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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE LEXINGTON COUNTY
COURT OF COMMON PLEAS

The Honorable Walton J. McLeod, IV, Circuit Court Judge

Appellate Case No. 2024-001746

In the Matter of the Care and Treatment of Phillip B. Nix, ... Appellant.

RECORD ON APPEAL

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INDEX

Jury Verdict & Orders

Jury Verdict (August 13, 2024)	1
Order of Commitment (August 13, 2024).....	2
Order Denying Rule 59 Motion (September 25, 2024)	3

Motion

Rule 59 Motion to Set Aside Verdict and Grant a New Trial & Proposed Order (August 22, 2024)	4

Transcript

Trial Transcript of August 12th-13th, 2024	7
Opening Statement Mr. Runyan	42
Opening Statement Ms. Johnson.....	48
Emily Gottfried - Direct Examination by Mr. Runyan	53
Emily Gottfried - Cross-Examination by Ms. Johnson.....	131
Emily Gottfried – Redirect Examination by Mr. Runyan.....	143
Chris Catoe - Direct Examination by Mr. Runyan	152
Chris Catoe - Voir Dire Examination by Ms. Johnson	154
Chris Catoe - Continued Direct Examination by Mr. Runyan.....	155
Chris Catoe - Cross-Examination by Ms. Johnson	158
Motion for Directed Verdict	167
Christopher Gillen - Examination by Ms. Johnson.....	173
Christopher Gillen - Direct Examination by Mr. Runyan.....	231
Christopher Gillen – Redirect Examination by Ms. Johnson	267
VICTIM - Direct by Ms. Johnson.....	275
VICTIM - Cross-Examination by Mr. Runyan.....	285
Motions Renewed	291
Closing Argument Mr. Runyan.....	294
Closing Argument Ms. Johnson.....	306
Closing Argument Mr. Runyan.....	320
Charge of the Court.....	323

Verdict of the Jury	337

Exhibits

Exhibit List.....	341
State’s Exhibit 1: Nix Certified Convictions/Indictments	342
State’s Exhibit 2: Nix Certified Convictions/Indictments	345
State’s Exhibit 3: Nix Certified Community Release Revocation.....	348
State’s Exhibit 4: Nix Redacted Cellebrite Extraction Report.....	349
Court’s Exhibit 3 - Judge's Note	375

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
IN THE MATTER OF THE)
CARE AND TREATMENT OF)
PHILLIP BYRON NIX,)

RESPONDENT.)

2024 AUG 13 PM 6:17
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
LISA CASEMER
CLERK OF COURT
LEXINGTON SC
CASE # 2022-CP-32-02497
VERDICT FORM

Has the Petitioner, the State of South Carolina, proved beyond a reasonable doubt that Respondent, Phillip Byron Nix, is a sexually violent predator under the South Carolina Sexually Violent Predator Act?

We, the jury, unanimously answer the question as follows:

☒ YES, Phillip Byron Nix is a Sexually Violent Predator.

Or,

☐ NO, Phillip Byron Nix is not a Sexually Violent Predator.

STOP AND END YOUR DELIBERATIONS

Please sign and date.



Jury Foreperson

8/13/24

Date

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

FILED

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2024 AUG 13 PM 6:47
CASE #: 2022-CP-32-02497

IN THE MATTER OF THE
CARE AND TREATMENT OF
PHILLIP BYRON NIX,

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ORDER OF COMMITMENT

RESPONDENT.

The trial of this case was held in the Lexington County Court of Common Pleas the week of August 12, 2024. A jury of citizens from Lexington County heard this case pursuant to a request for a jury trial filed by the State. Christopher Runyan from the Attorney General's Office represented the State and Respondent Phillip Byron Nix was represented by Kindle K. Johnson, Esquire. 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, Phillip Byron Nix, 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, Phillip Byron Nix, is committed to the South Carolina Department of Mental Health for his long-term control, care and treatment;

(b) Respondent, Phillip Byron Nix, is to continue to be detained at the Lexington 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.


WALTON J. MCLEOD, IV
Presiding Judge
Eleventh Judicial Circuit
Court of Common Pleas

August 13, 2024
Lexington, South Carolina

RECEIVED

Oct 14 2024

SC Court of Appeals

FILED

STATE OF SOUTH CAROLINA)
2024 OCT -1 AM 8:29)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Civil Action Nos. 2022-CP-32-2497

EISA M. COMER)
CLERK OF COURT)
LEXINGTON, SC)

In the Matter of the Care & Treatment of)
Phillip Nix,)

**ORDER DENYING MOTION FOR NEW
TRIAL PURSUANT TO RULE 59, SCRPC**

Respondent.)
)
)
)
)

This matter is before the Court on Phillip Nix's ("Respondent") Motion for the Court to set aside the verdict and grant a new trial. A jury trial was completed in this matter during August 12, 2024 term of court in Lexington County. The Respondent was present and represented by Kindle Johnson, Esq., and Assistant Attorney General Christopher Runyan appeared for the State of South Carolina.

Subsequent to the jury verdict, Respondent timely moved for a new trial pursuant to Rule 59, SCRPC, asserting the verdict was contrary to the law and to the weight of the evidence. The State filed no response. After careful consideration of the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby respectfully DENIES Plaintiff's Motion for a New Trial pursuant to Rule 59, SCRPC. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Lexington, SC
September 25, 2024


Walton J. McLeod, IV
Presiding Judge
Eleventh Judicial Circuit

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

11th JUDICIAL CIRCUIT

COUNTY OF LEXINGTON)

CASE NO.: 2022-CP-32-2497

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

In the Care & Treatment of Phillip Nix)

Respondent.)

State's Attorney:
Christopher Runyan
Assistant Attorney General
South Carolina Attorney General's Office, SVP Unit P.O.
Box 11549
Columbia, SC 29211
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Respondent's Attorney:
Kindle Johnson
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(803) 329-1900
kjohnson@kjohnsonlawfirm.com

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

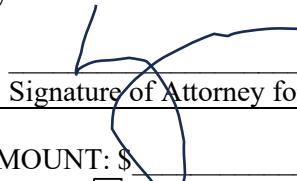
Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff/☐ Defendant

08/22/2024

Date submitted

SECTION III: Motion Fee

- ☐ PAID – AMOUNT: \$ _____
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☒ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

In the Matter of the Care & Treatment of
Phillip Nix,

Respondent

) IN THE COURT OF COMMON PLEAS
) ELEVENTH JUDICIAL CIRCUIT
)
)
)

**MOTION TO SET ASIDE VERDICT
AND GRANT A NEW TRIAL**

Case No.: 2022-CP-32-2497

Pursuant to SCRCP Rule 59, Respondent moves the Court to set aside the verdict and to grant him a new trial because the verdict in the case is contrary to law and to the weight of the evidence and because Respondent did not receive a fair and impartial trial.

RESPECTFULLY SUBMITTED BY
ATTORNEY FOR THE RESPONDENT

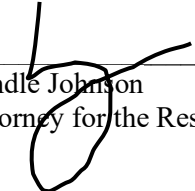


Kindle Johnson
K. JOHNSON LAW FIRM, LLC
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(803) 329-1900
kjohnson@kjohnsonlawfirm.com

August 22, 2024
Rock Hill, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a copy of the above Motions was delivered via electronic mail (or by First Class Mail, USPS if otherwise indicated below) to: Christopher Runyan, Assistant Attorney General, South Carolina Attorney General's Office, crunyan@scag.gov, on this 22 August 2024.



Kindle Johnson
Attorney for the Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
)
)
In the Matter of the Care & Treatment of)
Phillip Nix,)
Respondent)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

ORDER

Case No.: 2022-CP-32-2497

Pursuant to SCRCF Rule 59, Respondent has moved this Court to set aside the verdict in his case and to grant him a new trial. Respondent argues that the verdict is contrary to the law and to the weight of the evidence. He further argues that he did not receive a fair and impartial trial.

After a review of the record, Motion and arguments regarding Respondent's Motion, this Court:

() Grants Respondent's Motion for a New Trial for the following reasons:

() Denies Respondent's Motion for a New Trial because the evidence and questions of fact submitted to the jury support the jury's verdict that Respondent is a sexually violent predator.

AND IT IS SO ORDERED.

, 2024
, South Carolina

Walton J. McLeod, IV
Presiding Circuit Court Judge
11th Judicial Circuit

1 State of South Carolina) Court of Common Pleas
 2 County of Lexington) Eleventh Judicial Circuit
 3
 4 In Re: The Care and Treatment) Transcript of Record
)
 5 of Phillip Byron Nix,) 2022-CP-32-02497
)
 6 _____ Respondent. _____)

7

8 August 12th-13th, 2024
 9 Lexington, South Carolina

10 B E F O R E:

11 The Honorable Walton J. McLeod, IV, Judge; and a Jury

12

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

14 Christopher Runyan, Assistant Attorney General
 On behalf of the State of South Carolina

15 Kindle Kay Johnson, Esquire
 On behalf of the Respondent

16

17 REPORTED BY:

18 Stacy S. Johnson, RPR
 19 Circuit Court Reporter

20

21

22

23

24

25

1	I N D E X	
2	<u>WITNESS</u>	<u>PAGE</u>
3	Jury Selection	4
4	Opening Statement	
5	By Mr. Runyan	36
6	By Ms. Johnson	42
7	Emily Gottfried	
8	Direct Examination by Mr. Runyan	47
9	Cross-Examination by Ms. Johnson	125
10	Redirect Examination by Mr. Runyan	137
11	Chris Catoe	
12	Direct Examination by Mr. Runyan	146
13	Voir Dire Examination by Ms. Johnson	148
14	Continued Direct Examination by Mr. Runyan	149
15	Cross-Examination by Ms. Johnson	158
16	Motion for Directed Verdict	161
17	Christopher Gillen	
18	Direct Examination by Ms. Johnson	167
19	Cross-Examination by Mr. Runyan	225
20	Redirect Examination by Ms. Johnson	261
21	VICTIM	
22	Direct Examination by Ms. Johnson	269
23	Cross-Examination by Mr. Runyan	279
24	Motions Renewed	285
25	Closing Argument	
	By Mr. Runyan	288
	By Ms. Johnson	300
	By Mr. Runyan	314
	Charge of the Court	317
	Verdict of the Jury	331
	Certificate of Reporter	334

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
C-1	Foreperson Selection	31	
C-2	Jury Charge	329	
C-3	Judge's Note/Jury's Response	330	
S/P-1	Certified Convictions/Indictments	31	73
S/P-2	Certified Conviction/Indictment	31	74
S/P-3	Certified Community Release Revocation	31	84
S/P-4	Cellebrite Extraction Report	142	151

1 (Whereupon, the following proceedings were held
2 August 12, 2024, beginning at 10:35 AM.)

3 BAILIFF: Please keep your seats. Court's back in
4 session.

5 THE COURT: All right. Ladies and gentlemen, now
6 we're about to pick the jury for our first case, which
7 is In the Matter of the Care and Treatment of Phillip
8 Byron Nix. This is a civil case where the State alleges
9 that Mr. Nix is a sexually violent predator under South
10 Carolina law and seeks to commit him to long-term care
11 and treatment at a -- in a secure facility.

12 I'll have several questions to ask you as part of
13 this jury selection process, which we call voir dire, but
14 before I begin with those questions I'd like to allow the
15 attorneys to stand up and introduce themselves to you at
16 this time.

17 State.

18 MR. RUNYAN: Thank you, Your Honor.

19 My name is Chris Runyan. I'm an assistant attorney
20 general with Office of the South Carolina Attorney General,
21 and sitting with me is Sara Rosario, she is a law student
22 and law clerk for the summer with us, and she's here to
23 observe the process.

24 MS. JOHNSON: May it please the Court?

25 Good morning. My name is Kindle Johnson. I'm a

1 private attorney. I work throughout the state of South
2 Carolina, but I'm headquartered in York County, South
3 Carolina.

4 THE COURT: All right. Bear with me, folks.

5 All right. Ladies and gentlemen, I'll have a list
6 of questions here. There's no wrong answer to these
7 questions. If they apply to you, simply stand up, tell
8 me your juror number and I may have a follow-up question
9 to ask you after that regarding your ability to be fair
10 and impartial in hearing this case.

11 So first let -- the first thing I'll do is this.
12 The following is a list of potential witnesses in this
13 case. Please pay attention.

14 Phillip Nix. Dr. Christopher Gillen. Dr. Emily
15 Gottfried. Chris Catoe from the South Carolina Department
16 of Probation, Pardon and Parole Services. And **VICTIM**
17 **VICTIM**. If I mispronouncing that, please let me
18 know.

19 Is there any member of this jury panel that is
20 related by blood or marriage or have a close business,
21 personal or social relationship with any of the potential
22 witnesses I've just called out? If so, please stand.

23 (Potential juror stands.)

24 THE COURT: Yes, ma'am. Your juror number, please?

25 POTENTIAL JUROR: 203.

1 THE COURT: Who do you know?

2 POTENTIAL JUROR: I don't know if it's the same
3 Chris Catoe, but I worked with a Christopher M. Catoe,
4 so I don't know if that's the same one.

5 THE COURT: I don't have his middle initial. I do
6 know he works for the South Carolina Department of
7 Probation, Pardon and Parole.

8 POTENTIAL JUROR: Okay. I don't think he works there
9 anymore, so I think I should be good.

10 THE COURT: Okay. The fact that you might know Chris
11 Catoe, would that affect your ability to be fair and
12 impartial?

13 POTENTIAL JUROR: No.

14 THE COURT: All right. Thank you.

15 Anyone else?

16 Okay. Counsel, could I ask you-all a quick question,
17 please?

18 (Proceedings held at the bench; not reported.)

19 THE COURT: All right. Mr. Nix, would you mind just
20 standing up real quick?

21 (Mr. Nix stands.)

22 THE COURT: Ladies and gentlemen, this is Phillip
23 Byron Nix.

24 You can have a seat please, sir.

25 Does any member of this jury panel know anything or

1 does anyone on the jury panel know or know of Phillip
2 Byron Nix? If so, please stand.

3 Does any member of this jury panel know anything
4 about the sexual offense that Phillip Byron Nix was
5 convicted of?

6 This case involves an action by the State to commit
7 Phillip Byron Nix for treatment. Would the fact that
8 Mr. Nix has been convicted of a sexual offense and has
9 completed his criminal sentence related to that conviction
10 prevent you from being able to be a fair and impartial
11 juror in the trial of this case? If so, please stand.

12 (Potential jurors stand.)

13 THE COURT: Your number, please?

14 POTENTIAL JUROR: 100.

15 THE COURT: You don't believe you could be a fair
16 and impartial juror?

17 POTENTIAL JUROR: No.

18 THE COURT: All right. Thank you.

19 Your number, please.

20 POTENTIAL JUROR: 203.

21 THE COURT: And you believe you cannot be a fair and
22 impartial juror?

23 POTENTIAL JUROR: That's correct.

24 THE COURT: Does any member of this jury panel,
25 currently or formerly, worked in the fields of psychiatry,

1 psychology or the law or have any training or experience
2 in those fields? If so, please stand.

3 (Potential juror stands.)

4 THE COURT: Your number, please.

5 POTENTIAL JUROR: 153.

6 THE COURT: One-fifty what?

7 POTENTIAL JUROR: Three.

8 THE COURT: 153. And what was your training?

9 POTENTIAL JUROR: Psychology, mental health.

10 THE COURT: The fact that you've got training in
11 psychology and mental health, do you think that would
12 affect your ability to be a fair and impartial juror in
13 this case?

14 POTENTIAL JUROR: When it comes to sexual offenses,
15 yeah, I do believe so.

16 THE COURT: All right. Thank you, 153.

17 (Potential juror stands.)

18 THE COURT: I'm sorry.

19 POTENTIAL JUROR: I'm sorry. Did you say law and
20 the legal field or no?

21 THE COURT: I did say in law and the legal field.
22 And I understand you're a paralegal; is that correct?

23 POTENTIAL JUROR: Yeah. Yeah.

24 THE COURT: All right. The fact that you're a
25 paralegal, would that affect your ability to be fair and

1 impartial?

2 POTENTIAL JUROR: No.

3 THE COURT: All right. Has any member of this jury
4 panel or any of your close personal friends or relatives
5 ever been a victim of a sexual assault or convicted of a
6 sexual offense? If so, please stand.

7 (Potential jurors stand.)

8 THE COURT: Okay. I think I'll start on the far
9 right here.

10 Yes, ma'am, up front. Your juror number?

11 POTENTIAL JUROR: 183.

12 THE COURT: 183. And you've got a friend who was a
13 victim or --

14 POTENTIAL JUROR: A family member victim.

15 THE COURT: Okay. The fact that you have a family
16 member victim of a sexual assault of some sort, would that
17 affect your ability to be a fair and impartial juror?

18 POTENTIAL JUROR: No, I don't think so.

19 THE COURT: All right. I think you're on the front
20 row, too. Yes, ma'am.

21 POTENTIAL JUROR: 176.

22 THE COURT: Okay.

23 POTENTIAL JUROR: It was a family member also.

24 THE COURT: Was a victim?

25 POTENTIAL JUROR: Yes.

1 THE COURT: All right. The fact that you've got a
2 family member who's been a victim of a sexual offense of
3 some sort, do you believe that -- could you still be a
4 fair and impartial juror?

5 POTENTIAL JUROR: I don't think so. No, sir.

6 THE COURT: Thank you.

7 Yes, ma'am.

8 POTENTIAL JUROR: 58.

9 THE COURT: Okay.

10 POTENTIAL JUROR: I was a victim.

11 THE COURT: Okay. Could you be a fair and impartial
12 juror?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: I think you're next.

15 POTENTIAL JUROR: 98. I was a victim.

16 THE COURT: Okay. The fact that you've been a
17 victim of a sexual offense, would that -- could you still
18 be a fair and impartial juror?

19 POTENTIAL JUROR: Probably not.

20 THE COURT: Okay. Thank you.

21 POTENTIAL JUROR: 100.

22 THE COURT: And I spoke with you earlier actually.

23 POTENTIAL JUROR: Yes.

24 THE COURT: Thank you.

25 Yes.

1 POTENTIAL JUROR: 187.

2 THE COURT: Okay.

3 POTENTIAL JUROR: Myself.

4 THE COURT: Could you be a fair and impartial juror?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Yes, ma'am. Carolina Game --

7 POTENTIAL JUROR: 45.

8 THE COURT: 45?

9 POTENTIAL JUROR: (Nods head.)

10 THE COURT: A victim or know someone who was
11 convicted?

12 POTENTIAL JUROR: A very close friend of mine was a
13 victim.

14 THE COURT: Okay. And the fact that you have a
15 close friend who was a victim, do you think you could be
16 a fair and impartial juror here today?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Thank you.

19 Yes, sir. First row.

20 POTENTIAL JUROR: 84.

21 THE COURT: Okay.

22 POTENTIAL JUROR: Both. Me and someone I know.

23 THE COURT: Okay. You've been a victim and know
24 someone who's been convicted?

25 POTENTIAL JUROR: Yeah.

1 THE COURT: Do you think you could be a fair and
2 impartial juror?

3 POTENTIAL JUROR: No.

4 THE COURT: Okay.

5 THE CLERK: What was his juror number?

6 THE COURT: He was Number 84, correct?

7 POTENTIAL JUROR: Yes.

8 THE COURT: Thank you, sir.

9 Yes, ma'am.

10 POTENTIAL JUROR: 144.

11 THE COURT: Okay.

12 POTENTIAL JUROR: I was a victim.

13 THE COURT: Okay. And the fact that you were a
14 victim, do you think you could be a fair and impartial
15 juror?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Thank you.

18 POTENTIAL JUROR: 153. I was a victim.

19 THE COURT: Okay. Do you think you could be a fair
20 and impartial juror?

21 POTENTIAL JUROR: No.

22 THE COURT: Thank you.

23 And 203?

24 POTENTIAL JUROR: I was a victim.

25 THE COURT: And do you believe could you be a fair

1 and impartial juror?

2 POTENTIAL JUROR: No, I do not.

3 THE COURT: All right.

4 POTENTIAL JUROR: 122. A family member was a victim.

5 THE COURT: The fact that you had a family member
6 who's a victim, do you think you could be a fair and
7 impartial juror?

8 POTENTIAL JUROR: Absolutely not.

9 THE COURT: Okay. Very well.

10 POTENTIAL JUROR: 22. Oh, sorry.

11 THE COURT: I'm sorry. Juror Number what?

12 POTENTIAL JUROR: 22.

13 THE COURT: Yes, sir.

14 POTENTIAL JUROR: My stepdaughter was a victim.

15 THE COURT: All right. Do you believe you could be
16 a fair and impartial juror?

17 POTENTIAL JUROR: I do.

18 THE COURT: Thank you, sir.

19 Yes.

20 POTENTIAL JUROR: 185. I was the victim.

21 THE COURT: And, ma'am, you think you could be a
22 fair and impartial juror?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Thank you.

25 Does any member of this jury panel have any previous

1 dealings with the attorneys who introduced themselves to
2 you today? Have you been represented by Mr. Runyan or
3 Ms. Johnson, whether you know them personally or have a
4 business or social relationship with them or have any
5 connection with their respective legal offices? If so,
6 please stand.

7 Has any member of this jury panel been involved in
8 a prison ministry, prison outreach program or any other
9 program involving contact with incarcerated people? If
10 so, please stand.

11 Has any member of this jury panel or any of your
12 close personal friends or relatives ever been subject
13 to civil commitment proceedings or been voluntarily or
14 involuntarily civically committed? If so, please stand.

15 (Potential juror stands.)

16 THE COURT: Yes, ma'am. Your number?

17 POTENTIAL JUROR: 187.

18 THE COURT: Yes, ma'am.

19 POTENTIAL JUROR: My husband.

20 THE COURT: Was committed?

21 POTENTIAL JUROR: Yes.

22 THE COURT: And the fact that your husband had that
23 experience, do you think you -- would that affect your
24 ability to be a fair and impartial juror?

25 POTENTIAL JUROR: Yes.

1 THE COURT: Thank you.

2 Is any member of this jury panel related by blood
3 or marriage to any other member of the jury panel?
4 Anyone got any cousins or in-laws sitting in here with
5 them? I haven't asked that question before, so I didn't
6 think so.

7 Any member of this jury panel who for any other
8 reason believes -- other than what's already been
9 disclosed, any other juror who thinks there's some reason
10 they cannot be a fair and impartial juror in this case?
11 If so, please stand.

12 Okay. Now has any juror, relative or close friend
13 ever been a school teacher, preschool teacher, daycare
14 worker or other child -- or in any other child-related
15 job? If so, please stand.

16 (Potential jurors stand.)

17 THE COURT: Okay. I'll start with this side now.

18 POTENTIAL JUROR: 105.

19 THE COURT: You're 105?

20 POTENTIAL JUROR: My wife is a third grade school
21 teacher.

22 THE COURT: Okay. The fact that your wife's a
23 school teacher, would that affect your ability to be a
24 fair and impartial juror?

25 POTENTIAL JUROR: No.

1 THE COURT: All right. I think you're up.

2 POTENTIAL JUROR: 223. My daughter is a K-4 school
3 teacher.

4 THE COURT: And would that affect your ability to
5 be a fair and impartial juror?

6 POTENTIAL JUROR: No.

7 THE COURT: Yes.

8 POTENTIAL JUROR: 144. I'm a substitute and no.

9 THE COURT: Thank you. 203.

10 POTENTIAL JUROR: Oh, I'm so sorry. My very best
11 friend is a special needs teacher.

12 THE COURT: And would that affect your ability to
13 be a fair and impartial juror?

14 POTENTIAL JUROR: No.

15 THE COURT: Okay.

16 POTENTIAL JUROR: 153. I've worked with kids my
17 entire life and it wouldn't affect me.

18 THE COURT: Thank you.

19 Yes, sir.

20 POTENTIAL JUROR: 182. My sister is an elementary
21 school teacher and my friend is a preschool teacher.

22 THE COURT: Any effect on your ability to be fair
23 and impartial?

24 POTENTIAL JUROR: No.

25 THE COURT: All right. I'll start with you, ma'am.

1 POTENTIAL JUROR: Number 50, and I'm a preschool
2 teacher, but it wouldn't affect my ability.

3 THE COURT: Thank you.

4 POTENTIAL JUROR: 176, and my aunt is a first grade
5 teacher, but it won't affect.

6 THE COURT: Thank you.

7 POTENTIAL JUROR: 201. My wife was an elementary
8 school teacher and it would not affect me.

9 THE COURT: Thank you.

10 POTENTIAL JUROR: 64. My spouse is a social worker
11 and she does therapy and CA assessments on children.

12 THE COURT: No effect on your ability to be impartial?

13 POTENTIAL JUROR: Probably.

14 THE COURT: Probably no effect?

15 POTENTIAL JUROR: Yes, sir. Effect.

16 THE COURT: What was your number?

17 POTENTIAL JUROR: 64.

18 THE COURT: Thank you.

19 I think -- ma'am, I think we're --

20 POTENTIAL JUROR: 170. Former director of health
21 services and school nurse for school district -- Lexington
22 County school district. No, it would not affect.

23 THE COURT: Yes, ma'am.

24 POTENTIAL JUROR: 35. Wife and sister both former
25 teachers. No effect.

1 THE COURT: Thank you, sir.

2 POTENTIAL JUROR: 141. At one point I was a middle
3 school teacher. It should not have an effect.

4 THE COURT: Very well.

5 POTENTIAL JUROR: 98. I was a preschool teacher,
6 but it shouldn't affect.

7 THE COURT: Very well.

8 POTENTIAL JUROR: 166. I was a behavioral counselor
9 tech with adolescents, but shouldn't affect me.

10 THE COURT: All right.

11 POTENTIAL JUROR: 62. Strength conditioning coach
12 for high school. No effect.

13 THE COURT: Very well.

14 Have any of you, a relative or close friend ever
15 worked in a job involving victims of sexual abuse or
16 sexual assault? If so, please stand.

17 (Potential jurors stand.)

18 THE COURT: Okay. Yes, ma'am. 203. I'm sorry.

19 POTENTIAL JUROR: I worked at a family law firm a
20 few years ago that we dealt with some victims.

21 THE COURT: Okay. And just having that employment,
22 would that affect your ability to be a fair and impartial
23 juror?

24 POTENTIAL JUROR: Yes.

25 THE COURT: Okay. 153.

1 POTENTIAL JUROR: I worked in crisis management and
2 dealt with rape trauma victims, so it would affect.

3 THE COURT: Thank you.

4 Yes, sir.

5 POTENTIAL JUROR: I work at a psych hospital, so.
6 But that won't affect me.

7 THE COURT: What was your number?

8 POTENTIAL JUROR: 166.

9 THE COURT: So you work in a psychiatric hospital.
10 Would that affect your ability to be a fair and impartial
11 juror?

12 POTENTIAL JUROR: No, it would not.

13 THE COURT: Very good. Thank you.

14 Yes, ma'am.

15 POTENTIAL JUROR: My mother was a charge nurse for
16 the State hospital retired. I don't think that would
17 affect.

18 THE COURT: Very well. Thank you.

19 Have you or a relative or a close friend been the
20 victim of a violent crime in the past? If so, please
21 stand.

22 (Potential jurors stand.)

23 THE COURT: Yes, ma'am.

24 POTENTIAL JUROR: 100.

25 THE COURT: And you were a victim of a violent crime?

1 POTENTIAL JUROR: I'm the survivor of a rape.

2 THE COURT: Very well. Thank you.

3 Yes.

4 POTENTIAL JUROR: Does domestic violence count?

5 THE COURT: It does.

6 POTENTIAL JUROR: Yes. 98.

7 THE COURT: Okay. And that would affect your ability
8 to be a fair and impartial juror?

9 POTENTIAL JUROR: No, sir.

10 THE COURT: And I apologize for the repetitiveness of
11 my questions, folks. I'm just trying to make the record.

12 Yes, ma'am.

13 POTENTIAL JUROR: 187. My cousin was murdered.

14 THE COURT: Okay. And that would -- would that
15 affect your ability to be a fair and impartial juror?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Yes, sir. 45.

18 POTENTIAL JUROR: 45. I was a victim.

19 THE COURT: Okay. The fact that you were a victim
20 of a violent crime, would that affect your ability to be
21 a fair and impartial juror?

22 POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you.

24 Yes, ma'am.

25 POTENTIAL JUROR: 223. My husband was a victim of

1 an armed robbery at an insurance company.

2 THE COURT: Okay. Would that affect your ability
3 to be a fair and impartial juror here today?

4 POTENTIAL JUROR: No.

5 THE COURT: Very well.

6 Yes, ma'am.

7 POTENTIAL JUROR: 203, and I've been a victim of
8 domestic abuse and rape.

9 THE COURT: Thank you.

10 Yes, ma'am.

11 POTENTIAL JUROR: 185. My brother-in-law was
12 murdered. It won't affect me.

13 THE COURT: 183?

14 POTENTIAL JUROR: 185.

15 THE COURT: Okay. Thank you. No affect on your
16 ability to be fair and impartial?

17 POTENTIAL JUROR: No.

18 THE COURT: Thank you.

19 Does any member of this jury panel have moral or
20 religious convictions which would prevent them from
21 rendering a fair and impartial verdict in a case that
22 involves acts of sexual crimes or sexually violent crimes?

23 I think we've covered that already frankly.

24 The question I thought I was asking, does anyone
25 here have moral or religious convictions that would

1 prevent you from sitting in judgment of another person
2 as a juror? If so, please stand.

3 Okay. Is there any this member of this jury panel
4 who give more weight to the testimony of a witness simply
5 because that person is a medical professional or an expert
6 in their given field? If so, please stand.

7 (Potential juror stands.)

8 THE COURT: Your number?

9 POTENTIAL JUROR: 185.

10 THE COURT: 185. You'd --

11 POTENTIAL JUROR: I'd give more weight.

12 THE COURT: Okay. Thank you.

13 Counsel, can I speak real quick?

14 (Proceedings held at the bench; not reported.)

15 THE COURT: All right. Ladies and gentlemen, has
16 anyone on this jury -- does anyone on this jury feel
17 you'd be unable to be a fair and impartial juror in a
18 case that involves crimes against a child? If so, please
19 stand.

20 (Potential jurors stand.)

21 THE COURT: Okay. I'm just gonna go by numbers.
22 Number?

23 POTENTIAL JUROR: 105.

24 THE COURT: 105. 223. 203. 153.

25 POTENTIAL JUROR: 130.

1 THE COURT: 185?

2 POTENTIAL JUROR: 185.

3 THE COURT: Yes, sir.

4 POTENTIAL JUROR: Number 7.

5 THE COURT: Yes.

6 POTENTIAL JUROR: 176.

7 POTENTIAL JUROR: 64.

8 POTENTIAL JUROR: 183.

9 POTENTIAL JUROR: 100.

10 POTENTIAL JUROR: 98.

11 POTENTIAL JUROR: 186.

12 POTENTIAL JUROR: 187.

13 POTENTIAL JUROR: 45.

14 POTENTIAL JUROR: 202.

15 POTENTIAL JUROR: 197.

16 POTENTIAL JUROR: 16.

17 THE COURT: Very well.

18 Counsel, let's have a sidebar right quick.

19 (Proceedings held at the bench; not reported.)

20 THE COURT: All right. Ladies and gentlemen, the

21 Clerk of Court is gonna tabulate a list of -- well,

22 actually just to be clear, any other questions for voir

23 dire, Counsel?

24 MR. RUNYAN: Nothing from the State, Your Honor.

25 MS. JOHNSON: Nothing, Your Honor, from the defense.

1 THE COURT: All right. The Clerk of Court's gonna
2 tabulate a list of potential jurors here. Once we print
3 that out, I'm gonna let the attorneys look over it for a
4 few minutes, so you're probably gonna be sitting quiet
5 for about ten minutes. If anyone has to get up for any
6 reason, just let us know, but I'd like everyone to stay
7 put. Once they have a chance to review the potential
8 sheet, we'll get our jury picked and go from there, okay?

