, I think we both
22 testified to, you know, it's not uncommon for people in this
23 high stakes evaluation to present themselves in a more
24 favorable light.

25 And so, why that's important is I'm also gonna look at

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1 the records of the underlying offense dynamics when trying
2 to make decisions about patterns of offending. In this
3 particular case, and, and in my report, I actually do
4 document that there's sustained arousal during at least two
5 of the three rapes. The two completed rapes, there's
6 certainly evidence of that. That's also consistent with his
7 self-report that he was willing to continue and was still
8 aroused by what was going on at the time.

9 So, again, that is something that I note in, in the
10 report and use that as potential evidence in support of a
11 paraphilic diagnosis.

12 Q. Okay. And, in fact, throughout the report, you
13 actually document that there are multiple ongoing concerning
14 behaviors that Mr. Chapman exhibits, correct?

15 A. Yes. Yes, that is true.

16 Q. Okay. And those ongoing concerns indicate callousness.
17 He doesn't care about his victims. He doesn't care that he
18 hurt them. In fact, he focuses solely on the consequences
19 to himself.

20 Isn't that correct?

21 A. So it -- yes and no. It's a little bit of a mixed bag.

22 So he, he -- he's reporting, you know, remorse for
23 certain crimes and, you know, understanding about what
24 happened to victims. He was able to tie that in with some
25 of the correctional programming that he took earlier. So

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1 that -- that's part of it.

2 However, there was, as Ms. Shaw was saying, there's
3 certainly also a point where ongoing callousness, for
4 example, is certainly there. I think he has a personality
5 disorder. That kind of stuff just doesn't go away magically
6 on its own. So, so, yes, there are still ongoing concerns
7 within that specific domain.

8 Q. Okay. And, in fact, he reported that he was the one
9 who was the worse affected by his offending behavior, that
10 those offenses are gonna follow him for the rest of his
11 life, and he felt bad because he "may of hurt his victims
12 feelings."

13 Do you remember him saying that?

14 A. So, I'm not sure if that was the exact language or the
15 exact quote that was used. But if I'm remembering, he would
16 sometimes make statements similar to that, and then he would
17 what I would call is self-correct. So he then would say
18 things like, you know, it was my behavior that got me in
19 here. I'm the one who's in here and he would, and he would
20 do that on his own. But, yes, he was making certain
21 statements like that. But I'm not sure if that was the
22 direct quote that he had.

23 Q. Well, I am gonna refer you -- well, I'll refer you
24 first to Page 16 out of 20, the second full paragraph. He
25 "denied thinking about women" and identified a female

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1 companion as a "low priority." when asked why, he replied a
2 woman got me 30 years and that's what got me into prison,
3 thinking about a female.

4 Is that a direct quote from him?

5 A. Yes, I believe so and I believe that's indicative of
6 ongoing offense supportive attitudes is how I wrote it up in
7 the report.

8 Q. Okay. So let's go to the bottom of that same
9 paragraph. He also reported some beliefs minimizing others
10 problem sexual acts when discussing a relative's behavior
11 touching females in a nursing home. He stated quote.

12 Can you read that for me please?

13 A. He didn't do anything really. Just groped them,
14 mannerisms, the nurses, and then I used the term buttock to
15 describe how, how it was said.

16 Q. Okay. And then can you read the next sentence, the
17 last sentence in that paragraph?

18 A. Yep. It says these types of attitudes, rather than
19 denial and minimization of specific crimes, are most
20 predictive of risk to sexually reoffend.

21 Q. So, those attitudes are really important?

22 A. Yes. And that's, as I note in the report, I certainly
23 viewed these as ongoing problems directly connected with the
24 risk factor offense supportive attitudes.

25 Q. All right. So, if you'll just give me a moment. I

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1 really would love to find that quote. Let me just look at
2 my own notes here. I apologize.

3 (Pause.)

4 Q. All right. Let's go to Page 13. Now, in your
5 report -- it's the end of the second paragraph --

6 A. Okay.

7 Q. -- you stated Mr. Chapman is attracted to physically
8 developed females and he is not been convicted of any sexual
9 misconduct in 30 years with females while in prison. But
10 that's not exactly true, is it?

11 He was stalking female employees. He physically
12 assaulted a female employee and your last sentence there
13 says he is had the opportunity to do so and has chosen not
14 to.

15 In a prison setting, female employees, and specifically
16 guards, are armed, correct?

17 They carry chemical munitions?

18 A. So there's a few things to unpack---

19 Q. Well, no, I'm just asking for a yes or no.

20 A. I'm not sure I -- could you repeat the question then?

21 Q. Then---

22 A. I'm not sure how I can answer yes or no to that.

23 Q. Sure.

24 In a prison setting, the guards are armed, right?

25 They carry mace. They carry pepper spray.

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1 A. I'm not sure exactly what tools or utensils the guards
2 may or may not have.

3 Q. Okay. But are you aware if they're armed?

4 A. I am not. But I think it's a -- also really important
5 to keep in mind, when I'm talking about female staff, I'm
6 not just talking about correctional staff. There are other
7 staff that Mr. Chapman has interacted with that were not
8 correctional officers.

9 For example, as part of his employment, there are
10 individuals who are there who are female who are not
11 correctional officers, who are not COs. So, when I talk
12 about 30 years of opportunity for sexually problematic
13 behavior, I'm talking about something very, very specific
14 and that is sexual misconduct against female staff broadly,
15 not just COs or correctional officers, over -- since he's
16 been, since he's been incarcerated from the early '90s.
17 That's what that statement's referring to.

18 Q. Okay. But I mean having the opportunity to do so, I
19 mean you, you think he's had opportunities to physically
20 assault and rape someone in prison?

21 A. I think he's had plenty of opportunities to engage in
22 sexually problematic behavior and that is not that uncommon.
23 There are a lot of people that I evaluate with antisocial
24 personality disorder that engage in chronic sexually
25 misconduct behaviors in prison.

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1 They target specific female staff numbers and
2 masturbate at them. They masturbate in the cafeteria, at
3 the sallyport during count when they're lining up. It's,
4 it's repeated and it goes on and it's because of their
5 antisocial personality disorder why a lot of those guys do
6 that.

7 Q. But that's never been Mr.---

8 A. That is a great example as to why, you know, or why
9 someone with a personality disorder might have a volitional
10 impairment as I was testifying to earlier. Again, that is
11 the complete opposite of what's going on here with, with Mr.
12 Chapman as it relates to his personality disorder.

13 Q. well, historically, Mr. Chapman's sexual offending
14 behaviors have been to rape adult women. Not whip it out
15 and expose himself to random people.

16 If that had been the case, would you not -- I mean if
17 he had been exposing himself in the community, would you not
18 expect that behavior to continue?

19 A. No, actually. So there are plenty of people who have a
20 variety of sexual offenses. People who have sexual offenses
21 against children, for example, sexual offenses similar to
22 Mr. Chapman's with rapes of adult women, for example. And,
23 again, we're seeing a difficulty being able to control
24 sexual behaviors in a secure setting and, and that's really
25 important as I testified to earlier cause, again, when we're

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1 looking at a personality disorder, when we're trying to talk
2 about volitional impairment, can someone control sexual
3 arousal and behavior, we need to look at the full picture of
4 information. That needs to be -- include lengthy periods of
5 incarceration and that's exactly what we're doing here.

6 So, again, yes, Mr. Chapman's sexual offenses are
7 certainly sexually violent by statute. He raped multiple
8 women. That is certainly not up for debate. I think we're
9 all in agreement about that.

10 But what's going on is can -- has he developed
11 abilities to control sexual arousal as it relates to
12 volitional impairment specifically. I believe that his
13 conduct, over, over 30 years, and then even more so narrowly
14 within the last dozen or years or so, speaks against someone
15 who has a severe difficulty being able to control sexual
16 behavior.

17 Q. Okay. But, Doctor Gillen, that stalking behavior
18 occurred within the last 12 years, did it not?

19 A. Yeah. So that's a -- so that's a great point about the
20 stalking behavior. I was really -- so, it was very alarming
21 when I heard about this from the staff member and I really
22 wanted to figure out well, what exactly is going on. What
23 exactly are these accusations referring to.

24 Not a single person of the five that I talked to
25 referred to this behavior as having any sort of sexual

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1 element to it. They made it very clear that it was a
2 lingering sort of behavior, certainly something that made
3 them feel uncomfortable. I think it's certainly concerning
4 in a lot of ways as it relates to his personality disorder.

5 But in no way was there any evidence from anyone I
6 talked to that that specific type of behavior had any sort
7 of sexual underpinning or sexual motivation or that any of
8 his other alleged misconduct that some of these staff are
9 reporting had any sort of sexual element to it either. But
10 what was consistent was, again, the decreasing frequency of
11 aggressive and impulsive acts in over a decade, and then
12 that 30 year period where there's no substantiated incidents
13 of any sort of sexual impropriety or sexually problematic
14 behavior.

15 Q. Okay. But female prison employees, specifically
16 guards, are also trained in self-defense, are they not?

17 A. I'm not sure what the training regiment is.

18 Q. Well, do you have any idea whether each of the three
19 victims that Mr. Chapman either raped or attempted to rape
20 had any sort of self-defense training?

21 A. I'm not sure.

22 Q. Okay. Do you know if any of them had any training to
23 or access to weapons to defend themselves during his
24 offenses?

25 A. I am not sure about that.

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1 Q. Okay. So, you really are equating his lack of assaults
2 on armed females officers at a prison setting to his
3 assaulting unarmed potentially individuals who had no
4 self-defense training in the community?

5 You're equating those two?

6 A. No, that's not, that's not what I'm saying and maybe I
7 need to better explain what it is meant by volitional
8 impairment.

9 So, again, when, when we're talking about volitional
10 impairment in a personality disorder, the most important
11 thing is you need to look at the full body of evidence. You
12 can't just go back and take a look at a snapshot from the
13 '80s, the '90s, for example, and then apply it to whether
14 someone has volitional impairment today. The research is
15 very, very clear on this.

16 And so, why that's important is you need to look at
17 both impulsive, aggressive, sexual behaviors throughout the
18 course of someone's lengthy incarceration. The reason why
19 the research says that's important, particularly as it
20 relates to personality disorder, is the nature of the
21 disorder to wane with age.

22 So, when you have someone who's incarcerated for 30
23 years, that is relevant. That is a large period of time in
24 which maturational changes can happen in which the nature of
25 the personality disorder can change.

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1 So, again, when I talk about, you know, not having any
2 sort of sexually problematic behavior in the prisons,
3 decreasing frequency of impulsive and aggressive behavior,
4 improved pro-social behavior as indicated by some of the
5 employment history, his maintenance on a character based
6 unit, all of that comes together to speak against a serious
7 difficulty being able to control sexual behaviors. That --
8 those are empirically derived indicators.

9 what that means is these are signs to look for as
10 evidence -- as indicated by the research, by the science.
11 And so these are things that I'm looking at specifically
12 when trying to establish whether someone's personality
13 disorder may -- makes them have volitional impairment or
14 not. And it's fairly clear, over the last 30 years, that
15 that is not the case for Mr. Chapman.

16 Q. Okay. So you're just saying, because he hasn't raped
17 another employee or a -- someone while he's been in SCDC,
18 that he doesn't have any volitional impairments?

19 A. No, that is not what I'm saying. I, I'm so -- I
20 apologize if I'm not explaining this as well enough.

21 we're looking at the full context of sexually
22 problematic behaviors. we're not, we're not just looking at
23 sexually violent offending. we're not just looking at
24 rapes. I'm looking at all sorts of indications whether
25 someone can control or has control, in other words willful

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1 action, over sexually problematic behavior.

2 A great example of someone with antisocial personality
3 disorder, as I mentioned earlier, who has that rape history,
4 yet continues to engage in sexually problematic behaviors,
5 why?

6 Because it's showing again a continuation of volitional
7 impairment. That's what that evidence suggests.

8 When you have someone whose been in the program for
9 about 30 years or more -- not program. Sorry. Been in the
10 prison for 30 years like Mr. Chapman has, and, again, we're
11 not seeing volitional impairment in that sense as it relates
12 to sexual behavior, that speaks against why someone's
13 personality disorder would not be predisposing for him. And
14 so, again, we're looking at the full range of sexually
15 problematic behaviors when looking at that specific prong in
16 the statute.

17 Q. Okay. So, let's go back to the collateral interviews.

18 You talked to Mr. Chapman's brother, right?

19 A. Yes. Yes, that's correct.

20 Q. Okay. And Mr. Chapman actually offered him as a
21 community resource for someone who's gonna keep him in line
22 and make sure that he's gonna do what he needs to do if he
23 gets out, right?

24 A. Yes. So he described his brother as someone who was --
25 he would be able to live with, someone who would be able to

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1 help him find employment through his automotive business,
2 and as a community support in that sense.

3 Q. Okay. And is it not significant to you that that
4 brother expressed the belief that Mr. Chapman had never ever
5 committed these crimes and that these were just false
6 accusations?

7 A. Yes, that is very significant. And as I mentioned in
8 the report, there are several concerns with both
9 Mr. Chapman's release plans as well as the nature of his
10 community support and, and that is certainly one of those
11 things.

12 Q. Okay. And as part of his release plans, he said he was
13 gonna try and go to Sheriff Victor Hill's pay -- inpatient
14 program for six months and then go live with his brother and
15 then attend services.

16 But that program doesn't exist and that was actually
17 you that verified it, isn't it?

18 A. Yes, that is exactly correct. So both Mr. Chapman and
19 his brother talked about the community based reintegration
20 program in Clayton County Georgia that was administered or,
21 or run by the sheriff there. So, you know, I'm not familiar
22 with, with Georgia in that sense. So I wanted to figure out
23 well, hey, let's see. Like how is this program. What does
24 it look like.

25 So, I couldn't find anything on the Internet about it,

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1 which, ah, that's not that unusual. So I called up the
2 county sheriff's office and inquired about it and they had
3 informed me that no one in the county office had, had heard
4 of this. And so, I'm starting to think well, that's kind of
5 strange.

6 So I took it a step further and I went out and tried to
7 figure well, what's going on with the sheriff and I found
8 that there were some serious pending allegations against
9 this sheriff on federal charges.

10 And so, why that's all important, and, again, you know,
11 not to -- I don't know anything about the case against the
12 sheriff and, again, I believe those cases -- those charges
13 are still pending. So that's not what I'm saying.