9 I appreciate your patience. Thanks.

10 (Pause in proceedings.)

11 THE COURT: All right. Counsel, are you ready?

12 MR. RUNYAN: Yes, Your Honor.

13 MS. JOHNSON: Your Honor, may I just have two more
14 minutes?

15 THE COURT: Very well.

16 MS. JOHNSON: We are ready, Your Honor.

17 THE COURT: All right. Madam Clerk.

18 THE CLERK: What say you for the plaintiff?

19 THE COURT: Hold on. Just a little bit of summary
20 of what we're gonna be doing here.

21 (Proceedings held at the bench; not reported.)

22 THE CLERK: Okay. We will use the numbers on the
23 left and we will use 1 through 20.

24 And did you want one or two alternates?

25 THE COURT: Two.

1 THE CLERK: Okay. And then we'll go from 21 through
2 23 for the first alternate and then 24 through 26 for
3 the second alternate.

4 So what say you for the plaintiff?

5 MR. RUNYAN: The State will strike Juror Number 20.

6 THE CLERK: What say you for the defense?

7 MS. JOHNSON: The defense would strike Juror
8 Number 11.

9 THE CLERK: What say for the plaintiff?

10 MR. RUNYAN: The State strikes Juror Number 6.

11 THE CLERK: And what say for the defense?

12 MS. JOHNSON: The defense strikes Juror Number 7.

13 THE CLERK: What say for the plaintiff?

14 MR. RUNYAN: The State would strike Juror Number 4.

15 THE CLERK: What say you for the defense?

16 MS. JOHNSON: The defense would strike Juror Number
17 16.

18 THE CLERK: That was 16?

19 MS. JOHNSON: Yes, ma'am.

20 THE COURT: I'm sorry. 16 or 15?

21 MS. JOHNSON: 16, Your Honor.

22 THE COURT: 1-6. Got it. Thank you.

23 THE CLERK: What say for the plaintiff?

24 MR. RUNYAN: The State would strike Juror Number 3.

25 THE CLERK: And what say for the defense?

1 MS. JOHNSON: Number -- the defense would strike
2 Juror Number 15, please.

3 THE CLERK: 15?

4 MS. JOHNSON: Yes, ma'am.

5 THE CLERK: And then there's one strike for jurors
6 for -- I mean, sorry. For the numbers on the left,
7 21 through 23, you each get one strike for an alternate.

8 What say for the plaintiff?

9 MR. RUNYAN: The State strikes 23.

10 THE CLERK: And what say you for the defense?

11 MS. JOHNSON: Defense would strike Number 21.

12 THE CLERK: And then for the second alternate, we
13 will use 24 through 26.

14 What say for the plaintiff?

15 MR. RUNYAN: The State strikes Number 25.

16 THE CLERK: What say for the defense?

17 MS. JOHNSON: I beg the Court's indulgence, Your
18 Honor.

19 THE COURT: Okay.

20 MS. JOHNSON: Defense strikes Number 26.

21 THE COURT: All right.

22 THE CLERK: Let's confirm your strikes.

23 The State struck Number 4 -- I'm sorry, the
24 plaintiff, and they struck Number 3, Number 4, 6, 20, 23
25 and 25.

1 MR. RUNYAN: That's correct.

2 THE CLERK: Thank you.

3 And the defense struck Number 7, Number 11, 15, 16,
4 21 and 26.

5 MS. JOHNSON: That is correct.

6 THE CLERK: Anything else before --

7 THE COURT: No, you can call them up.

8 THE CLERK: Okay. I will.

9 When I call your name, if you'd please bring your
10 personal belongings with you and have a seat in the jury
11 box.

12 Juror Number 209. Charles Taylor.

13 (Whereupon, Charles Taylor, a white male, was called
14 forward.)

15 THE CLERK: 21 Aubrie Boehnke.

16 (Whereupon, Aubrie Boehnke, a white female, was
17 called forward.)

18 THE CLERK: 147. Jennifer Middleton.

19 (Whereupon, Jennifer Middleton, a white female, was
20 called forward.)

21 THE CLERK: 156. Jessica Motell.

22 (Whereupon, Jessica Motell, a white female, was
23 called forward.)

24 THE CLERK: 166. Kevin Pettiford.

25 (Whereupon, Kevin Pettiford, a black male, was

1 called forward.)

2 THE CLERK: 35. James Bullock.

3 (Whereupon, James Bullock, a white male, was called
4 forward.)

5 THE CLERK: 142. Gregory McGill.

6 (Whereupon, Gregory McGill, a white male, was called
7 forward.)

8 THE COURT: 167. Ainsley Pluckett -- or Plunkett.
9 I'm sorry.

10 (Whereupon, Ainsley Plunkett, a white female, was
11 called forward.)

12 THE CLERK: 113. Tyree Jeter.

13 (Whereupon, Tyree Jeter, a black male, was called
14 forward.)

15 75. David Dufries.

16 (Whereupon, David Dufries, a white male, was called
17 forward.)

18 THE CLERK: 168. Lawrence Pralour.

19 (Whereupon, Lawrence Pralour, a black male, was
20 called forward.)

21 THE CLERK: 86. Alwin Foust.

22 (Whereupon, Alwin Foust, a black male, was called
23 forward.)

24 THE CLERK: 62. Jacob Crouch.

25 (Whereupon, Jacob Crouch, a white male, was called

1 forward.)

2 THE CLERK: 208. Ronald Sykes.

3 (Whereupon, Ronald Sykes, a white male, was called
4 forward.)

5 THE COURT: Counsel, any issues with jury selection?

6 MR. RUNYAN: No, Your Honor.

7 MS. JOHNSON: None from the defense, Your Honor.

8 THE COURT: Very well.

9 All right. Ladies and gentlemen, you've been chosen
10 as the jury for our trial this week, so thank you in
11 advance for your service you are providing here.

12 It's 11:40, so the first thing we'll probably do is
13 break for lunch here and not start up until after the
14 lunch hour. It's important for you to know that you
15 haven't heard any evidence in this case yet. You've
16 heard a little bit of what I've told you in the jury
17 selection process, but that's not evidence, so. The only
18 evidence -- only thing you need to be worried about is
19 what you're gonna hear from the witness stand after the
20 lunch break.

21 While you're out at lunch, please don't do any
22 independent research about the law or about any of the
23 names you've heard today or do anything on your phone
24 trying to learn more about the case you're gonna hear
25 today. It's not necessary. You'll hear all you need to

1 hear to fulfill your duty as a juror from the box looking
2 at the witness stand today and tomorrow, okay?

3 When you're out -- when you're together in the jury
4 room or when you're outside the jury room, please don't
5 discuss this case. Please don't discuss what you think
6 about the case. Please don't discuss any of the people
7 involved in the case, okay? It's important that all of
8 you have fresh minds and you're not discussing this case
9 prematurely.

10 I think we'll go ahead and have you go back to the
11 jury room now.

12 Counsel, just a quick scheduling question.

13 (Proceedings held at the bench; not reported.)

14 THE COURT: All right. So when you head back, show
15 them the jury room and when they come back at 1:15, once
16 they're all assembled, they can choose a foreperson, okay?

17 Mr. Crouch and Mr. Sykes, can you raise your hands?
18 Those are our alternates.

19 So head on out to lunch. I'd like you back in your
20 jury room, which they'll show you to, by 1:15 and we'll
21 start our testimony -- witness testimony this afternoon.
22 We'll hear opening statements and get into witness
23 testimony. I only anticipate one witness this afternoon
24 and we'll get started with that, but don't discuss the
25 case while you're out at lunch. We'll see you back here

1 at 1:15 and you can choose a foreperson, all right?

2 Thank you.

3 (Whereupon, the jury retires to the jury room at
4 11:42 AM.)

5 THE COURT: All right. Ladies and gentlemen, there
6 are no more jury trials planned this week and I've chosen
7 the jury for our first and only jury trial this week, so
8 I think I can release you from your jury obligations at
9 least for the next three years today.

10 And to be -- I recognize some of the subject matter
11 today might have been tough for some of you-all to talk
12 about, and my apologies, but thank you for being here and
13 offering yourself for service, and you're excused.

14 (Whereupon, the jury panel was excused at 11:42 PM.)

15 THE COURT: I'll see everyone back at 1:15.)

16 (Whereupon, a luncheon recess was taken at 11:45 PM.)

17 (Back on the record at 1:37 PM.)

18 (State's/Petitioner's Exhibit Number 1 through 3
19 were marked for identification.)

20 BAILIFF: All rise. Court's now in session.

21 The Honorable Walton J. McLeod presiding.

22 THE COURT: Thank you. Good afternoon. Please be
23 seated.

24 All right. We had a -- just a brief conference in
25 there about exhibits. I think there were four exhibits

1 and I think three essentially are without objection
2 exhibits.

3 MR. RUNYAN: That's correct.

4 THE COURT: The fourth being a Cellebrite phone
5 extraction, which actually in theory won't get put in
6 until tomorrow through the next witness, it's sort of
7 in dispute right now and I'll talk with them and I'll
8 think about it some more certainly before tomorrow morning
9 on what to do, if anything, with those exhibits.

10 Is the State ready to proceed?

11 MR. RUNYAN: Yes, Your Honor.

12 THE COURT: Is the defense -- or respondent ready to
13 proceed?

14 MS. JOHNSON: We are, Your Honor.

15 THE COURT: The jury is ready and, Stacy, we've got
16 -- our foreperson is Juror Number 166, Kevin Pettiford.

17 (Court's Exhibit Number 1 was marked for
18 identification.)

19 (Whereupon, the jury return to the courtroom at
20 1:40 PM.)

21 THE COURT: All right. Mr. Foreman, thank you for
22 agreeing to be our foreperson.

23 You are the foreperson?

24 FOREPERSON: Yes, sir.

25 THE COURT: All right. Thank you.

1 Ladies and gentlemen, we're about to begin the
2 case, which is in The Matter of the Care and Treatment
3 of Phillip Byron Nix. I've got some opening remarks for
4 you, but before I do that, I'll have the Clerk of Court
5 swear you in.

6 THE CLERK: If you would please stand and raise your
7 right hand.

8 (Whereupon, the jury was duly sworn by the Clerk of
9 Court.)

10 THE CLERK: If so, please answer by saying I do or I
11 affirm.

12 (Whereupon, the jury responds.)

13 THE CLERK: Please be seated.

14 Was there anyone who could not take the oath as
15 administered? If so, please stand.

16 All jurors are sworn, Your Honor.

17 THE COURT: Very well.

18 Mr. Foreman and ladies and gentlemen of the jury,
19 the State has brought this case under the sexually
20 violent predator law of South Carolina. The State seeks
21 the civil commitment of Phillip Byron Nix, the respondent,
22 for long-term control, care and treatment in a secure
23 facility. This is not a criminal proceeding seeking
24 incarceration, rather it is a proceeding seeking civil
25 commitment.

1 The State alleges or claims that the respondent,
2 Mr. Nix, is a sexually violent predator in the law.
3 Mr. Nix denies that he is a sexually violent predator.
4 The State has the burden of proof in this case and must
5 prove its case beyond a reasonable doubt. If you find
6 that the State has not met this burden, the respondent
7 will be released. If you find that the State has met its
8 burden of proof and find that the respondent, Mr. Nix,
9 is a sexually violent predator, he will not be released,
10 but will be committed to a secure treatment facility
11 operated by the South Carolina Department of Mental Health.

12 It is my responsibility to preside over this trial
13 and I also have the duty to rule upon the admissibility
14 of evidence offered during the process of this trial.

15 In this trial, you are the sole and exclusive judge
16 of the facts and I am the judge of the law. Do not infer
17 that I have an opinion about any of the facts in this case
18 from anything I say during the course of this trial in
19 ruling upon the admissibility of evidence or otherwise.
20 The law simply does not permit me to have an opinion about
21 the facts.

22 As jurors, it is your duty, and your duty alone, to
23 determine the effect, value, weight and truth of the
24 evidence presented during the course of this trial.

25 In determining what the facts are, you must judge

1 the credibility, which simply means believability, of
2 the witnesses, and value the weight -- and the value of
3 weight to be given to their testimony. You alone must
4 decide the force, effect and truth of the testimony.

5 The elements which the State must prove beyond a
6 reasonable doubt are, one, that the respondent has been
7 convicted of a sexually violent offense, and, two,
8 the respondent suffers from a mental abnormality or
9 personality disorder that makes him likely to engage in
10 acts of sexual violence if not confined in a secure
11 facility for long-term control, care and treatment.

12 I'll define these terms in more detail when I
13 instruct you on the law at the end of this trial, but as
14 I told you earlier today keep in mind I want you to pay
15 close attention to what you hear from the witness stand
16 from the witnesses and the questions back and forth
17 between the attorneys. If you need a break during
18 testimony, either get the bailiff's attention or wave
19 and get my attention. My eyes may be looking at different
20 things, so I may not see you at first, but if you need
21 some sort of break, just let me know and we'll certainly
22 accommodate that.

23 We have one witness planned this afternoon, and as
24 I told you earlier, I think we'll just go and start back
25 up again tomorrow morning as well.

1 I think that's all for the moment, but at this time
2 please give your complete and undivided attention to the
3 attorneys as they make opening statements.

4 MR. RUNYAN: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. RUNYAN: Ms. Johnson.

7 Good afternoon, ladies and gentlemen. Again, my
8 name is Chris Runyan and I work for the South Carolina
9 Attorney General's Office. I'm an assistant attorney
10 general.

11 And as I introduced with me at the table here is
12 Sara Rosario. She's a law clerk. She's starting her
13 second year at law school and she's just here simply to
14 observe the process. You may see me speaking with her,
15 she may ask me questions, but I'm just trying to tell her
16 what's going on during -- during the trial to give her
17 some experience in doing these things.

18 I do want to take a minute to thank you. The judge
19 has thanked you and I think you're gonna be thanked a
20 lot in the short time you're gonna be here. Because jury
21 duty is such an important civic duty, it's one of the few
22 things in this world that is unique to the United States;
23 that the twelve of you will come together and make a
24 determination about the facts and you'll answer disputed
25 questions, and that's very important. And I know it might

1 be hard to believe that twelve people today can come
2 together and answer anything in the same voice, but you'll
3 find it happens every day in the American court system,
4 and it will happen with you guys as well.

5 We thank you for being here. It's important not
6 only to the State of South Carolina, it's also important
7 to Mr. Nix. Because in this case Mr. Nix's liberty's at
8 interest, so we thank you for your service.

9 And, like I said, I work for the South Carolina
10 Attorney General's Office, and you might be wondering
11 why someone from the Attorney General's Office is here
12 and not the local solicitor, and the answer to that
13 question is very simple. In 1998, so roughly twenty-six
14 years ago, I'm not very good at math, but I think it was
15 twenty-six years ago, the Legislators passed a law called
16 the Sexually Violent Predator Act, and in that law they
17 wrote into it that the Attorney General's Office is that
18 agency that will adjudicate these cases, and so that's
19 why I'm here and not the local solicitor.

20 And we are here seeking the civil commitment of
21 Mr. Nix, so you might be wondering as we get into this
22 what is a sexually violent predator. Well, when the
23 Legislators passed that law back in 1998, they really
24 had two things in mind. One, there's individuals in this
25 state who suffer from a mental abnormality or personality

1 disorder that makes them likely to engage in acts of
2 sexual violence. And the second thing they were thinking
3 is those individuals with those disorders need to be in a
4 secure facility for treatment to help them, and the State
5 contends that Mr. Nix is one of those people.

6 Now I want to stop here and I want to apologize to
7 you because when you came in this morning, you got your
8 jury summons a couple of weeks ago, and you heard this
9 was a civil court you may have thought something like
10 a car wreck, you know, liability, somebody slipped and
11 fell at the Food Lion and they hurt themselves and they're
12 looking for compensation for their injuries. That's kind
13 of what we all think about when we think about civil cases.
14 We don't think sexually violent predator.

15 So I'm apologizing to you because, as the judge said,
16 you're the decider of the facts. Only you can do it. The
17 judge can't do it, I can't do it, Ms. Johnson can't do it.
18 It will be the twelve of you.

19 Now in order to determine those facts, you're gonna
20 have to listen to some bad things. You're gonna have to
21 listen to some things that Mr. Nix did to his daughter,
22 you're gonna have to listen to things that he -- images
23 that he had. You're gonna have to hear these things and
24 you have to set aside your personal emotions about the
25 things that he did because it's important. As the judge

1 told you, he's already been punished. He's gone to prison,
2 he's served his sentence. We're not here to punish him.
3 We're here to determine whether or not he needs treatment,
4 and that's -- that's for you guys to decide. So you're
5 gonna have to listen to these things, but it's important
6 that you listen to them because those are the details and
7 the testimony that you're gonna hear that are gonna be the
8 foundation of how you answer this question.

9 So what must we prove? Well, as the judge told you,
10 there's really two things we have to show. One, has
11 Mr. Nix been convicted of at least one sexually violent
12 offense, and I think you're gonna hear testimony and
13 you're gonna see evidence that he has been convicted of
14 two criminal sexual conduct with a minor victim age 11
15 to 14 second degree and sexual exploitation of a minor
16 in the third degree. I don't think that will really be
17 contested.

18 On the second point, the mental abnormality or
19 personality disorder that makes him likely to engage in
20 acts of sexual violence if he's not confined for long-term
21 control, care and treatment, we need the help of mental
22 health professions. So in this case, the Department of
23 Mental Health was ordered to do an evaluation of Mr. Nix
24 and you're gonna hear from their witness, Dr. Christopher
25 Gillen, who originally issued an opinion and said Mr. Nix

1 met the criteria. He subsequently changed that opinion
2 and you'll hear evidence and testimony to that effect.
3 So we went out and got a second opinion, which is
4 allowed, and we hired Dr. Emily Gottfried from the
5 Medical University of South Carolina, and you'll hear
6 her testimony and she's gonna testify that he does meet
7 the criteria to be a sexually violent predator.

8 You're gonna hear that he suffers from something
9 called antisocial personality disorder and you're gonna
10 hear that both doctors diagnosed him with that.

11 Likely to engage in acts of sexual violence, and
12 the judge will define all these terms for you at the end,
13 but I'd suggest to you that likely to engage in acts of
14 sexual violence means that a person is predisposed to
15 engage in acts of sexual violence and they more probably
16 than not will engage in acts of sexual violence to such
17 a degree they pose a menace to the health and safety of
18 others.

19 Now, again, you're gonna hear talk of comprehensive
20 evaluations, you gonna see the evidence, there's gonna be
21 documents entered for you to look at, and at the end
22 you're gonna have to take that and you're gonna have to
23 look at the credibility like the judge told you, you're
24 gonna have to weigh what's important to you, what the
25 facts are in this case, and you'll come out with a

1 determination of whether or not Mr. Nix is a sexually
2 violent predator.

3 The other question that has to be answered is what
4 level of proof do we have to do this to him, how much do
5 we have to show you to prove, and the judge alluded to it,
6 it's beyond a reasonable doubt.

7 Now you've probably heard that before. That's --
8 that's the highest standard there is. And when I was
9 in law school -- in normal civil cases it's called the
10 preponderance of the evidence, and my law professor talked
11 to me about that. If you think about those old scales
12 of justice and you have a block on this side that weighs
13 100 pounds and you have a hundred blocks over here that
14 weigh one pound, you know, that's -- that's even. So
15 how do you determine which side it is? We'll, he said
16 imagine a bird is flying over and a little feather falls
17 off and it lands on either side of those scales, that's
18 50 percent plus a feather, that's what he said, and in a
19 normal civil case that's all the burden of proof we need,
20 but I think you've all figured out this is not a normal
21 civil case. We have a much higher standard, which we
22 welcome because, again, Mr. Nix's liberty is at interest,
23 and we welcome that burden to prove beyond a reasonable
24 doubt.

25 And the judge is gonna tell you what that means, but

1 for right now I'm gonna suggest to you that it means if
2 you're firmly convinced. If you've listened to all the
3 evidence and you're firmly convinced that Mr. Nix is a
4 sexually violent predator, then that's the way that you
5 should go.

6 So what do I want you to do? I -- law's not a first
7 career for me. I was -- I spent twenty years building
8 cell towers and putting fiberoptics in the ground and
9 decided I wanted to go to law school. Now I had an old
10 construction superintendent and he would always -- he'd
11 told me at a very young age, he said Chris, always ask
12 for what you want, and I really don't see any difference
13 now in asking you what I want from you, and it's simply
14 this. Listen to the evidence. No matter how bad it is
15 or how disturbing it is, listen to the evidence. And not
16 just the evidence that the State puts up, any evidence
17 that Mr. Nix might put up because that's -- that's where
18 you're gonna determine whether or not he is a sexually
19 violent predator, and if you can do that for me, then
20 that's all I can ask of anyone.

21 I thank you for your time.

22 MS. JOHNSON: May it please the Court?

23 THE COURT: Yes, ma'am.

24 MS. JOHNSON: Good afternoon, ladies and gentlemen.

25 I introduced myself earlier. My name is Kindle

1 Johnson. I've got a private law firm here in South
2 Carolina and I'm from the area and I try cases, even
3 cases like this.

4 So I represent Phillip Nix in this case and as
5 you've heard, as the State has said, it's a sexually
6 violent predator case. And these cases are sort of
7 interesting because most people have heard of sexually
8 violent offenders. Those are people who commit certain
9 violent crimes that are sexual in nature and, you know,
10 when we say sexually violent offenses, I'm not talking
11 about necessarily beating somebody up and raping them or
12 anything like that. It's a list of offense in South
13 Carolina. It's just a list of crimes that they say we're
14 gonna count these as sexually violent offenses.

15 And so this particular case involves not just
16 somebody who's charged with a sexually violent offense,
17 but the State is saying that the person who is charged,
18 Mr. Nix, is so dangerous that he needs to be involuntarily
19 committed so that he can be treated. He can be forced to
20 undergo treatment.

21 So that's Phillip Nix. Mr. Nix, would you please
22 stand up.

23 Thank you.

24 You're gonna learn a lot about him. You're gonna
25 learn he's from South Carolina. You're gonna learn he's

1 forty-eight years old, that he had a family, that he had
2 daughters. You're gonna learn some things you don't like.
3 One of which is that he has been convicted of sexually
4 violent offenses, which is why we're here really.

5 The truth is we don't disagree with the State on
6 many issues. We don't disagree that he's got a conviction
7 and we don't disagree that they're gonna be doctors here
8 who say -- experts really who say that he has a personality
9 disorder. I don't know that we agree he has it, but we
10 know there's gonna be doctors here to say he has it.

11 You're not gonna see a lot of drama between the
12 State and I because the truth is we are professionals and
13 we like each other and this is par for the course. This
14 is in support of the State and in my case in support of
15 my client.

16 But here's the big issue. The big question is not
17 whether he's got the convictions, not whether he has
18 these offenses on his record, but whether we should force
19 him to go into an institution and be committed so that he
20 can have the treatment or can he go home and have that
21 treatment at home or have that treatment some other way.
22 It's a question not as much about the past, but really
23 more about the future and what we do with him.

24 Now you might say well, how can it not be about the
25 past when it involves these things that -- you know,

1 these crimes that you're gonna hear about, and what I
2 specifically mean by that is that we're not punishing him
3 here today. That's not what the -- that's not what the
4 job is that you-all have. It's not the goal. He's been
5 punished. You're gonna hear that he served time at the
6 Department of Corrections for the crimes that he was
7 convicted for. You're gonna hear all about that.

8 And so today in this trial is not about being angry
9 with him and punishing him and sending him a message.
10 It's not about that. It's about treatment and it's about
11 where the treatment is gonna occur, and that's it.

12 And so at the end of this case I'm gonna ask you
13 that you send him home and that you let him have his
14 treatment at home because I believe that the State's not
15 gonna prove beyond a reasonable doubt that he can't do
16 that.

17 Interestingly, that law -- there's gonna be a few
18 things that I do want you to keep an eye out for, and
19 we'll talk more at the end of the case, but interestingly
20 the law, there's a few buzzwords in that law and the judge
21 will go over it with you, but specifically it requires a
22 mental disorder or personality disorder, mental abnormality
23 or personality disorder, but it also requires
24 predisposition. You're gonna hear the word "predisposed".
25 Is he likely to do it because that's just the way he is and

1 it makes him more likely to commit those offenses. And
2 you're gonna hear likely to engage. You're gonna more
3 probably than not going to engage in acts of sexual
4 violence. So is he probably gonna do it? That's one of
5 the questions you have to ask yourself. Is there a
6 likelihood he probably -- more probably than not do it.

7 Another question you're gonna have to ask yourself
8 is whether he poses a menace to the health and safety of
9 others if he's not involuntarily committed. So is he so
10 dangerous, does he have so much -- so many issues with
11 self-control that if he's out he's just a menace?

12 These -- this sexually violent law is really
13 interesting. Not every state in the United States has
14 it. In South Carolina we have it and we have it because
15 we just don't want to release people who are gonna go
16 out and hurt others, who are gonna commit these sexually
17 violent acts and really devastate the lives of others, but
18 the truth is that there are treatment options available and
19 they're available without having to take away somebody's
20 liberty.

21 So I would like for you to keep all of that in mind.
22 You're gonna hear lots of expert testimony. I'll be
23 honest with you, sometimes it can be quite complicated,
24 but it's important. It's important to Mr. Nix because
25 he's been punished and now he just wants to go home, and

1 so we ask that at the end of the case you do that, you
2 send him home.

3 Thank you.

4 THE COURT: Is the State ready to all their first
5 witness?

6 MR. RUNYAN: Yes, Your Honor.

7 The State would call Dr. Emily Gottfried.

8 THE COURT: Very well.

9 (Whereupon, Emily Gottfried was duly sworn by the
10 Clerk of Court.)

11 THE CLERK: Please be seated in the witness stand
12 and once you are seated if you would please state your
13 name, spelling your last name for the record.

14 THE WITNESS: It's Dr. Emily Gottfried.
15 G-O-T-T-F-R-I-E-D.

16 EMILY GOTTFRIED,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. RUNYAN:

20 Q. Good afternoon, Dr. Gottfried.

21 A. Good afternoon.

22 Q. I'm gonna stand back here, so -- I know we're mic'd
23 up, but if I can hear you back here hopefully the jurors
24 back here can hear you as well, so I hope you don't think
25 I'm yelling at you, so.

1 A. Okay.

2 Q. All right. Dr. Gottfried, by whom and where are you
3 employed and in what capacity?

4 A. I am an associate professor of psychiatry and
5 behavioral sciences at the Medical University of South
6 Carolina in Charleston. I also serve as the director of
7 our sexual behaviors clinic and lab at MUSC.

8 Q. Now in order to be employed in that capacity, are
9 you required to have a certain education, background and
10 experience?

11 A. Yes, all three.

12 Q. Where did you obtain your undergraduate degree?

13 A. For undergraduate I went to San Diego State University.

14 Q. And what degree did you obtain?

15 A. Psychology.

16 Q. Did you do any graduate work?

17 A. Yes.

18 Q. Where did you do that and what did you obtain?

19 A. First I did a master's degree in psychology at
20 Columbia University in New York City and then after I
21 completed that, I went to Florida State University where
22 I did another master's degree in clinical psychology and
23 then I got a doctorate of philosophy or a Ph.D. in clinical
24 psychology.

25 Q. Now did you pursue any further specialized training?

1 A. Yes.

2 Q. And what did you do?

3 A. I did a postdoctoral fellowship in forensic
4 psychology.

5 Q. Where did you do that?

6 A. I did that in a partnership, it was in Augusta,
7 Georgia, between the State Forensic Psychiatric Hospital
8 and the Medical College of Georgia.

9 Q. Have you been published in the area of forensic
10 psychology?

11 A. I have.

12 Q. Have your works been peer reviewed?

13 A. Yes.

14 Q. About how many times?

15 A. I believe I have thirty-three peer reviewed journal
16 articles or publications and I think six or seven book
17 chapters in like edited scholarly psychology books.

18 Q. Have you presented your work at -- or any work at any
19 professional conferences?

20 A. Yes.

21 Q. Where at?

22 A. I'm sorry?

23 Q. Where have you done that?

24 A. I've presented at a lot of APA conferences, so that's
25 the American Psychological Association. The APA has a

1 lot of different divisions, so in the -- Division 41 is
2 American Psychology and Law Society. I present at the
3 Association for the Treatment and Prevention of Sexual
4 Abuse. The American Academy of Forensic Sciences, Society
5 for Personality Assessment. A lot of different
6 conferences.

7 Q. Are you a member of any professional organizations?

8 A. Yes.

9 Q. Which ones?

10 A. The ones that I named. So APA, American Psychology
11 and Law, American Academy of Forensic Sciences, the
12 assessment division of APA. ATSA, which is the Association
13 for the Treatment and Prevention of Sexual Abuse. Maybe a
14 couple of other ones.

15 Q. Do you hold any positions in any of these
16 organizations?

17 A. I do.

18 Q. And what are those?

19 A. Currently I'm president of the assessment section of
20 the APA and then I'm on the -- the board of directors for
21 ATSA.

22 Q. Now are you required to have a license to practice
23 psychology?

24 A. Yes.

25 Q. And where are you licensed?

1 A. I'm licensed here in South Carolina and also in
2 Georgia.

3 Q. For about how long?

4 A. About nine years. I got licensed in -- a little more
5 than nine years, I guess -- around June, July of 2015.

6 Q. So tell us what your job duties are.

7 A. I have a couple of different job duties. So in the
8 sexual behaviors clinic and lab, I oversee the lab and the
9 clinic. So we have a number of different contracts, for
10 example, with the United States Federal Probation, for
11 individuals who have been convicted of sexual offenses,
12 they've served time in Federal prison and then they get
13 out. A lot of them are supervised on lifetime probation,
14 so I coordinate and/or provide all of their mental health
15 assessments, sexual behavior assessments, and then
16 treatment.

17 I do general forensic evaluations for the courts. So
18 I do competency to stand trial, criminal responsibility.
19 I do some evaluations with people who want to be police
20 officers. I teach a lot, so I teach medical students,
21 psychiatry residents, psychology interns, forensic
22 psychology and psychiatry fellows.

23 I direct an undergraduate research internship for
24 students who are not at MUSC, but are at under grad
25 institutions around the Charleston area. I conduct a lot

1 of research. That's pretty much the gist of it.

2 Q. So tell us what psychology is.

3 A. So psychology is generally the study of the human
4 mind, how people interact with others and how like what
5 they think and feel affects their behavior.

6 Q. And what is clinical psychology?

7 A. Clinical psychology is the specialization of
8 psychology that really deals with the assessment and
9 treatment and diagnosis of mental illnesses.

10 Q. Taking it a step further, Doctor, what would be
11 forensic psychology?

12 A. Forensic psychology generally is the intersection
13 or the interaction of psychology and the law. So
14 typically it's using specialized mental health or
15 psychiatric knowledge to help the trier of fact, which is
16 either a jury or a judge, understand like more complex
17 mental health issues as they relate to something going on
18 in the legal system.

19 Q. So how many -- approximately how many individuals
20 have you evaluated in your career in all these types of
21 different assessments that you've told us?

22 A. Thousands.

23 Q. Talking about just sexually violent predator
24 evaluations, pre-commitment evaluations, about how many
25 have you done?

1 A. For pre-commitment, about sixty-two have been referred
2 to me.

3 Q. And how do -- how do you get involved in these cases?

4 A. For the sexually violent predator evaluations,
5 typically it's the attorney general's office will ask
6 for an independent evaluation. On a few occasions the
7 respondent's attorney will request an evaluation.

8 Q. And prior to this case have you been qualified as an
9 expert in the field of forensic psychology?

10 A. Yes.

11 Q. Where?

12 A. South Carolina, all over the state, and Georgia.

13 MR. RUNYAN: Your Honor, at this time I would ask
14 that Dr. Gottfried be recognized as an expert in clinical
15 and forensic psychology and forensic sex offender
16 evaluations.

17 MS. JOHNSON: That's without objection, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, a
19 person testifying cannot give opinion testimony, but
20 testifies to what the person saw, heard, sensed by
21 smell or something of that nature; however, there is an
22 exception when someone is qualified because of knowledge,
23 education or experience, then they are permitted to give
24 their opinion in certain areas if the Court qualifies
25 them that way.

1 This witness will be qualified in the area of
2 clinical and forensic psychology and forensic sex
3 offender evaluations and to give opinion testimony in
4 that area. It doesn't mean you must accept the opinion,
5 but it's evidence for you to use in any way you see fit.

6 MR. RUNYAN: Thank you, Your Honor.

7 BY MR. RUNYAN:

8 Q. Dr. Gottfried, how were you approached to conduct an
9 evaluation of Mr. Nix?

10 A. Your office requested that the MUSC's sexual behaviors
11 clinic and lab do an evaluation with him.

12 Q. What type of evaluation did you conduct?

13 A. I conducted a pre-commitment evaluation pursuant to
14 the Sexually Violent Predator Act.

15 Q. And when you're asked to do this, what is your -- I
16 guess what's the referral question? What are you trying to
17 answer?

18 A. So generally the referral question is has the person
19 been convicted of at least one sexually violent offense
20 and do they have what's called a mental abnormality or a
21 personality disorder that makes them likely to engage in
22 future acts of sexual violence. In 2023, the law was
23 amended a little bit where they provided a definition or
24 changed the definition of the word "likely". And if I
25 could refer to my notes. I don't have it memorized. So

1 they amended it to a person is predisposed to engage in
2 acts of sexual violence and more probably than not will
3 engage in acts of sexual violence to such a degree as to
4 pose a menace to the health and safety of others.

5 Q. And that's the standard you were using when you issued
6 your report?

7 A. Yes.

8 MR. RUNYAN: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. RUNYAN:

11 Q. Doctor, I just want to make sure we're working from
12 the same report. And I have a copy. I believe it's
13 sixty pages. If you would just make sure we're working...

14 A. Yes.

15 Q. Okay. Thank you.

16 Just preliminary questions here, Doctor, did you --
17 how were you paid to conduct the evaluation in the case?

18 A. So at MUSC we have a flat rate for these evaluations.
19 It was \$5,600. That includes the testing, the testing
20 materials, the three evaluation dates with the clinical
21 interview, writing the report, reviewing the collateral
22 records and then one day of testimony.

23 Q. Do you personally receive the fee?

24 A. No.

25 Q. Does the fee or your salary change depending on the

1 results of your evaluation?

2 A. No.

3 Q. Thank you. Doctor, can you describe for us the
4 protocol or steps you take in conducting an evaluation of
5 this type?

6 A. Sure. So when I get a referral to do this kind of
7 evaluation, typically they send along a lot of the case
8 materials. So I'll review all of those materials. That
9 includes the police reports, court documents, like the
10 indictments, the sentencing sheets, often records from
11 correctional facilities, so South Carolina Department of
12 Corrections, sometimes local county detention centers.
13 They send me other forensic reports if available. So I go
14 through all of that information, make sure I'm not missing
15 anything. If I am missing something, I request the
16 attorney general's office to try to get it for us. Then I
17 schedule three evaluation dates for the examinee. The
18 examinee is transported to our clinic and lab at MUSC on
19 three occasions where they undergo a battery of testing, a
20 clinical interview and then I put it kind of all together
21 and -- and write a report about it.

22 Q. At the beginning of the evaluation, was Mr. Nix
23 informed about what you were doing?

24 A. Yes. We have a six or seven-page consent form where
25 it goes through like all of the different possible tests

1 that he could be administered, kind of the limits to
2 confidentiality, that the evaluation was requested by a
3 third party. So different from when you're seeing a doctor
4 for treatment, it's not gonna be confidential because I'm
5 gonna write the report to send to the attorney, and so he
6 went through each -- we go through it together, each kind
7 of paragraph on the consent form, and then he signs that
8 consent form. And then every subsequent appointment, so
9 the other two dates, when he comes in he goes back over the
10 consent form and he signs another form that's essentially a
11 re-reading of that consent form because we want them to
12 consent to the evaluation during every appointment.

13 Q. And you said as a part of the evaluation you met with
14 Mr. Nix?

15 A. Yes.

16 Q. Is Mr. Nix in the courtroom here today?

17 A. Yes.

18 Q. Could you point him out to us?

19 A. Yes. He's sitting with his attorney, Ms. Johnson.

20 Q. And this is the man that you did your evaluation and
21 interview of?

22 A. Yes.

23 MR. RUNYAN: Your Honor, I just want the record to
24 reflect that Dr. Gottfried has identified Mr. Nix as the
25 individual she assessed for this evaluation.

1 THE COURT: Very well.

2 BY MR. RUNYAN:

3 Q. Doctor, you said you met with Mr. Nix on three
4 different occasions?

5 A. Yes. He was transported to the clinic and lab on
6 three occasions. I have a technician that does some of
7 the testing, so I don't meet with them on all three days,
8 but he was seen in our offices for three appointments.

9 Q. How long was your interview with him?

10 A. That's a great question. Typically they range between
11 about four and six hours. For Mr. Nix the interview was
12 three hours and twenty minutes.

13 Q. Okay. Now in addition to meeting him and interviewing
14 him, could you summarize the information you had to review
15 in this case?

16 A. Yes. So I had documents from the Newberry County
17 Court of General Sessions, Lexington County Court of
18 General Sessions, Lexington County Sheriff's Office, SCDC,
19 South Carolina Department of Corrections, records. I had
20 records from Lexington Medical Center, from the Dickerson
21 Center for Children, DSS or Department of Social Services
22 in South Carolina. I had some SLED records. I had some
23 records from the Clarendon County Court of General
24 Sessions, records from South Carolina Department of
25 Probation, Parole and Pardon Services. I had some cell

1 phone data, the Cellebrite extraction data, from someone
2 downloading his phone, law enforcement. And then I had
3 records from the South Carolina Department of Mental
4 Health.

5 Q. Now all those records you listed, are those the types
6 of records that someone in your field uses in performing
7 these assessments that are reasonably typically relied on
8 by experts in your field?

9 A. Yes.

10 Q. Doctor, can you explain to us how an individual's past
11 sexual offense behavior relates to their future sexual
12 offense behavior?

13 A. Yes. So we know that the best predictor of future
14 behavior is looking at what somebody did in the past, so we
15 want to examine the offense characteristics of both charges
16 and convictions of prior sexual offenses that can tell us
17 the likelihood of that happening again, if it were to
18 happen again what the offense behaviors might look like,
19 the victim pool, and also helps us to look at and identify
20 patterns of behavior.

21 Q. Let's talk about a personal -- their personal history.
22 Why it is important for someone in your field to learn
23 about a person's personal history for these types of
24 evaluations?

25 A. Well, so the referral question is does the person

1 have a mental abnormality or personality disorder that
2 makes them likely to sexually re-offend and so you don't
3 want to cherry pick and just look for sexual behavior or
4 personality disorders. You want to look at their whole
5 kind of spectrum of functioning, so we want to see if they
6 have a mental illness or personality disorder and if there
7 is one established, then you want to see if that, you know,
8 was related to their sexual offense, predisposes them, so I
9 want to get a whole history of them. I don't want to just
10 talk to them about sexual behavior. I want to get an idea
11 of like their lifetime spectrum of functioning and it kind
12 of completes the whole picture of the person.

13 Q. So what is -- let's back up a little bit. What is a
14 personal history? What are you looking for?

15 A. I guess I would say personal history are some of
16 the information that I gather from the clinical interview
17 and collateral records, so kind of starting at the
18 developmental period or before that. I usually ask
19 questions about if they know if their mother had any
20 complications during the pregnancy, asking them how their
21 childhood was, talking to them about their school history,
22 any personal abuse victimization history, substance use,
23 mental illness, mental health treatment. Just kind of
24 their whole history up until today.

25 Q. So as a part of your interview, did you discuss

1 Mr. Nix's developmental history?

2 A. Yes.

3 Q. What, if any, conclusions did you make about Mr. Nix's
4 developmental history that were significant to your
5 opinion?

6 A. Well, I noted that Mr. Nix reported that he was born
7 here in Lexington. His parents divorced when he was about
8 two years old. He was primarily raised by his mother. He
9 talked about having some issues getting along with his
10 stepfather. I believe that he moved out of the home when
11 he was about fifteen and stayed with a friend. He reported
12 engaging in some shoplifting behaviors. He reported that
13 his father had a significant mental illness and was
14 physically abusive to him on some occasions. He denied a
15 history of neglect and he denied a history of sexual abuse.

16 Q. As a part of your interview, did you discuss Mr. Nix's
17 educational history?

18 A. Yes.

19 Q. And what, if any, conclusions did you make about that
20 that were significant to your opinion?

21 A. Mr. Nix reported that he was expelled from school in
22 the eighth grade. He told me that it was for showing up
23 intoxicated or drunk to school. He said he was expelled
24 and sent to the Department of Juvenile Justice school or
25 facility. Collateral records indicated that he was

1 expelled from school on two occasions. He reported being
2 suspended from school. He said that he was suspended for,
3 quote, being a bad kid. He said he got into fights, being
4 drunk that one time, not going to school, and then he noted
5 that he got his GED when he was sixteen years old.

6 Q. As a part of your interview, did you discuss Mr. Nix's
7 employment and financial history?

8 A. Yes.

9 Q. And what, if any, conclusions did you make about that
10 that were significant to your opinion?

11 A. Mr. Nix reported primarily working in construction
12 and cooking jobs across his lifetime. He said he had no
13 problems with his employment. He said that he had never
14 been fired from a job. SCDC or Department of Corrections
15 records indicated that he was fired from about five of
16 those positions, but it looks like those were related to
17 disciplinary infractions. Maybe not problems at work, but
18 got in trouble in the institution and then couldn't work
19 anymore. Related to his financial history, he reported
20 having some charges for failing to pay child support. He
21 talked about how he had been kind of behind on child
22 support, then he got back together with the child or
23 children's mother and he had a significant amount of back
24 child support which he's had forgiven.

25 Q. As a part of your interview, did you discuss

1 Mr. Nix's, we'll call it, social history?

2 A. Yes.

3 Q. And what, if any, conclusions did you make about his
4 social history that were significant to your opinion?

5 A. One thing that I'm assessing when I'm looking at
6 their social history is kind of their support system so we
7 know that if you're releasing somebody to a supportive
8 environment where they have people who are going to hold
9 them accountable and be good sources of support, that be
10 can a favorable thing for somebody's prognosis or how
11 they're gonna do when they get out.

12 So Mr. Nix described having a support system, but I
13 noted that not everyone or not -- his whole support system
14 isn't what I would necessarily call all positive, so
15 specifically some people in his support network had a
16 criminal history, some used drugs and/or alcohol, and he
17 said that -- another thing that I always ask them is, you
18 know, how much do they know about your offenses and he said
19 that everyone in his support system knew that he didn't do
20 it, so he said that no one in his support system thinks
21 that he actually committed a sexual offense.

22 Q. Why is that problematic?

23 A. Well, one of the -- I think one of the things that
24 makes a supportive social network protective and have
25 favorable outcomes is that you want those people to be

1 able to hold you accountable. So if you're messing up,
2 if you're doing something that could get you in trouble,
3 you want that support system to be like hey, I'm gonna
4 intervene before something happens here, but if your
5 support system doesn't think that you did something that
6 you were convicted of, that is potentially problematic.

7 Q. As a part of your interview, did you discuss Mr. Nix's
8 substance abuse history?

9 A. Yes.

10 Q. What, if any, conclusions did you make about his
11 substance abuse history that were significant to your
12 opinion?

13 A. I believe he started drinking alcohol per his report
14 around the age of thirteen. He said after the age of
15 fifteen he wasn't that big of a drinker. He said that he
16 started smoking marijuana around the age of thirteen as
17 well and that he used on a nearly daily basis from the age
18 of thirteen until he went to prison. He smoked marijuana
19 while in prison, but he said not that often because it's
20 pretty expensive, and then when he got out of prison he was
21 on community supervision and he told me that he was smoking
22 THC vapes and he also failed a urine drug screen or a drug
23 test while on community supervision and one of the
24 substances he tested positive for was marijuana or at least
25 during my evaluation he told me that he had not used any

1 marijuana since he had failed that drug test in 2022. He
2 reported using cocaine for the first time around the age of
3 fourteen or fifteen. He said he last used cocaine in 2006.
4 He described a number of problems and symptoms associated
5 with a cocaine use disorder. Not since 2006, but he noted
6 that cocaine had caused him a lot of problems in his life.
7 He reported that he tried meth or methamphetamine a few
8 times. He did it maybe four to five times he said while he
9 was in prison in 2018. He used heroin on two occasions,
10 other opioids. He said those substances didn't cause him
11 any problems.

12 Q. As a part of your interview, did you discuss Mr. Nix's
13 relationship history?

14 A. Yes.

15 Q. And what, if any, conclusion did you make about his
16 relationship history that were significant to your opinion?

17 A. Mr. Nix reported being married on one occasion, but
18 that they had been separated for what he described as
19 being a long time. He described five significant romantic
20 relationships. He reported having one adult son and one
21 adult daughter and then some stepchildren who referred to
22 him as dad.

23 Q. And finally on developmental history here or personal
24 history, as a part of your interview did you discuss
25 Mr. Nix's sexual history?

1 A. Yes.

2 Q. And what, if any, conclusion did you make about his
3 sexual history that were significant to your opinion?

4 A. Mr. Nix reported that he had sex for the first time
5 when he was thirteen with an 18-year-old female partner.
6 He reported -- he said that he didn't have any unusual
7 or deviant sexual interests or fantasies, but it also
8 seemed like during the interview and on testing he really
9 minimized his sexual thoughts, fantasies, behaviors,
10 masturbation habits, so I didn't know how valid his
11 self-report was for that.

12 Q. All right. Doctor, turning to -- that's his personal
13 history. Let's turn to criminal history. Why is it
14 important for an expert in your field to look at prior
15 criminal history?

16 A. So for a couple of different reasons. Some of the
17 risk assessment measures that we score, which we'll hear
18 about in a little bit, rely specifically on different
19 kinds of charges and convictions and numbers of charges
20 and convictions, but you're looking at this person's
21 ability to control their behavior, their ability to follow
22 the rules. As I mentioned, past behavior is the best
23 predictor of future behavior, so we want to know what's in
24 his criminal history that's gonna help us with the risk
25 assessment.

1 Q. So you look at criminal history even if it's not
2 sexual?

3 A. Yes.

4 Q. And why is that?

5 A. Again, we're looking at their ability to control their
6 behavior, we're looking at patterns of behavior, we're
7 looking to see if they have violent offenses because that
8 can be predictive of future sexual violence as well.

9 Q. And so you're looking at not just convictions, but
10 charges?

11 A. Yes.

12 Q. And things that they self-report?

13 A. It depends -- well, yes. I'm getting their report for
14 everything. For some of the measures that I mentioned, the
15 risk assessment measures that we score, some of them you
16 can use self-report, some of them you can only use their
17 official criminal history.

18 Q. In your review of Mr. Nix's -- let's go to juvenile
19 history. Why would it be important to look at somebody's
20 juvenile history?

21 A. For a couple of different reasons. So we know that
22 early behavioral problems that persist through adulthood
23 are significant, so when it comes to -- well, I'm not gonna
24 -- that's gonna be on a tangent. So we know that some
25 juveniles get in trouble when they're kids, they never get

1 in trouble again, but if you have an adult who's offending
2 and they also offended during childhood, that can be a
3 risk factor that can make them more likely to commit
4 future crimes in the future. You're looking at when these
5 behavioral problems started, we're looking at this pattern
6 of his ability to follow the rules. In scoring some of the
7 risk assessment measures, we look separately at juvenile
8 offenses and adult offenses.

9 Q. What, if anything, did you find significant about
10 Mr. Nix's juvenile criminal history that was important to
11 your opinion?

12 A. Mr. Nix self-reported that he was first arrested when
13 he was twelve or thirteen years old. He said that he stole
14 a camera, was arrested for shoplifting. He said that when
15 he was between the ages of fifteen and sixteen he stole a
16 car and went to Ohio because he wanted to get out of South
17 Carolina. He reported that he was extradited back to South
18 Carolina and spent a number of months in a Department of
19 Juvenile Justice or DJJ facility. He said when he was
20 sixteen he stole from Lexington Medical Center. He said
21 that he like went into offices there and stole purses and
22 wallets and he went to DJJ again and then other collateral
23 documents indicate that he was adjudicated delinquent,
24 which is the language that they use for juveniles, so he
25 was found guilty or convicted on four separate occasions as

1 a juvenile.

2 Q. Now did you review Mr. Nix's adult nonsexual criminal
3 history?

4 A. Yes.

5 Q. And what, if anything, did you find significant to
6 your opinion about Mr. Nix's adult nonsexual criminal
7 history?

8 A. Well, I noted that as an adult he had arrests that
9 spanned from 1994 to 2022. He, by my count, was arrested
10 approximately thirty times. He had a variety of different
11 kinds of arrests or criminal behavior like multiple driving
12 offenses, drug possessions, having fraudulent checks, lots
13 of thefts and larcenies. He was arrested for burglary,
14 resisting arrest, failing to pay child support. He had a
15 charge related to South Carolina Department of Corrections
16 where he had carry or conceal a weapon by an inmate and he
17 had approximately five probation violations.

18 Q. What's significant about that to your opinion?

19 A. The whole thing?

20 Q. Yeah.

21 A. I mean, it shows this pattern with him disregarding
22 the rules, not being able to control his behavior, not
23 being able to follow the rules in a really controlled
24 environment like a prison environment and not being able
25 to follow the conditions of his release when he's out on

1 probation.

2 Q. I just want to back up. You said he was convicted
3 of an offense of carrying a weapon or concealing a weapon
4 while he was incarcerated?

5 A. Yes.

6 Q. And when was that?

7 A. I believe that was in 2018, but I'm going to look.
8 It occurred in 2016 and I believe that he was convicted in
9 2018.

10 Q. Let's move on, Doctor, to sexual crimes. I'll ask
11 you this question, and it may seem silly, but why is it
12 important to look at a person's sexual crimes?

13 A. Well, we're looking for patterns of behavior. We are
14 looking at the offense characteristics to kind of try to
15 hypothesize or come up with what was the reason that this
16 person was offending. It's really difficult to say how
17 likely someone is to re-offend if we don't know the reason
18 that they were offending in the first place. So we're
19 looking for patterns of behavior, we're looking at possible
20 victim characteristics if there were to be another sexual
21 offense, and being able to, you know, maintain their
22 behavior. So if somebody gets arrested and then they are
23 offending again, that's notable.

24 Q. So based on your interview of with Mr. Nix and your
25 review of the file at the time of your interview with him,

1 had he been charged or convicted of any sexually violent
2 offenses?

3 A. Yes.

4 Q. What were they?

5 A. Well, he was charged with I believe five sexual
6 offenses. So criminal sexual with minor in the first
7 degree, criminal sexual conduct with a minor in the second
8 degree, sexual exploitation of a minor in the second degree
9 and another one in the third degree, and then unlawful
10 conduct towards a child.

11 Q. Okay. Did you review the law enforcement and court
12 records concerning these offenses?

13 A. Yes.

14 Q. Are these part of the information that you listed to
15 us earlier?

16 A. Yes.

17 Q. Did you ask Mr. Nix about each of these to get his
18 input?

19 A. Yes.

20 Q. Are these the type of records that other experts in
21 your field reasonably rely on in rendering opinions in
22 these types of cases?

23 A. Yes.

24 Q. So why is it necessary to examine the underlying
25 details behind the convictions?

1 A. So, again, we're looking for patterns. We are trying
2 to assess how risky this person is, so we're trying to
3 develop an idea or a sense of what made them offend. So
4 people usually engage in behavior because they like
5 something about it, but we want to kind of explore that, so
6 we want to use that in the risk assessment, that is the
7 referral question, to see if there are things about the
8 offenses that suggest there might be an underlying mental
9 abnormality or personality disorder and then offering
10 predictions -- or, yeah, predictions about how likely they
11 are to do that in the future.

12 Q. All right. Let's turn to his offense.

13 MR. RUNYAN: Your Honor, may I approach the witness?

14 THE COURT: Very well.

15 BY MR. RUNYAN:

16 Q. I'm gonna give you what's been premarked State's 1.
17 Do you recognize that document, Dr. Gottfried?

18 A. Yes.

19 Q. Is it something you reviewed in this case?

20 A. Yes.

21 Q. Is there anything to indicate the document's
22 authenticity?

23 A. Yes.

24 Q. What is that?

25 A. I believe it's called a seal. There is like a raised

1 stamped seal that has been signed I believe by the Clerk of
2 Court.

3 Q. And can you tell us what that document is?

4 A. The one I'm looking at right here, this is the
5 sentence sheet for the charge of criminal sexual conduct
6 with a minor victim eleven to fourteen years of age in the
7 second degree.

8 Q. Okay. And the other one?

9 A. And then the other document is the indictment for the
10 same criminal sexual conduct with a minor in the second
11 degree.

12 MR. RUNYAN: Your Honor, I ask at this time and
13 request that what's been premarked State's 1 to be entered
14 into evidence.

15 THE COURT: Without objection?

16 MS. JOHNSON: No objection, Your Honor.

17 THE COURT: State's Exhibit 1 is admitted into
18 evidence without objection.

19 (State's/Petitioner's Exhibit Number 1, Certified
20 Convictions and Indictments, was admitted into evidence.)

21 BY MR. RUNYAN:

22 Q. I'm gonna go ahead and put these -- this next one in
23 as well. This is what's been marked State's Exhibit 2, and
24 I'll have the same questions, Doctor. Do you recognize
25 this document?

1 A. Yes.

2 Q. Is it something you reviewed in this case?

3 A. Yes.

4 Q. Does it have anything to indicate its authenticity?

5 A. Yes.

6 Q. And what is that?

7 A. It's, again, the seal, the stamp.

8 Q. And can you tell us what those are?

9 A. This is the sentencing sheet for the charge of sexual
10 exploitation of a minor in the third degree and the
11 indictment for that charge.

12 MR. RUNYAN: Okay. Your Honor, I'd ask what's
13 been premarked State's Exhibit 2 be entered into
14 evidence.

15 THE COURT: Without objection?

16 MS. JOHNSON: No objection, Your Honor.

17 THE COURT: State's 2 is admitted into evidence.

18 (State's/Petitioner's Exhibit Number 2, a Certified
19 Conviction and Indictment, was admitted into evidence.)

20 BY MR. RUNYAN:

21 Q. So, Doctor, you testified you considered -- let's talk
22 about, first, the criminal sexual conduct with a minor
23 second degree. Could you tell us what the conviction was?
24 I'm sorry. What the sentence of the Court was.

25 A. Yes. He was sentenced to fifteen years in the South

1 Carolina Department of Corrections.

2 Q. Okay. Well, tell us what are the underlying details
3 about this criminal conviction that are important to you
4 in forming your opinion in this case.

5 A. Sure. So when he was charged with the criminal
6 sexual conduct with a minor in the second degree, he also
7 was charged with one in the first degree as well, and so
8 kind of what the allegations were it was a former romantic
9 partner of Mr. Nix and she reported to law enforcement
10 that Mr. Nix's 12-year-old daughter and his I believe
11 9-year-old stepdaughter reported that he was sexually
12 offending against them. The documents indicated that the
13 12-year-old daughter said that he had been raping her for
14 several months, having full intercourse with her. The
15 documents suggested that the victim told one of her family
16 members that Mr. Nix told her that she made it really easy
17 for him to become aroused or have an erection because she
18 was so beautiful, and then both of the reported victims
19 underwent forensic interviews as well.

20 Q. And what is a forensic interviews?

21 A. So forensic interviews are specialized interviews of
22 children who are reporting sexual or physical abuse or
23 neglect. They are conducted by trained professionals who
24 conduct them in such a way where they're not like leading
25 the child to an answer, so they're standardized, they're

1 videotaped, they're interviewed by a professional and then
2 they're used usually by law enforcement to support charges
3 against the person.

4 Q. Did you review a forensic interview of -- on his
5 victim, his 12-year-old daughter, that he was convicted of
6 sexually assaulting?

7 A. Yes.

8 Q. What, if anything, was significant about that forensic
9 interview to you?

10 A. She noted that he had gotten out of some incarcerated
11 setting about three weeks before he began touching her. So
12 he got out, he moved in with them, her and her sisters and
13 her mother, and then three weeks later he began touching
14 her. She said that this would happen almost every day.
15 That she would be bleeding and she would be sore. She said
16 that she was eleven years old when her dad moved in. She
17 made a lot of statements that were -- within this forensic
18 interview of things that he reportedly said to her such as
19 you should not be able to make me hard. She said --

20 MS. JOHNSON: Your Honor, I'm gonna object to this
21 language.

22 MR. RUNYAN: Approach?

23 THE COURT: Yeah.

24 (Proceedings held at the bench; not reported.)

25 BY MR. RUNYAN:

1 Q. Doctor, let's talk about -- without going into to
2 much detail, let's talk about what specifically in his --
3 his criminal offending behavior in this one charge, this
4 CSC, why is that significant to your opinion in this case?

5 A. To me it demonstrates that he cannot control his
6 behavior. So he offended against the victim shortly after
7 going to live with them, almost immediately, three weeks
8 later. He offended in situations that had a really high
9 likelihood of him getting caught, which also suggests that
10 he had problems controlling his behavior. So he offended
11 against people who could readily identify him because she
12 was related to him. He abused her within the home while
13 other people were reportedly present and he reportedly
14 offended against her nearly every day despite her
15 reportedly being bleeding, sore, being distressed by it.

16 Q. Now what did -- you said you talked to Mr. Nix about
17 these crimes --

18 A. Yes.

19 Q. -- this crime. What did he tell you about this?

20 A. He said that he did not engage in this behavior, that
21 he -- I don't know if it was that he -- what he told me or
22 what he told the police, but he said that he slept in the
23 same bed with them, he sometimes showered with his children
24 I believe that like in his swimming trunks and that maybe
25 that, you know, wasn't the right thing to do, but he said

1 to both me and the police that he never had sexual contact
2 with any of his children.

3 Q. Okay. Well, let's go onto State's Exhibit 2, Doctor.
4 You said you considered that for -- in this evaluation.
5 What was the sentence of the Court in that?

6 A. The sentence of the Court was ten years to be served
7 concurrently, so at the same time, as the 15-year sentence.

8 Q. Well, what were the underlying details about this
9 conviction that were important to you in rendering your
10 opinion?

11 A. So to my understanding, after Mr. Nix had been
12 arrested for criminal sexual conduct, the victim's mother
13 told law enforcement that she had found a cell phone that
14 had pictures of young girls on it that she thought included
15 her children. They looked at the phone or extracted the
16 phone and found, I believe, four pictures of young
17 children. The mother -- the children's mother identified
18 that some of them were her children. It was an 8 or
19 9-year-old girl exposing her like breast area. There was
20 one where another girl was --

21 MS. JOHNSON: Your Honor, I object to all of the
22 details.

23 THE COURT: All right. Let's -- Counsel, I'd like
24 to lead the discussion in a little more general pace, not
25 every single detail.

1 MR. RUNYAN: Yes, Your Honor.

2 BY MR. RUNYAN:

3 Q. Dr. Gottfried, without telling us what's in the
4 pictures, can you explain why the pictures -- or this
5 conviction is important to you in rendering your opinion
6 in this case?

7 A. Yes. So he possessed pictures of young girls on a
8 cell phone. He was included in some of the pictures.
9 Typically you're going to take pictures of -- save pictures
10 of things that you're aroused by, things that you like.
11 This is kind of going along with the criminal sexual
12 conduct offenses.

13 Q. What did he tell you about it?

14 A. He essentially told me that this was his cell phone,
15 but like it didn't -- it wasn't hooked up or it didn't have
16 service and that the children used it as a toy and took
17 pictures of themselves, that he couldn't really dispute it
18 because it had been his phone, but that he hadn't taken the
19 pictures.

20 Q. Okay. Let's move on, Doctor, to other -- other
21 misconduct. You mentioned earlier that you looked at
22 institutional records. Why would you look at institutional
23 misconduct?

24 A. So I'm looking at the person's ability to control
25 their behavior in a really secure controlled setting. So

1 there are a lot of rules in prison and you see some people
2 who have a really long criminal history who go to prison,
3 and I don't know if you'd say they're model inmates, but
4 they just are not getting in trouble because there's a lot
5 of structure, a lot of rules in place, and then you have
6 some people who go to prison and they despite having a lot
7 of consequences while they're there continue to get in
8 trouble for breaking the rules in prison.

9 Q. Did you review South Carolina Department of
10 Corrections records on Mr. Nix?

11 A. I did.

12 Q. And did he have any offenses while at SCDC?

13 A. He did.

14 Q. And what were some of the offenses?

15 A. Let's see. He was convicted on several occasions --
16 or he was investigated and I believe convicted once for
17 refusing or failing to obey an order, possession of
18 contraband. He had at least two convictions for using
19 or possessing tattoo paraphernalia, a conviction for
20 interfering with count. As I mentioned, he had a criminal
21 charge that was also within the facility. He was convicted
22 of possession of a weapon and possession or attempt to
23 possess a cell phone. He was convicted of smuggling or
24 conspiracy to smuggle contraband. He had a couple of
25 possessions of contraband. He had about five convictions

1 for possession or attempting to possess a cell phone, some
2 substances, so he had some drug possessions, and those were
3 the ones in SCDC.

4 Q. Why specifically these -- what's important about his
5 misconduct in SCDC that's important to you in your opinion?

6 A. I mean, again, it's showing his inability to follow
7 the rules. So he doesn't have any sexual offenses while in
8 prison, but it's also my opinion that there wasn't anyone
9 in the prison that he would have been aroused by, so it was
10 adult men, which by his report he's not sexually attracted
11 to, but this continued pattern of despite there being
12 strict rules, a lot of structure, this controlled
13 environment, he couldn't control his behavior.

14 Q. Did Mr. Nix have any offenses while in Lexington
15 County Detention Center?

16 A. Yes.

17 Q. What were those offenses?

18 A. He told me during the evaluation that he had gotten
19 in trouble for a fight. He said it was approximately April
20 of 2023 and he said that he was initially -- he had what
21 he called a street charge, so he was actually charged with
22 third degree assault, but he noted that they threw it out
23 so it never proceeded in court, but he was disciplined
24 within the detention center for that offense.

25 Q. And, again, tell us why that's important, and when was

1 that offense.

2 A. He said it was in April of 2023.

3 Q. And why is that important to you?

4 A. I mean, it just continues to go along with his pattern
5 of his inability to follow rules and control his behavior.
6 He was in the detention center because he was undergoing
7 evaluations pursuant to the Sexually Violent Predator Act
8 and that would be a good reason to be on your best behavior
9 at that time.

10 Q. Did he have any sexual offender treatment while in
11 prison?

12 A. No.

13 Q. Does that factor -- does that fact figure in your
14 conclusion in any way?

15 A. Yes.

16 Q. Why is that?

17 A. Well, that could be a protective factor. So even if
18 somebody is showing really high risk on the risk assessment
19 measures that we administer, we're also looking for things
20 that could mitigate that risk or be protective. So if
21 somebody has completed sexual behavior treatment, that is a
22 favorable thing that you want to consider. He didn't have
23 any in prison. He was ordered to have some when he was out
24 on community supervision in 2022. He attended one session
25 and didn't go back.

1 Q. Let's talk about that. Did you look at probation or
2 community supervision records?

3 A. Yes.

4 Q. And, again, tell us why you were looking at those.

5 A. Well, I noted that Mr. Nix had a number of probation
6 violations, so that is significant to me because, again, it
7 goes along with his inability to follow the rules. You get
8 out on probation, you get out on community supervision, I
9 mean, that is the time that I would think you should be on
10 your best behavior, but what was really notable to me and
11 the reason that I have these records is he was released
12 from his 15-year prison sentence on intense community
13 supervision and he had a number of rules to follow and he
14 violated the terms of that community supervision like -- I
15 think less than two months after he was released from that
16 prison sentence.