14 But what I'm saying is each of those issues kind of
15 raised concerns about whether there will be an adequate
16 structured environment in Georgia for which Mr. Chapman
17 could, could reside in.

18 Q. Okay. And you also spoke to probation, pardon &
19 parole, correct?

20 A. In South Carolina?

21 Q. Yes.

22 A. Yes. Yes, that's true.

23 Q. Okay. And they informed you that Mr. Chapman will have
24 absolutely no restraints other than having to register once
25 he is released?

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1 A. Yes, that is true. There are no specific sort of
2 conditions or constraints on Mr. Chapman outside of those
3 standard sex offender registry conditions once he's
4 released.

5 Q. Okay. So, at this point -- and, oh, one other thing.
6 You tried to speak to his sister, Radonna Street---

7 A. Uh-huh. (Affirmative).

8 Q. ---correct?

9 She's listed on his SCDC discharge paperwork is where
10 he's planning to live?

11 A. Yeah. So I -- and, and the records that we get from
12 the Department of Corrections that will usually list a
13 tentative discharge address for where someone's gonna live
14 and reside after, after their release and it provides a
15 contact name and number for that individual. And so I
16 called that individual that was listed and she said that she
17 was not his sister and it was unclear why that individual
18 was listed on the paperwork.

19 Q. So she didn't claim him.

20 Are, are you sure it was his sister or it was the
21 individual identified in the paperwork?

22 A. When I'm -- what I remember this person telling me was
23 that she, she was not -- the sister wasn't aware of who
24 Mr. Chapman was. My initial thought was well, must of been
25 something wrong in, in the paperwork, that, you know, that

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1 wasn't the right person listed or it was an error of some
2 kind cause clearly I wasn't talking to a person that was
3 expecting Mr. Chapman to live with them or who was related
4 to him.

5 Q. Okay. So whoever he gave him that information wouldn't
6 claim him and --?

7 A. Well, again, so that's actually something I don't know.
8 I don't know why that happened. I don't know if that was
9 something that Mr. Chapman had provided that was incorrect
10 or whether it was an error, like a clerical error, for
11 example, in the number or name that was provided. I, I just
12 don't know.

13 Q. Okay. But you wouldn't disagree that the tentative
14 discharge address and person he'd be staying with should be
15 provided by Mr. Chapman, right?

16 A. I believe so, yes.

17 Q. Okay. Thank you.

18 So, let's move on -- so we have an outpatient treatment
19 program for release that doesn't exist. We have a brother
20 who does not believe he even committed these offenses and
21 will not hold him accountable. We have another alleged
22 sister who won't even admit that she's related to him.

23 Do you think these are supportive and appropriate
24 community supports?

25 A. So, as I testified earlier, I do think there are some

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1 positives with the brother. From what we know---

2 Q. Well, no, I'm asking if you think that the brother who
3 doesn't believe he actually raped anybody would actually
4 hold him accountable?

5 A. No, I, I believe the question was about whether they
6 were appropriate supports, and, you know, I think there are
7 some indicators that, for example, the brother was providing
8 him a place to live and, and a job. It's certainly
9 something positive.

10 But as I mentioned in the report, there are, there are
11 several concerns with, with the release plans including the
12 one noted by Ms. Shaw about the structured placement and
13 about his brother's ability to hold him accountable. Yes,
14 those are things that I, I mentioned in the report as
15 concerns in that particular domain.

16 Q. And those are risk factors for re-offense, correct?

17 A. Yeah. So they're certain risk assessment tools which
18 will conceptualize release to high risk environment, for
19 example, community supports, a compliance with community
20 supervision, for example, as relevant risk factors.

21 Q. Okay. So, what if the brother was no longer an option
22 for Mr. Chapman to live with?

23 would that change your ultimate conclusion about the,
24 the appropriateness or lack of appropriateness of the plan?

25 A. I don't think so. Again, I, I---

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1 Q. Okay. If he had no where to go, no structured
2 environment, and no brother to give him a place to live,
3 that wouldn't be concerning to you?

4 A. Well, I think the way to answer that question is that I
5 note several concerns already with the release plan. Would
6 that be a relatively worse release plan, sure. I think
7 that's fair to say. But already in the report I, I do think
8 that that is a area of need or concern for him the way it
9 currently is.

10 Q. Okay. Now, let's just go into the dynamic risk factors
11 and I'll ask you to -- you're familiar with the SVR-20,
12 right, the, the clinician structured assessment?

13 A. Yes, I have some familiarity with that.

14 Q. Okay. You're, you're familiar with the dynamic risk
15 factors that are actually incorporated into that process of,
16 of doing the SVR-20, right?

17 A. I don't have them memorized off the top of my head but
18 I do have an understanding of what some of those factors
19 are, yes.

20 Q. Okay. Well, let's go into the dynamic risk factors.
21 How many are there in total that are empirically
22 supported and, and just clarify for the jury what
23 empirically supported means please?

24 A. Sure. And when you ask about dynamic risk factors, are
25 you talking as measured by that specific instrument or --?

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1 Q. I'm talking about your assessment. Not Doctor
2 Gottfried.

3 A. Oh, okay. Sorry. I was confused by the SVR-20.

4 Okay. So for, for my assessment of dynamic risk
5 factors, there's approximately I'll say -- it's less than
6 17. I want to say 15 or so risk factors. Yes, 15 total
7 risk factors that I'm looking at and, and evaluating.

8 Q. Okay. And how many are empirically supported and how
9 many are correlated with recidivism risk?

10 A. So we're talking about -- yes, sorry. That was the
11 earlier part of your question.

12 So empirically related, that, that means that, through
13 the research, there is evidence that the -- having certain
14 factors or certain traits is going to increase someone's
15 risk of committing a new sexual crime for people who've
16 already been convicted of sexual crimes. So, that means,
17 through the science and through the literature, there's been
18 certain factors that have been identified. So, when we say
19 empirically supported, that's, that's what that means.

20 And sorry. What was the second part of your question?

21 Q. And which ones are correlated?

22 If you could just clarify the difference.

23 A. Well, a, a correlation is, is a statistical procedure
24 showing the degree of relationship between two things. So,
25 for example, as someone smokes more or someone increases in

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1 health problems, the relationship between early death, other
2 health problems, goes up. So it's just simply it's a
3 statistical relationship between things.

4 And then how is that different from an empirically
5 supported, again when looking at empirical support, it means
6 across various studies, scientific articles, that they're
7 finding a relationship between the risk factors that are
8 identified and then the outcome of interest. In this case,
9 that's sexual offending. But it's maybe not just based on
10 one statistical technique or one correlation coefficient.
11 It's based on multiple studies and evidence finding support
12 for certain risk factors as opposed to others.

13 Q. Thank you.

14 So, you identified that Mr. Chapman has eight currently
15 active dynamic risk factors?

16 A. Yes, that is correct.

17 Q. Okay. And, and those dynamic risk factors, and I'll
18 relate it back to the SVR-20, those are consistent with what
19 Doctor Gottfried identified in her assessment under the
20 SVR-20?

21 A. I believe there's -- they're fairly consistent. I'm
22 not sure if it's a direct mapping on. But there were
23 certainly some overlap there for sure.

24 Q. Okay. Great. So, let's go through each of the eight
25 factors---

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1 A. Uh-huh. (Affirmative).

2 Q. ---and I'd like you to discuss how they are currently
3 applicable to Mr. Chapman.

4 A. Sure.

5 Q. So---

6 A. So with, with sexual preoccupation -- I know you said
7 currently but I think it's important to note just how
8 sexually preoccupied he was at the time of the offending. I
9 believe that was, if not the most important, one of the most
10 important risk factors in why he did what he did.

11 Sexual preoccupation means someone who has a difficult
12 time controlling sexual behavior. So that can include
13 engaging in various promiscuous sex, being unfaithful to
14 partners, having -- you know, the way I was taught was it's
15 having a high number of sexual outlets. Sex is always on
16 the mind, your struggle being able to control it.

17 So, at this point, in a secure environment, there's
18 been really no indication that he's actively having problems
19 with sexual preoccupation right now. However, as I note in
20 the report, he hasn't learned really any specific arousal
21 management strategies. These might be behavioral sort of
22 strategies which can help control sexual arousal and, and,
23 and deviance, for example, things of that nature. So, that,
24 to me -- that, to me, is still the ongoing need in that
25 particular risk factor.

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1 Q. Okay. Great. Thank you. And actually I'm gonna back
2 you up just one second---

3 A. Uh-huh. (Affirmative).

4 Q. ---and I apologize for that. We were talking about
5 where Mr. Chapman just stated that all he did to these women
6 were "hurt their feelings." I'm gonna refer you to Page 11
7 of your report.

8 A. Okay.

9 Q. Second to the last paragraph, third line up.

10 A. Yes.

11 Q. In fact, that was his quote. All he thought was that
12 he hurt his victim's feelings rather than traumatizing them.

13 A. I might not be in the same spot.

14 You said it's the second to last paragraph?

15 The second last full paragraph or --?

16 Q. Second to last full paragraph on Page 11.

17 A. Okay. So that would be right in the middle of the
18 page, right?

19 Q. Nope. It would be second to last paragraph.

20 A. Okay. Including the one that runs over to the next
21 page then?

22 Q. Yes.

23 A. Okay. Okay. Yeah.

24 Q. Right.

25 A. I see that now.

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1 Q. Okay. So he, he did, in fact, say that?

2 A. Yes. And that's exactly what I was testifying about
3 earlier I believe when he made that -- the comment again
4 that I think suggests some ongoing callousness and then
5 there was that spontaneous self-correction that he did
6 frequently throughout the evaluation where he would say
7 something and then he would, on, on his own, kind of retract
8 it and try and, and spin it a different way.

9 Q. Yeah.

10 So, he, he was trying to spin his behavior you felt?

11 A. Well, yeah. So, again, yeah, a great way to look at
12 that is he self-corrected. So, he, he makes a statement
13 just like that and then, you know, I don't say oh, tell me
14 more about or, you know, what's going on with that. He, he,
15 before I say anything or respond, he's then self-correcting
16 and then issues a statement that, for example, you know, he
17 was -- I'm the reason why I'm, I'm in this situation. You
18 know, I'm the reason why I'm in prison, things of that --
19 things of that nature.

20 Q. Okay. So let's go into the callousness that you were
21 just discussing.

22 A. Uh-huh. (Affirmative).

23 Q. He expressed repeated, repeated statements that he was
24 very derogatory about his victims.

25 A. Uh-huh. (Affirmative).

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1 Q. He expressed no empathy, no remorse. He really didn't
2 care that he had hurt these people.

3 was that your impression?

4 A. So, as I testified earlier, I think it's somewhat of a
5 mixed bag. He was ex -- he did talk about, during the
6 interview, developing some victim empathy. As I said
7 earlier, he was able to connect that back with certain
8 courses that he completed in the Department of Corrections.

9 So, in that sense, he's, he's reporting improved
10 remorsefulness and improved victim empathy. But yes, as, as
11 Ms. Shaw mentioned, there were certainly multiple statements
12 and way -- that suggests the way he's thinking about some of
13 these crimes is still very much within that kind of
14 callousness domain.

15 Q. And you're, you're aware that he's had multiple rounds
16 of sex offender treatment since his second incarceration
17 since 1991?

18 A. Since, since '91?

19 Q. Yes.

20 A. So I believe -- so it's -- the records are a little
21 variable on that. It shows -- there's some that show that,
22 yeah, he was participating and then was completing and
23 there's others that say he might of participated in one and
24 completed one and then there was others that say he was
25 terminated from that. So, so, the records were a little

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1 inconsistent with the nature of that treatment.

2 Q. Okay. But he has had it?

3 A. I, I, I believe so. Yeah, based on the full body of
4 evidence, it suggest that's there's been some involvement in
5 sex offender treatment since his most recent sexual offense.

6 Q. Okay. And when he was self-correcting and, and
7 basically correcting these statements that he would make,
8 you indicated in your own report that his understanding of
9 these concepts of what he really did to these people was
10 limited and in -- superficial and in some ways very
11 academic, right?

12 A. Yeah. So I don't think I used the term academic but
13 definitely vague is I think one term that I remember using
14 in my report. And this kind of speaks to I guess maybe a
15 bigger issue when I'm doing these evaluations.

16 People -- you know, it's not uncommon to have people
17 who've participated in some form of treatment, completed
18 treatment, and what I'm most important -- or, or, sorry,
19 what I think is most important is what have they learned
20 from that treatment. Have they really internalized the
21 treatment. A supervisor once told me are they walking the
22 walk or are they just talking the talk.

23 And so, in this case, when, when I was asking about,
24 you know, what did Mr. Chapman learn in this treatment from
25 the '90s, he was able to provide some, some statements, you

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1 know, some indication he learned something. But as I
2 mentioned in the report, I, I -- some of them do seem vague
3 and like maybe that there hasn't been that crystallization
4 or internalization of, of concepts that were learned. And
5 why that's concerning is because can you then take that on
6 the outside and then apply it cause that's really what the
7 whole point of treatment is. It's can you take what you've
8 learned and then apply it elsewhere.

9 Q. And based on the responses he gave you, it doesn't
10 appear that he's internalized any of that information.

11 He's just got this superficial understanding of it,
12 right?

13 A. Yeah. So I think generally there was some vagueness to
14 some of his responses. I do think there was some things
15 that, that he has picked up on.

16 I think I testified earlier that there's some insight
17 into the role of sexual preoccupation into his offenses. So
18 I do think he has some understanding of that. I do think
19 that there's -- probably a good way to put it is maybe some
20 very initial development of, of understanding remorse but
21 certainly inconsistent based on some of his other statements
22 as well.

23 So, you know, I don't think it's, you know, a complete
24 wash. I mean I do think there's been something gained. But
25 certainly, you know, I stand by the -- just stand by my, my

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1 report saying that, overall, that it seems vague.

2 Q. Okay. So, you also identified lack of emotionally
3 intimate relationships with adults.

4 A. Uh-huh. (Affirmative).

5 Q. Negative social influences and life-style impulsivity
6 along with resistance---

7 A. Uh-huh. (Affirmative).

8 Q. ---to rules and, and supervision.

9 That's not changed, has it?

10 A. So actually I think with each of those there's been
11 improvement in each of those areas. So, for---

12 Q. But they're still active?

13 These are still active concerns that you have with this
14 man?

15 A. Yes. So, for instance, with lack of emotional intimate
16 relationships, so that's does someone have strong, tight
17 connections with people. I think he has certainly made
18 progress in that with his relationship with his brother, for
19 example.