17 MR. RUNYAN: Approach the witness, Your Honor?

18 THE COURT: Very well.

19 BY MR. RUNYAN:

20 Q. Doctor, I just want to follow up on that. I'm giving
21 you what's been premarked State's 3. Again, do you
22 recognize this document?

23 A. Yes.

24 Q. Is this something you used in your evaluation?

25 A. Yes.

1 Q. Is there anything to show its authenticity?

2 A. Yes. It has the seal or the stamp on it.

3 Q. Can you tell us what that is?

4 A. This is a community supervision revocation order. So
5 this is them revoking his supervised release.

6 MR. RUNYAN: Your Honor, at this time I'd like to
7 admit into evidence what's been premarked State's 3.

8 MS. JOHNSON: No objection.

9 THE COURT: All right. State's Exhibit 3 is
10 admitted into evidence without objection.

11 (State's/Petitioner's Exhibit Number 3, Certified
12 Community Release Revocation Order, was admitted into
13 evidence.)

14 BY MR. RUNYAN:

15 Q. All right. Doctor, let's go into -- you have the
16 community supervision revocation there. Can you tell us
17 what he was violated for?

18 A. Yeah, so he was violated for a number of things to my
19 understanding, one of the things that he had on his cell
20 phone, but I believe it was in the deleted pictures file,
21 so he had multiple screen shots of an adult woman and a
22 2-year-old child.

23 MS. JOHNSON: Your Honor, again, I'm gonna object.

24 THE COURT: Hold on, folks.

25 (Proceedings held at the bench; not reported.)

1 THE COURT: I'm gonna talk to the lawyers for a
2 minute. Let's go ahead and take our midafternoon break.

3 Head on back to the jury room, refresh yourselves.
4 Let the bailiff know when everybody's had a chance to
5 refresh themselves and we'll get you back in here in the
6 courtroom, okay?

7 Do not discuss the case with one another while
8 you're in the jury room. Talk about the weather and
9 football, but just not the case.

10 Thanks.

11 (Whereupon, the jury retires to the jury room at
12 2:49 PM.)

13 THE COURT: All right. Just briefly, counsel had an
14 objection about the testimony from the witness about what
15 was discovered or found on Mr. Nix's cell phone during
16 the community supervision process, and this is what we
17 discussed in chambers earlier about whether the full
18 exhibit comes in, the Cellebrite report, which has small
19 -- I'm using the word "thumbnail". That may not be the
20 correct word.

21 MR. RUNYAN: That's the correct word.

22 THE COURT: All right. That shows images of a
23 person. I mean, truthfully it's tough to really
24 understand what it is, but it's a person -- it looks
25 like a person who's not wearing clothing, and from what

1 I saw before, I don't know if the people were identified
2 in the text messages or not, but I think, Counsel, your
3 main issue is that the witness is referring to the
4 identifications of the people noted in this cell phone
5 that was inspected by the community supervision people
6 through Pardon, Parole and Probation. Is that accurate?

7 MS. JOHNSON: That is, Your Honor. That was my
8 objection.

9 THE COURT: Okay. And we're trying to -- what we
10 discussed in chambers was did everything need to come
11 in with that or not. We didn't get to the point in the
12 testimony, but what I said to you-all up here at the
13 bench was that, you know, I was curious if the witness
14 had confirmed that information to Dr. Gottfried. We
15 didn't quite get there. You know, of course, she
16 reviewed this in the file and, of course, experts under
17 703, I believe, can rely on hearsay testimony and
18 records, which they often do in these types of cases.
19 I'm just trying to be somewhat cautious in relaying too
20 much. So I get the point that she's allowed to talk
21 about how she came to her opinion and she's given a lot
22 of bases already for her opinion, so.

23 MR. RUNYAN: Your Honor, our argument would just be
24 -- I think we've already made it, but just to put it on
25 the record, what we have to establish is a very high

1 burden. What we have to show is someone who cannot
2 control their behavior, they have problems with their
3 volitional control and they're showing a pattern of
4 behavior, and that's exactly what this evidence does;
5 that Dr. Gottfried and experts routinely rely on law
6 enforcement records and in those law enforcement records
7 Mr. Nix admitted that it was his daughter and his
8 granddaughter to them, and she should be allowed to
9 testify to that. She should be allowed to say -- I
10 understand the Wilson argument, I understand they're
11 graphically disturbing details, but this is -- that's the
12 allegations. This is a community supervision revocation.
13 I mean, it was certified, it's not made up, and I think
14 it's not graphic to say there -- it's concerning that he
15 had eight thumbnails from a video -- video phone call of
16 his victim with a 2-year-old daughter naked in the shower.
17 That's -- I don't think -- that's what it is and why
18 it's problematic to his pattern of behavior and his
19 likelihood to re-offend, and we can proffer it from
20 Dr. Gottfried if you'd like.

21 THE COURT: No, no. I think -- but, I mean, she's
22 sitting right next to me. I could simply just ask the
23 question at this point.

24 Did the witness -- did Mr. Nix identify or did the
25 records -- did Mr. Nix in his interview confirm who was

1 in those pictures on the cell phone?

2 THE WITNESS: Yes.

3 THE COURT: Okay. So he told that to you from his
4 own mouth?

5 THE WITNESS: Yes.

6 THE COURT: Okay. So that's just a matter of is it
7 just still overly prejudicial?

8 MS. JOHNSON: Yes, Your Honor. You know, the
9 objection also is just to the extremely inflammatory
10 details that the witness is going into that are
11 unnecessary. I mean, certainly it's one thing to say,
12 you know, he had sex with his 12-year-old daughter
13 regularly or even daily. It's another thing to say
14 he raped her so much she bled, she was screaming. I
15 just think that all of those details are extremely
16 inflammatory and prejudicial to -- unfairly prejudicial
17 to him.

18 THE COURT: Okay. We went -- we just went back in
19 time.

20 MS. JOHNSON: I did, but --

21 MR. RUNYAN: We're talking about the probation
22 violation now.

23 MS. JOHNSON: Yes, and I'm giving it sort of as
24 an example of just some of these details that are just
25 really unnecessary, Your Honor, and I believe extremely

1 prejudicial to my client.

2 THE COURT: Okay.

3 MR. RUNYAN: She says they're unnecessary, Your
4 Honor, but they go to the pattern of behavior and that's
5 what we must establish. I mean, it's highly probative
6 to her diagnosis and her risk assessment. It's not
7 outweighed by -- it's not substantially outweighed by
8 the prejudicial effect.

9 THE COURT: Fair enough. Fair enough, but when we
10 talk about -- I mean, when we talk about having sex with
11 your daughter, that in itself is somewhat inflammatory,
12 but it's part of the case; however, just detail after
13 detail after detail, which is why after Ms. Johnson's
14 objection I said let's keep it a little bit more general
15 because I recognize that that was in the record, but,
16 you know, you have a high burden and we need to allow
17 you to meet your burden, but we also -- we don't need to
18 slam the burden either. So anyway...

19 MR. RUNYAN: I guess, Your Honor, I don't know how
20 -- I mean, to me how Dr. Gottfried can -- how can she
21 establish the importance of the images if she can't
22 explain what's in the images?

23 THE COURT: I think the fact that she just told me
24 in-camera that she reviewed the records and also Mr. Nix
25 himself confirmed. I think it is a -- the fact that he

1 didn't just have pornography on his phone, which would
2 be a violation of his probation in any other capacity if
3 you were on probation, particularly for a sex offense,
4 the fact that he had it on his phone is -- it is highly
5 probative. I just don't want specific details of how they
6 were oriented to the extent that there was discussion of
7 that. I think testimony -- over defense objection
8 testimony that he while on supervision had pornography
9 involving a previous victim of his conviction is -- is
10 suitable, okay, but I don't think we need to talk about
11 what they were doing, if anything, in the photographs.
12 I think he made the point to a level that it -- well, it's
13 the jury's decision, of course, but I think I've allowed
14 you to met your burden of proof, so.

15 MR. RUNYAN: I mean, I guess is it -- now that we've
16 taken the jury out, is it fair for me to go back -- Your
17 Honor, would I be allowed to go back and ask her if
18 Mr. Nix confirmed these were --

19 THE COURT: No, I think that's a foundational
20 question. I mean, the reason I brought it up was because
21 it mattered to me if -- imagine if -- well, let's not
22 imagine. Let's speak in more hypotheticals, but if he
23 admitted it, I think that lowers the prejudicial value
24 personally.

25 So just to be very clear, Ms. Johnson has made

1 an objection under Rule 403 that all of this type of
2 evidence we're talking about from the expert on the
3 phone, from records she saw that were probation records,
4 as well as her one on one interview, that the danger of
5 unfair prejudice outweighs its probative value, I'll
6 deny the objection, I find that it's admissible, but I
7 hope I've been somewhat clear that I would like that
8 testimony somewhat streamlined without -- to limit
9 specific details. The fact that it was there and who
10 was there is enough.

11 MR. RUNYAN: I will say we'll need to probably go
12 into this with Dr. Gillen as well because he relied on
13 the very same things and he has the same things in his
14 file.

15 THE COURT: Fair enough, but that's her expert.

16 MR. RUNYAN: Okay. I just don't want -- if she
17 opens the door, you know, in letting her expert talk
18 about it --

19 THE COURT: Okay. Well, Ms. Johnson, I don't
20 foresee you trying to open the door with your expert.

21 MS. JOHNSON: I don't want to open that door, Your
22 Honor.

23 MR. RUNYAN: Well, if he says it.

24 THE COURT: Well, look, we can't control --

25 MR. RUNYAN: That's right.

1 THE COURT: It's one thing we've learned, we can't
2 always anticipate -- we can control, but we can't
3 anticipate what a witness may say, so I think we're
4 making the best effort we can to try to get the necessary
5 appropriate information there without getting too much.

6 All right. Why don't you-all take five minutes to
7 refresh yourselves and I'll do the same.

8 (Recess taken at 2:59 PM.)

9 (Back on the record at 3:10 PM.)

10 BAILIFF: Please keep your seats. Court's back in
11 session.

12 THE COURT: Okay. Ready to roll?

13 MR. RUNYAN: Yes, sir.

14 MS. JOHNSON: Yes, Your Honor.

15 THE COURT: And, Mr. Runyan, you can refresh that
16 since we've been on a little break.

17 MR. RUNYAN: Yeah, I think I have a way to do
18 this --

19 THE COURT: The basic foundational thing and then
20 try to move on through.

21 MR. RUNYAN: All right.

22 THE COURT: All right. Thank you.

23 Bring them back in.

24 (Whereupon, the jury returns to the courtroom at
25 3:13 PM.)

1 THE COURT: All right. Ladies and gentlemen, we'll
2 pick up where we left off.

3 MR. RUNYAN: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. RUNYAN: Thank you, Your Honor.

6 BY MR. RUNYAN:

7 Q. Dr. Gottfried, when we left off we'd just started
8 talking about the community supervision violation that we
9 entered as State's Exhibit 3. I just want to refresh your
10 -- why is it important to look at community supervision or
11 Probation, Pardon and Parole violations?

12 A. Yes. We're looking at the ability for somebody to
13 control their behavior, including their sexual behavior
14 and their general criminal behavior, while on intensive
15 supervision after being released from a prison sentence.

16 Q. And he was violated you said how long after he
17 completed his prison sentence?

18 A. I believe that some of the violations began less
19 than two months before -- I'm sorry -- less than two
20 months after he was released. The date that he was
21 actually violated was March 11th of 2022 and I don't
22 recall exactly when he was released, but the violations
23 started in January.

24 Q. Were there multiple reasons why his supervision was
25 revoked?

1 A. Yes.

2 Q. Was one of the reasons he failed to pay GPS fees?

3 A. Yes.

4 Q. Was one of the reasons he failed to pay a drug test
5 fee?

6 A. Yes.

7 Q. Did he fail a drug test?

8 A. Yes.

9 Q. Did he fail to go to sex offender treatment?

10 A. Yes.

11 Q. Tell me about that.

12 A. One of the requirements of community supervision is
13 to complete sexual behavior treatment. As I mentioned
14 earlier, Mr. Nix attended one session and then didn't
15 attend other sessions, so he did not complete sexual
16 behavior treatment.

17 Q. Was he violated for possessing pornographic websites
18 on his phone?

19 A. Yes.

20 Q. Was he violated for possessing sexually stimulating
21 and sexually explicit material on his cell phone?

22 A. Yes.

23 Q. Why would all of that that you just told us be
24 important in your opinion about Mr. Nix?

25 A. There are really specific strict rules when you're

1 on community supervision. You're not allowed to look at
2 pornography of any type when you are released on community
3 supervision from a sexual offense to my understanding, so
4 his inability to follow rules. The materials that I
5 reviewed from the cell phone extraction were in line with
6 his convictions for sexual offenses, similar material. It
7 suggests that he has these sexual interests that he
8 continued to act on even after conviction and punishment
9 and serving a sentence in prison, the inability to control
10 his behavior.

11 Q. Well, like the convictions, did you discuss this
12 community supervision revocation with Mr. Nix?

13 A. Yes.

14 Q. What did he tell you about that?

15 A. He began by just saying that he had failed a drug test
16 and that he hadn't been able to pay his fees. With some
17 prompting he acknowledged that there were some deleted
18 screen shots that were discovered on his phone of his
19 victim and her 2-year-old daughter or he told me that the
20 picture was of his daughter in the shower and that he
21 accidentally took a screen shot of a FaceTime call because
22 it was a new cell phone and he didn't -- it was an
23 accident, that he accidentally screen-shotted it several
24 times.

25 Q. Okay. Did he tell you anything else about that?

1 A. No.

2 Q. Okay. Doctor, moving on, do you review other
3 evaluations for your -- as a part of your review for these
4 cases?

5 A. Yes.

6 Q. Why would experts in your field want to review other
7 forensic evaluations?

8 A. For a couple of different reasons. So I want to see
9 what the previous evaluator, what data, what documents they
10 had. Sometimes I notice that they have records that the
11 attorney general's office did not provide to me, so I want
12 to make sure that we have the same data. I want to see
13 what the examinee told that evaluator and compare that to
14 what they tell me during my evaluation. I'd say those are
15 the two main reasons.

16 Q. Did you review any prior evaluations to support your
17 evaluation in this case?

18 A. Yes.

19 Q. What evaluations did you review?

20 A. I reviewed a report by Dr. Gillen of the Department of
21 Mental Health from January of 2023 and then I reviewed an
22 amended version of that report dated June of 2023.

23 Q. What, if anything, was significant about your review
24 of those -- of that evaluation and its amendment that was
25 significant to your opinion?

1 A. I noticed that Dr. Gillen diagnosed Mr. Nix with
2 antisocial personality disorder. He thought that the
3 offending behavior, the sexual offending behavior, was
4 directly related to that personality disorder. He noted
5 that he had a lot of what we call dynamic risk factors
6 for future sexual offenses. He -- ultimately it was his
7 opinion that Mr. Nix had a personality disorder, that he
8 had demonstrated a pattern of difficulty controlling his
9 sexual arousal in the community that was consistent with
10 an inability or a problem controlling your behavior. He
11 noted that his risk to sexually re-offend was within the
12 above-average range when you're considering the spectrum
13 of risk factors. He thought that he presented with some
14 current active risk factors that were closely associated
15 with his sexual offense history, as well as his personality
16 disorder, that he had chronic problems following the rules
17 in community supervision in the past, that he didn't have a
18 lot of independent skills that he had developed in order to
19 safely manage himself in the community, and he ultimately
20 opined that he met criteria for being a sexually violent
21 predator. He then amended the report based on the statute
22 change where they said the definition of likely was more
23 probably than not and he noted that the combination of the
24 risk factors that he identified in Mr. Nix that made him
25 not more probably than not to sexually re-offend and so he

1 changed his opinion that he did not meet diagnostic or
2 statutory criteria for being a sexually violent predator.

3 Q. Doctor, let's move onto your inventories and testing.
4 Were there any assessments you performed as a part of your
5 evaluation?

6 A. Yes.

7 Q. And what type of assessments do you use?

8 A. So I administer a battery. I look at mental health
9 functioning, personality functioning, substance abuse
10 history, sexual behavior questionnaires. I administer
11 those to the individual, so they answer those questions.
12 They're self-report measures. I also score some risk
13 assessment measures on them and kind of put all of that
14 together.

15 Q. So when you say self-report assessment, is that --
16 tell us how those tests work.

17 A. So the self-report instruments that I administer are
18 computerized. So the person sits in an office space by
19 themselves in my clinic. They read questions themselves on
20 the computer. Some of them are true/false, some of them
21 are false, somewhat true, very true, mainly true. Some
22 of them ask, you know, to identify an age, but they are
23 self-reporting, so they are just reporting the information
24 to the computer based on the questions asked, and that's
25 looking at things like personality functioning, sexual

1 history, mental health symptoms.

2 Q. And you said clinician scored. How are they different
3 than the self-report testing?

4 A. The clinician scored measures are ones that I score
5 and rate based on collateral information and my interview
6 with that person. So I might be looking at their criminal
7 history and counting the number of charges and convictions
8 they have, I may be looking through all my interview notes
9 and looking to see what they reported about their behavior
10 during childhood, but I'm taking all of that information
11 that I gathered from the person and using my knowledge and
12 expertise for those measures to rate them.

13 Q. Was the information you learned from the assessments
14 that you performed a part of the basis of your opinion?

15 A. Yes.

16 Q. Are the assessments you use the type of assessments
17 that other experts in your field reasonably rely on to
18 render opinions in these matters?

19 A. Yes.

20 Q. Why do you do all these assessments?

21 A. For a couple of different reasons. So as I mentioned,
22 it's important for me to get a whole picture of the person.
23 I'm not just only looking for a sexual behavior disorder
24 or a personality disorder. I want to know what's going on
25 with this person and then see if that's related to their

1 offense history so I'm getting a whole picture.

2 I also like to do what's called a multimethod
3 assessment. So there is research not just about sexual
4 behavior, but about a range of things like suicidal
5 behavior, headaches, pain, that some people are more likely
6 to be forthcoming when they're answering questions by
7 themselves on a computer, sometimes they're more likely to
8 be forthcoming when they're, you know, sitting across from
9 you in person talking. We don't know how this person is
10 going to be most forthcoming, so I like to assess similar
11 traits and constructs in a multimethod way, so with a
12 computer, a questionnaire by themselves, in the interview
13 with me looking at records, so I'm looking for the data
14 points to kind of come together.

15 Q. Let's talk about the self-report, the computer-based
16 test that Mr. Nix took. What about his performance on
17 those assessments was significant to you regarding your
18 opinion?

19 A. I noted that Mr. Nix had a lot of what we call
20 cognitive impression management, so kind of attempting
21 to paint himself in maybe a more positive light than is
22 actually the case. That's not unusual in these kinds
23 of evaluations, but it's important to note that their
24 self-report might not be the most accurate. So it would
25 be a natural inclination for somebody to want to put

1 their best foot forward in an evaluation like this, but
2 I noted that across the measures there were some issues
3 with validity, that they might not have been an accurate
4 representation of his current level and history of
5 functioning. I noted that he was defensive in response
6 to some of the questions and despite some of his positive
7 impression management and defensiveness he was reporting
8 a history of significant problems with substance use. I
9 noted that he answered the sexual behavior questionnaire
10 in such a way that he was probably being pretty defensive
11 about his history of sexual behavior, fantasies,
12 masturbation thoughts, offenses, and I think those were
13 the pretty big takeaways -- the two big takeaways of it.

14 Q. Now on the clinician scored test, let's talk about
15 that. Why would someone in your field use the -- what's
16 called a Hare PCL-R?

17 A. Yeah, so all of these evaluations I scored them on
18 the Hare Psychopathy Checklist-Revised. That is a
19 clinician-scored measure looking at traits of psychopathy
20 or being a psychopath because we know that psychopathy
21 is linked to recidivism or re-offending and certain
22 characteristics of psychopathy are specifically related to
23 sexual offending.

24 Q. What, if anything, is important about Mr. Nix's scores
25 on the Hare that was significant to your opinion?

1 A. I noted that he didn't meet full criteria or his score
2 did not exceed the cut score or the clinical cutoff for
3 saying that somebody has psychopathic personality disorder,
4 so I don't think that he is a psychopath, but I noted that
5 he had some elevations in certain of the traits and that is
6 important to other things that I'm looking at in terms of
7 diagnoses.

8 Q. What traits were elevated that were of concern to you?

9 A. I noted that he had a lack of remorse and guilt. That
10 he had shallow affect. He had a history of promiscuous
11 sexual behavior. He scored highly on irresponsibility,
12 failure to accept responsibility for his own actions,
13 juvenile delinquency. I noted that his conditional release
14 had been revoked before. And then criminal versatility,
15 which means he has committed a wide range of different
16 types of offenses.

17 Q. Doctor, moving on, were there any other tests that you
18 performed that were significant to your opinion that you
19 need to tell us about?

20 A. No.

21 Q. Okay. I want to move onto diagnosis and I want to ask
22 you if you recognize this book?

23 A. Yes.

24 Q. And what is this book?

25 A. That's the Diagnostic and Statistical Manual of Mental

1 Illnesses. That is the fourth edition text revision. I'm
2 sorry. The fifth edition text revision.

3 Q. And who uses this book?

4 A. So that's published by the American Psychiatric
5 Association or the APA that was published in 2022. We use
6 it. Anybody who has a license to diagnose psychiatric
7 disorders, that's one of the two of the manuals that they
8 use, but that I would say is most widely used in the United
9 States to diagnose mental illness.

10 Q. So you would consider this authoritative in your
11 field?

12 A. Yes.

13 Q. Let's talk about paraphilic disorders. What are
14 paraphilic disorders?

15 A. So paraphilic disorders are sexual behavior disorders
16 in which the person has a really persistent intense sexual
17 arousal to something other than a human consenting adult
18 partner. So that could be something like a fetish. So
19 they're sexually aroused by shoes, for example, and that
20 that arousal causes them distress or impairment or could
21 cause harm to another person.

22 Q. Why do experts in your field in these type of cases
23 consider paraphilic disorders?

24 A. I would say the primary reason is that that is -- I
25 mentioned we want to look for the cause of why somebody

1 committed the sex offenses in the first place. Committing
2 them because you're sexually aroused by those materials,
3 that stimuli, that is a reason why people commit offenses.
4 We also know that really large studies show that if
5 somebody has a sexual arousal to something that they've
6 acted on, so they have a paraphilic disorder, that is a
7 significant risk factor for sexually re-offending later.

8 Q. Did you consider any paraphilic disorders for Mr. Nix?

9 A. I did.

10 Q. Were you able to diagnose Mr. Nix with any relevant
11 paraphilic disorders?

12 A. I did not.

13 Q. Was there anything significant in your review of his
14 -- while you were reviewing him for paraphilic disorders
15 that were notable to your opinion?

16 A. Yes. It is my opinion that Mr. Nix has some what we
17 call deviant or paraphilic sexual interests, but I didn't
18 have the data to say that it rose to the level of a
19 paraphilic disorder for a couple different reasons. So I
20 considered pedophilic disorder, which is sexual arousal to
21 prepubescent children, and that is a persistent intense
22 sexual arousal that lasts at least six months or longer. I
23 noted that Mr. Nix's daughter at the time of the offenses
24 was pubescent, so she was in puberty, so she wasn't
25 prepubescent, but there were some other data to suggest

1 that he might be sexually aroused by prepubescent children,
2 but I had no information to suggest that that had lasted
3 longer than a six-month period, that he had recurrent and
4 intense and persistent arousal to fantasies and was
5 masturbating to those stimuli. So while I do think there
6 are some data points that suggest that arousal, to me it
7 didn't rise to the level that I was confident to make that
8 diagnosis. I also considered if he was sexually aroused
9 to pubescent children. I do think that there are data
10 to suggest that he is sexually aroused by children or
11 teenagers who are in puberty and there is a lot of I'd say
12 controversy of whether or not that is a diagnosis. We
13 know that while it is a hundred percent definitely illegal
14 to have sex with somebody who is not of consenting adult
15 age, somebody who is in puberty and has secondary sex
16 characteristics, so developed breasts, pubic hair, it's
17 difficult to tell somebody that age, you know, if they're
18 thirteen or fourteen or if they're seventeen or eighteen,
19 so that's why there is some controversy about that
20 diagnosis, and -- while I think that he probably is aroused
21 by teenagers, that is not necessarily a disorder.

22 Q. Let's move onto personality disorders. What are
23 personality disorders?

24 A. So personality disorders, they begin in either
25 adolescence or early adulthood. They are these persistent

1 inflexible dysfunctional ways that you interact with the
2 environment, in your relationships and how you think, how
3 you feel. They're pretty stable. They're inconsistent
4 with your culture and they're --- yeah, they're persistent
5 across the lifespan beginning in adolescence or early
6 adulthood.

7 Q. Why would someone in -- experts in your field consider
8 personality disorders in SVP evaluations?

9 A. Well, again, that is a potential reason for why
10 somebody was offending and it's a potential risk factor
11 for sexually re-offending.

12 Q. Did you consider any personality disorders for
13 Mr. Nix?

14 A. Yes.

15 Q. Were you able to diagnose Mr. Nix with any relevant
16 personality disorders?

17 A. Yes.

18 Q. What did you diagnose him with?

19 A. He meets diagnostic criteria for antisocial
20 personality disorder.

21 Q. Is antisocial personality disorder in the DSM-5?

22 A. Yes.

23 Q. What is the criteria for someone to meet -- what's the
24 diagnostic criteria for somebody to meet the diagnosis of
25 antisocial personality disorder?

1 A. So just generally antisocial personality disorder is a
2 pervasive and inflexible disregard for the rules and the
3 safety of others, as well as the rights of other people.
4 This is a disorder where we have evidence of problems with
5 your conduct, your behavioral conduct, prior to the age of
6 fifteen, and then in order to meet diagnostic criteria you
7 need at least three of the symptoms. So like a failure to
8 conform your behavior to the rules of society. So that
9 could be breaking a lot of laws, getting arrested a lot,
10 repeatedly performing acts that are grounds for arrest.
11 Deceitfulness. So that could be lying a lot, using a
12 fake name or an alias. Impulsivity or failure to plan
13 ahead. Irresponsibility, consistent irresponsibility,
14 irritability, aggressiveness and lack of remorse. Those
15 are the different symptoms.

16 Q. Okay. How does Mr. Nix meet the criteria for
17 antisocial personality disorder?

18 A. Well, there was evidence of conduct disorder. So he
19 had multiple juvenile arrests. He self-reported that he
20 ran away from home, that he shoplifted, he got into fights
21 when he was a youth, he skipped school, he destroyed
22 property, he was suspended and expelled from school, so we
23 had the necessary evidence of conduct disorder prior to the
24 age of fifteen. And then as an adult, he has repeatedly
25 performed acts that are grounds for arrest. So he had

1 approximately thirty arrests in his adult history. He had
2 numerous probation violations and lots of prison and
3 detention center disciplinary infractions. He is
4 impulsive. So he has a pretty impulsive substance use
5 history, his relationship seems pretty impulsive, his
6 sexual incarceration history. So a history of -- of being
7 impulsive. A history of irresponsibility. So failing to
8 make child support payments, repeatedly violating his
9 probation or conditional release. He also had a lack of
10 remorse. So he seemed to make a lot of excuses or blame
11 other people for his spectrum of offenses. Had a lot of
12 information about why he thought that the sexual offenses
13 had been made up against him. Had the pictures. He like
14 minimized any wrongdoing like across his history and like
15 attributed some of the consequences of his actions to the
16 victims. So, yeah, not accepting his own responsibility,
17 but kind of putting the blame on other people.

18 Q. Is antisocial personality disorder, is that a chronic
19 disorder?

20 A. Yes.

21 Q. Is it a lifetime?

22 A. Well, it's persistent so we see it usually starting
23 in adolescence or early adulthood. There is some
24 literature to suggest that some people with antisocial
25 personality disorder have a drop in some of the behavioral

1 characteristics after the age of forty. Kind of the
2 thought behind that is as you're kind of aging past forty
3 you don't have as much energy as you had when you were
4 younger to commit like some of these crimes, but that was
5 -- I did not note that in Mr. Nix despite him being over
6 the age of forty. After the age of forty he continued to
7 get in trouble and violate community supervision.

8 Q. So how does a person with antisocial personality
9 disorder, how do they interact with society if they're not
10 treated?

11 A. Well, this is a pervasive inflexible way that you're
12 dealing with the world. So if your needs come first and
13 you don't care about the safety or the rights of other
14 people, that's going to color every interaction that you
15 have with other people, so that's gonna affect your ability
16 to follow the rules, to maintain relationships, how you
17 think about yourself. So it's gonna color everything of
18 how you're interacting with the world.

19 Q. Let's talk about substance abuse disorders. You
20 mentioned them together, but did you consider substance
21 abuse disorders for Mr. Nix?

22 A. Yes.

23 Q. What did you conclude about those?

24 A. I'm sorry?

25 Q. What did you conclude, if anything?

1 A. Well, I think it's important to consider substance use
2 disorders for a couple of different reasons. So we know
3 that there's no drug that makes you rape somebody or have
4 sex with a child; however, if somebody has committed a
5 sexual offense, the presence of a substance use disorder
6 can make you risky for re-offending because it can affect
7 your ability to control yourself, your impulses. If you're
8 acting on something that you like and then you're under
9 the influence of drugs or alcohol, that could put you in
10 a really risky situation. I thought it was especially
11 prevalent or important for Mr. Nix because he tested
12 positive for a number of substances while he was out on
13 community supervision in 2022, and so it's my opinion that
14 he meets diagnostic criteria for cocaine use disorder. He
15 acknowledged that cocaine caused him a lot of problems. I
16 don't think it's an active disorder currently because I
17 don't think he has access to cocaine right now, but I have
18 concerns about his ability to maintain his abstinence from
19 cocaine or other substances when he gets out.

20 Q. Any other mental abnormalities or personality
21 disorders we need to discuss?

22 A. No.

23 Q. Okay. Let's move on then to your risk assessment,
24 Doctor. How do experts in your field assess risk?

25 A. So risk is really important. Like the referral

1 question is how likely is this person to sexually re-offend
2 and the way that typically experts in this field assess
3 risk is we look at research studies, these really, really
4 large research studies where they combine the data from
5 30,000 people and more who had been arrested for at least
6 one sexual offense. They then followed them for an average
7 of five to six years and looked to see the differences
8 between people who re-offended sexually and people who
9 didn't. So they were looking at characteristics or risk
10 factors that differentiated these two groups. What do the
11 group of people who sexually re-offended, what makes them
12 different than the group that had that offense but didn't
13 sexually re-offend in five to six years.

14 Q. Okay. Well, so what are risk factors?

15 A. So risk factors could be any characteristic thing,
16 disorder, characteristic that separates these two groups.
17 So they can be broken down do stable risk factors and
18 dynamic risk factors. Stable risk factors are things that
19 you cannot change. So, for example, age is a static risk
20 factor. We know that a younger age increases your risk.
21 We know that you're always gonna get older, but there's
22 no treatment that I can give you that's gonna make you
23 younger. We know, for example, the presence of a male
24 victim is a risk factor, so I can give you treatment so
25 that you never have another male victim again, but there's

1 no treatment I can give you that's going to take that male
2 victim out of your history. So static risk factors are
3 things that you can't change, you can't treat.

4 Dynamic risk factors are things that might be really
5 difficult to treat, but they are treatable. That could be
6 things like substance use disorders, paraphilic disorders.
7 So we know that sexual arousal is very difficult to treat,
8 but you can treat it, so that's a dynamic risk factor.

9 Q. Well, let's talk about static historical risk factors.
10 These historical risk factors. Can you tell us what
11 actuarial assessments are?