20 Related to negative social influences, there's no
21 indication that he's been associating with problematic peers
22 in prison. He's, of course, been on the character based
23 unit, which I think also suggests to some pro-social
24 functioning.

25 Some concerns in those areas that remain are going to

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1 be that, within his relationship with his brother, I think
2 there's still some issues with how open and trusting he's
3 gonna be when communicating with him. I think that's very
4 much a work in progress. I think also the context of having
5 intimate, emotionally intimate connections, has not yet
6 happened within a romantic relationship. So, you know, he
7 doesn't have any sort of romantic partner for which he is,
8 you know, improved or shown improvement in that area.

9 The other one that was mentioned was impulsivity and
10 resistance to rules. So, as I mentioned I think quite a few
11 times in my testimony, there's certainly improvement in
12 there. We've seen that, as he hit 40, his overall frequency
13 of impulsive behavior, aggressive behavior, reacting spur of
14 the moment without thinking of consequences has certainly
15 gone down. It's improved. And, at the same time, his
16 ability to comply with directive has improved.

17 By that, as I also testified earlier, it's not a, a
18 full, a fully managed or completely managed risk factor at
19 this point based on some of the accounts that I got from
20 talking with some of those correctional workers.

21 Q. Okay. So, on Page 17 you indicated he has "mitigated
22 the risk to some degree in each of these domains."

23 That's -- those are your words, right?

24 A. Yes.

25 Q. Okay. But mitigating the risk is a question for

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1 resident reviews.

2 That's not the question you were asked to answer, is
3 it?

4 A. No, I don't, I don't believe that's the case cause,
5 again, I'm doing a risk assessment for the purpose of this
6 evaluation and part of that is looking at the dynamic risk
7 factors, how are those dynamic, dynamic risk factors being
8 manifested and presented today.

9 And so, what's important to know is that, from a risk
10 management or risk mitigation standpoint, I believe he's
11 made some degree, albeit varying amounts, in each of those
12 eight things.

13 As I also mentioned in that, I, I don't feel that any
14 one of those things is still fully managed. And so that, to
15 me, is important when providing the context and the scope
16 for my risk assessment which is certainly an integral part
17 of this, this sort of evaluation.

18 Q. Okay. So -- and I'm almost done, Doctor Gillen. So
19 I'm gonna ask you to look at Page 18 of your report, the --

20 A. Okay.

21 Q. -- last sentence of the first paragraph.

22 Could you read that please?

23 A. Yes. Let's see. Nevertheless, addressing each of the
24 aforementioned risk factors in treatment will help
25 Mr. Chapman further reduce his risk, oh, sorry, further

Christopher Gillen - Cross-examination
By Ms. Shaw

1 reduce his risk to sexually reoffend in the community.

2 Q. Okay. So, it is your recommendation that he receive
3 treatment?

4 A. Yes. And so what, what, what this means is that all
5 eight of those risk factors that I assigned, there's still
6 some degree of problem with each of them. He's made some
7 degree of progress I think in managing each of those but
8 there's still concerns in each.

9 And so these are the types of concerns which can
10 certainly be addressed in treatment. They can certainly be
11 improved upon in treatment and, because of that, they are
12 still actively risk factors. And that's ultimately what
13 that comment is suppose to make is that there are still
14 concerns going on with Mr. Chapman.

15 Q. Okay. Significant concerns?

16 A. I would say that there are still concerns in each of
17 those eight risk factors that I identified, yes.

18 Q. Okay. Just to -- I have nothing further. Thank you,
19 Doctor Gillen.

20 A. Okay.

21 MR. FALK: Your Honor, may I approach?

22 THE COURT: Yes, sir.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: Ms. Shaw, does that conclude your

Christopher Gillen - Redirect examination
By Mr. Falk

1 cross-examination?

2 MS. SHAW: I'm sorry, Your Honor?

3 THE COURT: Does that conclude your cross-examination?

4 MS. SHAW: Yes.

5 THE COURT: All right. Folks, we just have a few more
6 questions and then we'll be -- we'll take a break.

7 REDIRECT EXAMINATION

8 BY MR. FALK:

9 Q. You just said that he needs treatment.

10 A. That -- no, that's not exactly my, my opinion.

11 Q. Well, what was -- then what was your response to Ms.
12 Shaw?

13 A. So, as I, as I was trying to explain is he has
14 currently not fully managed risk factors. He has these
15 eight risk factors that I don't think are yet fully managed,
16 and all I was trying to say is that these are things that
17 can be treated because they are not fully managed. That's
18 just my way of trying communicate that. You know, there are
19 still some risk relevant concerns in this particular case.

20 Q. So if he needs to get treatment, does he need to be in
21 a secure facility or could he get outpatient treatment?

22 A. He can certainly get outpatient treatment. That's,
23 that's a possibility. But, ultimately, the question that I
24 was, you know, opining on in this particular case wasn't
25 whether he needs treatment or not. It was a question as to

Christopher Gillen - Redirect examination
By Mr. Falk

1 whether he has a predisposing mental abnormality or mental
2 condition that makes him likely to commit future acts of
3 sexual violence.

4 That's the question I'm looking at, and as I testified
5 to earlier, I, I don't believe that his personality disorder
6 fits that criteria. It doesn't raise to that bar. So, he
7 does not meet criteria as a sexually violent predator.
8 That -- that's the, that's the opinion.

9 Q. Thank you.

10 THE COURT: Okay. Ms. Shaw.

11 MS. SHAW: Your Honor, I actually am not -- I'm not
12 gonna recross.

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

14 Okay. Folks, it's 12:32. You made it to lunch. We're
15 gonna break at this time. We'll come back at two o'clock.

16 Just ask everybody to remain in the courtroom until the
17 jury's excused.

18 Just, once again, you can't talk about your testimony.
19 If anybody approaches you and talks to you, let me know.

20 All right. Thank y'all. And when you come back,
21 you'll reassemble in there but we'll continue to take the,
22 the group breaks as we did earlier. But I do want you to
23 reassemble here.

24 THE BAILIFF: Your Honor, they's some of them may have
25 something in there.

1 THE COURT: Yeah, if you have something you need to
2 retrieve, we'll give you ample opportunity to do that.
3 We'll wait till you've exited the courtroom before we, we
4 officially break.

5 THE BAILIFF: You don't need to get anything?

6 Yeah, she's going out the door.

7 THE COURT: Yeah. If you'll open the door and just get
8 what you need. Thank you.

9 We're in recess.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Court will come to order.

13 All right. The jury's been dismissed for lunch and I
14 know that we have some motions that need to be brought
15 before the Court and then we also have some other procedural
16 matters to work through.

17 Would you like to make your motions now or come back
18 after, after getting a break?

19 MR. FALK: I just got to re -- make sure I remember
20 them all.

21 I -- let's assume that I've rested in front of the
22 jury, which I guess I should have, and then -- so my -- I'm,
23 I'm just making a standard directed verdict motion that the
24 State has failed to prove their case.

25 THE COURT: All right.

1 MR. FALK: I know what your response is.

2 THE COURT: All right. Ms. Shaw, do you need to
3 respond?

4 MS. SHAW: Does Your Honor want me to respond?

5 THE COURT: I, I, I, I feel like there's adequate --
6 it's -- the, the record's clear that I believe that the
7 State's overcome that burden. And so I'll respectfully --
8 your -- respectfully deny your motion for directed verdict.

9 MR. FALK: Thank you.

10 And then, Your Honor, we were gonna -- I made an
11 objection and I made a motion for a mistrial regarding
12 Ms. Shaw's mention of annual reviews and I'm just renewing
13 that motion. We obviously spent a lot of time here
14 yesterday trying to hammer out and I think we actually used
15 the phrase that she came up with. Resident reviews is the
16 phrase that she came up and then the first thing out of her
17 mouth is annual and I, and I believe that the jury now back
18 there is gonna hear that he's gonna have reviews annually.

19 And that is -- A, what we agreed not to do and, B, is,
20 you know, I think it's unfair. If we can talk about
21 reviewed annually, then I think we have to get into the
22 whole thing about how long it takes to get out of the
23 program.

24 THE COURT: I believe, without hearing from Ms. Shaw,
25 I, I -- I'm confident that it was, it was something she's

1 programmed to, to, to say or to ask. It's -- and it wasn't
2 something she deliberately and she immediately caught
3 herself and didn't finish the sentence. And I, I do not
4 believe that the jury was impacted by that.

5 But I, but I note -- so I respectfully deny your motion
6 for mistrial with regard to, to that utterance. But your,
7 your objection's noted for the record.

8 MR. FALK: Thank you.

9 MS. SHAW: And, Your Honor, just to briefly respond,
10 that was my error. I am programmed to use the word annual
11 review. I was trying not to and trying to think of what we
12 were actually---

13 THE COURT: And you immediately stopped and --

14 MS. SHAW: ---were saying. I got A-N-N out and I
15 didn't finish the word annual. So, it was my error but I do
16 believe it was a harmless error.

17 THE COURT: I, I agree.

18 All right.

19 MS. SHAW: Thank you.

20 THE COURT: What else do we have?

21 MR. FALK: Well, we have to talk about jury
22 instructions.

23 THE COURT: Let's come back a little early for, for --
24 let's take a break and we'll come back. I've got 12:37.
25 So, so by 1:30 we'll come back.

1 MR. FALK: I'm not taking lunch and I don't think Ms.
2 Shaw is either. So we'll go and you come back.

3 MS. SHAW: I, I never eat when I'm on trial, judge.
4 It's -- it makes me sleepy.

5 THE COURT: Well, I'd like to take a break.

6 MR. FALK: No, I appreciate -- no, I was just saying
7 we'll -- at, at your---

8 THE COURT: Okay. Well, I'll come back and then we'll
9 hash that out. I think y'all said you need at least 15
10 minutes or so and we should be able to --

11 MR. FALK: Thank you.

12 THE COURT: -- do that.

13 Were there any other matters that we needed to take --?

14 MS. SHAW: No, judge. I think we just have to do the
15 jury instruction and then hash that out and then we're good.

16 THE COURT: Okay. We'll need to get those, those
17 printed out once we come to a final resolution and the
18 verdict form that was submitted. I have no objections to
19 that verdict form.

20 MS. SHAW: Yes, sir.

21 THE COURT: Have you had a chance, Mr. Falk, to look at
22 the verdict form?

23 It's the standard.

24 MR. FALK: Yeah.

25 THE COURT: Okay. All right.

1 MS. SHAW: Your Honor, may I present the order of
2 commitment and the verdict form to the Court just so you
3 have them?

4 THE COURT: Absolutely.

5 MS. SHAW: May I approach?

6 THE COURT: Yes, ma'am.

7 MS. SHAW: Thank you.

8 THE COURT: All right. We'll be in recess for lunch
9 and then I'll come back about 1:30, 1:35. Then we'll hash
10 out the jury charges.

11 All right.

12 MR. FALK: I'd suggest, procedurally wise, when they---

13 THE COURT: I'm sorry. I still got a witness up here.
14 I apologize to Doctor Gillen.

15 Are we gonna need him?

16 MR. FALK: No.

17 THE COURT: Okay. All right. Doctor Gillen,
18 appreciate you --.

19 THE WITNESS: That's okay. I can, I can wait along as
20 long as I'm needed.

21 THE COURT: I apologize for just forgetting about you
22 over there.

23 THE WITNESS: That's okay.

24 THE COURT: You can, you can step down.

25 THE WITNESS: Okay.

1 THE COURT: And thank you for your service to this
2 Court.

3 THE WITNESS: Thank you.

4 MR. FALK: So, the -- eventually the jury will come
5 back in, I'll make my motion and we'll go right into the
6 charge once we decide what the jury charge is. I'm just
7 saying cause I---

8 THE COURT: Yeah.

9 MR. FALK: Okay.

10 THE COURT: Procedurally, yeah, that would be the --.

11 MR. FALK: Oh, I am putting my client up. Sorry.

12 THE COURT: Okay. I was, I was, based on your
13 questions, I was thinking maybe you weren't. But if you
14 are, then---

15 MR. FALK: No, I am putting my client up.

16 THE COURT: We'll address that and then, and then we'll
17 hash out the jury charges, your client.

18 MR. FALK: Yeah.

19 THE COURT: Upon completion of that, then our closing
20 statements, charge to the jury.

21 okay?

22 MR. FALK: Thank you.

23 MS. SHAW: Thanks, judge.

24 THE COURT: All right.

25 (WHEREUPON, Court was in recess for the lunch break.)

1 (Whereupon, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. Court will come to order.

4 Folks, thank y'all. We had some matters to go over to
5 prepare for this last phase of the trial. So thank you for
6 your patience.

7 I believe when we broke, Mr. Falk, you were---

8 MR. FALK: Yes, I have one more witness to call.

9 THE COURT: All right, sir.

10 MR. FALK: We would like to call Wiley Chapman to the
11 stand.

12 THE COURT: Mr. Chapman, let me get you to come
13 forward, sir.

14 THE CLERK: Mr. Chapman, if you'd please come forward
15 and place your left-hand on the Bible and raise your right.

16 WILEY CHAPMAN, being first duly
17 sworn, testified as follows:

18 THE CLERK: Please take your seat please.

19 THE COURT: Mr. Chapman, you come right over here, sir,
20 and you have a seat.

21 THE CLERK: Watch your step. Pull that chair up. Face
22 that microphone.

23 THE COURT: Mr. Chapman, would you just tell us your
24 full, sir?

25 THE WITNESS: Wiley Limuel Chapman.

Wiley Chapman - Direct examination
By Mr. Falk

1 THE COURT: Thank you, Mr. Chapman.

2 Your witness, sir.

3 DIRECT EXAMINATION

4 BY MR. FALK:

5 Q. Mr. Chapman, how old were you when you went to prison
6 this last time?

7 A. Twenty-five years old.

8 Q. And how old are you today?

9 A. Fifty-six.

10 Q. And you've been in the Department of Corrections that
11 whole time.

12 Is that correct?

13 A. That's correct.

14 Q. All right. I'm -- I think we've already sort of talked
15 about, about everything we need to talk about. But I just
16 wanted you to sort of maybe amplify some testimony that
17 Doctor Gillen gave. He had talked about your work history
18 for the past 12 years.

19 Could you just explain where you were working?

20 A. I was working -- while being in prison, I was working
21 for an aerospace company and it was real -- you had to
22 have -- like you couldn't have major charges to work in
23 there, and you had to -- like striking the employ with a
24 weapon, well, you couldn't be in there. Masturbation, you
25 couldn't be in there. Escape charges, you couldn't be in

Wiley Chapman - Direct examination
By Mr. Falk

1 there.

2 But the whole thing was it -- we worked for the
3 Department of Defense, military. And what I done, and one
4 more guy that work with me, we build cables to go in
5 airplanes, fighter jets, private jets, and some tanks. And
6 it was the type of job where you couldn't make no error
7 cause life depends on what I done -- we done and I worked
8 there approximately 11 years.

9 Q. So did you get any training to work there?

10 A. Yes, sir, you had to be certified every two years and
11 you had to -- different trainings like for termination or
12 molding or plugging.

13 Q. I'm sorry.

14 what was that?

15 A. Plugging -- like plug in cables. And you got these
16 different trainings that you had to pass these tests in
17 order to be certified and you were certified for two years
18 before you had to do it again.

19 Q. And you had -- Doctor Gillen talked about some kind of
20 clearance that you had like security clearance?

21 A. Well, it was, like I said, working for the Department
22 of Defense where it was a real strict job and you couldn't
23 give too much information about the job or you will be fined
24 for federal charges. So, really I just couldn't discuss how
25 you build it but I can discuss the things we did and made,

Wiley Chapman - Direct examination
By Mr. Falk

1 the cables, you know, we made---

2 Q. So---

3 A. ---and what they went in.

4 Q. What facility were you at?

5 A. Evans Correctional Institution in Bennettsville.

6 Q. And that's when you were in the character dorm.

7 Is that correct?

8 A. Yes, sir, I was in---

9 Q. Now where is this plant that you were working at
10 relative to Evans?

11 A. It's on Evans grounds. But we had to leave a little
12 part from the dorms to go through this gate and be in
13 another totally different, different building. It was
14 approximately 80 of us that worked in there and they had
15 approximately 15 staff members like---

16 Q. Were the staff members in the Department of
17 Corrections?

18 A. Yes, sir, not all of them. Not all of them. You had
19 only two. The rest of them was civilians and you had
20 approximately 10 womens that worked in there with us and one
21 security guard. And the owner asked them was they
22 comfortable working there with inmates cause, like I say,
23 it's approximately 80 of us that work in there and one
24 officer. So, one officer can't keep an eye on everybody.
25 And so---

Wiley Chapman - Direct examination
By Mr. Falk

1 Q. When these, these -- and, again, so the -- you call
2 them civilians.

3 So, these, these women that were working there, they're
4 not in the Department of Corrections?

5 A. No, sir.

6 Q. They're---

7 A. No, sir, they're not.

8 Q. Okay.

9 A. They're civilians.

10 Q. And are they working near you?

11 A. Yes, sir, they work side-by-side with us cause you got
12 like different section leaders. I was one and you had like
13 five or six more. And they would work with us to help
14 design or engineer cables to -- new cables that we was
15 getting and we didn't know -- inmates did not know how to
16 design them. So we was -- they had to help us design or
17 engineer the cable and get it cleared before we could put it
18 in the field.

19 Q. If this jury releases you today, where are you gonna go
20 next?

21 A. I'm gonna go to Jump Start.

22 Q. What do you know about Jump Start?

23 A. There is a, there is a ministry and they help you find
24 a job. They help you get your license back if you need it.
25 They help you get your birth certificate if you need it.

Wiley Chapman - Direct examination
By Mr. Falk

1 They put you through more classes and you have to stay there
2 at least six months to a year. And once you clear, they
3 would also help you find a place to live if you needed it.

4 Q. So you had told a different plan to both Doctor Gillen
5 and Doctor Gottfried.

6 Is that right?

7 A. Yes, sir.

8 Q. And when did you -- that was over a year ago?

9 A. About two years. In '20.

10 Q. Okay. But now your plan is to go to Jump Start?

11 A. That's right cause the first plan didn't work out
12 right. For one, they was talking about the sheriff was
13 indicted on these charges. So, I had to come up with
14 another plan and a place to live.

15 Q. The, the two ladies who are in the back of the
16 courtroom, who are they?

17 A. They're my sister, Vanessa Chapman, Karen Birch.

18 Q. Do you have any other sisters?

19 A. One more, Wanda Chapman, which live right here in
20 Chesterfield County.

21 Q. Okay. No further questions.

22 THE COURT: All right. Ms. Shaw.

23 MS. SHAW: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. SHAW:

Wiley Chapman - Cross-examination
By MS. Shaw

1 Q. So, Mr. Chapman, your plan is now changed --

2 A. That's correct.

3 Q. -- so you say.

4 All right. Have you talked to anybody from Jump Start?

5 A. I been locked up the whole time and I can't talk to
6 nobody from Jump Start. But my family, sister, Karen and
7 them, they was talking to people in Jump Start.

8 Q. Uh-huh. (Affirmative).

9 And do you have any paperwork that would confirm that
10 you've been accepted to that program?

11 A. No, ma'am.

12 Q. Okay. Have you personally been able to speak with any
13 sort of ministers or staff that would give you information
14 about the program or is this just information you've heard
15 from your attorney and other inmates?

16 A. From my sister, yes, that's correct.

17 Q. Okay. But she's not a qualified therapist, is she?

18 A. Ma'am?

19 Q. She's not a therapist, is she?

20 A. She's not a therapist but she's trying to help get me
21 into Jump Start is what I'm saying.

22 Q. Okay. But, at this point, if you're released today,
23 you don't have any where to go?

24 You have not been accepted to that program?

25 A. I can't answer that question cause, like I say, I'm not

Wiley Chapman - Cross-examination
By Ms. Shaw

1 the one that doing the searching for me to live there. But
2 that's my plan and I'm pretty sure, if I was, I would be
3 able to go in there as soon as possible.

4 Q. Were you gonna go in the mean time if you're released
5 today?

6 If you can't go to Jump Start tonight, where you gonna
7 go?

8 A. Back to jail.

9 Q. Oh, no, you wouldn't be going back to jail. You're
10 done.

11 So where would you go?

12 A. I'm going to Jump Start and, and, and be there first
13 thing the time -- as soon as I can be there. Probably
14 wouldn't be able to go today. But I would go on straight to
15 the Jump Start and they have -- I know some of the members
16 that work there. But I don't know all of them. And, like I
17 say, I wasn't able to talk to them directly myself cause I
18 been lock up for 30 plus years and I'm not---

19 Q. So---

20 A. ---allowed cause the phone number that they had I can't
21 call the jailhouse.

22 Q. But you can call your sister, right?

23 A. Yes, sir.

24 Q. Okay.

25 A. I mean yes, ma'am.

Wiley Chapman - Cross-examination
By Ms. Shaw

1 Q. That's all right.

2 A. I'm sorry.

3 Q. That's all right.

4 So -- but as of today, there's no where for you to go.

5 You're not go gonna live with your brother?

6 A. No, sir. No, ma'am. I keep -- I'm sorry.

7 Q. That's okay.

8 A. Sorry.

9 Q. All right. All right. Thank you.

10 A. Thank you.

11 THE COURT: Anything else?

12 MR. FALK: No redirect.

13 THE COURT: All right. Thank you.

14 Mr. Chapman, thank you for your testimony. You can
15 step down, sir.

16 THE COURT: Thank you.

17 THE CLERK: Watch your step.

18 (Pause.)

19 THE COURT: All right. Mr. Falk.

20 MR. FALK: At this time, respondent rests its case.

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

22 Okay. Ladies and gentlemen of the jury, I'm gonna have
23 to excuse you one more time so that I can talk to the
24 lawyers about some, some matters of law, and then we'll
25 bring you right back out. And my plan is, is to have

1 closing arguments, charge you on the law, and then allow you
2 to begin deliberating.

3 Okay. So, at this time, if, if -- any objection to
4 them being -- cause I don't think we'll be -- it should not
5 be a, a long break for you. So, I'm just gonna ask y'all to
6 retire to the jury chambers and we'll get you out of there
7 cause I know it's cramped quarters in there.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Counsel.

11 MR. FALK: Your Honor, we -- I would renew my motion
12 for a directed verdict and I'd also renew my other
13 evidentiary motions.

14 THE COURT: All right.

15 MR. FALK: And I guess my motion for a mistrial.

16 THE COURT: All right. I would -- I'm going to
17 respectfully deny your motion for directed verdict as well
18 as the motion for a mistrial.

19 And anything else in there that I, I failed to address
20 so that you're covered?

21 MR. FALK: Well, you know, we had two proffers. You,
22 you -- Ms. Shaw objected to some of the testimony I wanted
23 to bring in and that we brought in through a proffer. And
24 so, to the extent that those were evidentiary objections,
25 I'm just renewing them also.

1 THE COURT: All right, sir. So noted.

2 All right. Ms. Shaw.

3 MS. SHAW: Your Honor, just from the State's
4 prospective to protect the record, I am requesting that the
5 motion for mistrial that I made regarding the jury
6 irregularities and certain individuals in the courtroom and
7 I renew that as to protect those references as well---

8 THE COURT: All right.

9 MS. SHAW: ---if necessary.

10 THE COURT: I respectfully deny the motion but your,
11 your objection is so noted.

12 MS. SHAW: Thank you, Your Honor.

13 THE COURT: Okay. All right. What else do we need to
14 cover before we --?

15 MR. FALK: I guess we just need to see the typing.

16 THE COURT: Let's, let's have y'all -- how much time do
17 you need for preparing for closing?

18 MR. FALK: I'm ready.

19 MS. SHAW: I'm ready as well.

20 THE COURT: Okay. Well, let's, let's, let's -- all
21 right. We just got to print the jury charges. Y'all look
22 at them and we'll bring them out.

23 Okay. We'll stand at ease.

24 (WHEREUPON, a short recess was taken at this time.)

25 (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. Court will come to order.

3 Prior to the jury stepping out, Mr. Falk, I believe you
4 indicated that you had rested your case at this time?

5 MR. FALK: Yes, we will rest our case.

6 THE COURT: All right. Is there anything else from
7 the---

8 MS. SHAW: No, Your Honor.

9 THE COURT: Okay.

10 All right. Ladies and gentlemen of the jury, there
11 were some things that we had to work on outside of your
12 presence that are critical to the trial.

13 We're now -- we have completed with the evidentiary
14 testimony part of the trial. We're now going to have
15 closing arguments from counsel. So, they'll need your
16 undivided attention. You have an opportunity to -- each one
17 of them have an opportunity to speak to you. And then,
18 concluding their remarks, then I will charge you with the
19 law. I'll tell you what the law is in this case. After
20 that, we'll excuse you to, to deliberate. I'll have some
21 further instructions from the foreperson before you exit the
22 courtroom.

23 okay. Counsel.

24 MS. SHAW: Thank you, Your Honor.

25 All right. Ladies and gentlemen, we're in the home

1 stretch. We're almost done. It's been a relatively short
2 trial. So, I am not going to belabor you with a very long
3 closing. I'd just like to highlight certain things that
4 were brought out in trial which I would really like you to
5 seriously consider when you are deliberating.

6 So, what this case ultimately comes down to is not
7 whether Mr. Chapman has a qualifying conviction. As you saw
8 at the beginning of trial, he has not one but two.

9 Secondly, the question is also not whether he has a
10 personality disorder or mental abnormality and that is
11 important. It's got to be one or the other, possibly both.

12 Both of the experts in this case agree that Mr. Chapman
13 suffers from other specified personality disorder with
14 antisocial features, which is a secondary diagnosis because
15 he doesn't meet full criteria having that behavioral issue
16 as a teenager to meet antisocial personality disorder.

17 Okay. So, he has a personality disorder. The question
18 is ultimately gonna come to whether you believe he also has
19 a paraphilia and whether you believe that that personality
20 disorder makes it likely that he is going to reoffend and
21 that's what your common sense really needs to inform on this
22 question. Do you believe that, if he is released,
23 Mr. Chapman is likely to commit another sexual offense and I
24 do want to emphasize another sexual offense to you because
25 that's why we're here.

1 If Mr. Chapman goes out and robs a bank tomorrow, the
2 State has nothing to say about that under this law. The
3 question is is he going to potentially or is he -- is he
4 likely to rape another adult female cause that is his victim
5 of choice.

6 In 1986, he assaulted a female violently and was
7 convicted of that. In 1986 again, he attempted to rape a
8 20-year old female. He got sentenced for that. He got a
9 slap on the wrist. In 1987 he raped a 15-year old
10 violently, threw her to the ground, beat her about the head
11 and face, and this was someone who had previously been
12 willing to have consensual sex with him.

13 He could of had sex with her. He could of had sex with
14 any number of other partners. As you heard the testimony,
15 he was living a Playboy life-style. He wanted sex all the
16 time everyday and he really didn't care how he got it and
17 that is what makes him so dangerous, ladies and gentlemen,
18 is that that personality disorder which enabled him to go
19 out there, violate those first two victims, and then, in
20 that escalating pattern of violence over time after he had
21 been sentenced to six years in prison and had served part of
22 that sentence but was released early in 1991, he raped a
23 complete stranger, a 60-year old lady in her home at night.
24 And he was convicted of criminal sexual conduct in the first
25 degree as well as burglary in the first degree.

1 But he didn't steal anything from that lady. If he was
2 going into her house to steal things from her, he would of
3 done so presumably. He had incapacitated her. He beat her
4 about the head with a flashlight. He was also charged with
5 kidnapping in that offense even though he was not ultimately
6 convicted, in part, because he pled out.

7 He pled to CSC first. He pled to burglary and that is
8 what you need to consider because the personality disorder
9 that both experts agree he has is what enabled that in
10 combination with his sexualized life-style, his sexual
11 preoccupation, his poor impulse control, his callousness.
12 He still doesn't care what he did to those women.

13 You heard it from Doctor Gillen's own mouth.
14 Mr. Chapman said he may have hurt their feelings. He may
15 have learned some basic elements of victim impact in the
16 sexual treatment that he's had not once but on four
17 separation occasions. He had it when he was first
18 incarcerated on -- from the six year bit for the first rape
19 and then he went out, and very shortly after, less than a
20 year after he was released from prison, he reoffended far
21 more violently than before.

22 He had had See Star training. That is SCDC sex
23 offender treatment. He's now had it at least three more
24 times. May of completed it. May not have. The records
25 were not clear on that as both experts said.