12 A. Sure. So actuarial assessments are where you're
13 comparing someone to a group of people. So I like to use
14 an example of life insurance. So when you apply for life
15 insurance, the company is gonna want to know a lot of
16 information about you. They're gonna want to know are you
17 a man or a woman first of all because we know that women on
18 average live about five years longer than men. They want
19 to know do you smoke, do you drink. They're gonna send you
20 for a physical. They want to know what your blood pressure
21 is, what your weight is. They want to know what your body
22 mass index is. They want to know how many speeding tickets
23 you have, do you like driving race cars. So they're
24 looking at all of these characteristics that we know are
25 associated with early death, but just because you have

1 those risk factors the insurance company has no idea when
2 you're gonna die. They're just comparing you and looking
3 to see how many of these risk factors you have that are
4 associated with heart problems or early death and that's
5 how they're gonna decide your premium and maybe charge you
6 more money for your life insurance.

7 So this risk assessment measure that we use is kind of
8 looking at it in the same way. So we're taking the results
9 from those really large studies of what differentiated
10 people who re-offended from those who didn't and we're
11 looking to see how many of those characteristics the person
12 sitting in front of us has. So we're just comparing what
13 we know about recidivism or re-offending, but it doesn't
14 tell you anything about the person sitting in front of you,
15 just about the characteristics that they may or may not
16 have.

17 Q. So what are the Static-99R and the Static-2002R?

18 A. So the static instruments are actuarial measures of
19 risk. So they're look at the static unchanging risk
20 factors that have been identified in those really large
21 studies. It's looking at things like the person's age,
22 whether or not they've been -- they've lived with a
23 romantic partner for two or more years, the number of sex
24 offense charges and convictions they've had, whether or
25 not they've had a male victim, whether their victims were

1 strangers to them. So it's looking at what differentiated
2 the two groups from those who re-offended and those who
3 didn't.

4 Q. And did you perform -- those are actuarials, did you
5 score those in this case for Mr. Nix?

6 A. Yes. I scored what's called the Static-99R and the
7 Static-2002R.

8 Q. What's the difference between those two?

9 A. They're looking at -- the Static-2002R has a few
10 dynamic risk factors and they're looking at slightly
11 different of the risk factors. There's research that
12 suggests that when you administer both, combine them, that
13 that can add what's called incrementally. It can add
14 validity or weight to your risk assessment. So in high
15 stakes evaluations such as civil commitment, it would be
16 well advised to administer more than one risk assessment
17 instrument.

18 Q. Is that why you used these two risk assessments?

19 A. Yes.

20 Q. So let's talk about Static-99R. What's the scoring
21 range on the Static-99R?

22 A. The scores range from negative 3 to 12.

23 Q. And what was Mr. Nix's score on this measure?

24 A. I scored him a 2.

25 Q. Okay. What's the range of scoring on the

1 Static-2002R?

2 A. Negative 2 to 13.

3 Q. And what was Mr. Nix's score on the Static-2002R?

4 A. 5.

5 Q. What you learn from those assessments, what's
6 significant about those numbers to you?

7 A. So a score of 2 on the Static-99 is in the average
8 range to sexually re-offend. The score of 5 on the
9 Static-2002 is in the above average range to sexually
10 re-offend. So, again, it doesn't telling you anything
11 about Mr. Nix's, you know, probability or likelihood that
12 he's going to re-offend, it just looks at other people who
13 have similar characteristics to him. But you don't want
14 to just stop with the static risk factors, you also want
15 to look at dynamic risk factors and things that could be
16 treatment targets as well.

17 Q. Doctor, do you solely rely on the statics as a means
18 of assessing risk?

19 A. No.

20 Q. Is there any potential to underreport risk in the
21 Static-99 or 2002R?

22 A. It's possible. So the Static family of instruments,
23 the 99 and 2002, they only are -- they only included
24 people in those big studies who had what's called a
25 detected sexual offense, so that means they were charged

1 with or convicted of a sexual offense. It potentially
2 could underreport those numbers because we know that
3 sexual offenses are the least likely of all crimes to be
4 reported to authorities. I think the research suggests
5 that like about only 30 percent of all sexual offenses are
6 actually reported to police. So we don't know if some of
7 the people in those two groups, if some of them actually
8 had re-offended but nobody reported it, so potentially it
9 could be underreported.

10 Q. You mentioned dynamic risk factors. Let's move onto
11 those. How do you assess dynamic risk factors?

12 A. For Mr. Nix I used the Stable-2007, which is a measure
13 of dynamic risk factors.

14 Q. So tell us what are -- what are dynamic risk factors.

15 A. So, again, dynamic risk factors are the things that
16 can be changed. They can be treated. It might be very
17 difficult to treat them. Like, you know, substance use
18 disorders are really hard to treat, but you can treat them.
19 So those are looking at things that are not static. They
20 could be dynamic, which means changing, and it's just
21 another category of risk factors.

22 Q. You said you scored the Stable-2007. What was
23 Mr. Nix's score on the Stable-2007?

24 A. He scored a 14 out of a possible 26 on the
25 Stable-2007.

1 Q. What is significant about this scoring in your
2 opinion?

3 A. It's a fairly high -- I mean, it's in the high density
4 range on the Stable-2007. It represents the approximate
5 90th percentile. So that means that he scored higher on
6 that measure than about 90 percent of the normative sample
7 or how they made that instrument, and then I noted that
8 he had a number of dynamic risk factors that should or
9 could be addressed in treatment. So I noted that he has
10 deviant sexual interest preference. So although it's my
11 opinion that he doesn't meet diagnostic criteria for a
12 paraphilic disorder, I noted that he frequently engaged
13 in nonconsensual sexual behavior with a daughter who was
14 related to him who was a minor who couldn't consent. I
15 noted that he immediately after -- or soon after being
16 released on community supervision possessed images on his
17 phone that were consistent with the offenses that he was
18 convicted of, and so all of those should be treatment
19 targets. That's my opinion.

20 Let's see. I also noted that he had a dynamic risk
21 factor of cooperation with supervision or treatment. So as
22 I mentioned a couple of times, he had numerous probation
23 violations, he had disciplinary infractions while in
24 prison, in the detention center, a lot of charges,
25 convictions. He has not completed sexual behavior

1 treatments and I think that based on my assessments it's
2 not clear that he would complete that treatment. He
3 maintained that he doesn't have any problems with his
4 sexual behavior, that he didn't commit any of the offenses
5 and that he doesn't need treatment because there's nothing
6 wrong with him sexually.

7 As I kind of talked about in the diagnostic section,
8 another risk factor that he has is a lack of concern for
9 other people. He continued to offend despite it being
10 reported that there was distress involved. There might
11 have been some psychological coercion. In the records
12 there was a letter that Mr. Nix wrote to his daughter --

13 MS. JOHNSON: Your Honor, I object.

14 THE COURT: Sustained.

15 Move on to the next question it.

16 MR. RUNYAN: She's still answering this one.

17 THE COURT: Well --

18 MR. RUNYAN: Can she finish answering this one?

19 THE COURT: No. No. Come up here.

20 (Proceedings held at the bench; not reported.)

21 THE COURT: Next question.

22 BY MR. RUNYAN:

23 Q. Doctor, talking about dynamic risk factors, what's the
24 next dynamic risk factor you had concerns with?

25 A. He also scored highly on sex drive, sex preoccupation,

1 kind of for the same reasons that I've been discussing.
2 Impulsive acts. He has a history of his sexual offending
3 behavior, criminal behavior, substance use, lots of
4 impulsivity, capacity for relationship stability, problems
5 with emotionally intimate relationships with adults, having
6 a stable support network.

7 So I mentioned that he, you know, described having
8 this support system, but there are some issues with how
9 positive and helpful those support people are going to be
10 for his future functioning. I think that he has some poor
11 problem-solving skills.

12 So those were the ones that he scored the highest on
13 for the Stable-2007, but then you can also combine Stable
14 with the Static scores, so you're looking at both static
15 and dynamic risk factors together and when you combine
16 those -- when you combine the Stable score with the
17 Static-99 score, he was in the well-above average risk for
18 risk factors and then when you combine the Stable and the
19 Static-2002, he was in the well-above average risk.

20 Q. So what does it mean for someone to be in the
21 well-above average risk category once you combine those
22 two?

23 A. That is the highest risk category. So it goes
24 well-above average risk, above average risk, average risk,
25 below average risk, well-below average risk. So when you

1 combine them -- when you combine the Static-2002 with the
2 Stable-2007, he was in the well-above average risk.

3 Q. Doctor, what, if anything, did Mr. Nix reveal to you
4 about his own -- his own sexual risk to re-offend? Did you
5 discuss that with him?

6 A. I did.

7 Q. What did he tell you?

8 A. He reported that he's at no risk to re-offend, that
9 he didn't commit the offenses to begin with, that he has
10 no problem with his sexual behavior, that he didn't need
11 treatment for it because he doesn't have any problems. He
12 essentially said that his plan to not re-offend was to
13 just be around adults because he kind of alluded to being
14 worried that somebody might like falsely accuse him of
15 something and that if he was only around adults that he
16 wouldn't get in trouble. He said that nobody has helped
17 him with his sexual behavior problems because he doesn't
18 have any; that he, again, didn't need treatment. I
19 thought that he really lacked insight into his risk
20 level, his antisocial personality disorder diagnosis, his
21 sexual arousal to things that are not consensual or age
22 appropriate, and I thought that during the evaluation he
23 was suppressing -- like he either is currently suppressing
24 his sexual drive or he -- the way he reported it he is
25 and, I mean, that's not a technique to avoid sexual

1 re-offending.

2 Q. Putting everything together you've discussed about
3 these risk factors, Doctor, what did you learn about
4 Mr. Nix's risk to re-offend?

5 A. Well, it's my opinion that he is at risk to re-offend.
6 He has antisocial personality disorder that caused the
7 offense behaviors. He offended sexually because his sexual
8 needs were more important than the victim's safety, wishes
9 desires. His lack of empathy, his impulsivity contributed
10 to his sexual offense. He continued to get in trouble
11 in the really structured environment of prison and the
12 detention center. He was released on community supervision
13 and within two months was already violating the terms also
14 sexually, so -- and I think, as I mentioned, like substance
15 use disorders don't make you re-offend, but they can put
16 you at risk for -- for future offenses and he was using
17 substances in 2022 when he was released, and I think
18 taking together all of that with the absence of protective
19 factors, the fact that he has not had sexual behavior
20 treatment and doesn't think that he needs it, I think all
21 of that places him at high risk to sexually re-offend.

22 Q. Okay. Doctor, just turning real quickly here, did
23 you discuss future plans with Mr. Nix?

24 A. Yes.

25 Q. Why would someone in your position want to know what

1 the future plans are?

2 A. I mean, I want to know what his plan is when he gets
3 out, what is he gonna do, where is he going to live, how
4 is he going to keep himself and others safe.

5 Q. Well, what did he discuss with you about this plans
6 for release?

7 A. He reported that he was going to live with a friend
8 in West Columbia. This is a friend that he's lived with
9 on and off since he was fifteen years old. He said that
10 when he gets off of community supervision he was going to
11 move to Orlando. He said that he doesn't think he needs
12 any treatment because there's nothing wrong with him.
13 Essentially that's pretty much what he said. That he was
14 at zero risk to re-offend.

15 Q. Are you aware if he has any remaining supervision or
16 probation?

17 A. He does not.

18 Q. In your opinion is his -- are his future plans
19 realistic given the level of risk that you've noted?

20 A. I don't think they are. I think that he needs more
21 support. I don't know that his support system is going to
22 keep him accountable. I noted that he's lived with the
23 person that he plans to live with in West Columbia. He's
24 lived with her on and off since he was fifteen years old,
25 that he has gotten into a lot of trouble since he was --

1 was fifteen years old. I don't think he has insight into
2 his level of risk. I don't think he has insight into his
3 need for treatment, so I don't think that those plans are
4 realistic of keeping him safe from getting in trouble
5 again.

6 Q. All right. Doctor, wrapping up here, putting
7 everything you discussed together, did you make any
8 conclusions about whether Mr. Nix meets the criteria for
9 civil commitment?

10 A. Yes.

11 Q. And what is that?

12 A. It is my opinion that he meets the statutory criteria
13 for being a sexually violent offender and needs to be
14 civilly committed for treatment.

15 Q. Is it your opinion that Mr. Nix has a mental
16 abnormality or personality disorder?

17 A. Yes, he has antisocial personality disorder.

18 Q. Is it your opinion that Mr. Nix's antisocial
19 personality disorder affects his volitional control to
20 the extent that it predisposes him to commit sexually
21 violent offenses?

22 A. Yes.

23 Q. Why is that?

24 A. I think that he -- that his sexual offenses was caused
25 by the antisocial personality disorder, so that predisposes

1 him to commit acts of sexual violence, that -- and then
2 continue to act out sexually even in controlled settings.

3 Q. Do you believe that he has a serious difficulty
4 controlling this propensity?

5 A. Yes.

6 Q. Why?

7 A. The probation violations, the community supervision
8 violations, the amount of trouble that he got in within the
9 controlled setting all suggest that he can't control that
10 behavior.

11 Q. Do you believe that Mr. Nix's propensity to engage in
12 sexually violent offenses is to such a degree that he is
13 more probably than not to re-offend?

14 A. Yes.

15 Q. Do you believe Mr. Nix poses a menace to the health
16 and safety of others if he's not committed to a secure
17 facility for long-term control, care and treatment?

18 A. I do.

19 Q. Did you draw all of these conclusions to a reasonable
20 degree of psychological certainty?

21 A. Yes, I did.

22 MR. RUNYAN: Thank you, Dr. Gottfried. Please
23 answer any questions that Ms. Johnson may have.

24 THE COURT: Cross-examination.

25 MS. JOHNSON: Thank you, Your Honor. I beg the

1 Court's indulgence.

2 May it please the Court?

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. JOHNSON:

6 Q. Dr. Gottfried, I just have two quick questions for
7 you. Now you gave a variety of tests, almost ten of them,
8 correct?

9 A. I don't think ten tests. Let's see, MMPI, APY, PAI.

10 Q. Today we're discussing about seven.

11 A. So he took four and then I scored four, so he didn't
12 take -- the clinician administered ones are ones that I
13 score based on my interview, the rap sheet, so he was
14 administered four or five tests.

15 Q. Okay. So but in total, seven, eight? Is that the
16 number that you think that you used to make your -- to do
17 your report?

18 A. Oh, that I used? Yes. I'm sorry. I thought you said
19 that he took.

20 Q. Yeah, that you used.

21 Okay. And so can you just very briefly talk about --
22 I believe that there were seven that were including --
23 let's see. There was the MIDSA. Will you tell me what
24 that is?

25 A. Yes. So that is a multidimensional inventory of sex

1 and aggression. It is a self-report measure where it's
2 essentially a long questionnaire asking the person about
3 their sexual history, both consensual and nonconsensual,
4 it's asking about the first time they had sexual thoughts
5 and fantasies, their masturbation habits, their pornography
6 habits, arrests, and these are all things that I ask during
7 the clinical interview, but, again, in the spirit of a
8 multimethod assessment I like to do a questionnaire where
9 they're in a room alone answering questions on the computer
10 and I also like asking them the questions during the
11 clinical interview.

12 Q. Okay. And you used that MIDSA to help you come up
13 with your final opinion and to do your report and your
14 evaluation?

15 A. Correct.

16 Q. And on that MIDSA in this particular case that was
17 administered to Mr. Nix, you did mention that from -- that
18 there was no evidence of sexual interest in children,
19 sexual violence, sexual preoccupation; is that correct?

20 A. No, I wrote that there was no evidence that he was
21 reporting those things, so.

22 Q. Okay.

23 A. But I also noted on the validity scales that he likely
24 was responding in a defensive manner regarding sexual
25 behavior.

1 Q. All right. And to that end you also said that for
2 self-management scales there was some evidence to rules
3 and supervisions because of his prior delinquencies and
4 his adult conduct disorder, but no evidence of lifestyle
5 impulsiveness or dysfunctional coping; is that correct?

6 A. Right. So the questions that he answered, he was
7 not -- it's kind of a check box, so he wasn't check --
8 he wasn't checking in the box of behaviors suggesting
9 impulsivity for the self-report.

10 Q. Okay. And so you're saying that this MIDSA, the
11 only thing that you're looking at is what he's reporting.
12 You're not actually comparing them to data and coming up
13 with -- using an analysis to come up with a number, it's
14 only about what he's reporting?

15 A. Well, I would say both. So it's a self-report where
16 there's these long boxes where it's like when you were
17 under the age of eighteen, did you ever steal a car, did
18 you ever set a fire, so you're check-marking it. Then you
19 are -- like when you interpret the test, you're comparing
20 their responses to both a community sample of men who were
21 never charged with or convicted of sexual offenses and also
22 comparing their responses to other men incarcerated for
23 sexual offenses. So you're looking at individually what
24 he reported and then looking at the prevalence of those
25 reports compared to those -- to normative or comparison

1 groups.

2 Q. Okay. You also said that he didn't significantly
3 elevate the child molestation scales, the supplemental
4 scales relevant to sexual age preferences, cognitive
5 distortions relevant to sexual age preferences,
6 sexualization scales, problematic sexualization scales,
7 sexual sadism scales, expressive aggression scales or
8 psychopathy-related scales; is that correct?

9 A. That's correct. So on the self-report, again, he
10 had some, I think, positive depressive management, he
11 had some defensiveness about sexual behavior, he wasn't
12 reporting ever engaging in any illegal or nonconsensual
13 sexual behaviors, so he didn't elevate any of those scales
14 because he didn't endorse any of them.

15 Q. And to that end also you gave him this -- it's the
16 Hare Psychopathy. Is that how you pronounce it?

17 A. I scored him on the Hare Psychopathy Checklist
18 Revised, correct.

19 Q. Okay. But the DSM-5 does not actually say that this
20 psychopathy is a personality disorder per se, correct?

21 A. So psychopathy is not in the personality disorder
22 diagnostic section of the DSM-5-TR, it is in the Section --
23 newer Section 3. So when you look at dimensional models
24 of personality pathology, it is a -- part of a personality
25 disorder, but -- but, yes, when I have somebody who meets

1 diagnostic criteria for psychopathy, I discuss in detail
2 about how like that language is not used in the DSM, but
3 it's a recognized personality disorder that is recognized
4 in the field, but he doesn't meet for it.

5 Q. Also one of the things that you mentioned is that past
6 behavior is the best predictor of future behavior, right?

7 A. It is one of them, yes.

8 Q. Yeah. But in this case with Mr. Nix, before the
9 allegations and convictions that brought us here today for
10 the sexually violent offenses, he didn't have any other
11 victims, child victims or anything like that in his past,
12 correct?

13 A. That's correct. So he was charged with the two
14 counts of criminal sexual conduct and then while he was in
15 the detention center he was charged with the exploitation
16 of a minor charges and then when he got out on community
17 supervision that was part of his revocation. But, correct,
18 prior to the criminal sexual conduct he didn't have sex
19 offense charges or convictions.

20 Q. Okay. And as far as you could tell based on your
21 evaluation, his relationships -- outside of the offenses
22 that he served time for, his relationships, sexual,
23 romantic in nature, were all you with -- consensual,
24 correct?

25 A. There was a report that he might have had a

1 15-year-old girlfriend when he was an adult, but that
2 wasn't something that he was charged with.

3 Q. Are you talking about the one where he was -- his
4 wife, the girl he was married to?

5 A. I don't know that that's what I'm referring to. I'm
6 referring to one of the pictures.

7 Q. Oh, you're talking about one of the -- from community
8 supervision?

9 A. No. From the exploitation of a child. So some of
10 the pictures were of the reported victims and then two or
11 three -- in the forensic interviews it said it was his
12 15-year-old girlfriend.

13 Q. Okay. But are you talking about still in the realm
14 of those convictions, charges that ultimately led to him
15 spending the fifteen years in prison?

16 A. Yes.

17 Q. Okay. But before then --

18 A. Oh, no. Sorry. He wasn't charged with that. That
19 was just noted that he at some point when he was an adult
20 had a 15-year-old girlfriend.

21 Q. Okay. So before then he was married, correct?

22 A. Yes.

23 Q. All right. To somebody sort of in his age range,
24 appropriate age range for him, yes?

25 A. To my knowledge, yes. I'd have to look at the

1 records, but --

2 Q. And you don't have any allegations -- other than what
3 you mentioned, you don't have a long list of sexually
4 violent offenses, beating up women, raping women, other
5 children, anything like that, correct?

6 A. He self-reported I believe to Dr. Gillen some domestic
7 violence, but no charges for that.

8 Q. Okay. And then after you mentioned him in the
9 Department of Corrections, no sexual offenses he was
10 charged with there?

11 A. That's correct.

12 Q. Okay. And it's not uncommon for people to be charged
13 with sexual offenses while serving time at the Department
14 of Corrections, correct?

15 A. It's not uncommon. It's typically more in line of
16 like what they're aroused by, but, yes, we see sexual
17 offenses within the prison.

18 Q. Okay. And none -- none while he was in prison?

19 A. As I indicated, none of his disciplinaries were for
20 sexual behavior.

21 Q. Okay. And so basically the sum total of what you've
22 been able to use for your evaluation, confirm for your
23 evaluation, are sort of limited to these allegations and
24 convictions regarding his daughter, his relative?

25 A. The daughter and the stepdaughters and then the

1 material discovered in 2022.

2 Q. Okay. And are you talking about the community
3 supervision material?

4 A. Correct.

5 Q. Okay. So -- but while he was a juvenile, we don't
6 have anything like that, correct?

7 A. Nothing that I know of.

8 Q. And most of his juvenile offenses were related to
9 theft and property crimes, fights, that sort of thing?

10 A. Yeah. He might have gotten arrested after he was
11 expelled for fighting, but the ones that I'm thinking of
12 they all were related to grand theft or theft, larcenies,
13 things like that.

14 Q. Okay. And I noticed that you did take issue and said
15 that he's not accountable for his behavior or that it's
16 your opinion that part of the issue is that he's not
17 accountable for his behavior. That's one of the reasons?

18 A. I think it's less of -- I would agree with that, but I
19 think it's less that he's not accountable and more that he
20 is saying that he doesn't have any problems, that he's not
21 a high risk and that's what I think is gonna impair his
22 functioning when he gets out.

23 Q. And you noted that he is denying the original charges?

24 A. Yes. He said that he never had sexual contact with a
25 daughter or a stepdaughter.

1 Q. Do you have any indication that she recanted?

2 A. I don't.

3 Q. Okay.

4 A. I have his self-report that he told me that she was
5 going to, but I have no -- nothing else other than him
6 telling me that she had changed her story.

7 Q. When you talked about 99R score and you said -- what
8 are the parameters? Like what are the scores you could
9 get, the minimum and the maximum on that 99?

10 A. I always get them confused. One's negative 2 and
11 one's negative 3, but let me tell you the correct answer.
12 The Static-99 ranges from negative 3 to 12.

13 Q. Okay. And is that the one that you scored him as a 2?

14 A. He was scored a 2 on the 99, correct.

15 Q. And can you tell me what then that translates to in
16 laymen's terms? Like what that ultimately means for your
17 findings.

18 A. That places him at average risk. So compared to all
19 of the people from those large studies that compared people
20 who went onto sexually re-offend from those who didn't, his
21 score was actually the mean score. So the average score of
22 that whole sample.

23 Q. Okay. And I noticed in your report you mentioned
24 something about between five and fifteen would be charged
25 or convicted?

1 A. That has nothing to do with a 2. That is the known
2 recidivism rate. So individuals who are convicted of
3 sexual offenses about 5 to 15 percent of them will go onto
4 sexually re-offend.

5 Q. Okay. And you put him in about that range?

6 A. He was -- not him because there's no test that we can
7 give someone that's gonna tell you his exact likelihood of
8 re-offending sexually, but other people with the same
9 score, that was their risk profile.

10 Q. So this evaluation, while you do it, you sort of --
11 and you've alluded to it, that it just kind of gives you a
12 scientific look at things, but you can't necessarily say
13 that my client, Mr. Nix, is actually going to re-offend?

14 A. Nothing could tell you that. You would have to be
15 psychic or have a crystal ball. The best you can do is
16 take your expertise, your knowledge, your experience in
17 the field, read the literature, look at the research
18 studies, administer more than one instrument and put it
19 all together. But, yeah, there's nothing in the world
20 that's going to tell you definitively about this person
21 who's sitting in front of you of their risk.

22 Q. And just very briefly, will you tell the names of the
23 other tests that you did. I think that there was about
24 seven of them that we're using here in court today.

25 A. So the ones we're using. I administer the MMPI-3,

1 the SASSI-4, the PAI, the MIDSA. That is what he took on
2 the computer. And then I also did clinician-scored, so I
3 scored him on the PCL-R, Psychopathy Checklist, I scored
4 him on the Static-99R, the Static-2002R and the
5 Stable-2007.

6 Q. And do you have any indication that since he -- since
7 this community supervision or the probation revocation that
8 he's committed any other offenses?

9 A. Just by his self-report.

10 Q. Okay. But you don't have any indication that he's
11 currently using drugs or anything like that?

12 A. No indication of that.

13 Q. All right. And so your report and your evaluation
14 really references your knowledge of him actually using
15 drugs in the past?

16 A. I'm not sure I understand that question.

17 Q. Well, you have confirmed that he's used drugs in the
18 past, correct?

19 A. He -- I would say yes. He confirmed it and the failed
20 urine drug screen.

21 Q. Okay. But you have not confirmed or you cannot say
22 that he's currently using drugs?

23 A. He said that he is not and I have no information to
24 the contrary.

25 MS. JOHNSON: I beg the Court's indulgence, Your

1 Honor.

2 BY MS. JOHNSON:

3 Q. Dr. Gottfried, you work at the Medical University of
4 South Carolina?

5 A. Yes.

6 Q. Okay. And is that like a state agency?

7 A. Yes, it -- I don't really know how to answer that
8 question. So there's like the university is a percentage
9 of a state agency, so it's a private medical school, but I
10 also work for the State and I get State benefits. So I
11 don't know how to answer that question. It's not a hundred
12 percent a state agency, but we are -- or at least I get,
13 you know, the State insurance plan.

14 Q. Okay. It's State-funded? Is it State-funded?

15 A. I think so. I mean, yes, they get some of their
16 funding from the State, but not a hundred percent. But
17 that I can't answer.

18 Q. And out of the evaluations that you do right now, how
19 much are they -- how much is MUSC charging?

20 A. For Mr. Nix or currently?

21 Q. Currently.

22 A. So right now for a sexually violent predator
23 pre-commitment evaluation it's 6,400.

24 Q. And for Mr. Nix how much was it?

25 A. That was back -- the old contract. That was 5,400.

1 Q. Are you guys like a research facility or a teaching
2 facility as well?

3 A. All of the above.

4 Q. Both of them. Okay.

5 MS. JOHNSON: I beg the Court's indulgence, Your
6 Honor.

7 Your Honor, I have no further questions.

8 THE COURT: Redirect.

9 MR. RUNYAN: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. RUNYAN:

12 Q. Dr. Gottfried, you were asked about the self-report
13 test that Mr. Nix performed and I just want to get some
14 clarification here. Ms. Johnson asked you about things
15 that he -- you said he didn't, you know, raise the child
16 molestation scale, he didn't raise the sexual sadism scale,
17 you said that there was no evidence reporting sexual
18 interest in children or sexual violence or that there was
19 no evidence of lifestyle involvement, but just clarify for
20 us, those -- are you saying those were the answers he gave
21 you?

22 A. Yes, it's all self-report.

23 Q. Okay. So you weren't saying that he didn't -- it's
24 not your opinion he doesn't have those characteristics,
25 it's just that he didn't report them; is that right?

1 A. That's correct. I mean, he was denying all
2 problematic sexual behavior and he did that during the
3 interview and also on the computer to the MDSA.

4 Q. You were also asked about whether or not he had age
5 appropriate consensual sexual relations. At the time he
6 was offending, was he -- was he married?

7 A. I believe he was still married, yes.

8 Q. Was he living with the wife and the children at the
9 time?

10 A. My understanding is that the mother of the children
11 was not his wife, it was just a partner, but I might be
12 incorrect on that.

13 Q. Was he living with someone at the time that he could
14 have age appropriate sexual relations with?

15 A. Yes.

16 Q. Did he indicate to you that he was having those type
17 of relations?

18 A. No.

19 Q. And this was when he offended against his daughter; is
20 that right?

21 A. Yes.

22 Q. Okay. You were asked about the -- well, I think you
23 were only asked about the Static-99R and you had said you
24 scored him at 2 in the average risk category; is that
25 correct?

1 A. Yes.

2 Q. But you weren't asked, and I just want to clarify, you
3 also scored the Static-2002R; is that right?

4 A. Yes.

5 Q. And what --

6 MS. JOHNSON: Your Honor, I object. Of course, this
7 is out of the scope of my cross-examination at this point.

8 THE COURT: Well --

9 MR. RUNYAN: I think she opened the door.

10 THE COURT: -- the question was about which test she
11 used, right?

12 MR. RUNYAN: Yes, sir.

13 THE COURT: I'll overrule the objection, but let's
14 see where this goes.

15 BY MR. RUNYAN:

16 Q. You scored another measure, she didn't talk about it,
17 but the implication was that you only did one, but you did
18 multiple?

19 A. Yes.

20 Q. Okay. Multiple risk assessments?

21 A. Yes.

22 Q. And overall your opinion is -- what risk category
23 would you put him in?

24 A. He is well-above average risk. He is likely to
25 sexually re-offend. He's more probably than not.

1 Q. And, again, do you receive any monies from the \$5,400
2 or the \$6,400? Do you directly received any monies from --

3 A. I don't receive any of the money. I would assume
4 that MUSC takes that money and puts some of it towards my
5 salary, but I get a monthly paycheck no matter who I do an
6 evaluation for or what I desire how much they pay. I have
7 a set salary.

8 MR. RUNYAN: Thank you.

9 No more questions, Your Honor.

10 THE COURT: Recross?

11 MS. JOHNSON: No, sir.

12 THE COURT: All right. The witness is excused.

13 Thank you.

14 (Witness excused.)

15 THE COURT: Counsel, if you-all could approach real
16 quick?

17 (Proceedings held at the bench; not reported.)

18 THE COURT: All right. Ladies and gentlemen, we'll
19 go ahead and recess for the day. If you could just plan
20 to be back in your jury room by 9:15 in the morning, so
21 we'll look to start up testimony at 9:30.

22 As I've told you once, I'll tell you again, please
23 don't discuss this case with one another or with family
24 members or with friends after you leave the courthouse
25 today. Just come on back tomorrow and we'll continue

1 with witness testimony in this matter. I think -- well,
2 I think we can finish tomorrow, but -- I better not
3 promise it, but I think we will. We'll certainly finish
4 Wednesday if we don't finish tomorrow.

5 But otherwise don't do any independent research about
6 the case or any of the people involved in the case. We'll
7 see you back here tomorrow morning at 9:15 and for some
8 reason if we have one of these crazy traffic mornings or
9 you're behind schedule, make sure you give the clerk's
10 office a heads-up so we know not to worry about you.

11 All right. See you-all in the morning. Have a good
12 night.

13 (Whereupon, the jury was excused for the day at
14 4:20 PM.)

15 THE COURT: Okay. Anything else for the record
16 today?

17 MS. JOHNSON: No, sir.

18 MR. RUNYAN: Just, Your Honor, we'd ask Dr. Gottfried
19 be released from her subpoena.

20 MS. JOHNSON: No objection.

21 THE COURT: Doctor, thank you for being here today.

22 All right. We'll see you tomorrow morning bright and
23 early.

24 (Whereupon, the proceedings were concluded for
25 August 12, 2024, at 4:22 PM.)

1 (The following proceedings were held August 13, 2024,
2 beginning at 9:24 AM.)

3 (State's Exhibit Number 4 was marked for
4 identification.)

5 BAILIFF: All rise. Court's now in session. The
6 Honorable Judge Walton J. McLeod presiding.

7 THE COURT: All right. On the Cellebrite report
8 objection, all right, Mr. Runyan, I just got your --

9 MR. RUNYAN: I did have something to offer on that
10 report, Your Honor.

11 THE COURT: Okay.

12 MR. RUNYAN: I went through last night and determined
13 that I don't have an issue redacting out of images of the
14 female and minor child or all of the pornographic websites
15 and just proceed with that.