1 So, that personality disorder is what really enabled
2 his functioning. And as you heard Doctor Gillen and Doctor
3 Gottfried testify, it's still there. It's still active.
4 Personality disorders are a chronic condition. They affect
5 a way a person thinks and perceives the world and how they
6 interact with others. And that, ladies and gentlemen, is
7 really where you need to focus.

8 Now, Doctor Gottfried also diagnosed Mr. Chapman with a
9 paraphilia, paraphilic coercive disorder. That's where the
10 two experts differ substantially in their diagnoses and
11 ultimate conclusions.

12 I don't -- submit to you that the reason they do that
13 or they did that is because Doctor Gillen, number one,
14 didn't have the information that Doctor Gottfried had. He's
15 actually in a relatively unenviable position where he has
16 first crack at the individual. So, he has to go with what
17 that individual tells him. And if you listen to Doctor
18 Gottfried or Doctor Gillen's testimony today, excuse me,
19 doctor -- or Mr. Chapman told him he wasn't aroused during
20 either of the rapes. He told he did not ejaculate. He told
21 him that he was just trying to get them to comply.

22 But what he told Doctor Gottfried was very different.
23 He told her he was aroused. He told her he did ejaculate.
24 He told her, when she asked him if he enjoyed that power and
25 control, he admitted that. He said yes, I did enjoy that.

1 I guess so.

2 So, he is admitting already that he enjoys coercive sex
3 and that, ladies and gentlemen, is a big problem and that is
4 an extreme risk factor. That diagnosis, that paraphilia, in
5 addition to the personality disorder and also in addition to
6 that deviant life-style, that unstable life-style, the
7 dynamic risk factors that you heard about from both of them,
8 both experts, Doctor Gillen did a slightly more simplistic
9 evaluation just taking into account the dynamic risk factors
10 but Doctor Gottfried did a formal comprehensive evaluation
11 using the SVR-20.

12 As you heard Doctor Gillen, he agreed that the SVR-20,
13 it takes into account those same personality facets and
14 behavioral traits and it's considered. But the difference
15 is, is that, just looking at and assigning dynamic risk
16 factors is not the same as using a structured clinician
17 assessment. The SVR-20 is a structured way of thinking and
18 that's what Doctor Gottfried said. It's a way to keep her
19 focused on the right questions and not to get sidetracked or
20 off into the weeds with other secondary concerns.

21 So, I would submit to you that Doctor Gottfried's
22 analysis, under the SVR-20, is far more credible and should
23 be given more weight than just a simple dynamic risk factor
24 assessment.

25 You will also note, ladies and gentlemen, that, on the

1 Statics, despite Mr. Chapman's older age at this, which you
2 heard Doctor Gottfried discuss he gets points off of the
3 score, despite his age, he still is in the well above
4 average risk category. That is one of the highest risk
5 categories that you can possibly have with this instrument.
6 It is used in all sex offender evaluations, particularly
7 high stakes one like this, and it's very informative. He
8 also scored a six on the 2002R, which puts him in above
9 average risk.

10 These two factors, in combination with that high need
11 for treatment that Doctor Gottfried identified using the
12 SVR-20, as well as the need for treatment that Doctor Gillen
13 identified in his own report, he believes this man needs
14 treatment.

15 So the question is why do they differ and,
16 unfortunately, that is due to inexperience. And,
17 unfortunately, Doctor Gillen answered the wrong question.

18 You heard both of these experts testify that they have
19 done numerous evaluations in this context, precommitment as
20 well as resident reviews. But the difference is that Doctor
21 Gottfried has done 33 precommitment evaluation reviews.
22 Doctor Gillen has done nine. She's been licensed since 2015
23 and this is what she specializes in, sexual offending and
24 deviant behaviors.

25 Doctor Gillen has been licensed since 2020 and he

1 doesn't specialize in this. It's a considerable portion of
2 his work but he also does criminal responsibility
3 evaluations. He does capacity evaluations. He does
4 everything for DMH and that's part of his role there and
5 that's fine. But the biggest difference between the
6 precommitment evaluation and a resident review is the
7 question asked.

8 And you know doctor -- well, actually I hope you heard
9 Doctor Gillen say he's done 60 resident reviews over his
10 time at DMH. That's a lot.

11 The question he's asking in those reviews is has this
12 person's mental abnormality or personality disorder changed.
13 That is what he asked with Mr. Chapman. He looked at
14 Mr. Chapman's behavior in prison over time in a controlled
15 environment much like his home life growing up. His home
16 life was strict. His mom did not let him run the streets.
17 He's not allowed to do that in prison either.

18 So, in that controlled environment, he can function
19 well. That's probably why he does not have a -- the
20 juvenile conduct disorder. The environment he was in kept
21 him under control.

22 But you also heard Doctor Gillen say that, once
23 Mr. Chapman got out of that, by Mr. Chapman's own admission,
24 he went wild and that's exactly what will happen again.
25 Nothing has changed about Mr. Chapman's personality

1 disorder, his dynamic risk factors, his current need for
2 treatment that would mitigate it and that was,
3 unfortunately, the question that Doctor Gillen was focusing
4 on.

5 So, very well qualified expert no doubt. He got it
6 right with the personality disorder but he lost his focus.

7 why?

8 He was just doing the basic evaluation. He didn't use
9 those structured assessments.

10 So, that being said, I do ask that you find that
11 Mr. Chapman has a personality disorder. The experts agree.
12 I do ask that you find that he also has that paraphilia. By
13 his own admission, he likes the power. He likes control.
14 He has raped two women, tried to rape a third, assaulted a
15 fourth, and he will do it again.

16 So, I ask you, with that, to find that he is likely to
17 sexually reoffend if released and that he should be
18 committed to a secure environment for long term control,
19 care, and treatment.

20 Thank you.

21 THE COURT: Mr. Falk.

22 MR. FALK: May it please the Court. Ms. Shaw.

23 Ladies and gentlemen of the jury, 30 years. The
24 question here is whether or not Mr. Chapman is the same
25 person he is today as he was 30 years ago. Is he the same

1 man cause clearly that he was wild when he was in his
2 twenties.

3 He testified now and I think you saw some of his
4 maturity that he has that you would expect any 56 year old
5 man to acquire over this period of time. I mean anybody who
6 spends 30 years at the Department of Corrections is gonna
7 learn something.

8 The State just wants to focus on stuff that he did 30
9 years ago and they want you to keep -- cause there is no
10 question that those were crimes, that they were serious
11 crimes. He caused pain. I mean I'm not here to minimize
12 any of his conduct from 30 years ago. I'm just here to tell
13 you that he's not the same person he was 30 years ago.

14 You basically have two experts here. You have Doctor
15 Gottfried and Doctor Gillen. I think, if you've listened,
16 if you consider Doctor Gottfried's testimony, she was really
17 focusing on who he was 30 years ago whereas it seems, from
18 my view of the testimony, that Doctor Gillen was more
19 recognizing what he -- what sort of happened over the past
20 30 years. You know, has he changed. I think that both of
21 these experts had sort of two different approaches.

22 The one thing I thought that was interesting about
23 Doctor Gottfried's approach and I think you heard more that
24 you certainly -- I don't recall hearing much from Doctor,
25 excuse me, from Doctor Gillen's approach. You didn't hear

1 much from Doctor Gottfried about any type of conversation
2 she had with other people who knew Mr. Chapman over the past
3 30 years. I mean people who he's had inter -- interaction
4 with over the past 30 years, and that's one of the
5 collateral sort of contacts that Doctor Gillen did, and the
6 one I want you to think about is, you know, he heard --
7 Mr. Chapman testified that, for the last 12 years, he'd been
8 working in a factory.

9 It was a skilled position of some sort. You had to be
10 trained to reach the position and you had have some site --
11 securities and you have to be tested and he was also in a
12 facility -- there were 80 -- he said about 80 men were there
13 who are from the prison and they're about, I don't know, 12,
14 13, whatever he said, females who are also in that facility
15 who are not prisoners. I guess he, he called them
16 civilians.

17 So, over those 12 years, we didn't hear any complaints
18 about any type of assault on one of these other women who
19 were in that facility. I mean and having -- doctor -- I
20 mean Ms. Shaw wants to just sort of characterize him as this
21 caged animal, and as soon we let him out, boom, he's gonna,
22 you know, reoffend. But I don't think that that's -- I
23 don't think you saw a caged animal sitting up there on the
24 stand. I think you saw somebody who has matured.

25 Doctor Gillen focused on the fact that a lot of these

1 personality disorders, it kind of wanes as you get older, as
2 you get into what he said into your fifth decade. It sort
3 of -- you know, some of that conduct might still be there.
4 But it, you know, I think his term was mellowed.

5 I think you see a mellow man right there. I think you
6 see a man who has been through a lot.

7 But I want to know why Doctor Gottfried didn't follow
8 up on what I think is this important piece of the puzzle is
9 the fact that he was working sort of outside the prison
10 walls in another facility where there was no problem, where
11 he was given a lot of -- where he was given a lot of
12 seniority. I didn't hear any testimony from Doctor
13 Gottfried about that.

14 So, when you're talking about who did the more thorough
15 evaluation, you have to consider who went out and talked to
16 some of the other people. Didn't just rely on some other
17 accounts. He talked to some of the other people who had
18 interactions with him. He confirmed stories and he
19 confirmed information that he heard by talking to the other
20 people who knew him over the past 30 years.

21 During the cross-examination, Ms. Shaw certainly had
22 some concerns, what appeared to me that she had some
23 concerns about his plans for the future and certainly,
24 during the testimony from her cross-examination of Doctor
25 Gillen, she had concerns about his plans for the future. I,

1 I, I don't think it's unrealistic to think that, you know,
2 in this kind of state when you're getting out of prison
3 after 30 years, your plans might change. When he talked to
4 Doctor Gillen and Doctor Gottfried, that was a year and a
5 half, two years ago. Yeah, things changed.

6 Mr. Chapman, these two ladies right here, are his
7 sisters. They have been here both days -- all three days of
8 this trial. He's got family support here if he needs a
9 place.

10 I am -- but what's important, I mean he might need some
11 kind of short term place while he gets into Jump Start. But
12 he's, he's picked a place, a place to go. It's a, it's a
13 realistic plan for the future as far as allowing him to
14 reintegrate into society. They're gonna help him find a
15 job. They're going to help him, you know, get situated.
16 They're gonna find him a place to live. It's a reasonable
17 place. It's a reasonable plan for going forward.

18 Now, a lot of times, when you have civil cases and
19 you -- there's expert witnesses, you're still under
20 what's -- what we call the sort of the civil burden of proof
21 thing where one side has to prove their case just a little
22 bit more than the other side. You know, it's the idea of
23 you had these two even scales. They both have a pile of
24 pebbles on them and you pull one pebble away from the one
25 scale and the other one goes up.

1 That's kind of the notion of how, how persuasive the
2 testimony's got to be and it's not very much in a civil
3 case, in a normal civil case. But this is really -- this
4 case, because of the fact that you're gonna decide really
5 where he's going to live for the foreseeable future, that
6 they -- the State has to prove their case beyond a
7 reasonable doubt.

8 Now, one thing I think you can get from some of this
9 testimony is that, in the psychological field, even some of
10 the experts have some disagreements about their opinions,
11 and what's relevant, and what's not relevant. One, one
12 person wants to use this kind of test. Another person wants
13 to use this kind of test.

14 I mean I think it's reasonable to assume that there's
15 some disagreements in this field and what I get concerned
16 about is, when you use the term diagnosis in one of these
17 cases, it conjures up, in my mind, like a medical diagnosis
18 from a medical doctor. But most -- many, many, many
19 diagnoses that -- for medical doctors, you know, there are
20 some tests that you can give them when -- and they can get
21 some certainty to the results from that test and another
22 doctor could look at those results from that test and agree
23 with you.

24 I mean the most obvious example is, you know, you go
25 in, your arm really hurts. You can hardly even move it.

1 The doctor takes an x-ray. He sees that your arm is broken.

2 All right. You have the symptom, the sore arm. You do
3 the test. The arm is broken. And the thing about that is
4 that doctor could send that test to anybody, could look at
5 that same x-ray, and agree with them. But, in this field,
6 it's not quite as -- there's no kind of precise measures in
7 or in order to help them support their diagnoses.

8 So, the State's got to prove their case beyond a
9 reasonable doubt and I think another way to look at it is
10 the State has got to prove that man that we saw this morning
11 is wrong beyond a reasonable doubt. I mean that's really
12 the other side of the coin.

13 In order for the -- in order for you to -- can find him
14 as a sexually violent predator, you basically have to
15 believe hardly anything that came out of his mouth in order
16 for it not to be just a little bit better. But it's so much
17 better than you think that Doctor Gottfried's testimony is
18 so persuasive that you don't believe anything from him, that
19 there's no doubt that he gave -- he told you nothing this
20 morning that would create any doubt about whether or not
21 he's going to reoffend.

22 I think you saw a guy from the stand and, you know,
23 maybe he has a little bit less experience. I mean so you
24 have nine evaluations versus 30 evaluations. You've been
25 practicing for a couple more years. But I think, you know,

1 you're gonna weigh the testimony -- you're gonna -- you're
2 entitled to look about how persuasive he was and you can
3 decide which, which -- if, if you want to believe Doctor
4 Gillen's testimony.

5 He certainly stuck to his opinion and basically I mean
6 yeah, he agreed that he had the personality disorder. He
7 agrees with this personality disorder. But he just does not
8 agree that it's gonna make him likely to commit a crime
9 going forward, that it's gonna -- makes it likely to
10 reoffend. But -- and he also did not agree with this
11 paraphilia definition. I think -- I mean he's used it. He
12 understands it. But he thinks it doesn't really apply to a
13 case like Mr. Chapman's. I mean he thinks that that applies
14 in a much more narrow circumstance.

15 But, again, this conduct happened 30 years ago. It
16 didn't happen last week. I mean if this trial were going on
17 in 2000 this would probably be a different story. But this
18 trial is now in 2022 and Mr. Chapman has been in the
19 Department of Corrections for that long a time and we really
20 haven't seen any type of acting out that you would expect
21 from somebody who has a diagnoses that Doctor Gottfried
22 talked about.

23 I don't, you know, incident -- when you're talking
24 about reasonable doubt, it's always hard. I mean cause, you
25 know, being firmly convinced. Here's one kind of an analogy

1 that might -- some of y'all might be able to appreciate is
2 y'all -- if y'all watch football games, whether it's college
3 or the NFL, you know that there's instant replay and, you
4 know, they go to the instant replay when there's kind of a
5 question as to what happened. And what the -- what you have
6 to do with the instant replay official is, you know, they're
7 gonna with -- go with the guy who made the decision on the
8 field unless there's incontrovertible proof that the guy
9 made the wrong decision.

10 I think that's what we have here. There's certainly
11 not incontrovertible proof that Doctor Gillen is wrong.
12 There's not incontrovertible proof that Doctor Gillen is
13 wrong that he is not gonna reoffend. And there's not
14 incontrovertible proof that he suffers from some type of
15 paraphilia.

16 I think, when you go back there, if you just consider,
17 use your own judgment, are you the same person you were when
18 you were 26 years old or are you a different person than you
19 were when you were 26 years old?

20 I don't know if somebody's 27 on the jury. I mean that
21 might make a difference. But I think you know what I'm
22 saying.

23 So just, you know, give some thoughtful consideration
24 and I think, when you're at the end of -- once you've had a
25 chance to sort of flesh some of these things out, I think

1 you're gonna come back with a verdict and I'm asking you to
2 come back with a verdict finding that Mr. Chapman is not a
3 sexually violent predator.

4 Thank you.

5 MS. SHAW: Very brief rebuttable, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. SHAW: So, ladies and gentlemen, this is the last
8 you will have to hear from me or Mr. Falk and then you will
9 retire to do your deliberations. And the one thing I'm
10 gonna say is Mr. Falk is right.

11 Mr. Chapman is not a caged animal. He's not gonna go
12 out and beat somebody tomorrow that we know of. That's not
13 the way he works.

14 He works in that he likes coercive sex. He's admitted
15 to and he didn't admit that to Doctor Gillen. He wouldn't
16 admit that to Doctor Gillen. It was only after that
17 additional battery of testing and really digging deeper into
18 Mr. Chapman's psyche that Doctor Gottfried was able to
19 identify that and get him to admit to it.

20 So, you know, acting out in prison is not necessarily
21 going to be indicative of whether he's likely to reoffend.

22 I'll concede Mr. Chapman's a good worker. There's
23 never been any issue with that. There's been discussions of
24 that.

25 But Mr. Falk would have you forget that, while he was

1 in prison, Mr. Chapman was infracted eight -- seven separate
2 times. One of them was for assaulting a female officer,
3 closing a door on her trying to keep her out of a room where
4 he was. Another one was for disrespecting an officer.
5 He -- I'm not sure quite what he said but it was a female
6 officer.

7 Another one, who Doctor Gillen spoke to, was a business
8 manager and Mr. Chapman was stalking her. And that person
9 reported she was uncomfortable with the behavior.
10 Mr. Chapman had been told to desist that behavior and he
11 didn't. That, ladies and gentlemen, indicates that he
12 continues to struggle with his paraphilic disorder as well
13 as the personality disorder. So he can have either or but,
14 in this case, I'm asking you to find that he has both.

15 Mr. Falk says that his client has mellowed in prison.
16 Mellowing out is not the same as being safe. Mellowing out
17 doesn't mean he's not likely to reoffend.

18 So, Mr. Falk also would have you believe that Jump
19 Start is a realistic plan. His plan so far now that we have
20 heard that he plans to go to Jump Start has changed three
21 separate times in a year.

22 First he said he was going to live with a woman named
23 Radonna Street who he claimed was his sister. That
24 individual denied even knowing him.

25 Second, he said he was going to go and live with his

1 brother in Georgia and -- but his brother doesn't even
2 believe he committed these offenses. His brother wouldn't
3 hold him accountable even if he could, and, more
4 importantly, if he's out on the street, he's gonna run wild
5 again just like he did the first time and you heard both
6 doctors say that historical behavior is the best predictor
7 of future behavior and that is what you need to consider.

8 Every time this man's been on the street since he's
9 been 21 years old and got out from under his, his home life,
10 which was strict, he has been acting repeatedly,
11 consistently, and the Static score, which are actuarial
12 measures, they can under or overestimate the risk but they
13 both say he is extremely high risk.

14 That is what you need to think about and one of the
15 words Mr. Falk just used was incontrovertible proof that
16 he's going to reoffend. That's not the standard. I
17 absolutely welcome the heightened burden of proof in these
18 cases because, if you decides to commit Mr. Chapman, there
19 is a significant deprivation of his liberty and he is
20 entitled to due process before that can happen. That's why
21 we have this standard because it is important.

22 So, as you consider all these factors, consider one,
23 there's no disagreement about the personality disorder.
24 There is some disagreement about the paraphilia but you have
25 to use your good judgment in deciding whether Doctor

1 Gottfried is correct or whether Doctor Gillen is correct.

2 So, that being said, I will leave you it to and I thank
3 you for your service.

4 THE COURT: Thank you, MS. Shaw.

5 MS. SHAW: Thank you, Your Honor.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, it's now the time of the trial where the Court -- I
8 have to charge you with the law. In other words, I have to
9 give you the law that you're to consider for purposes of
10 deciding this case.

11 I am going to read this but I'm also going to give you
12 my copy for you to take back into the jury room with you so
13 that, if you need to reflect upon it, you would have it
14 available to you.

15 All right. So, ladies and gentlemen of the jury, it's
16 now my duty as the trial judge, under the Constitution of
17 this state, to charge and instruct you on the law applicable
18 to this case. It's your duty, as jurors, to accept and
19 apply the law as I will now state it to you.

20 The State has brought this case under the Sexually
21 Violent Predator Law of South Carolina and is requesting the
22 civil commitment of Wiley L. Chapman, the respondent, for
23 long term control, care, and treatment in a secure facility
24 administered by the South Carolina Department of Mental
25 Health. This is not a criminal proceeding seeking

1 incarceration but rather it is a proceeding seeking, seeking
2 civil commitment.

3 The State of South Carolina alleges that the
4 respondent, Wiley L. Chapman, is a sexually violent predator
5 under the law. Respondent denies that he is a sexually
6 violent predator and the burden of proof is, therefore, on
7 the State to prove, by evidence sufficient to satisfy each
8 of you beyond a reasonable doubt, that Mr. Chapman is a
9 sexually violent predator. If the State is unable to meet
10 that burden of proof as to one or more of the elements of
11 this claim, the respondent is entitled to a finding that he
12 is not a sexually violent predator.

13 Ladies and gentlemen, I want to make sure that you
14 understand that Mr. Chapman is not accused of committing a
15 crime. As you heard from the testimony, he has had, in this
16 proceeding, previous charges on which he was convicted and
17 sentenced by the Court. The respondent has now completed
18 his sentence for those charges and the State is alleging
19 that Mr. Chapman is a sexually violent predator.

20 The State has the burden of proof in this case and must
21 prove it case beyond a reasonable doubt. If you find that
22 the State has not met this burden, respondent will be
23 released. If you find that the State has met its burden of
24 proof, and find that the respondent is a sexually violent
25 predator, he will not be released but rather will commit --

1 be committed to a secure treatment facility in Columbia.

2 Now, during this trial, you and I've had separate
3 duties to perform. As the trial judge, it's my
4 responsibility to preside over this trial and also have the
5 duty to rule upon the admissibility of evidence offered
6 during the process of this trial. You are to consider only
7 the competent evidence before you and you are to disregard
8 any testimony ordered stricken from the record of this case
9 during the progress of this trial if there was any of you --
10 if there was any. Excuse me. You are to consider only the
11 testimony which has been presented from this witness stand
12 together with any exhibits admitted into the record and any
13 stipulations of counsel if there were any.

14 Furthermore, I have the additional duty to charge you
15 on the applicable law of this case, and, in that regard, I
16 am the sole judge of the law of this case. It is your duty
17 to accept and apply the law as I now state it to you. If
18 you have any preconceived ideas as to what the law is or
19 what the law ought to be, and those ideas do not agree with
20 what I tell you the law is, you are obligated, under your
21 oath, to abandon this preconception because you are sworn to
22 accept the law precisely as I now state it to you.

23 In this trial, you are the sole and exclusive judge of
24 the facts and I am the judge of the law. Do not infer that
25 I have any opinion about the facts in this case from

1 anything I have said during the course of this trial, in
2 ruling upon the admissibility of evidence or otherwise, or
3 from anything that I now say during the course of this
4 charge to you. In this regard, the law simply does not
5 permit me to have an opinion about the facts.

6 As jurors, it is your duty alone to determine the
7 effect, value, weight, and accuracy of the evidence
8 presented during the course of this trial.

9 Arguments of counsel. While arguments of counsel is a
10 beneficial part of every trial, you should remember that the
11 statements made by counsel are not evidence. In presenting
12 arguments, counsel often refer to evidence. However, you
13 should base your verdict on the evidence as you remember it.
14 Therefore, if there are any conflicts between the
15 recollection of counsel about the evidence and your own
16 recollection, you should rely upon your own understanding of
17 the evidence.

18 The burden of proof. So, ladies and gentlemen, in most
19 civil cases tried in the court, and this is civil court, the
20 burden of proving a claim is by the preponderance or the
21 greater weight of the evidence. However, in this type of
22 case under this particular statute, the State's burden is
23 greater than that. Here it must be beyond a reasonable
24 doubt.

25 As I already stated to you, the State has the burden of

1 proof under the law of this state. According to the
2 Sexually Violent Predator Statute, the State must prove its
3 case to the standard of proof beyond a reasonable doubt. If
4 the State fails to meet this high burden, then you must find
5 that Mr. Chapman is not a sexually violent predator.

6 what is reasonable doubt?

7 Reasonable doubt -- I'm sorry. Proof beyond a
8 reasonable doubt is proof that leaves you firmly convinced
9 that the respondent is a sexually violent predator.

10 Ladies and gentlemen, there are very few things in this
11 world that we know with absolute certainty, and in this type
12 of case, the law does not require proof that overcomes every
13 possible doubt. If, based on your consideration of the
14 evidence, you are firmly convinced that Mr. Chapman is a
15 sexually violent predator, then you must return a verdict
16 for the State. If, on the other hand, you think there's a
17 real possibility that he's -- that he is not a sexually
18 violent predator, you must give him the benefit of the doubt
19 and return a verdict for the respondent.

20 Reasonable doubt may arise from evidence that is in
21 the -- this case or from the lack of evidence in this case.
22 It is up to you, the jury, to determine whether or not a
23 reasonable doubt exists in this case.

24 The State must prove, beyond a reasonable doubt, that
25 unless confined to a secure facility, respondent is likely

1 to commit another act of sexual violence. In making this
2 determination of likelihood, you must be firmly convinced
3 that respondent will commit another act of sexual violence.
4 You do not have to be convinced beyond all doubt that
5 respondent will commit an offense in the future. You must,
6 therefore, limit your consideration to respondent's
7 likelihood of committing a sexually violent offense and not
8 consider the likelihood that he may commit an ordinary
9 criminal offense.

10 Direct and circumstantial evidence. Evidence may be
11 direct or circumstantial.

12 Direct evidence is testimony by a witness about what
13 the witness personally saw, heard, or did. Circumstantial
14 evidence is indirect evidence. That is it is proof of one
15 or more facts from which one can find another fact. You are
16 to consider both direct and circumstantial evidence. The
17 law permits you to give equal weight to both. But it is for
18 you to decide how much weight to give any evidence.

19 Credibility of witnesses. In determining what the
20 facts in this case are, you must judge the credibility which
21 simply means the believability of the witnesses and the
22 value or weight to be given to the testimony. You alone
23 must decide the force, effect, and accuracy of the
24 testimony.

25 In making this decision, there are many things you may

1 and should take into consideration such as the appearance
2 and manner of the witness -- the manner of the witness on
3 the stand, a characteristic often referred to as the
4 demeanor of the witness.

5 was the witness forthright or hesitant?

6 was the witnesses testimony consistent or did it
7 contain discrepancies?

8 what was the ability of the witness to know the facts
9 about which he or she testified?

10 was there some reason a witness would want to give
11 testimony which would help or hurt one side or the other?

12 In other words, was the witness biased or prejudiced?

13 was the testimony of the witness reasonable when
14 considered in light of all the evidence in the case and in
15 the light of your own experience and common sense?

16 was the testimony of the witness corroborated or made
17 stronger by other testimony and evidence or was it made
18 weaker or impeached by such other testimony and evidence?

19 As jurors, please understand that you have the right to
20 believe a small portion of a witness testimony and discard
21 the larger portion or vice versa. You may believe all of a
22 witnesses testimony or none. You may believe the testimony
23 of a single witness against that of many, many witnesses or
24 the other way around. And, of course, you do not determine
25 the case merely by counting the number of witnesses

1 presented by each side.

2 The fact that testimony is not controverted does not
3 mean you must accept it as valid and undisputed. You still
4 must gauge the credibility of the witness to determine the
5 believability of the facts offered through the testimony.

6 In exercising your mental processes and attempting to
7 decide the accuracy of testimony, the law simply requires
8 that you exercise your good judgment, your common sense,
9 your sense of logic and reason, and your experiences in
10 life. You then apply these attributes to the evidence and
11 apply the law as I am now going to state it to you and thus
12 arrive at a verdict.

13 We had two expert witnesses testimony. So, with regard
14 to test -- expert witnesses, during the course of this trial
15 you heard the testimony of two expert witnesses, Doctor
16 Christopher Gillen and Doctor Emily Gottfried. The rules of
17 evidence ordinarily do not permit witnesses to testify to
18 opinions or conclusions. Instead, they can testify as to
19 facts they perceived such as what they saw, smelled, heard,
20 or they touched.

21 However, an exception to this rule exists for a witness
22 we call an expert witness. A witness who has special
23 knowledge, skill, experience, training, or education in a
24 particular field may state an opinion as to relevant and
25 material matters in which the witness claims to be an

1 expert. In determining the weight to be given to such an
2 opinion, you should likewise consider the qualifications and
3 credibility of the expert and the reasons given for the
4 opinion. You are not bound by such opinion. Rather you
5 should gave it the weight, if any, which you think it
6 deserves.

7 The value and effect of expert testimony, testimony is
8 a matter to be solely estimated by you, the jury. No
9 opinion of an expert can be accepted in and of itself as
10 accurate or reliable but must be weighed by you and convince
11 your judgment beyond a reasonable doubt and with the same
12 force and effect as any other fact proved in this case
13 before you can rely upon it.