16 THE COURT: All right. So you intend to offer the
17 Cellebrite phone with the thumbnail images redacted.

18 MR. RUNYAN: The images of the female and the child.
19 His image, I think, is okay.

20 THE COURT: Fair enough. Okay. We're on the same
21 page. And then you will not have the actual listing of
22 the pornographic websites --

23 MR. RUNYAN: That's correct.

24 THE COURT: -- but there will be testimony that there
25 were pornographic websites on the phone.

1 MR. RUNYAN: That's correct.

2 And our witnesses being -- you know, he's the one
3 who downloaded pictures. I think he should be allowed to
4 describe what he saw in those pictures, but simply a naked
5 female and a naked child in the shower, but not have the
6 actual image.

7 THE COURT: Okay. Well, I wrote this out this morning
8 and I don't think I need it now.

9 That's essentially -- Ms. Johnson, I mean, of course,
10 I'm sure you'd like to have the whole thing excluded, but
11 that's --

12 MS. JOHNSON: I think that's reasonable, Your Honor.

13 THE COURT: All right. So I think we can proceed
14 forward based on that.

15 You know, it's 9:25. If the jury's here, are you-all
16 ready to roll?

17 MS. JOHNSON: I just need to get set up, Your Honor,
18 but that will take two minutes.

19 THE COURT: All right. I'll try to make this as
20 seamless as possible. I am gonna have to take a short
21 break around ten for a conference call. It shouldn't take
22 more than ten to fifteen minutes and then, you know --

23 MR. RUNYAN: That's fine.

24 THE COURT: I'll try to wave at you if you're still
25 on direct and just try to find a question --

1 MR. RUNYAN: I'll try -- if I'm around ten minutes
2 or five minutes till and I'm at a stopping point, I'll
3 just ask to approach and we can -- do you want me to do
4 that?

5 THE COURT: Well, yeah. I mean, I'm not gonna stop
6 us until right about ten.

7 MR. RUNYAN: Okay. So go until ten?

8 THE COURT: All I've got to do is go out there and
9 initiate this call. I appreciate your patience.

10 (Discussion between counsel.)

11 THE COURT: All right. Mr. Runyan, I don't mean
12 to interrupt you and Ms. Johnson, but as far as the
13 State's proposed jury charge, I've added two small
14 paragraphs at the very end, which I always say, I now
15 ask that you return to your jury room, but don't begin
16 your deliberations until you're told to do so, I've got
17 to take up some other matters with the attorneys, and I
18 also say I'll give you a copy of these instructions in
19 written form, they have to refer to the instructions as
20 a whole and not ignore some and follow some portions of
21 it; otherwise, it's basically the State's charge, okay?

22 MS. JOHNSON: Your Honor, I think you had in your
23 charge, and I didn't see it in the State's, but sympathy?

24 THE COURT: He has a sympathy paragraph. It's not
25 as long as mine, but it's on the next to the last page,

1 I believe. I'm sorry. It's the last page. Your verdict
2 in this case cannot be based upon sympathy, passion,
3 emotion or some other consideration not found in the
4 evidence, and remember your verdict has to be unanimous,
5 so similar.

6 MS. JOHNSON: Okay. Yes.

7 THE COURT: All right. I don't mean to rush you,
8 Ms. Johnson, do you need some more time with your client?

9 MS. JOHNSON: No. Oh, yeah. Just one second.

10 THE COURT: Thank you.

11 MS. JOHNSON: Your Honor, we are ready.

12 THE COURT: All right. Is the State ready to proceed
13 with their next witness?

14 MR. RUNYAN: Yes, Your Honor.

15 THE COURT: Let's bring in the jury.

16 (Whereupon, the jury enter the courtroom at
17 9:31 AM.)

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen of the jury, welcome back. I hope you had a
20 nice evening. And we're gonna pick up where we left off
21 yesterday with the next witness in the State's case in
22 chief.

23 MR. RUNYAN: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. RUNYAN: The State would call Chris Catoe.

1 (Whereupon, Chris Catoe was duly sworn by the Clerk
2 of Court.)

3 THE CLERK: Please be seated in the witness stand
4 and once you are seated, if you'd please state your name
5 and spell your last name for the record, please.

6 THE WITNESS: My name is Chris Catoe. Last name is
7 spelled C-A-T-O-E.

8 CHRIS CATOE,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. RUNYAN:

12 Q. Good morning, Mr. Catoe. Could you tell us where
13 you're employed?

14 A. The Department of Probation, Pardon and Parole.

15 Q. How long have you worked there?

16 A. I've worked there for -- going on twenty-seven years.
17 I started in '97.

18 Q. And in what capacities have you worked there?

19 A. I started in IT as assistant network manager and
20 then promoted into IT operations manager. I was in that
21 position for eighteen years and then in 2019 I started
22 the forensic unit and I've been doing that for a little
23 over five years.

24 Q. So you're in the forensic unit now?

25 A. I am.

1 Q. What are your duties in the forensic unit?

2 A. Basically I support our sex offender caseload agents.

3 When they confiscate a device or a computer, any kind of

4 digital device that they either suspect or have seen

5 evidence of violations on, they bring it to our central

6 office on Greystone where our property and evidence is

7 and then they notify me that they've confiscated a device

8 and if I can do a forensic analysis on it and look for any

9 evidence I might found.

10 Q. Do you have any training in the field of digital

11 forensics?

12 A. I have.

13 Q. Could you explain? Just give us a brief overview of

14 your training.

15 A. I have about 170 hours of forensic training. I have

16 certifications; three with Cellebrite, one with BlackLight,

17 which is another company that actually got bought by

18 Cellebrite, so.

19 Q. And what is Cellebrite?

20 A. Cellebrite is a digital forensic tool. Probably the

21 one most widely used by law enforcement. It's what I use

22 to extract data off the phone, basically cell phones, and

23 then analyze that data and extract any evidence I might

24 find.

25 Q. And how many of these forensic extractions have you

1 performed in the five years you've been doing this?

2 A. For Cellebrite, about 230 Cellebrite extractions.

3 Q. And other extractions?

4 A. About a thousand. That's with Magnet Axion I use for
5 computers. Autopsy is another one I've used before. It's
6 about four or five. I usually focus right on Cellebrite
7 for phones and Magnet for the computers.

8 Q. Have you previously testified in South Carolina
9 courts?

10 A. I have in revocation hearings.

11 Q. About how many times?

12 A. Four times.

13 Q. Four times.

14 MR. RUNYAN: Your Honor, at this time I'd like to
15 introduce the witness as expert in digital forensics.

16 THE COURT: Any voir dire?

17 MS. JOHNSON: Briefly, Your Honor.

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

19 VOIR DIRE EXAMINATION

20 BY MS. JOHNSON:

21 Q. Mr. Catoe, you said you've only testified in probation
22 revocation hearings?

23 A. Correct.

24 Q. And were any of those in front of a jury?

25 A. No, ma'am.

1 Q. And how often have you done that?

2 A. It's four times in the five years I've been here and
3 usually I've been called on just to like explain the report
4 to the judge or whatever.

5 Q. And during those times, were you ever cross-examined?

6 A. No.

7 Q. Okay. Did you ever have any evidence that you offered
8 during those times?

9 A. Just explaining the evidence that I find. Kind of
10 like what I'm here to do today, to explain the report.

11 MS. JOHNSON: I have no further questions, Your
12 Honor, but I would ask to approach the bench.

13 THE COURT: Very well.

14 (Proceedings held at the bench; not reported.)

15 THE COURT: The Court will qualify this witness as
16 an expert in Cellebrite phone analysis, phone examination,
17 and to give opinion testimony in that area. It doesn't
18 mean you have to accept the opinion, but it's evidence
19 for you to use in any way you see fit.

20 MR. RUNYAN: Thank you, Your Honor.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. RUNYAN:

23 Q. Mr. Catoe, can you tell us what an extraction is?

24 A. An extraction is -- there's two basically pieces of
25 software that Cellebrite uses, one is UFED, U-F-E-D, which

1 stands for Universal Forensic Extraction Device. It's what
2 I used to actually extract the data off the phone. I don't
3 know how much into the weeds you might want to get on this,
4 but I basically put the phone into developer mode and then
5 activate USB debugging, which allows me to connect the
6 phone to my computer and have them communicate so they can
7 extract files from it, and then I choose whatever drive or
8 package that fits that phone, depending on the model and
9 the make and that kind of thing, and then it extracts the
10 data, and then I use a second program called Cellebrite
11 physical analyzer and that actually takes that data and
12 examines it and extrapolates whatever I need, pictures,
13 videos, browser histories, phone contacts, anything like
14 that it will extract from that, and then I'll go through
15 and look through that data pulling out anything to tag for
16 reports.

17 MR. RUNYAN: Approach the witness, Your Honor?

18 THE COURT: Very well.

19 BY MR. RUNYAN:

20 Q. I'll give you this document that's been premarked
21 State's Exhibit 4. Mr. Catoe, do you recognize that
22 document?

23 A. I do.

24 Q. How do you recognize it?

25 A. It is a copy of the report I did for the Newberry

1 probation office.

2 Q. And did you issue that report?

3 A. I did.

4 Q. Is there anything different from that report than your
5 original report?

6 A. It looks like a lot of the images and verbiage and the
7 browser history have been redacted.

8 Q. Okay. So knowing that, do you believe it's still an
9 accurate representation or copy of your report?

10 A. It is.

11 MR. RUNYAN: Your Honor, I'd ask to enter into
12 State's evidence what's been premarked as Exhibit 4.

13 MS. JOHNSON: No objection.

14 THE COURT: Without objection, so Defense Exhibit 4
15 is admitted into evidence.

16 (State's/Petitioner's Exhibit Number 4, a Cellebrite
17 Extraction Report, was admitted into evidence.)

18 BY MR. RUNYAN:

19 Q. Mr. Catoe, why did you issue this particular report?

20 A. I was contacted by Agent Lindsey Brown who conducted
21 a home visit of Mr. Nix and during that home visit they
22 did a manual search on the phone just kind of looking at
23 his pictures, videos and browser history and they noticed
24 there were some images and some browser history in there
25 that constituted violations of his supervision and so they

1 confiscated it and then contacted me to tell me about the
2 confiscation and asked me to do a forensic examination on
3 the device and see what I could find.

4 Q. And how did you get involved in this case today?

5 A. I was contacted by yourself to speak upon this report.

6 Q. Were you paid for your testimony?

7 A. No, sir.

8 Q. Were you promised anything in return for your
9 testimony?

10 A. No, sir.

11 Q. Did anyone force you to come here today and testify?

12 A. No, sir.

13 Q. Okay.

14 MR. RUNYAN: Your Honor, I'd like to publish the
15 report for the jury.

16 THE COURT: Okay. Are you gonna publish it on the
17 screen up there?

18 MR. RUNYAN: Yeah.

19 BY MR. RUNYAN:

20 Q. Can you see this, Mr. Catoe?

21 A. I can.

22 Q. I'll zoom in little bit here. This is helpful. Let's
23 try one more. No, that's too much.

24 Mr. Catoe, I just want to ask you a few questions
25 about this report. Right here in this area under summary,

1 could you please just outline for us what this is?

2 A. That's basically the -- what version of physical
3 analyzer I used, the date that it was created, the time,
4 my name, examiner, what county I was doing the report for,
5 the person whose device it was, and then the evidence
6 number from our property and evidence room, and then, of
7 course, where I am located, central office, and then the
8 agency and the investigator, which is our sex offender
9 caseload agent, Lindsey Brown.

10 Q. And what date did you do this report?

11 A. The 27th.

12 Q. 27th of?

13 A. Of January, 2022.

14 Q. And just moving down here, Mr. Catoe, in the section
15 called source extraction, could you explain to us what it
16 is we're looking at here?

17 A. So these are the different type of extractions I do.
18 Usually -- I mean, no one extraction works a hundred
19 percent of the time. Especially with Android phones. You
20 have a lot of different types of clones out there, unlike
21 Apple, which is pretty proprietary. So you can try
22 different ones. Advanced logical is one of the three
23 types of extractions you can do. You can do a physical
24 extraction, a file system, and then an advanced logical.
25 So that was the advanced logical that I used with two

1 separate drivers to see if I could get different
2 information.

3 Q. And what type of phone was this?

4 A. This was a Revvl or a Revvl 2 I think it was.

5 Q. Is that here --

6 A. Yes.

7 Q. -- under device name?

8 A. Right. The first one it looks like it used a generic
9 driver because it didn't really have an exact match for
10 some of these phones like this. They've a lot of clone
11 phones out there that, you know, they haven't come across
12 yet and as they do they'll update the software to add those
13 new phones.

14 Q. Okay. Let's move here. Now this section here, this
15 is all still part of the extraction?

16 A. Correct. That's when I did the actual device screen
17 shots. So the program will -- as I'm scrolling through the
18 phone, it will actually take a screen shot of exactly what
19 I'm looking at on the screen of the phone, so it actually
20 looks just like the phone looked when I was looking at it.

21 Q. And you took -- this took screen shots of his phone in
22 this case?

23 A. Correct. I used the screen shots to take pictures of
24 browser history and then there was an Instagram profile I
25 took a screen shot of.

1 Q. And just moving on here and just for our sake, not to
2 say what these are, but what type of files are these?

3 A. That was a text message that they wanted me to pull
4 out. It was for some separate thing they were working on.

5 Q. And these were all text messages?

6 A. Correct. Yeah, that's the text message string they
7 wanted me to document.

8 Q. And let me zoom through here.

9 A. This just show the conversation, when it happened,
10 those kind of things.

11 Q. I want to get down here to these data files. How many
12 data files does it say right there?

13 A. Eight.

14 Q. Okay. Now number one here, could you tell us what --
15 explain to us what we're looking at here. What is this
16 information over here?

17 A. So this was a screen shot that was taken during a
18 video chat. It was pulled from program Messenger. So
19 I think there was eight different screen shots that
20 lasted between the first and the last screen shot about
21 55 seconds.

22 Q. And what date were these screen shots taken?

23 A. On January 24th.

24 Q. Tell us what this means here. What are these -- this
25 nudity and suspected --

1 A. Cellebrite has like different filters you can click
2 on, so it will look for firearms, drugs, nudity. CSA is
3 child sex abuse. And then it uses an algorithm built in
4 to pull those out. It just helps to filter. Some phones
5 have thousands of images you have to go through, so it
6 helps filter through two or three thousand images.

7 Q. Now this right --

8 A. And that's the percentage that it saw for whatever
9 algorithm it runs.

10 Q. And this right here, what's this time here?

11 A. That's the timestamp of when that snapshot was taken.

12 Q. Now did you actually see these snapshots?

13 A. I did.

14 Q. Okay. Could you just explain for us what you saw in
15 those images?

16 A. They were just snapshots that looked like a video,
17 half with the upper half being one of the person on the
18 chat, the bottom half being the person on the other end of
19 the video chat. The top was Mr. Nix. The bottom was a
20 young female and a child in the shower.

21 Q. Okay. And was that consistent across all eight
22 thumbnails?

23 A. Correct. It looked like they were taken -- they were
24 taken in different points in time over a 55 second period
25 of time during that video.

1 Q. So this one's 10:44:38; is that right?

2 A. Correct.

3 Q. So this next one here, number two, was it taken at
4 10:44:21?

5 A. Yes.

6 Q. And, again, this is -- this is what this image
7 suspects?

8 A. Correct. That's what Cellebrite -- that's the
9 algorithm Cellebrite uses to pull it out, so it was
10 basically 95 percent positive for nudity in the image.

11 Q. Is this consistent with what you saw in the pictures?

12 A. Yes.

13 Q. And I'm not gonna go through all of these, but there
14 were like you said at different times over you said
15 55 seconds?

16 A. Over 55 seconds, yes.

17 Q. There were eight different images?

18 A. Correct.

19 Q. Okay. And they were all consistent with --

20 A. Yes.

21 Q. -- with what the suspected nudity and CSA was?

22 A. Right. And then, you know, each image, you know, the
23 person would move in a different way, so they were taken
24 over a course of time, but I don't know how long the actual
25 video chat took. It could have been sixty minutes, it

1 could have been sixty seconds. I don't know. I just know
2 the time it took to take the snapshots was over a 55 second
3 period.

4 Q. Okay. Now the only other thing I want to ask you
5 about this report, and I'm gonna go down but it's not gonna
6 tell us much, you're gonna have to tell us, Mr. Catoe, this
7 right here, what are these screen shots here?

8 A. Those are the screen shots of his browser history as I
9 saw them on his phone.

10 Q. Okay. And were there different types of -- different
11 types of websites he had -- or the screen shots showed that
12 had been visited?

13 A. Right. I mean, he had a lot of websites there. The
14 ones I took screen shots of were particular to pornographic
15 websites that he visited.

16 MR. RUNYAN: I have no further questions, Your Honor.
17 Please answer any questions that Ms. Johnson may have.

18 THE COURT: Cross-examination.

19 MS. JOHNSON: Very briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. JOHNSON:

22 Q. Mr. Catoe, you were not there during the conversation
23 that may have occurred that you saw on these pictures,
24 right?

25 A. No.

1 Q. Okay. But -- and you mentioned though that there were
2 images of two people in the picture --

3 A. Correct.

4 Q. -- these pictures? And, I'm sorry, I'm talking about
5 there were two females in the pictures?

6 A. Correct. There was -- one side was a male, the bottom
7 part was a young female and then a child in the shower.

8 Q. And when you say young female, you don't mean a female
9 who was like nine, ten years old?

10 A. No, I'm talking about young, like twenties maybe. I
11 couldn't tell. The pictures are very small, so I couldn't
12 really get an age of it, but --

13 Q. You mean an adult female?

14 A. Correct.

15 Q. Okay. And the pictures that you saw, they don't
16 actually depict sex acts, correct?

17 A. No, they were just in the shower together.

18 Q. Okay. And on the actual pictures that you saw of the
19 two women, they weren't -- was there another picture of the
20 man with them? Was it a screen shot that included both?

21 A. It was. It was kind of like a split screen where
22 one person on one side, you know, you could see the face,
23 and the other picture from the other side. If they were
24 closer up to the phone, they would show the two faces, but
25 they were a distance from wherever the cameras was set up

1 -- or the phone was set up.

2 Q. Okay. But on their face they were not in and of
3 themselves -- the pictures of the two girls, they were not
4 in and of themselves sexual on their face?

5 A. No, they were just in the shower bathing or whatever.

6 Q. Okay.

7 MS. JOHNSON: I have no further questions, Your Honor.

8 THE COURT: Any redirect?

9 MR. RUNYAN: No, Your Honor.

10 THE COURT: No?

11 MR. RUNYAN: No.

12 THE COURT: All right. The witness may step down.

13 Without objection the witness is excused?

14 MS. JOHNSON: No objection.

15 THE COURT: All right. Thank you, Mr. Catoe.

16 (Witness excused.)

17 THE COURT: Any further witnesses?

18 MR. RUNYAN: At this time, Your Honor. The State
19 would rest.

20 THE COURT: Ladies and gentlemen, the State has
21 rested their case. I've got some matters to take up
22 with the attorneys at this time. I'll ask you to head
23 on back to the jury room, refresh yourselves, and I'll
24 get you back out here once I'm done discussing these
25 matters with the attorneys.

1 Please don't discuss the case while you're in the
2 jury room.

3 Thank you.

4 (Whereupon, the jury retires to the jury room at
5 9:52 AM.)

6 THE COURT: Ms. Johnson.

7 MS. JOHNSON: Your Honor, at this time we would
8 move for a directed verdict. Our argument is that while
9 the State may have proven that my client has a mental
10 abnormality, they have not proven that he has to be
11 involuntarily confined such that he would be -- because
12 that mental abnormality would cause him to be a menace
13 to society.

14 THE COURT: All right. Any response from the State?

15 MR. RUNYAN: Your Honor, as you know, in a directed
16 verdict motion you look the evidence in the light most
17 favorable to the nonmoving party and it's not the weight
18 of the evidence, but the existence of the evidence. We
19 have two things to prove; whether we he has a mental
20 abnormality or personality disorder -- I'm sorry, whether
21 he has a conviction and whether he has a mental abnormality
22 or personality disorder that makes him likely to engage
23 in acts of sexual violence. Dr. Gottfried testified in
24 her expert opinion that he has two qualifying convictions
25 and that he does have a mental abnormality, antisocial

1 personality disorder, and that he's in the above average
2 or well-above average risk category to re-offend sexually
3 if not confined. We think that's more than enough evidence
4 to submit this case to the jury.

5 THE COURT: Anything else?

6 MS. JOHNSON: No, sir.

7 THE COURT: All right. I'll respectfully deny the
8 motion for directed verdict. I think the jury heard
9 enough evidence where they will have to make the decision
10 whether the State has met their burden of proof. I don't
11 see any reason to dismiss the matter at this time. I'm
12 certainly -- I'm most concerned with the existence of
13 evidence and not its weight at this point, and so I find
14 there's enough evidence where the jury could find one way
15 or another and we'll give them an opportunity to do that
16 at the appropriate time. So the motion for directed
17 verdict is denied.

18 That timing actually worked out perfect. So I've got
19 to take a short recess, probably about fifteen minutes,
20 and you can sort of have some time to get your ducks in a
21 row for your case and we'll get started after that.

22 Is your first witness here?

23 MS. JOHNSON: I'm gonna check, Your Honor. I think
24 he is though.

25 THE COURT: We're a little ahead of schedule in my

1 mind, so.

2 Let me ask you-all a question.

3 (Proceedings held at the bench; not reported.)

4 THE COURT: All right. Mr. Nix, if you could just
5 stand up real quick and raise your right hand.

6 (Whereupon, Phillip Byron Nix was duly sworn by the
7 Court.)

8 THE COURT: All right, sir. Mr. Nix, this is not a
9 criminal case. It's a civil case, but it has sort of a
10 general sessions, criminal burden of proof beyond a
11 reasonable doubt.

12 We've come to the point of the case where it's time
13 for you to put your case up. And you certainly have a
14 right to testify if you decide to, but I don't think
15 anybody is gonna make you testify, so it's a decision
16 that's up to you, but I just want to give you a little
17 bit of information about that.

18 We've now reached the stage of the trial where you
19 may present your defense. You have the right to claim
20 the protections given to you by the Fifth Amendment of
21 the Constitution of the United States, which states, in
22 part, no person shall be compel in a criminal case to be
23 a witness against himself. Now, again, not a criminal
24 case, but obviously the subject matter here involves
25 criminal cases, so in an abundance of caution that's why

1 I'm advising you of these rights, okay?

2 THE RESPONDENT: Yes, sir.

3 THE COURT: That means you cannot be required to
4 testify in this case. You have the right testify on
5 your own behalf, however, no one can make you testify.
6 This is a personal right and no one can waive this right
7 except you. If you decide to testify, you'll be subject
8 to the same rules that govern other witnesses. You may
9 be examined and cross-examined on any relevant issue in
10 this case. In addition, if you have any convictions
11 involving dishonesty or a false statement or for crimes
12 punishable by imprisonment for more than one year and this
13 Court determines that the probative value of admitting
14 this evidence outweighs its prejudicial effect to you,
15 the State will be able to introduce your record to attack
16 your credibility.

17 Do you understand that?

18 THE RESPONDENT: Yes, sir.

19 THE COURT: Now if you decide to testify, this
20 decision must be made freely on your part, voluntarily,
21 intelligently, with knowledge of the protections given
22 to you by the Fifth Amendment and the consequences of
23 your decision to testify. Again, a civil case.

24 I'm at the portion now where we talk about -- I
25 would instruct the jury not to even consider the fact

1 that --

2 MR. RUNYAN: Yeah, I don't think that applies here.

3 THE COURT: Okay. That's why I'm bringing it up.

4 So, anyway, we just wanted to endeavor to make sure
5 you were fully apprised of your rights. You're certainly
6 free to discuss this with your attorney or anyone else.

7 Would you like to do that at this time?

8 THE RESPONDENT: We've talked about it. She's
9 advised me against it, but I feel like it's in my best
10 interest. I mean, I know that everything's gonna be
11 brought up. I feel like the jury needs to hear all the
12 evidence, so --

13 THE COURT: Okay. Fair enough. So you intend to
14 testify? I didn't ment to interrupt.

15 THE RESPONDENT: I intend to testify. Yes, sir.

16 THE COURT: Okay. You intend to testify and your
17 attorney has advised you not to, but you believe it's in
18 your best interest to do so?

19 THE RESPONDENT: Yes, sir. I believe the jury needs
20 to hear all the facts in order to come up with the real
21 verdict.

22 THE COURT: That's your call. Okay. Fair enough.

23 We'll be in recess and I hope to be back out here
24 in fifteen minutes, okay?

25 Thank you.

1 (Recess taken at 10:00 AM.)

2 (Back on the record at 10:29 AM.)

3 BAILIFF: Keep your seats. Court's back in session.

4 THE COURT: Are you ready to proceed?

5 MS. JOHNSON: Just one second, Your Honor. I just
6 want to get these papers together and then I'll be ready.

7 THE COURT: All right.

8 MS. JOHNSON: Okay. Your Honor, I am ready.

9 THE COURT: All right. Let's bring them in.

10 (Whereupon, the jury returns to the courtroom at
11 10:32 AM.)

12 THE COURT: All right. Ladies and gentlemen,
13 welcome back. Folks, it's 10:30. You-all left here
14 about forty minutes ago. I want to be clear something
15 came up during the break not related to this case at all.
16 The lawyers have been ready for thirty minutes, but I
17 had something that was gonna take ten minutes and ended
18 up taking thirty, so the delay was on my part and no one
19 else's.

20 The State rested their case. We'll now have an
21 opportunity to hear from the respondent in this case.

22 Ms. Johnson.

23 MS. JOHNSON: Thank you, Your Honor. At this time
24 we'd call Dr. Christopher Gillen to the stand.

25 THE COURT: Very well.

1 (Whereupon, Christopher Gillen was duly sworn by the
2 Clerk of Court.)

3 THE CLERK: Please be seated in the witness stand
4 and once you are seated, if you'd please state your name,
5 spelling your last name for the record.

6 THE WITNESS: My name is Dr. Christopher Gillen.
7 Last name is spelled G-I-L-L-E-N.

8 CHRISTOPHER GILLEN,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. JOHNSON:

12 Q. And, Dr. Gillen, can you tell me where you work?

13 A. I work as an evaluator at the South Carolina
14 Department of Mental Health.

15 Q. How long have you worked there?

16 A. Since October of 2019.

17 Q. And when you say an evaluator, can you go into a
18 little bit more description? What does that mean?

19 A. So with the Department of Mental Health, my primary
20 responsibilities are to conduct sexually violent predator
21 evaluations for the State based on court orders that come
22 in through the courts, as well as periodic evaluations of
23 individuals listed as sexually violent predators. I'm also
24 responsible for doing other types of evaluations for the
25 State to include petitions for individuals wanting to come

1 off the sex offender registry, so I do risk assessments and
2 evaluations on that as well.

3 Q. Do you primarily work in the field of sexually violent
4 predators? Is that primarily who you're doing evaluations
5 for?

6 A. The vast majority of my work is directly with sexually
7 violent predator evaluations here in South Carolina.

8 Q. Do you have to have any particular schooling to be
9 able to do this kind of work?

10 A. So by statute there is a requirement to be licensed
11 as a psychologist or a psychiatrist in order to do these
12 types of evaluations and in addition to the licensure I
13 also have other experiences to include completing a
14 one-year postdoctoral fellowship in forensic psychology up
15 in Wisconsin that included specialized forensic assessment
16 training in both competency to go to trial for individuals
17 that have mental illnesses, violence risk assessments for
18 people who have been committed to state hospitals, sexually
19 violent person evaluations, which is the same thing as
20 sexually violent predator, they just call it something
21 different in Wisconsin, so how to do those evaluations, as
22 well as treatment of individuals who have been committed
23 as sexually violent persons in the state of Wisconsin. So
24 the whole year covered those different types of specific
25 training and experiences.

1 I've also completed a one-year clinical internship at
2 the University of Tennessee Health Science Center, which
3 included additional forensic evaluation training. So that
4 included domestic violence risk assessments on adults,
5 competency to stand trial evaluations on adults and
6 juveniles, as well as juvenile forensic evaluations for
7 people being waived to adult court.

8 So that covers most of my forensic specific area I
9 had before coming here to the Department of Mental Health.

10 Q. And in your experience with doing these evaluations of
11 sexually violent predators, have you ever been called on to
12 testify in court?

13 A. Yes, I have.

14 Q. And when you testify in court, do you testify solely
15 for the State or for the individual who has the case
16 against them? How does that work?

17 A. I have testified for both sides in these sexually
18 violent predator cases depending on what my opinion was in
19 any particular case. So in this case I'll be testifying
20 for the respondent based on the opinion that I came to in
21 this specific case.

22 Q. How many times have you testified in court regarding
23 these sexually violent predator cases?

24 A. I believe eleven times here in South Carolina.

25 Q. And was most of your work in South Carolina or

1 Wisconsin?

2 A. I'm sorry. Could you repeat the question?

3 Q. Was most of your work and your studying done in
4 Wisconsin and South Carolina or were there other states
5 that you did work in?

6 A. In terms of providing testimony or just more
7 generally?

8 Q. Just in general.

9 A. So I mentioned the University of Tennessee Health
10 Science Center for the one-year clinical internship where
11 I got some additional forensic evaluation experience, and
12 that was in Memphis, Tennessee, and before that when I
13 was completing my doctorate, that was in Hattiesburg,
14 Mississippi, for a doctorate in clinical psychology,
15 so in that training program to become a doctor I got
16 different experiences in conducting personality
17 assessments, different types of court-related evaluations
18 such as police officer candidate evaluations, is someone
19 suitable with the right psychological makeup to become a
20 police officer, different types of treatment experiences
21 as well with people, both adults and juveniles.

22 Q. Have you ever been qualified as an expert in court?

23 A. Yes.

24 Q. And can you tell me more about your qualifications?
25 What type of expert work have you been qualified in?

1 A. So only here in South Carolina I've been qualified
2 as an expert approximately eleven times and each of those
3 eleven times have been involving a sexually violent
4 predator case such as this.

5 Q. And were you usually qualified as an expert in
6 forensic psychology or was there some other expert means
7 that you were you qualified?

8 A. I'm not sure if it was an expert in forensic
9 psychology for each of the eleven times, but based on my
10 memory that's how I was qualified in, I think, the majority
11 of cases.

12 Q. Are you familiar with Mr. Phillip Nix?

13 A. Yes, I completed an evaluation of Mr. Nix.

14 Q. And do you remember when you completed an evaluation
15 of Mr. Nix?

16 A. I met with Mr. Nix in October of 2022 and submitted
17 the first report in January of 2023.

18 Q. Are reports the natural part of your evaluation
19 process?

20 A. Yes. So the reports outline the findings and the
21 opinions in the case once the evaluation has been
22 completed.

23 MS. JOHNSON: At this time, Your Honor, I would ask
24 that Dr. Gillen be qualified as an expert in forensic
25 psychology.

1 MR. RUNYAN: Without objection, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, this
3 witness will be qualified as an expert in the area of
4 forensic psychology and may give opinion testimony in
5 that area. It doesn't mean you must accept the opinion,
6 but it's evidence for you to use in any way you see fit.

7 MS. JOHNSON: Thank you, Your Honor.

8 BY MS. JOHNSON:

9 Q. So, Dr. Gillen, I'm gonna take you back. Let's start
10 at the beginning. How do you come to do these evaluations
11 for sexually violent offenders in South Carolina?

12 A. So I get assigned cases by my supervisor at the
13 Department of Mental Health and she assigned me to complete
14 Mr. Nix's case.

15 Q. And why the Department of Mental Health?

16 A. So the court order comes through that it must be a
17 Department of Mental Health psychologist from the forensic
18 evaluations services where I'm employed that completes the
19 court ordered sexually violent predator evaluation.

20 Q. So that's the initial evaluation?

21 A. Right. That's correct.

22 Q. So the Department of Mental Health -- correct me if
23 I'm wrong, but the South Carolina Department of Mental
24 Health is tasked with doing the very initial evaluation of
25 anybody who has a case in South Carolina who's been charged

1 or there were some sort of lawsuit against them for
2 sexually violent predator?

3 A. Right. If there's a finding in court and there's a
4 court order to complete an evaluation, it goes to the
5 forensic evaluation service at the South Carolina
6 Department of Mental Health to complete that court ordered
7 evaluation.

8 Q. And is that just the normal course of business or is
9 it actually statutorily the normal course of business?

10 A. It's statutorily required, so it baked into the law.
11 That's how the process works.

12 Q. And when you get the assignment to do an evaluation
13 for a sexually violent predator, tell me what you normally
14 do. Tell me your normal process.

15 A. So we get an initial file containing different types
16 of records on the respondent and I'll do a thorough review
17 of those records. Oftentimes I'll then have to request
18 additional records. So in this case for Mr. Nix, that
19 included his offense history records from different
20 jurisdictions, it included Department of Juvenile Justice
21 records, Department of Corrections records, Probation,
22 Parole and Pardon Services records, forensic interview
23 reports that were completed, medical history records,
24 written correspondences that had been made between Mr. Nix
25 and others that were included in the file, so those are the

1 types of records that were reviewed in this particular
2 case.

3 Q. And when you get these records, they're actually quite
4 -- usually quite a thorough set of records; are they not?

5 A. Yes, they are.

6 Q. I mean, they can go back as far as elementary school
7 some of these records, the details about how people
8 performed in elementary school or trouble that they got
9 into?

10 A. They can. Really records from any time period can be
11 accessed and included in this type of evaluation.

12 Q. And as you mentioned before, that's the same process
13 that you did when you evaluated Mr. Nix? Did you first get
14 his records and review them?

15 A. Yes. We have a paralegal at the Department of Mental
16 Health who will put the initial file together for us and
17 then provide it to the evaluator that my supervisor assigns
18 the case to and so that's the first step is to go through
19 that initial file, figure out maybe what records might be
20 needed in addition to what's already been included, request
21 those, receive them and review them, and typically I try
22 and review all of the records I can or at least that I know
23 about before even meeting with the respondent in these
24 types of cases.

25 Q. So what's your next step after you've reviewed the

1 records?

2 A. So I'll schedule a clinical interview with the
3 respondent and then I'll go through a series of structured
4 questions to try and supplement the information that was
5 reviewed in the records.

6 Q. Can you tell me -- have you heard of the DSM-5?

7 A. Yes, I have.

8 Q. Tell me what that is.

9 A. So the DSM-5 or Diagnostic Statistical Manual Fifth
10 Edition is the manual that mental health professionals
11 such as psychologists and psychiatrists use in coming to
12 diagnostic decisions for people. So that could be whether
13 someone meets specific types of criteria for depression
14 disorders, anxiety disorders, all types of different
15 disorders, the criteria are all established and listed upon
16 in that manual.

17 Q. And do you usually use the DSM-5 or just the DSM in
18 general as a guide or a resource when you're doing these
19 sexually violent predator cases?

20 A. Yes. So in coming to diagnostic opinions about cases,
21 I'll rely on the Diagnostic Statistical Manual Fifth
22 Edition, which is now in their text revision, so that's the
23 most recent edition that's out, and that's the manual that
24 I'll use in coming to all of my diagnostic decisions.

25 Q. And so tell me what the next step then is after that.

1 A. So it's gonna be a comprehensive risk assessment of
2 the individual and so what that entails is gonna be a
3 thorough examination of both their static or more
4 historical risk factors for sexual offending, as well as
5 their dynamic risk factors or factors that can be changed
6 or altered through treatment or environmental changes that
7 are gonna be related to their risk for sexual offending.

8 Q. And are those like tests or assessment tools? What
9 are those?

10 A. Those are actuarial risk assessment tools. So what
11 those are, are very structured guide-based tools that are
12 gonna have items that are scored and each of those items
13 are gonna be scientifically or empirically related to the
14 outcome of interest, in this case sexual offending, and
15 there's gonna be a statistical relationship between the
16 items that are being scored and then the outcome that's
17 being measured.

18 Q. Okay. And so if I can -- tell me if this summary is
19 correct. When you meet with an individual who's the
20 subject of a sexually violent predator action, you will do
21 these evaluations and assess them with these actuarial
22 tools that you have to see whether you can form an opinion
23 as to whether you think they're a sexually violent
24 predator?

25 A. Yes, that's correct. So the actuarial risk assessment

1 tools, that's one part of the risk assessment.

2 Q. What other parts, if any, are there?

3 A. So in addition to scoring those types of actuarial
4 tools, it's important to go beyond the information that
5 they provide. So actuarial risk assessment tools, right,
6 they're providing a prediction or probability of the
7 likelihood of someone being charged or convicted of a new
8 sex offense within a certain timeframe after they're
9 released. So you can kind of see the limitations with that
10 already just based on the definition and what that is, is
11 the statute here in South Carolina, you know, they don't
12 care if someone like Mr. Nix is gonna get charged or
13 convicted of a new sex crime in five years, they want to
14 know if he's gonna just do it again at some point in his
15 life whether he's charged or convicted of it within five
16 years, ten years, fifteen or twenty, and so it's important
17 to kind of go beyond the information that the actuarial
18 tools provide in order to try and answer, you know, what
19 risk is maybe left over that those actuarial tools aren't
20 accounting for.

21 Q. And so you talked to Mr. Nix?

22 A. Yes, I did.

23 Q. And you used these tools and assessments to come up
24 with the -- to do your evaluation?

25 A. Right. Yes. So there was a comprehensive clinical

1 interview that was conducted. I believe with Mr. Nix I
2 spoke with him for about five and a half total hours of
3 interview and then combining the information from records,
4 as well as the information that he provided in the
5 interview, I was able to score those actuarial tools, which
6 were both the Static-99 Revised or Static-99R to get at
7 those historical risk factors related to him, and then the
8 Violence Risk Scale Sex Offense version or VRS-SO, which is
9 an actuarial tool to look at those dynamic or changeable
10 factors that someone can have that's also related to sexual
11 offending.

12 Q. So I'm gonna take you back just a step. Now this is
13 a case where you had two different opinions while you --
14 during your evaluation process?

15 A. Yes, that's correct.

16 Q. And on the first opinion did you believe that Mr. Nix
17 qualified as a sexually violent predator?

18 A. I did. So in the initial report that I submitted in
19 January of 2023, my opinion was that he was a sexually
20 violent predator.

21 Q. And then you did another -- you issued another report
22 sometime later?

23 A. Yes, that's correct.

24 Q. And in that report you changed your mind and you said
25 that you did not believe that he met the qualifications to

1 be considered a sexually violent predator?

2 A. That's correct. I changed my opinion.

3 Q. And about how long after the first opinion did you
4 change the second opinion?

5 A. It was about a year and a half -- or, no, a half year.
6 It was June of 2023, so approximately six months after the
7 initial opinion was submitted.

8 Q. Why did you change your opinion?

9 A. Because the law here in South Carolina changed, so
10 the definition of what likely to sexually re-offend is
11 changed in May of 2023 and based on that change in the
12 law I re-evaluated the opinion and thought that based on
13 the new criteria, based on how the new definition was
14 presented, Mr. Nix no longer met that threshold. He no
15 longer met the criteria to be considered a sexually violent
16 predator because he no longer was likely to commit sexual
17 violence offenses if released based on the new definition.

18 Q. Okay. So tell me very specifically what your reading
19 or understanding that you used for this evaluation, the
20 difference in the law, that helped you to decide to change
21 your mind. In the beginning, what was the definition that
22 you worked from?

23 A. So the prior definition was that the person's
24 propensity to commit sexually violent offenses was to such
25 a degree to as to pose a menace to the health and safety of

1 others and then the definition changed in May of 2023 to be
2 that the person was predisposed to commit sexually violent
3 and was more probably than not to commit sexual violent
4 offenses to such a degree as to pose a menace to the health
5 and safety of others. So really the key change was that --
6 that probability language, which was that the individual
7 was more probably than not or more likely than not to
8 commit sexually violent offenses if they're released. So
9 the law changed from a more qualitative or descriptive
10 type of characterization of what likely means to a
11 quantitative --

12 MR. RUNYAN: Objection, Your Honor. Prior motions.

13 May we approach?

14 (Proceedings held at the bench; not reported.)

15 THE COURT: All right. Counsel, you can rephrase
16 your question, please.

17 MS. JOHNSON: Thank you, Your Honor.

18 BY MS. JOHNSON:

19 Q. Dr. Gillen, what was your understanding that made this
20 more probably than not significant enough for you to change
21 your opinion? What is your understanding?

22 A. Could you repeat the question? Like what do you mean
23 by my understanding specifically?

24 Q. You probably need to me to complete that question
25 because it was quite unclear, so let me be very clear about

1 what I'm saying. You changed your opinion?

2 A. Yes.

3 Q. Okay. And you mentioned this more probably than not
4 change in the statutory definition?

5 A. Yes, that's correct.

6 Q. And you assigned some significance to that that made
7 you decide to change your opinion, right?

8 A. Yes, that's correct.

9 Q. And in your opinion, in your mind, what was the
10 significance to you of the more probably than not language
11 that made you change your opinion?

12 A. So the significance of that to me was, again, based on
13 my experience and postdoctoral training that I received up
14 in Wisconsin where the statute is written very similarly,
15 that it's calling for a re-examination or trying to figure
16 out if there's a certain threshold that a person needs to
17 meet. The way I thought of it is almost like the weather.
18 So I'm sure we've all watched weather forecasts and they
19 say what the probability of rain is gonna be today and
20 they might say, you know, there's a 60 percent chance of
21 rain. Well, you would say it's more probably than not
22 it's gonna rain today, whereas if the weather person says
23 well, there's a 40 percent change of rain, well, that means
24 it's more probably than not that it will not rain today.
25 It's not saying it won't. It's just saying that based

1 on probabilities or the likelihood of a future event
2 occurring, that it's not -- more probably than not to
3 happen if it's below fifty. That was my understanding
4 and that's based on the training that as I received as
5 a postdoctoral fellow, as well as consultation with
6 evaluators working in those types of states and
7 jurisdictions that have similar laws and language to what
8 South Carolina has now.

9 Q. So let me take you back to the first evaluation that
10 you issued a report on Mr. Nix.

11 A. Uh-huh.

12 Q. And did you say that was June 2023? When did you
13 issue that report?

14 A. The first report was January 2023.

15 Q. Okay. And tell me what you first noticed about
16 Mr. Nix. Tell me some of your first observations about
17 Mr. Nix when you met with him then. Did he appear to be
18 orientated to time, you know, place and all of that?

19 A. Yes. There was nothing remarkable or significant
20 about his presentation in the interview room. There were
21 some minor forgetfulness that he had, but then when I was
22 able to give him corrective feedback about the things
23 he forgot, he was able to remember that. So there was
24 nothing significant or kind of clinically problematic with
25 Mr. Nix's demeanor or presentation in the interview room.

1 Q. And based upon the review that you had done of his
2 past history, was there any indication that he had some
3 medical or personality disorder that he had been diagnosed
4 with that would prevent him from understanding your
5 questions during your evaluation?

6 A. No, not to my knowledge. He seemed to fully
7 understand the evaluation and why he was meeting with me.

8 Q. So at the time of the evaluation did you feel
9 satisfied that he understood your questions and you could
10 get a valid reading on him, that you could make a valid
11 assessment on him?

12 A. Yes, I did because of the information that I was able
13 to acquire from the interview, but also the comprehensive
14 records that I was able to review as well. Really the
15 combination of that information together made me feel like
16 there was more than sufficient information to complete the
17 evaluation and come to an opinion in this case.

18 Q. Did you ask him about his past -- his criminal
19 history?

20 A. I did, yes.

21 Q. Okay. And did you talk to him about his relationship
22 history?

23 A. Yes.

24 Q. What about his childhood? Did you talk to him about
25 that?

1 A. I did, yes.

2 Q. Did you talk to him about the convictions that led to
3 this case?

4 A. Yes, I did.

5 Q. And did you -- did you just basically give him an
6 exhaustive evaluation where you talked to him about his
7 entire life and choices?

8 A. Yes. The questions of the interview followed his life
9 when from when he was a young child up until his thinking
10 and behavior that happened in the room, so right up to that
11 present point of October of 2022 when I met with him to
12 include his juvenile history, to include his school
13 history, employment history, relationship history, sexual
14 history, the offenses, all that information was asked and
15 discussed during our interview together.

16 Q. Did you make any observations about his criminal
17 history?

18 A. Yes. I had some -- I had observations or opinions
19 about that.

20 Q. Okay. He had a criminal history?

21 A. He did, yes.

22 Q. And he had a good bit of charges. Is that -- would
23 you say that he's not a person who only had one or two
24 charges in his history?

25 A. That's correct, yes.

1 Q. Okay. Most of the charges or convictions that he had
2 in his criminal history were property in nature or minor
3 offenses like traffic offenses; would that be correct?

4 A. Yes, and substance use offenses as well.

5 Q. So based on your review you noticed there may have
6 been some drug use in his history that caused him to have
7 some criminal charges, right?

8 A. Yes.

9 Q. And there was, you know, some significant theft or
10 taking or destroying of property in his criminal history,
11 right?

12 A. Yes, that's correct.

13 Q. Okay. And that he had some traffic violations or
14 things of that nature?

15 A. Right, some different types of driving related
16 offenses.

17 Q. Okay. No sexually violent offenses in his history
18 before his convictions in 2008 and 2009?

19 A. Yes, that's correct.

20 Q. No sexually violent allegations before the 2008, 2009
21 convictions, correct?

22 A. Yes, that's correct.

23 Q. And I'm saying 2008 and 2009. We're talking about the
24 convictions involving his daughter, correct?

25 A. Yes.

1 Q. Okay. And can you tell me what those charges were?

2 A. What, the sexually violent --

3 Q. I apologize. The convictions for each of those
4 charges.

5 A. So that was criminal sexual conduct with a minor in
6 the second degree that he was convicted of and then a
7 sexual exploitation of a minor in the third degree that he
8 was also convicted of.

9 Q. Okay. And these involved allegations regarding his
10 daughter?

11 A. Daughter and/or step-daughter. The records were
12 somewhat ambiguous about the relationship that he had with
13 -- with the different children in his life, but, yes,
14 definitely the second degree criminal sexual conduct with
15 a minor charge I believe was with his oldest daughter, so
16 that for sure I know, yes.

17 Q. And ultimately was it your observation of his criminal
18 record that when it all was said in done, the 2008 and 2009
19 charges, all of the ones fell away except the ones
20 involving his oldest daughter, those were the convictions?

21 A. That's -- that's more unclear because the sexual
22 exploitation with a minor third degree conviction that he
23 has there's some ambiguity about who specifically was
24 involved in that just because the nature of the images and
25 the materials that -- that were had at the time.

1 Q. Okay. So before 2008 and 2009, before those
2 convictions, no sexually violent offenses on his record,
3 right?

4 A. Correct.

5 Q. No sexually violent allegations?

6 A. Correct.

7 Q. And I'm using the term "sexually violent". That's a
8 list of crimes that the statute makes -- that the South
9 Carolina statute has, right? Is that your understanding?

10 A. Yes, that's correct. So sexually violent offenses
11 are spelled out specifically in the statute and what that
12 means is not all sex crimes or sex offenses are considered
13 sexually violent in the State of South Carolina, only
14 specific ones are classified that way.

15 Q. But before those 2008 and 2009 convictions, there
16 wasn't even as far as you could tell an allegation of
17 sexual assault in his criminal history, correct?

18 A. That's correct. There was no allegations, charges,
19 convictions of any sexually inappropriate behavior, sexual
20 misconduct prior to 2008.

21 Q. And after that conviction Mr. Nix had a probation
22 violation in about 2022; is that right?

23 A. Yes, that's correct.

24 Q. And that -- and he ended up violating and going back
25 to prison for that; is that your understanding?

1 A. Yes.

2 Q. Okay. And were those for -- tell me what the
3 violations that you -- that you understand that he had for
4 that, why he was violated.

5 A. Okay. There were several different types of
6 allegations from not paying fees or following advice of the
7 agent, also for not participating and showing up for sex
8 offender treatment, testing positive for substances and
9 some other different types of images or -- I'm sorry, one
10 image or screen shot image that was found on his phone, as
11 well of the naked two-year-old grand daughter. That was
12 another part of why he was violated for probation.

13 Q. Okay. And you said naked two-year-old granddaughter,
14 but the picture is not of a sex act, correct?

15 A. That's -- that's my understanding. The way the image
16 was described was the two-year-old granddaughter who was
17 naked coming out of the shower and there was a saved screen
18 shot on his phone of that.

19 Q. Okay. Beyond that, that was the 2022 allegations,
20 right?

21 A. For --

22 Q. I'm sorry, the 2022 violation.

23 A. Right, yes.

24 Q. All right. So between 2009 and 2022 no sexually
25 violent offenses -- no other sexually violent offenses on

1 his record, right?

2 A. That's correct.

3 Q. Okay. And, again, no allegations of sexual assault,
4 nothing like that, right?

5 A. That's my understanding.

6 Q. And after that 2022 violation, again, no sexually
7 violent allegations, charges, convictions on his record
8 based on your understanding, correct?

9 A. Yes, that's correct.

10 Q. And, again, not even an inkling of a sexual assault
11 or anything like that?

12 MR. RUNYAN: Your Honor, I think this has been asked
13 and answered. I'd object and ask to move on.

14 MS. JOHNSON: Your Honor, I'm actually going through
15 after the 2022, but I'm wrapping it up.

16 THE COURT: Overruled. Continue.

17 BY MS. JOHNSON:

18 Q. Again, not even an inkling at that time of some sort
19 of sexual offense; is that right?

20 A. Yes, that's correct.

21 Q. And now he was in prison for some of that, right?

22 A. Most of that time, yes.

23 Q. But it's not uncommon to have sexually violent
24 offenses or sexual offenses occur in prison even?

25 A. Some can. A lot of cases you see people with what

1 the Department of Corrections listed as exhibitionism or
2 indecent exposure types of offenses, so it's not uncommon
3 to see those types of infractions for people while they're
4 incarcerated in the Department of Corrections.

5 Q. In this case none of those?

6 A. That's correct. There was no indication that he had
7 any sexually problematic behaviors while he was in prison.

8 Q. So tell me the information that you used -- so what do
9 you -- do you get information, do you gather information
10 and then run it through your assessment tools? How does
11 that work?

12 A. So as I kind of mentioned earlier, each of these
13 actuarial assessment tools they have specific items and
14 each of these items is gonna have very specific scoring
15 criteria and so what you do is you take all of the
16 information that you have of the person that you're
17 evaluating, that could be from records, the information
18 you got from the interview, and you use that in order to
19 follow the coding or scoring rules of each tool in order
20 to assign a score based on those guidelines and rules for
21 the person that you're evaluating.

22 Q. Okay. And so you briefly mentioned the Static-99R and
23 the VRSO {sic}?

24 A. Right. The Static-99 Revised or Static-99R for static
25 risk factors are those historical factors unrelated to

1 someone's risk of committing a new sex crime, and then the
2 dynamic, the Violence Risk Scale Sex Offense or VRS-SO,
3 which is a different actuarial tool, which measures the
4 types of factors that are gonna be related to someone
5 committing a new sex crime, a new sex crime that can be
6 changeable with treatment, for example, or mitigated or
7 reduced through some sort of environment change for the
8 person. So, for example, maybe they go to a less risky
9 environment when they get released or maybe they've really
10 done a nice job building up their support system out in the
11 community. Those are things that would be tapped by that
12 Violence Risk Scale Sex Offense version.

13 Q. So ultimately these tools are used to help clinicians
14 and the Court understand what the chances are of somebody
15 re-offending in the future is?

16 A. Right. That's exactly right. So these tools both on
17 their own can provide information about someone's risk or
18 probability or likelihood of committing a new sex offense
19 is, but then the information from both those tools
20 independently can actually be combined into a cohesive
21 whole to figure out what their combined probability or
22 likelihood of committing a sex offense is from both
23 historical and dynamic factors together.

24 Q. Okay. And do they actually tell you this person is
25 going to commit a sexual offense?

1 A. No, they don't. So as I mentioned earlier, this
2 really is an issue of probability and I like to use
3 likelihood as a great way to talk about probability. So
4 you can almost think of it like a percentage. Going back
5 to the rain example just because we've been getting so
6 much of it here lately, right, it's not -- the weatherman
7 or weather woman isn't gonna tell you it is for sure gonna
8 rain with a hundred percent certainty today. They might
9 say there's a 60 percent chance in the viewing region. So,
10 again, it's talking about probabilities or likelihood of a
11 future event happening, not the certainty of it.

12 Q. And does the Static-99R and this VRSO, do you get
13 scores for -- with these tools?

14 A. Yes. So each item is scored and they are summed or
15 added together to produce total scores based on each of the
16 different items that you've coded or scored for the person
17 and each of those numbers that are generated corresponds
18 with or is related to a specific percentage or probability
19 that someone will commit a sexual offense in the future
20 and, again, that information can actually be combined
21 through a statistical procedure called logistic regression
22 in order to figure out what that individual's unique
23 probability or risk of sexual offending is based on both
24 pieces of information.

25 Q. Well, let's make it specific to Mr. Nix. Did you

1 score him on the 99 -- on the Static-99R?

2 A. Yes.

3 Q. Okay. And what was his score?

4 A. I scored Mr. Nix a 3 on the Static-99 R.

5 Q. What is the range that he could have been scored?

6 A. So it can range from negative 3 up to 12 being the
7 highest, and 3, based on that single measure, again,
8 not just based on the Static-99R, suggests that he's
9 considered average risk. That's what that number
10 corresponds to.

11 Q. Okay. And is it average risk in terms of compared to
12 other sexual offenders or average risk compared to just
13 people who commit crimes?

14 A. So that's compared to other people who have been
15 charged and convicted of sex offenses, so other sex
16 offenders.

17 Q. So it doesn't go just by convictions, it kind of is
18 more of an umbrella approach to the substantive?

19 A. Yes and no. So in order to be -- in order for you to
20 appropriately use the Static-99R on someone, they do have
21 to have that conviction on their record, but it does also
22 count charges. So in terms of comparing what average risk
23 means, it is someone who does have on their record a
24 conviction or maybe they were found not guilty by reason of
25 insanity of a sex offense, some sort of judicial decision

1 that the event or the charge actually happened.

2 Q. Okay. And so in terms of the general meaning of this
3 static score of number 3 in this average risk, is there --
4 can you tell me what that would mean in laymen's terms?
5 Is there a percentile that would suggest that he is this
6 percent is likely to re-offend or can you tell me more
7 about that?

8 A. There is, and that would be incomplete, but I'll see
9 if I have it here. So I think you mentioned percentile,
10 which is a little different. So a percentile -- think of
11 that as almost like where you fall within a distribution of
12 scores. So if you're taking like a math test and you get
13 your grade back from the teacher and they say oh, you
14 scored in the 90th percentile, well, that would mean that
15 90 percent of the other kids in the class scored below you
16 and so that's kind of how to think of a percentile. So
17 if you use kind of that example to think of what a 3 on
18 the Static-99R means, that corresponds with a percentile
19 of 65th, so what that means is that 65 percent of sex
20 offenders would have a lower score than Mr. Nix. On the
21 other side it would mean that, if my math's right,
22 35 percent would score higher than him.

23 Q. Okay. Talk to me about the VRSO. Now that ends up
24 giving two different scores on that, right?

25 A. Right. So the Violence Risk Scale Sex Offense

1 version, how it works is there's two distinct scales.
2 Sometimes they call it time one and time two, other times
3 they call it pretreatment or posttreatment. The most
4 important thing to remember about that is that there's two
5 separate scores that go into that tool. One is gonna be
6 their amount of dynamic risk factors that the person
7 currently has and then maybe if the person's made some sort
8 of change or improvement in those risk factors over time,
9 so the tool allows you to come up with two different
10 scores based on where they might be within their course of
11 treatment for sex offending.

12 Q. Okay. And what were the two scores that you had for
13 Mr. Nix?

14 A. So with Mr. Nix on that pretreatment end, so this is
15 -- again, this is his score on his total amount of dynamic
16 risk factors that he had at the time I saw him, he was
17 scored a 31 on a scale that ranges from zero up to 51, and
18 the second score or that time two score he was scored a
19 zero, which is the lowest score that you can get, and
20 that's because he had violated probation for not attending
21 sex offender treatment. So the guidelines for that
22 particular tool say if someone hasn't successfully
23 completed and was kicked out of treatment, they get
24 assigned a score of zero for that item to reflect those
25 problems that they've had.

1 Q. And you mentioned not -- that he didn't attend sex
2 offender treatment. Is it that he didn't attend it or that
3 he didn't complete it?

4 A. Both.

5 Q. Okay. So he did not attend any classes of sex
6 offender treatment or any of the courses?

7 A. So based on records, he went to one class and then did
8 not show back up again and then he was rearrested for some
9 of those violations that I had previously talked about and
10 then when he got released again before he went back to
11 prison, he didn't go back to sex offender treatment. So,
12 yeah, he went to one session and then didn't go back.

13 Q. Okay. So the three scores that you have for him, the
14 99 -- the Static-99 and the VRSO two scores, the dynamic
15 and the change score, do you end up merging those together?

16 A. Yes. So each piece, each of those three numbers, the
17 Static-99R score, the pretreatment VRS-SO score and that
18 change score, all three pieces of information add what's
19 called incremental value and really what that means is that
20 each one on its own predicts above and beyond what the
21 other one does in terms of sex offending. In other words,
22 they're all really important. And so we want to try and
23 find a way to combine them all together to get the most
24 accurate assessment of what someone's risk is and the way
25 that we do that is through a statistical procedure called

1 logistic regression that allows for that unique combination
2 of a specific person's scores on all three items or all
3 three scores to be combined to produce an overall risk or
4 probability for what that person's risk of being charged
5 or convicted of a new sex crime is within a set amount of
6 time.

7 Q. In this case, did you come up with a 5-year recidivism
8 risk score for Mr. Nix?

9 A. Right. So there was a 5-year probability or percent
10 likelihood. So with that, that was in the June 2023 report
11 -- I just want to make sure I get the number right -- 34.0
12 percent of being charged or convicted of a new sex offense
13 within five years of release.

14 Q. And I noticed in -- I beg the Court's indulgence. I
15 noticed there was some discussion of a 16.2 percent 5-year
16 risk. Can you tell me more about that?

17 A. Oh, I apologize. That was my error. I was looking at
18 the wrong part of my report. I jumped the gun a little
19 bit. Sorry about that. His 5-year risk was -- based on
20 the actuarial tools, was estimated to be 16.2 percent. So
21 I apologize. I got that wrong when I misspoke there. So
22 based on the actuarial tools, those three data points, the
23 Static-99R score, pretreatment VRS-SO score and then his
24 change score, that zero, combining all of those together
25 using this statistical procedure, his 5-year risk of being

1 charged or convicted of a new sex crime is 16.2 percent.

2 Q. So in laymen's terms, if there were a hundred sexually
3 violent offenders, 16.2 of them would have re-offended
4 within five years? Is that what that means essentially?

5 A. Right. That's a way of looking at it.

6 Q. Okay. So what about -- are you familiar with
7 personality disorders?

8 A. Yes.

9 Q. All right. And in this case, did you diagnose Mr. Nix
10 with a personality disorder?

11 A. I did, yes.

12 Q. Tell me what that means, a personality disorder or a
13 mental disorder.

14 A. I'm sorry. Could you repeat that last part?

15 Q. Tell me what it means, a mental or personality
16 disorder. What does that mean?

17 A. Well, I think those are two different things. So a
18 mental disorder, that's probably gonna be your broadest
19 term in terms of mental illness. You can think about it
20 like a syndrome or a condition that's gonna affect
21 somebody's behavior, their thinking, their emotions to such
22 a degree that it's gonna cause them to stress or have
23 problems, significant problems, in their life. So there's
24 lots of different types of mental disorders that someone
25 can have from depression, anxiety, schizophrenia, attention

1 deficit hyperactivity disorder, ADHD, a learning disorder,
2 all of those would count as mental disorders. On the other
3 side, a personality disorder is a specific type of mental
4 disorder, and the best way I think to think of what a
5 personality disorder is, is it's the way the person
6 perceives, thinks about, interacts with the world around
7 them is pathological or distorted significantly in some
8 way, and so it's gonna deviate markedly or significantly
9 from what would be expected based on that person's
10 culture and it's gonna cause problems for them in a lot
11 of different areas of their life, not just one, and it's
12 very rigid and inflexible.

13 And so I had a supervisor that I think really
14 explained this nice to me once and they said -- I wasn't
15 Dr. Gillen at the time, so they said Chris, a personality
16 disorder is climate. Every day problems, problems people
17 have, that's like temperature. So you can have -- you
18 know, it's not uncommon for people to have a bad day, maybe
19 do things they would be uncharacteristic of doing, but a
20 personality disorder is different from that. It's that the
21 problems are very chronic, inflexible, pervasive. Just
22 like, you know, a climate is fairly stable over time and
23 context.

24 Q. And the DSM-5, does that list specific personality
25 disorders?

1 A. It does, yes.

2 Q. Okay. Example. Is paranoid schizophrenia one of them
3 -- or, I'm sorry, paranoia?

4 A. Paranoid personality disorder would count, yes, but
5 schizophrenia is separate. That's a major mental illness
6 where someone might have -- you know, is hearing or seeing
7 things that aren't there or having beliefs or ideas that
8 might seem very unusual like maybe someone's out to get
9 them when no one is actually out to get them, that type of
10 thing.

11 Q. There's a schizoid personality disorder?

12 A. Yes.

13 Q. Schizotypal personality disorder?

14 A. Yes.

15 Q. Borderline personality disorder?

16 A. Yes.

17 Q. Histrionic personality disorder?

18 A. Yes.

19 Q. Narcissistic personality disorder?

20 A. Yes.

21 Q. Avoidant personality disorder?

22 A. Yes.

23 Q. Dependent personality disorder?

24 A. Yes.

25 Q. There's one called obsessive compulsive personality

1 disorder, OCD?

2 A. Yes.

3 Q. Okay. And there's one called antisocial personality
4 disorder?

5 A. Yes.

6 Q. And those are ten of the ones that the DSM-5 says
7 these are a list of the personality disorders?

8 A. Right. It's a non-exhaustive list, but those are the
9 -- in other words, that's not all the personality disorders
10 that are out there, but those are the ones that are listed
11 within the DSM-5 Text Revision or TR.

12 Q. In Mr. Nix's case, did you diagnosis him with any
13 personality disorder?

14 A. Yes, I did.

15 Q. Okay. Which one?

16 A. I diagnosed Mr. Nix with antisocial personality
17 disorder.

18 Q. Okay. But none of the other nine. Just antisocial
19 personality disorder?

20 A. Yes, that's correct.

21 Q. Tell me what that is.

22 A. So the best way to think of antisocial personality
23 disorder is it's a chronic violation of the rights and
24 norms of other people. So disregarding the rights of other
25 people. And, again, kind of going back to that climate

1 temperature example, it's not just, you know, someone had a
2 bad day and was speeding too fast on the road because they
3 were late for work. It's -- again, you're seeing these
4 types of problems and this disregard for others across a
5 variety of settings, a variety of environments, and a lot
6 of different areas of the person's life.

7 Q. Is this a common disorder?

8 A. It depends on how you define common. Within the
9 general population, the majority of people do not have
10 antisocial personality disorder.