14 I'm almost done, sir.

15 You must consider expert testimony in the same manner
16 as you do any other testimony and give to it such weight as
17 you believe to be entitled when considered with all the
18 other evidence in this case. Such testimony is given for
19 the purpose of helping you and not for the purpose of
20 controlling your judgment.

21 with regard to a sexually violent predator, the
22 elements which the State must prove beyond a reasonable
23 doubt are that the respondent has been convicted of at least
24 one sexually violent offense. I charge you that his 1988
25 conviction for criminal sexual conduct third degree and his

1 1991 conviction for criminal sexual conduct first degree are
2 both defined as sexually violent offenses under the Sexually
3 Violent Predator Act, and that the respondent suffers from a
4 mental abnormality and/or personality disorder, and that
5 makes him likely to engage in acts of sexual violence if not
6 confined in a secure facility for long term control, care,
7 and treatment.

8 In order for you to better understand the elements of
9 the State's cause of action, I'm going to define you -- I'm
10 going to deny -- define for you some of the terms that I
11 just used.

12 Mental abnormality means a mental condition affecting a
13 person's emotional or volitional capacity that predisposes
14 the person to commit sexually violent offenses. This mental
15 abnormality or personality disorder must cause Mr. Chapman
16 serious difficulty in controlling his behavior.

17 Likely to engage in sexual violence means the person's
18 propensity to commit acts of sexual violence is of such a
19 degree as to pose a menace to the health and safety of
20 others so that he is dangerous to others.

21 The mental abnormality or personality disorder must be
22 sufficient to distinguish him from repeat offenders
23 convicted, convicted of nonsexual criminal offenses.

24 Again, I remind you that the burden of proof is on the
25 State to prove to your satisfaction, beyond a reasonable

1 doubt, that the respondent has been convicted of a sexually
2 violent offense as I have instructed you and that he also
3 suffers from a mental abnormality or personality disorder
4 that makes him likely to engage in acts of sexual violence
5 if not confined in a secure facility for long term control,
6 care, and treatment.

7 If the State carries its burden of proof and convinces
8 you beyond a reasonable doubt as to each of the two elements
9 of its cause of action, it is entitled to a finding that
10 Mr. Chapman is a sexually violent predator. If the State
11 does not meet that burden of proof as to one or both of
12 these elements, the respondent is entitled to a finding that
13 he is not a sexually violent predator.

14 And, lastly, a fair and impartial trial. Ladies and
15 gentlemen of the jury, as you retire to begin your
16 deliberations, I wish to express the hope that each of you
17 will be mindful of the importance of your -- that you're
18 called upon to serve as jurors -- your various -- your, your
19 responsibility. Often, in the proper performance of your
20 duty requires that each of you free your mind of all
21 improper influences and preconceptions and weigh the merits
22 of this case fairly and without prejudice.

23 As the presiding officer of this Court, I am vitally
24 concerned that whatever verdict you find will be the result
25 of your going into the jury room and confining your

1 consideration to the evidence and the law that you have
2 heard in this courtroom, weighing it fairly and impartially
3 as I have every confidence you will do. Your verdict in
4 this case can not be based on sympathy, compassion,
5 prejudice, or emotion, or some other consideration not found
6 in the evidence and remember your verdict must be unanimous.

7 Before I go over the verdict form with the -- Madam
8 Forelady, any objections to the charges as stated to the
9 jury?

10 MS. SHAW: No, Your Honor.

11 THE COURT: Mr. Falk.

12 MR. FALK: No, Your Honor.

13 THE COURT: All right. Ms. Sellers -- in a moment I'm
14 gonna excuse y'all where you will begin -- you will not
15 begin deliberations until the clerk or one of the bailiffs
16 has given you the green light to do so.

17 And I believe, Madam Clerk, y'all have -- they will,
18 they will retire to the room that y'all had available
19 before?

20 THE CLERK: Yes, Your Honor.

21 THE COURT: Okay. Now, Ms. Sellers, as the foreperson
22 of the jury, this is the verdict form. Here, as the
23 Petitioner, the State of South Carolina proved beyond a
24 reasonable doubt willie L. Chapman is a sexually violent
25 predator under the State of South Carolina's Sexually

1 Violent Predator Act question mark.

2 We, the jury, unanimously answer the question as
3 follows:

4 Yes.

5 No.

6 Okay. And upon completing, you will check the
7 appropriate box. You will sign here as the foreperson of
8 the jury and then you would date it.

9 When you have reached a verdict, you will provide a
10 knock to the door. The bailiffs will check with you. Let
11 the bailiff know you reached a verdict. They will then
12 announce it to the Court. At that time we will bring you
13 back in and then you -- and I'll give you further
14 instruction at that point.

15 Do not begin your deliberations until you have been
16 given the, the green light from the clerk or the bailiff,
17 okay, cause there may be some matters that we need to take
18 up before and I, and I know they're a couple, they're a
19 couple exhibits that are part of the record that you will
20 need to take into the jury room.

21 Okay. I'm going to hand this to you now and this will
22 be -- and then, and then we also have the jury charges. I'm
23 going to hand those to you and these will be your
24 responsibility. You may defer to those if that is y'all's
25 desire.

1 MS. SHAW: Your Honor, would you like me to give the
2 exhibits to Madam Clerk or Madam Bailiff?

3 THE COURT: Yes. Hand them to the clerk and then she
4 can hand those off.

5 And if I can get counsel to approach one moment before
6 I excuse y'all.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: All right. Is it, is it Ms. Sheridan --
10 are you Ms. Jones or are you -- you're Ms. Jones.

11 Okay. Ms. Seegars.

12 Okay. All right. I'm going to -- all right. At this
13 time, Madam Bailiff, I'm going to -- is it Mr. Doster?

14 Are you on the far right?

15 THE JUROR: Yes, sir.

16 THE COURT: All right. Mr. Doster, Mr. Doster, you're
17 my second alternate and I'm gonna ask that you remain seated
18 as I excuse the jury. And, Ms. Seegars, I'm gonna ask that
19 you remain seated.

20 THE CLERK: No, Your Honor. I apologize.

21 THE COURT: No, just let me -- just let me -- wait. I
22 got it.

23 Are you Ms. Seegars?

24 Okay. All right. So, Mr. Doster, you are -- you're my
25 second alternate. So, yes, sir, you'll remain seated, and,

1 Ms. Seegars, you remain seated.

2 All right. Madam Bailiff, at this---

3 MS. SHAW: Your Honor, Madam Clerk is trying to get
4 your attention.

5 THE CLERK: That's---

6 THE COURT: I understand.

7 THE CLERK: That's not the correct alternates, Your
8 Honor, no.

9 THE COURT: I'm not -- let me see this right here.

10 THE CLERK: Mr. Braswell---

11 THE COURT: Hold on, Madam Clerk. Madam, Clerk, hold
12 on. (Indiscernible).

13 THE CLERK: Yes, sir.

14 THE COURT: Sir, are you Brandon walls?

15 Okay. Mr. walls, you will, you will exit the courtroom
16 with the jury and, Mr. Doster, you will remain here as
17 second alternate.

18 THE JUROR: All right.

19 THE COURT: At this time -- all right. At this time,
20 Madam Bailiff, Madam Clerk -- is there anything else?

21 MS. SHAW: No, Your Honor.

22 THE COURT: Okay.

23 MR. FALK: No, Your Honor.

24 THE BAILIFF: Your Honor, I am going to give them a
25 bathroom break --

1 THE COURT: All right.

2 THE BAILIFF: -- in case someone has to go before we
3 get started.

4 THE COURT: All right. Okay.

5 THE BAILIFF: And you're -- you've told them what you
6 want?

7 THE COURT: Once they're ready, Madam Bailiff, report
8 to the courtroom you've brought them back.

9 THE BAILIFF: I will.

10 THE COURT: All right. Thank y'all.

11 Ms. Seegars, if you remain seated.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. So we have excused the jury.
15 They're going to -- they won't start deliberating and -- all
16 right.

17 So, Ms. Ebony Seegars, and Mr. Tony Doster, I
18 appreciate your service to this jury.

19 Ms. Seegars, you were on the jury and, Mr. Doster, you
20 were an alternate. But, Ms. Seegars, I felt like, at
21 different times, that I think that -- I wasn't sure how
22 closely you were following the, the course of the trial and
23 I just -- I, I felt like it wouldn't be fair to you to put
24 you in that situation.

25 So, so, I, I moved Mr., Mr. Brandon Walls up into the

1 jury. And so that's -- that was why. I notified counsel
2 prior before doing that.

3 But I do appreciate your service. It's like you run a
4 race but they don't let you finish to cross -- the finish
5 line and that's always frustrating to people who've had to
6 sit here all week but thank you for your service.

7 You are welcome to stay. If you would like to retire,
8 excuse yourselves, you're welcome do that. If anybody
9 wishes to talk to you, and you want to talk to them, that is
10 fine. If you don't, you do not have to talk to anybody and
11 the only, the only, the only thing we need is that the clerk
12 have your, your contact information correct and that you
13 turn in your button.

14 Okay. But thank you for your service to your, to your,
15 your county and your state.

16 All right. Y'all are free to go.

17 (Pause.)

18 THE COURT: All right. If, if -- and I, I -- and just
19 once again for the record, I, I, I notified counsel what I
20 was gonna do. I took -- that was on the Court's initiative.
21 It was not requested by, by any of the lawyers in this
22 matter.

23 But the witness had slept through most of yesterday.
24 The bailiff had continued to make me aware of it and, and I
25 felt like she was not with us and she was sleeping through

1 most of closing argument and, and through my jury charge.
2 And I just didn't think it was fair to anybody involved in
3 this process.

4 Y'all have worked too hard. Mr. Chapman deserves a
5 fair opportunity and that would not be fair. I did not want
6 to embarrass Ms. Seegars. I tried to be as delicate as I
7 could but -- and that, that was the Court -- the Court took
8 that initiative.

9 Is there anything that y'all want to be heard on on
10 that matter?

11 MS. SHAW: No, Your Honor. I'm, I'm good.

12 THE COURT: Okay. All right.

13 MR. FALK: No, Your Honor.

14 THE COURT: All right. Any, any other matters we need
15 to take up before we give the case to the jury?

16 MS. SHAW: No, sir.

17 THE COURT: Okay. All right. Madam Clerk, I
18 understand your staff are getting them to the restroom and
19 getting them situated.

20 THE CLERK: Yes, Your Honor, and I apologize for that.

21 THE COURT: That's okay.

22 THE CLERK: I'm sorry.

23 THE COURT: If we have -- they -- who has the exhibits?

24 THE CLERK: Madam Bailiff's already---

25 THE COURT: All right.

1 THE CLERK: ---got everything, Your Honor.

2 THE COURT: Okay. All right. So if we just have -- if
3 she just tells us when they're situated, I'm ready for them
4 to, to begin deliberations.

5 So I guess, Dalton, if you would just -- if you'd just
6 let her know that, that there's nothing else that we need to
7 do.

8 All right.

9 THE CLERK: I think she was gonna let them have a
10 restroom break before she turned everything over to them.

11 THE COURT: But she can't do that until I say she can.
12 So, she doesn't have that -- in other words, she doesn't
13 have the authority to do that until the Court gives her
14 instruction to begin deliberating.

15 So, Dalton---

16 UNIDENTIFIED SPEAKER: I think she was clear on that.

17 THE CLERK: Okay.

18 THE COURT: Yeah. So, so -- all right. So -- okay.
19 We'll stand at ease and --.

20 MR. FALK: Your Honor, just -- you know---

21 THE COURT: Yes, sir.

22 MR. FALK: A lot of times the jury room is right there
23 and you can hear the knock on the door.

24 How, how's she been instructed to notify us?

25 THE COURT: They are in another room---

1 THE CLERK: Yes, sir.

2 THE COURT: ---and the bailiff will be outside of that
3 room.

4 MR. FALK: Oh, okay. Thank you. Sorry.

5 THE COURT: It's the -- it's --.

6 MR. FALK: I get it.

7 THE COURT: It's just like this. It's just in a
8 different part of the building.

9 (WHEREUPON, the jury began deliberating at around
10 4:12PM and returned a verdict at 4:30PM and the following
11 takes place within the presence of the jury.)

12 THE COURT: All right. Court will come to order.

13 The jury has returned to the courtroom.

14 Madam Foreperson, has the jury reached a verdict?

15 THE FORELADY: Yes, sir. Yes, Your Honor.

16 THE COURT: And is it a unanimous verdict?

17 THE FORELADY: Yes, Your Honor.

18 THE COURT: All right. Madam Bailiff.

19 Madam Clerk, if you would publish the verdict please?

20 THE CLERK: Yes, Your Honor.

21 State of South Carolina, County of Chesterfield, in the
22 matter of the care and treatment of Wiley L. Chapman, in the
23 Court of Common Pleas, Fourth Judicial Circuit, Case Number
24 2020-CP-13-764, verdict form, has the petitioner, the State
25 of South Carolina, proved beyond a reasonable doubt that

1 the -- wiley L. Chapman is a sexual violent predator under
2 the South Carolina Sexual Violent Predator Act, we, the
3 jury, unanimously, unanimously answer the question as
4 follows:

5 Yes, wiley L. Chapman is a sexual violent predator.
6 Jennifer Sellers, foreperson, June 8th, 2022,
7 Chesterfield, South Carolina.

8 Madam Forelady, is this your verdict?

9 THE FORELADY: Yes, it is.

10 THE COURT: So say you-all. If so say yes.

11 (WHEREUPON, the jurors answer in the affirmative.)

12 THE CLERK: Thank you.

13 THE COURT: All right. Anything from counsel at this
14 time?

15 MS. SHAW: No, Your Honor.

16 MR. FALK: Just ask to poll the jury.

17 THE CLERK: You'd like it polled?

18 Yes, sir.

19 THE COURT: Do you have your list?

20 THE CLERK: I do, yes, sir. One moment please.

21 As I call your name, if you'll please answer the
22 question.

23 Ms. Jennifer Sellers, is this your answer?

24 THE JUROR: It is.

25 THE CLERK: Is it still your answer?

1 THE JUROR: It is.
2 THE CLERK: Thank you.
3 Mr. Anthony Leach, is this your answer?
4 THE JUROR: Yes.
5 THE CLERK: Is it still your answer?
6 THE JUROR: Yes.
7 THE CLERK: Thank you.
8 Jerry Atchison -- Ashford---
9 THE JUROR: Ashworth.
10 THE CLERK: Ashworth, Junior.
11 Is this your answer?
12 THE JUROR: Yes, ma'am.
13 THE CLERK: Is it still your answer?
14 THE JUROR: Yes, ma'am.
15 THE CLERK: Thank you.
16 Crystal Hernandez, is this your answer?
17 THE JUROR: Yes, ma'am.
18 THE CLERK: Is it still your answer?
19 THE JUROR: Yes, ma'am.
20 THE CLERK: Thank you.
21 John W. Funderburk, is this your answer?
22 THE JUROR: Yes.
23 THE CLERK: Is it still your answer?
24 THE JUROR: Yes.
25 THE CLERK: Thank you.

1 Vickie Braswell, is this your answer?
2 THE JUROR: Yes, ma'am.
3 THE CLERK: Is it still your answer?
4 THE JUROR: Yes, ma'am.
5 THE CLERK: Thank you.
6 Brittany Moree, Brittany Moree, is this your answer?
7 THE JUROR: Yes, ma'am.
8 THE CLERK: Is it still your answer?
9 THE JUROR: Yes, ma'am.
10 THE CLERK: Thank you.
11 Gregory King, is this your answer?
12 THE JUROR: Yes, ma'am.
13 THE CLERK: Is it still your answer?
14 THE JUROR: Yes, ma'am.
15 THE CLERK: Thank you.
16 Leslie Mullis, is this your answer?
17 THE JUROR: Yes, ma'am.
18 THE CLERK: Is it still your answer?
19 THE JUROR: Yes, ma'am.
20 THE CLERK: Thank you.
21 Millon Threatt, is this your answer?
22 THE JUROR: Yes.
23 THE CLERK: Is it still your answer?
24 THE JUROR: Yes.
25 THE CLERK: Thank you.

1 Erica Jones, is this your answer?
2 THE JUROR: Yes.
3 THE CLERK: Is it still your answer?
4 THE JUROR: Yes.
5 THE CLERK: Thank you.
6 Brandon Walls, is this your answer?
7 THE JUROR: Yes, ma'am.
8 THE CLERK: Is it still your answer?
9 THE JUROR: Yes, ma'am.
10 THE CLERK: Thank you.
11 THE COURT: Okay.
12 MR. FALK: Thank you.
13 THE CLERK: Yes, sir.
14 THE COURT: Thank you.
15 Anything further before I dismiss the jury?
16 MS. SHAW: No, Your Honor.
17 MR. FALK: No, Your Honor.
18 (WHEREUPON, the jury panel was dismissed at this time.)
19 THE COURT: All right. The jury's been dismissed now.
20 Anything else?
21 MS. SHAW: No, Your Honor.
22 MR. FALK: No, Your Honor.
23 THE COURT: All right. Okay. All right. If there's
24 nothing further, I, I, I did mean to -- late, late at this
25 point but it was my intent to tell the jury -- members of

1 the jury that the Court's impressed with counsel and how you
2 handled the case and how you represented your clients and I
3 certainly appreciate it.

4 So, Mr. Chapman, good luck to you, sir. You've been
5 well represented.

6 THE DEFENDANT: Thank you, sir.

7 THE COURT: All right.

8 MS. SHAW: Thank you, Your Honor.

9 THE COURT: We're adjourned.

10

11 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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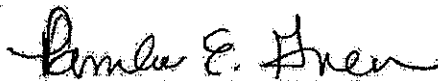
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Chesterfield County, South Carolina, on the 6th, 7th, and 8th days of June, 2022.

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

September 16th, 2022



PAMELA E. GREEN, Court Reporter

SENTENCE

OFFENSE

*General Sexual
Indecent 3d degree*

STATE OF SOUTH CAROLINA)

CASE NUMBER

87 GS-13- 451

COUNTY OF CHESTERFIELD)

THE DEFENDANT *Wiley Chapman* IS COMMITTED TO THE STATEOR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF *six (6)*~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF \$ _____; PROVIDED UPON THE SERVICE

OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF \$ _____; PLUS

PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE

IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury \$ _____

For Property damage \$ _____

to be paid _____

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: _____

DATE:

Jan. 18, 1988

COSTS AND ASSESSMENTS:

PRESIDING JUDGE

CLERK OF COURT, CHESTERFIELD COUNTY, S.C.



A True Copy Attest

*Christy S. Boosy*CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

RETURN

17 A copy of this Arrest Warrant was delivered to the following defendant:

Alley Chapman

on the 2 day of Mar, 1989

Atorney's Office

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

County

Chesterfield Municipality

(Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge J. Bill Thomas (L.S.)

PRELIMINARY HEARING held by

Judge _____

on _____, 19____

with _____

Attorney for Defendant

Decision: _____

BAIL

Date Set 11/2, 1989

Judge George W. Hartger

Amount \$30,000.00 or 1

Surety _____

RETURN WARRANT TO:

ARREST WARRANT

No. B 889045

STATE OF SOUTH CAROLINA

Chesterfield

(Circle one) County Municipality

THE STATE

against

Wiley Chapman

Address: 501

Phone _____

SSN _____

Sex M

Race B

Height 5-10

Weight 140

DOB _____

DL _____

Offense Criminal Sexual Conduct in the

First Degree

Code (or Ordinance) \$ _____

Date of Offense _____

Officer J.A. Graves

Agency Cheraw Police Dept.

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

NAME

NAME

NAME

NAME

NAME

A True Copy Attest

Christy S. Bandy
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

65 8 14 9 04 28
JURY
SERIAL

DOA: 11/2/87
B 889045

Wallace
87GS-13-451

Witnesses

LT. J.A. GRAVES

FILED

CLERK OF COURT

'87 NOV 12 PM 1 11

CHESTERFIELD COUNTY, S.

BOOK PAGE

Verdict

Foreman

The State of South Carolina

County of CHESTERFIELD

COURT OF GENERAL SESSIONS

NOVEMBER Term, 19 87

THE STATE

VS.

WILEY CHAPMAN

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT-FIRST

DEGREE

16-3-652

June Bill

J. Stooten

Foreman of Grand Jury

MCCAW PRINTERS,

COLUMBIA, S. C. 29205.

1176-87

State of South Carolina, County of Chesterfield

And now comes the Defendent Wiley Chapman
in open Court and pleads guilty to 3rd degree Criminal Sexual Conduct
and consents for said plea to be entered on record against him

Attest:

E. V. Eddins
Wiley Chapman

C.P. & G.S. for Chesterfield County

True Copy Attest

Christy D. Brady

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

The State of South CarolinaCounty of CHESTERFIELD**INDICTMENT FOR****CRIMINAL SEXUAL CONDUCT-FIRST DEGREE**

16-3-652

At a Court of General Sessions, convened on the 16TH day of NOVEMBER,
1987, the Grand Jurors of CHESTERFIELD County present upon their oath:

That WILEY CHAPMANdid in CHESTERFIELD County on or about the 31ST day of OCTOBER,

1987 COMMIT CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IN THAT
WILEY CHAPMAN DID USE AGGRAVATED FORCE TO ACCOMPLISH SEXUAL
BATTERY UPON ONE C.C. IN VIOLATION OF SECTION
16-3-652 OF THE 1976 CODE OF LAWS OF SOUTH CAROLINA AS
AMENDED BY ACT 157 OF 1977.

A True Copy Attest*Christy S. Shaddy*CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

SENTENCE

OFFENSE

CSC 1st

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

CASE NUMBER 91 GS-13- 422THE DEFENDANT Wiley Chapman IS COMMITTED TO THE STATEOR COUNTY DEPARTMENT OF CORRECTIONS FOR A TERM OF 30

MONTHS/YEARS AND/OR TO PAY A FINE OF \$ _____; PROVIDED UPON THE SERVICE

OF _____ MONTHS/YEARS AND/OR PAYMENT OF FINE OF \$ _____; PLUS

PAY/WAIVE COSTS AND ASSESSMENTS AS APPLICABLE*, THE BALANCE

IS SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS.

RESTITUTION YES / NO

For Physical Injury \$ _____

For Property damage \$ _____

to be paid consecutive

to the Clerk of Court for _____

(to be paid to victim's compensation fund if subrogated)

OTHER CONDITIONS: _____

DATE: 6-18-91

COSTS AND ASSESSMENTS: _____

PRESIDING JUDGE

Elizabeth Eddins
CLERK OF COURT, CHESTERFIELD COUNTY, S.C.

A True Copy Attest

Christy D. GaddyCLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SCPLAINTIFF'S
EXHIBIT47722 EP

ARREST WARRANT

C-992079

STATE OF SOUTH CAROLINA

☒ Chesterfield Municipality of
 Chesterfield

 THE STATE
 against

Wiley Chapman

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: [REDACTED] Weight: [REDACTED]

DL State: [REDACTED] DL #: [REDACTED] Agency ORI #: 1300

DOB: [REDACTED]

Prosecuting Agency: CCSD

Prosecuting Officer: R.E. Huntley

Offense: Criminal Sexual Conduct-

First Degree

Code/Ordinance Sec. 16-3-652

 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 law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant Wiley Chapman
 on 4-19-91

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Attest

Christy B. Doss

 CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 Chesterfield

AFFIDAVIT

Personally appeared before me the affiant R.E. Huntley whobeing duly sworn deposes and says that defendant Wiley Chapmandid within this county and state on April 19, 1991 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)

in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL Sexual conduct-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 April 19, 1991 Wiley Chapman did beat L.G. about
 the head and body, and did force her to have sex with Him. This
 offense occurred on a county dirt Rd at Rt. 1 Ruby, in Chesterfield
 County.
Sworn to and subscribed before me
on April 19, 1991
R.E. Huntley (L.S.)
 Signature of Issuing Judge

 Signature of Affiant
R.E. Huntley
 Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 Chesterfield

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 April 19, 1991 defendant Wiley Chapman
 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUEL CONDUCT- FIRST DEGREE

 Now, therefore, 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.

Christy B. Doss (L.S.)
 Signature of Issuing Judge

 Judge's Address 126 N. Pearl St.
Pageland, S.C.

 Judge's Telephone 672-6914
 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge Code: 281

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

Name: _____
 Address: _____
 Telephone: _____

BAIL set by

Judge _____
 on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____

Defense Attorney: _____

Decision: _____

FILED
 CLERK OF COURT
 3 PM 2 35
 DISPOSITION before
 CHESTERFIELD COUNTY, SC
 PAGE

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, etc.)

Disposition: _____

Sentence: _____

JURORS

A True Copy Attest

Christy S. Booby

CLERK OF COURT C.R. & G.S.
 CHESTERFIELD COUNTY, SC

WITNESSES

Ronnie Huntley /5

ARREST WARRANT #:

C992079

Arrested on April 19, 1991

ACTION OF GRAND JURY

True Bill

6-17-91
 Foreman: *Rossard Bull*
 Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 91GS13-0422

THE STATE OF SOUTH CAROLINA
County of Chesterfield

COURT OF GENERAL SESSIONS

Term: June, 1991

THE STATE

VS.

Wiley Chapman

INDICTMENT FOR

0160

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

(16-3-652)

A True Copy Attest

*Christy S. Sherry*CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
) **INDICTMENT #91GS13-0422**
 County of Chesterfield)

At a Court of General Sessions, convened on June 17, 1991,
 the Grand Jurors of Chesterfield County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT - FIRST DEGREE
 (16-3-652)

That Wiley Chapman did in Chesterfield County on or about April 19, 1991,
 wilfully and unlawfully engage in criminal sexual conduct in the first degree
 in that Wiley Chapman, engaged in sexual battery, to wit: Sexual Intercourse
 with **L. G.** and did use aggravated force to accomplish such sexual
 battery, and that the said **L. G.** was of the age of
 _____ and that the defendant Wiley Chapman is of the age of
 twenty-five.

Against the peace and dignity of the State, and contrary to the statute
 in such case made and provided.

SOLICITOR

Charles McBride

State of South Carolina, County of Chesterfield

And now comes the Defendant Wiley Chapman
 in open Court and pleads guilty to the within indictment
 and consents for said plea to be entered on record against him
 attest:

E. V. Eddins
 C.C.C.P. & G.S. for Chesterfield County

Wiley Chapman

A True Copy Attest

Wendy J. Haddy

CLERK OF COURT C.P. & G.S.
 CHESTERFIELD COUNTY, SC

RECEIVED**Jul 07 2022**

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

IN THE MATTER OF THE)
CARE AND TREATMENT OF;)

WILEY L. CHAPMAN,)

RESPONDENT.)IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE #: 2020-CP-13-0764**ORDER OF COMMITMENT**CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

2022 JUN -8 1 P 4:43

SC Court of Appeals

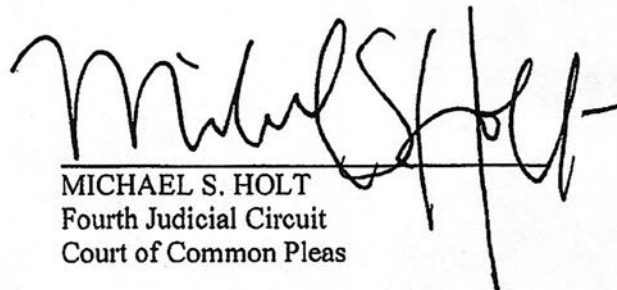
The trial of this case was held in the Chesterfield County Court of Common Pleas the week of June 6, 2022. A jury of citizens from Chesterfield County heard this case pursuant to a request for a jury trial filed by the State. Suzanne J. Shaw from the Attorney General's Office represented the State and James K. Falk, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to S. C. Code Ann. Sections 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent, Wiley L. Chapman, is a sexually violent predator as that term is defined in S. C. Code Ann. Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED THAT:

(a) Respondent, Wiley L. Chapman is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;

(b) Respondent, Wiley L. Chapman, is to continue to be detained at the Chesterfield County Detention Center, and then transported to the secure facility of the Department of Mental Health. The Detention Center or the Sheriff's Department is to transport Respondent on such scheduled date as is coordinated with the Department of Mental Health.

AND IT IS SO ORDERED.


MICHAEL S. HOLT
Fourth Judicial Circuit
Court of Common Pleas

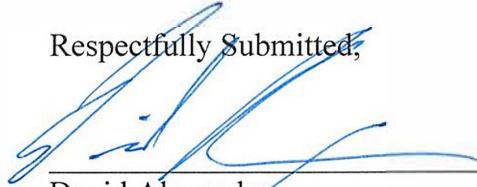
6-8, 2022
Chesterfield, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Sep 06 2023****SC Court of Appeals**

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of September, 2023.