11 Q. Can people function in society with antisocial
12 personality disorder?

13 A. Some certainly can because it can present in a lot of
14 different ways.

15 Q. In Mr. Nix's case, how do you feel that it presents?

16 A. So there's different symptoms that can make up an
17 antisocial personality disorder. I believe that Mr. Nix
18 has, I think, about four of the seven or so that are listed
19 within the diagnostic manual. So how it presents for him
20 is gonna be rule violating or criminal behaviors that he's
21 engaged in throughout his life. There's gonna be some
22 impulsivity that he's shown with his types of institutional
23 infractions and offending history, and what that means is
24 you're not stopping and thinking of consequences before
25 acting. You're also gonna see some recklessness. We've

1 seen that with some of the driving history that he reported
2 and then also with some of his sexual behavior and his
3 substance use history speak to recklessness in his life,
4 so there's different types of settings and context that
5 we see that in. And the other one is gonna be a lack of
6 remorse and so that is not accepting responsibility for
7 the behavior that someone has done and so that could be
8 minimizing or justifying, you know, someone's wrongdoing,
9 trying to excuse it, make it not seem as bad, things of
10 that nature.

11 Q. So in your original report you diagnosed Mr. Nix with
12 antisocial personality disorder?

13 A. Yes.

14 Q. And in your final report, did you change your mind or
15 did you still believe that he -- or I'm saying final. In
16 your second report, did you still believe that he has
17 antisocial disorder?

18 A. Yes, in both reports. That did not change.

19 Q. Okay. Now was it your observation that he had a -- I
20 know we talked about his criminal record. His employment
21 history. That seemed to be quite stable; was it not?

22 A. Yes, I don't think there was anything notable about
23 his employment history that would have been consistent
24 with antisocial personality disorder, so that wasn't one of
25 those domains or settings where that personality disorder

1 was really showing up at least based on the information
2 that I reviewed and what was disclosed to me during our
3 interview.

4 THE COURT: I tell you what. I just want to step in
5 for a minute and I want everybody to stand up.

6 Just move your body around a little bit.

7 All right. Thank you.

8 You can continue though.

9 BY MS. JOHNSON:

10 Q. Anyway, going back to what we were saying, so
11 employment history seemed to be pretty stable. What about
12 his relationships, romantic relationships? Outside of
13 the 2008, 2009 convictions, did he seem to have normal,
14 reasonable romantic relationships?

15 A. He had lengthier co-habiting or live-in
16 relationships with people. There were issues with his
17 relationship history, you know, in terms of like how
18 emotionally closed, how intimate and trusting they were,
19 but he certainly had long-term romantic relationships in
20 his history.

21 Q. Including marriage. He was married, correct?

22 A. I can't remember off the top of my head if they were
23 legally married, but they were certainly living as a --
24 in a husband and wife type of relationship at the very
25 least.

1 Q. Okay. And in his -- in the history that you did
2 and in his records that you reviewed, you didn't find
3 any evidence of a criminal domestic violence charge or
4 conviction or anything like that?

5 A. No.

6 Q. And, in fact, did you make any observations about
7 whether he had interpersonal aggression?

8 A. So interpersonal aggression is one of the seventeen
9 dynamic risk factors that are measured by the VRS-SO. So
10 very briefly, someone who uses aggression in their
11 interpersonal relationships, whether that be violence,
12 verbal abuse, you know, as part of their every day
13 interactions with people, that can increase someone's risk
14 for sexual offending. That was not a risk factor for
15 Mr. Nix. He doesn't have that type of aggressive or
16 violent history with others like that item talks about.

17 Q. Did you diagnose him with any other sexually related
18 disorders like pedophilia or paraphilia or anything like
19 that?

20 A. No, I did not.

21 Q. Did you consider them?

22 A. I did, yes.

23 Q. Why didn't you diagnose him with those?

24 A. So very briefly, paraphilic disorders, these are
25 paraphilias which are these kind of severe persistent

1 sexual interests in things other than fully developed
2 consenting human partners and it becomes a disorder when
3 the person is experiencing those severe persistence
4 abnormal sexual interests for at least six months and is
5 causing distress to themselves or risk of harm or harm to
6 others and so I didn't feel that based on the definition
7 of paraphilic disorder as I just said that Mr. Nix met
8 criteria for a specific type of paraphilic disorder. In
9 other words, I felt that his sexual offending history was
10 better captured by his antisocial personality disorder I
11 previously talked about rather than a specific paraphilic
12 or deviant sexual interest.

13 Q. Okay. And pedophilic disorder, is that a type of
14 disorder just like a paraphilia?

15 A. Right. So as you heard, there was a list of
16 personality disorders and the same thing is true for
17 paraphilic disorders, there's lots of different types, and
18 one of the types is called pedophilic disorder.

19 Q. And you assessed and decided he did not meet the
20 criteria for that as well?

21 A. That's correct. So I didn't feel that Mr. Nix met
22 criteria for pedophilic disorder and that he had -- you
23 know, that he met criteria for having a severe persistent
24 sexual interest in prepubescent children, so that's
25 specific to children who have not starting puberty yet.

1 Q. Is substance abuse a disorder? Can that be a disorder
2 as well?

3 A. It can, yes.

4 Q. Did you believe that Mr. Nix met the criteria of a
5 substance abuse disorder?

6 A. He very well might meet criteria for a stimulant use
7 disorder, but it doesn't seem relevant or connected to
8 his sexual offending. So based on my conversations with
9 Mr. Nix, there certainly was some legal problems that he
10 had because of his drug use, but not sexual legal problems.
11 So, again, the relevancy of his stimulant use, cocaine use,
12 as relates to sexual offending I think is less clear, so I
13 didn't feel it was a relevant diagnosis for this type of
14 evaluation.

15 Q. Okay. And so ultimately what did you decide from the
16 first evaluation? In your first report, what was -- what
17 did you -- what was your opinion as to whether he met the
18 criteria for sexually violent predator?

19 A. So in the report submitted in January of 2023 my
20 opinion was that he was a sexually violent predator, that
21 he met the criteria to be a sexually violent predator.

22 Q. By the time you did this second report, did you use --
23 did you update it with any more assessments or tools? Did
24 you use anything like that?

25 A. So there were additional peer reviewed scientific

1 research articles that I was able to use to incorporate
2 additional data information beyond what those actuarial
3 risk assessment tools provided and so I used those sources
4 and those publications in order to try and provide extra
5 information beyond what was provided by those prior tools
6 that I scored.

7 Q. And what sort of extra information does it encompass?

8 A. So the two main areas that are limitations for
9 actuarial tools. The first one being the risk of
10 undetected offending. What is the probability or
11 likelihood of someone over a specific period of time
12 getting away with sex crimes. In other words, not being
13 charged or alerted to law enforcement. The second piece
14 is gonna be their lifetime risk of sexual offending. So,
15 in other words, you know, going beyond the 5-year estimate
16 what is gonna be that person's risk throughout the rest of
17 their foreseeable lifetime.

18 Q. Okay. And which one was the Kelley test?

19 A. So that was a peer reviewed publication by Sharon
20 Kelley with the Sand Ridge Treatment Center in Wisconsin
21 and that was looking at undetected re-offending within
22 sexually violent persons in Wisconsin. So they term their
23 SVPs sexually violent persons, whereas we called them
24 sexually violent predators in South Carolina, but it's the
25 same -- same population. So her research was looking at

1 how much undetected offending was happening within their
2 population of sexually violent persons up in Wisconsin.

3 Q. And when you use that assessment tool, do you come up
4 with a numerical score for that?

5 A. Yes. So the article talked about how to quantify or
6 capture how much risk someone has of going undetected
7 within a specific timeframe and so how the article walks
8 through with a formula is within five years what is the
9 probability that someone's gonna get caught for a new sex
10 crime within that five years based on people who've been
11 committed as sexually violent persons or SVPs, and what
12 they found was that the vast majority actually do get
13 caught within that timeframe, approximately 84.36 percent,
14 but that's not a hundred percent. There's a gap of
15 approximately 15 percent of people who go undetected. So
16 it's important to try to account for that within the
17 overall risk assessment. So there's a formula that you
18 can use to try and take that roughly 15 or so percent that
19 go undetected and add that in with the actuarial risk
20 assessment that's already been conducted.

21 Q. With this Kelley assessment tool, did you find that
22 Mr. Nix had a 5-year recidivism risk of -- sexual
23 recidivism risk of 19.2 percent?

24 A. That is correct. So that 19.2 percent is what we call
25 the real 5-year risk. In other words, what is his risk of

1 committing a new sex crime within five years, which was
2 19.2 percent.

3 Q. Okay. And then you used that number to come up with
4 a lifetime risk of re-offending, correct?

5 A. Yes.

6 Q. And what was the lifetime risk that you came up with
7 for Mr. Nix?

8 A. So it's another statistical procedure based on a peer
9 reviewed scientific published article looking at lifetime
10 rates of re-offending for sex offenders and what they found
11 was that no matter how risky the sex offender, you could
12 have the riskiest sex offender that ever existed, if they
13 can go twenty years in the community without committing a
14 new offense their risk is the same as any other non-sex
15 offender, so maybe someone who was in prison for a
16 burglary. So what they found based on over a thousand
17 different sex offenders that they followed for more than
18 twenty years that once they get to that point regardless
19 of how risky they are, they're at what's call desistance
20 levels. So how the article presents it is that if a guy
21 can go twenty years without committing a new sex crime, his
22 risk is basically no different from you or I or other men.
23 And so what they're able to do is extrapolate that with
24 what that 5-year risk is, project what it's gonna be over
25 the next fifteen years for a total of twenty years, and

1 that's used as a lifetime estimate for what someone's risk
2 is gonna be, and for Mr. Nix that 20-year estimate put him
3 from -- boosted him from 19.2 percent over five years up
4 to 34.0 percent over that twenty years or that lifetime
5 estimate.

6 Q. Okay. So if we think in terms of the prior example
7 that I gave you, a hundred men, is it reasonable to use
8 that -- to apply that same example in this case, too, with
9 the Kelley 5-year risk?

10 A. Yes and no. I think you can, but also I like to
11 focus on that this is really a unique risk estimate for a
12 specific person. And so, again, it's not just compare it
13 to other people in a sample, this really is based on that
14 unique combination of scores for Mr. Nix and based on
15 that unique combination of scores and what we know about
16 undetected offending and lifetime risk, what his risk
17 actually is. So I think the better way to put it is more
18 like what is his probability or his likelihood of
19 committing a new sex crime again and that's what that 34.0
20 percent means.

21 Q. And is that also what the 19.2 percent means but for
22 five years?

23 A. Yes, the 19.2 percent is what his risk is over
24 five years. So another way to look at it is the difference
25 between 19.2 and 34.0 is the amount of risk that he would

1 have between years ten and twenty. That's the residual or
2 extra risk that's not being accounted for by undetected
3 offending or those actuarial risk assessment tools.

4 Q. Where does this 30 percent fall in the grand scheme of
5 scores? What is the significance of that?

6 A. The significance to me is that it suggests just like
7 a weather prediction that Mr. Nix is not more probably than
8 not to sexually re-offend based on all the data that's
9 being considered, all the data that's being analyzed and
10 used in this case.

11 Q. Okay. So -- and when you use the 34 percent, you
12 really sort of took into account almost a worse case
13 scenario kind of situation; is that right? Or is that
14 simplifying it a little too much?

15 A. I probably wouldn't use it in that way. I think
16 that's -- that's the most accurate representation of what
17 his risk really is, not necessarily worse case. It's based
18 on all the known information that we have about him as an
19 individual and about what we know about sex offending and
20 the persistence of sex offending over time. So I wouldn't
21 say it's a worse case. I'd say that's the most accurate
22 prediction that we have for Mr. Nix.

23 Q. And so if that's the case we can say that for his
24 lifetime there's about a 66 percent chance that he will
25 never re-offend and we will never have to see him again

1 with a sexually violent offense within this courtroom; is
2 that correct?

3 A. That's -- that's exactly right. Yeah, it's more
4 likely than not or more probably than not that he's not
5 gonna do this type of crime again.

6 Q. I'm gonna wrap up, but I just want to ask you very
7 quickly did you happen to review Dr. Gottfried's opinion
8 of Mr. Nix?

9 A. Yes, I went through her report.

10 Q. And is it your understanding that she came up with a
11 different final opinion than you did as to whether he meets
12 the criteria of a sexually violent predator?

13 A. Based on reading her report that was my understanding,
14 yes.

15 Q. Is there any particular differences that you noted
16 between what you did or how you came to your result versus
17 hers?

18 MR. RUNYAN: Objection, Your Honor. I think that's
19 pitting.

20 THE COURT: You-all approach real quick. I just want
21 to discuss something.

22 (Proceedings held at the bench; not reported.)

23 BY MS. JOHNSON:

24 Q. Dr. Gillen, let me be really specific. Did you
25 notice that Dr. Gottfried did sort of a battery of tests

1 on Mr. Nix?

2 A. Yes.

3 Q. Okay. Just very briefly -- because you actually did
4 not do some of these tests, correct?

5 A. That's correct.

6 Q. There was a test called the MMPI-3. Did you notice
7 whether or not Dr. Gottfried did one of those on Mr. Nix?

8 A. I believe she did, yes.

9 Q. Okay. And did you do it?

10 A. No, I did not.

11 Q. Why?

12 A. So probably the best way to answer this is the
13 overarching principle in psychology, you know, that I was
14 trained right when I was still a graduate student getting
15 my doctorate, is that you only add tests when it provides
16 what's called incremental predictive value. In other
17 words, it's gonna provide something new, something
18 important that you don't already have. So in my opinion,
19 there wasn't any -- in this specific case there wasn't
20 any potential value to gain by having him complete that
21 test. There are other cases where I do give an MMPI-3.
22 Typically those are gonna be cases where someone might
23 be feigning psychiatric symptoms or maybe when there's a
24 very complicated personality presentation, but with Mr. Nix
25 it was pretty clear that he had antisocial personality

1 disorder and there wasn't -- I wasn't gonna get any new
2 information that would change that opinion based on him
3 completing that type of test.

4 Q. So that MMPI-3, is that just a personality test then?

5 A. So it's what's considered a broadband psychological
6 testing instrument. So it can get at different types of
7 personality presentations, different types of clinical
8 presentations, so different types of mental health symptoms
9 that someone might be experiencing, their interpersonal
10 style, their response style, in other words, how they kind
11 of took the test and the way they answered questions. So
12 it does cover a lot of different types of topics.

13 Q. And is that a self-reported test; do you know?

14 A. Yes. So the person has a booklet of questions and
15 then they answer true/false to various questions.

16 Q. Can you briefly tell me what the SASSI-4 is?

17 A. So the SASSI-4, that's a substance abuse measure.

18 Q. Okay. And did you do that on Mr. Nix?

19 A. No.

20 Q. Okay. Did you notice whether Dr. Gottfried did it?

21 A. I believe she did.

22 Q. Why didn't you do it?

23 A. Well, I didn't do it because as I kind of testified
24 earlier about substance use being a risk factor for sexual
25 offending, on the VRS-SO there was no indication in

1 Mr. Nix's criminal history records that the substance abuse
2 was driving the sex offending, that, you know, the reason
3 why he was committing those sex crimes was because he was
4 high or drunk. So, again, I had the information that I
5 needed in order to accurately and reliably score that item
6 as relates to being a sex offense dynamic risk factor.
7 There was no information that I would have got from the
8 SASSI that would have helped me answer that type of
9 question, which was the risk relevant question in this
10 case.

11 Q. And I'm gonna run through just very quickly this list
12 and may you can just briefly tell me which each one is.

13 There was a PAI. Did you do -- what is that?

14 A. Personality Assessment Inventory. It's basically a
15 very similar type of test as the MMPI-3. It does the same
16 sort of thing.

17 Q. What about the MIDSA?

18 A. That is a sex offense specific measure, but I'm not as
19 familiar with that one. It's not used in our department or
20 other evaluators that I know.

21 Q. HARE Psychopathy.

22 A. Psychopathy checklist provides or PCL-R. That's a
23 personality assessment tool.

24 Q. Okay. And is psychopathy one of the risk -- what is
25 psychopathy considered? Is it a disorder? What is that?

1 A. So it's not in the Diagnostic and Statistical
2 Manual for diagnoses. So what psychopathy is, is it's
3 a personality presentation where someone is going to
4 be superficially charming, glib, manipulative,
5 interpersonally exploitative, having a callus disregard
6 for other people, having no empathy for others, being
7 impulsive, irresponsible, an antisocial behavior. It's
8 really the combination of all four of those facets, but
9 that is what psychopathy is as a construct or as a
10 personality presentation.

11 Q. She did something called a 2002R. What is that?

12 A. The Static-2002R. That's a second static risk
13 assessment tool for sexual offending different from the
14 99R in that it also taps into historical areas of sexual
15 deviance and criminality. Items that the 99R doesn't
16 cover.

17 Q. And there was a Stable-2007 V2. What's that?

18 A. Right. So that's a different type of actuarial risk
19 assessment measurement for dynamic risk factors. So it's a
20 different tool that measures dynamic risk factors than the
21 one I used, which was the VRS-SO.

22 Q. Okay. So did you do -- you did not do any of these on
23 Mr. Nix?

24 A. No, I did not.

25 Q. Okay. And can you kind of briefly summarize why you

1 didn't? Are they repetitive or unnecessary? Can you
2 briefly summarize?

3 A. Well, again, for the same reason why I didn't use the
4 MMPI-3 is the same reason I wouldn't use the PAI, the
5 Personality Assessment Inventory. Again, they're assessing
6 the same sort of mental health symptoms, response style,
7 personality characteristics that I didn't feel were
8 relevant in this type of case.

9 The second one I think you said was the 2002R, the
10 Static-2002R. Again, the Violence Risk Scale Sex Offense
11 version that I use has an assessment for dynamic risk
12 factors for criminality that has an assessment already
13 baked in for sexual deviance. So those areas of concern
14 are already now being captured by a different tool, so the
15 2002R doesn't need to be used again in those.

16 The other side of that actually is that there's no
17 real way of being able to combine information from two
18 different static tools that can actually be meaningfully
19 interpreted. You have to do different sorts of
20 mathematical transformation in order to try and combine
21 those which renders it -- I'm trying to think of a way to
22 put this. It renders it very difficult to -- to make any
23 sort of meaningful assessment of. I'm not sure if anyone
24 remembers from math school, in math class in high school
25 where, you know, you'd have to do like a big transformation

1 on scores and then you're asked well, what does that mean
2 and you're trying to interpret like long numbers or squared
3 numbers, it's not intuitive, and so you're left with the
4 same problem if you're trying to combine these different
5 static tools. So that was another more practical or
6 statistical reason why I didn't score that tool.

7 The Stable, which I think is actually a pretty good
8 tool, the reason why I didn't do the Stable-2007 is because
9 most of the samples that it was based on and developed for
10 were for community samples. So these are different types
11 of sex offenders that maybe are going into transitional
12 programming, community programming, which is different from
13 a sexually violent predator proceeding.

14 The other piece is that there's no way to actually get
15 an accurate probability based on specific scores. If
16 you're gonna combine the Stable, the information from that
17 dynamic risk assessment tool, and try and combine it with
18 your Static tool, you have to use a table. And that might
19 not sound all that bad, but the only way you can do that is
20 if you lump groups of scores together. So, in other words,
21 someone with a static between, say, a score of 2 to 4 falls
22 into one category and then you would compare that with
23 another lumped group set of scores from the other tool, so
24 what you're actually doing is you're losing precision,
25 you're losing mathematical precision where you're having

1 to use that type of tool, whereas with my dynamic risk
2 assessment tool and my Static-99R, I can use logistic
3 regression and get a specific pinpoint well-calibrated
4 probability of what someone's sexual offending is based on
5 the unique scores of a person. You can't do that when
6 you're using the Stable. It's just the limitation of the
7 tool and so that's why I don't use the Stable in this type
8 of work.

9 Q. Did you use the test that the South Carolina
10 Department of Mental Health normally uses with these
11 evaluations?

12 A. Yes. Every single evaluator that works for the South
13 Carolina Department of Mental Health uses the Static-99R
14 and Violence Risk Scale Sex Offense version for the reasons
15 that I just testified about.

16 Q. Would it be reasonable to say something like doing all
17 of these tests equates to going to the doctor for a cold
18 and getting a bunch of MRIs and x-rays and that sort of
19 thing? Is it overkill like that also?

20 A. That's how I think of it. Again, getting back to my
21 first point, you only administer tests, you only do extra
22 work with a respondent or client when there's the chance
23 that it can add something extra, you're missing something,
24 you need more information that you don't already have, and
25 in this particular case I just didn't see that those types

1 of tools or even adding like an MMPI-3 would have given me
2 additional information that could change my opinion. So,
3 yeah, you don't give tests just for the sake of giving
4 tests. That's how I was trained and that's how we operate
5 at the Department of Mental Health.

6 Q. Okay. And very quickly -- by the way, do you know
7 whether the victim recanted at all in this case? Was there
8 any indication?

9 A. I'm not sure about that.

10 Q. Okay. Did Mr. Nix have a plan for how he was going to
11 operate in the community once released and how he was not
12 going to sexually re-offend? Did he discuss that with you?

13 A. I did ask him about his plans and he did discuss them
14 with me.

15 Q. And he did have a home he could go to that there was
16 no children around, correct?

17 A. Yes. That was part of his identified release plan,
18 that he was gonna go live in a home where children would
19 not be present and he talked about a goal of trying to
20 avoid children in the future.

21 Q. Okay. And by the way, does the risk lower over time
22 with age? Does the risk of sexual re-offending over time
23 end with age?

24 A. Yes and no. So on the yes side, as someone ages and
25 gets older, for example, I think after age forty and after

1 age sixty, it might be forty-five, but forty-five and
2 sixty, their static risk can go down, so it's reflecting
3 that their risk to commit a sex crime does go down with
4 age. The reason why I said no is because in this
5 particular case when we're projecting his risk out, say,
6 twenty years, yes, Mr. Nix is gonna be an older man twenty
7 years from now, but he's not getting credit for being old
8 at that time if that makes sense. Age is already kind of
9 baked into the equation, so he wouldn't get like an
10 additional reduction based on that 34 percent by becoming
11 older. It's separate or maybe a better way to put it is
12 it's already kind of baked into the equation, it's already
13 baked into the prediction. So I just want to make sure
14 that's clear that at this point in time that number
15 accounts for what his risk will be over time over the next
16 twenty years already.

17 Q. And what is your -- finally, what is your ultimate and
18 final opinion as to whether Mr. Nix is more probably than
19 not likely -- more probably than not his risk to sexually
20 re-offend?

21 A. So it's my opinion based on all the evidence and the
22 information that was reviewed, based on scoring multiple
23 actuarial risk assessment tools for sexual offending and
24 considering other factors that go beyond those actuarial
25 tools, that based on his overall probability of sexual

1 re-offending that Mr. Nix is not more probably than not to
2 sexually re-offend within his remaining lifetime.

3 Q. And you're saying that even considering the fact that
4 you've diagnosed him with an antisocial personality
5 disorder?

6 A. Yes, even those he's been diagnosed with that and
7 even though he has risk factors that are connected to the
8 antisocial personality disorder, including impulsivity,
9 poor compliance with rules and supervision, all of that was
10 considered and scored and is being accounted for in his
11 risk assessment and he is still not more probably than not
12 to commit a sex crime if released.

13 Q. Is it your opinion that he does not fall in the
14 extremely dangerous group of individuals who require
15 involuntary commitment into a secure facility?

16 A. Yes, it is.

17 Q. Okay. And ultimately is it your opinion that Mr. Nix
18 does not meet the criteria to being a sexually violent
19 predator?

20 A. Yes, that's my ultimately opinion. Mr. Nix does not
21 meet the criteria to be a sexually violent predator.

22 MS. JOHNSON: Thank you. I appreciate your patience
23 with these long questions and if you'll answer any
24 questions for Mr. Runyan.

25 THE COURT: All right. Before we begin

1 cross-examination, let's take a short recess. We've been
2 going a little over -- about an hour and twenty minutes.
3 Refresh yourselves. As soon as you're ready to come back
4 in, we'll keep moving.

5 So please don't discuss the case during the recess.

6 (Whereupon, the jury retires the jury room at
7 11:51 AM.)

8 THE COURT: Okay. Doctor, you're free to get off
9 the stand and refresh yourself as well. Just don't
10 discuss your testimony with anyone.

11 Let's try keep this to five or ten and we'll try to
12 get started with cross. Obviously once we finish this
13 witness we'll have a break for lunch and then we can talk
14 afternoon schedule after that, okay?

15 MS. JOHNSON: Thank you, Your Honor.

16 (Recess taken at 11:51 AM.)

17 (Back on the record at 12:03 PM.)

18 BAILIFF: Keep your seat. Court's back in session.

19 THE COURT: All right. Are you read to cross?

20 MR. RUNYAN: Yes, Your Honor.

21 THE COURT: Okay. Ms. Johnson, ready to proceed?

22 MS. JOHNSON: Yes, sir.

23 THE COURT: Let's bring them in.

24 (Whereupon, the jury return to the courtroom at
25 12:04 PM.)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen, welcome back. We'll pick up now with
3 cross-examination of this witness.

4 MR. RUNYAN: May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. RUNYAN:

8 Q. Good afternoon, Dr. Gillen.

9 A. Good afternoon.

10 Q. So just as a threshold matter here, you testified that
11 in I think it was in January of 2023 you issued an opinion
12 in this case; is that right?

13 A. Yes, that's correct.

14 Q. And then in -- what I have is June 15, 2023, you
15 issued not a new report but an addendum; is that correct?

16 A. Yes, that's correct.

17 Q. Okay. And the addendum as I understand it, as you
18 testified to and as I've read it, is you were reassessing
19 the probability of recidivism for Mr. Nix?

20 A. Yes, that's correct.

21 Q. Okay. Doctor, how -- can you tell us -- would you
22 agree with this statement that the -- one of the best
23 predictors of someone's future sexual offending is their
24 past sexual offending?

25 A. Sure. Yeah, I think that certainly could be a strong

1 risk factor for sexual offending.

2 Q. Let's go into your January 2023 report. And, again,
3 just as a threshold, did you rescore any of the measures
4 you talked about? The Static-99R you gave -- you testified
5 you gave him a score of 3?

6 A. Right. Yeah, so that was consistent across the
7 January '23 evaluation, as well as the addendum or the
8 second report in June of 2023. That score remained
9 unchanged.

10 Q. Now the VRS-SO you said you scored him a 31 on the
11 pretreatment and a zero posttreatment. Did those scores
12 change in any way?

13 A. No, those scores, just like Static score, remained the
14 same on the second report unchanged.

15 Q. And you testified that you scored -- not scored, but
16 looked at a couple of different assessments and you talked
17 about the Kelley assessment and you scored that. That was
18 one you used in addition for the addendum, correct?

19 A. Yes, that's correct.

20 Q. Okay. And the other one you used I don't think you
21 named it, but the lifetime residual calculator, the
22 Thornton study; is that correct?

23 A. Yes, that was the second extrapolation or second
24 additional piece of information that was included in
25 addition to the undetected offending piece, which is from

1 the Kelley and colleagues article.

2 Q. But other than those two things, there was nothing
3 different between the two, the addendum and the original
4 report?

5 A. In terms of the work that I completed?

6 Q. The work you completed.

7 A. Yeah, that's correct. So the only additions were
8 extrapolating out from the actuarial risk assessments with
9 those additional pieces of information.

10 Q. And, of course, your ultimate opinion changed; is that
11 right?

12 A. Yes.

13 Q. Okay. All right. Doctor, have you always -- when you
14 did the report in January 2023, were you assessing lifetime
15 risk?

16 A. Not in the same way, no.

17 Q. But were you asked to assess lifetime risk?

18 A. It was implicit, but, again, it wasn't being assessed
19 in the same way because I wasn't as concerned with absolute
20 recidivism estimates. So in the January 2023 report, I
21 was more focussed on risk categories. So, in other words,
22 based on the combination of actuarial scores what level
23 or category of risk does the person belong to in order to
24 come to my ultimate opinions. So when I say implicitly
25 lifetime risk is focussed in there, it was, but, again,

1 I was more focussed on overall categories of risk when
2 making that decision, whereas in June of 2023 it really was
3 about the absolute recidivism estimates or probabilities
4 and so at that point it becomes important to quantify what
5 that lifetime risk actually is, whereas before getting a
6 specific number quantifying that amount of risk wasn't as
7 important to the ultimate opinion.

8 Q. I guess I may have confused you a little bit. I
9 wasn't asking the differences. I was asking you in January
10 of 2023 and prior evaluations that you've done was your
11 question basically, and I think you testified to this on
12 direct, that you're looking at any risk, either 5-year,
13 10-year or someone's lifespan. So you're assessing risk --
14 in whatever manner you assess risk, you're doing it for
15 someone's --

16 A. Right. Right. So if I'm understanding the question
17 correctly, before I wasn't making a determination based on
18 someone's 5 or 10-year risk or detected or undetected risk.
19 That was implicitly considered in there when I was making
20 the decision. Hopefully that answers the question if I'm
21 understanding it right.

22 Q. That's fine. We'll move on. So in your January 2023
23 report, just as a threshold matter here, you agree that
24 Mr. Nix has been convicted of two sexually violent
25 offenses?

1 A. Yes, that's correct.

2 Q. And they're criminal sexual conduct with a minor
3 second degree?

4 A. Yes, that was one.

5 Q. And a sexual exploitation of a minor third degree?

6 A. Yes, that was the second.

7 Q. And those were for offenses against his daughter and
8 stepdaughters?

9 A. Right. As I testified earlier, there was some
10 ambiguity about exactly the nature of the relation of
11 the individuals involved in the images for that sexual
12 exploitation of a minor third degree conviction, but, yes,
13 it was his oldest daughter with that criminal sexual
14 conduct with a minor in the second degree conviction.

15 Q. Now you discussed these charges or convictions with
16 him in the interview; is that right?

17 A. Yes.

18 Q. What, if anything, did he tell you about them?

19 A. He said that he didn't do them. He denied committing
20 any sex offenses. He blamed the victims for basically
21 fabricating or creating these allegations, and that was his
22 version of events when asked about those offenses directly.

23 Q. And you're also -- you would agree that he had a
24 community supervision revocation in 2022?

25 A. Yes, that's correct.

1 Q. Now would you -- I think you listed these, but we'll
2 just go over them again. He was violated for not paying
3 various fees?

4 A. That was part of it, yes.

5 Q. That -- for testing positive for illegal substances?

6 A. That was part of it.

7 Q. That he violated the Internet policy by going to
8 pornographic websites?

9 A. That was part of it, yes.

10 Q. That he possessed screen shots on his cell phone of
11 sexually explicit materials? That would be the images of
12 his -- you testified was his daughter and granddaughter?

13 A. Yes, so his adult daughter and his 2-year-old
14 granddaughter. Now whether they were sexually explicit
15 I think there is some ambiguity there, but they were
16 certainly nude naked pictures of them coming out of the
17 shower was how it was described.

18 Q. Well, did you talk to him about that?

19 A. Yes.

20 Q. What did he tell you about it?

21 A. He framed it as -- as an accident. So his version of
22 events was that he was FaceTiming with his adult daughter
23 and this was an accident that had happened, this screen
24 shot that it captured during the course of a conversation
25 that he was having with them.

1 Q. Now did you review other probation violations he had
2 prior to 2022?

3 A. Yes.

4 Q. What did he have?

5 A. So I believe there were charges out of Florida for a
6 probation violation before and then there were a probation
7 violation in 2013 that was connected with his convictions
8 for those sexually violent offenses that we talked about
9 earlier, so that was an additional conviction that he
10 had on his record for committing those crimes while on
11 probation.

12 Q. And you also agree I think you testified that during
13 his -- when he was required under community supervision to
14 participate in sex offender treatment he kind of failed --
15 fell short of that?

16 A. Right. That was part of the violation was because he
17 went to the -- as I testified earlier, he went to the one
18 initial session and then did not return and participate in
19 further sex offender treatment while on probation.

20 Q. And just generally you reviewed his nonsexual criminal
21 history?

22 A. Yes.

23 Q. And his juvenile criminal history?

24 A. Yes.

25 Q. And would you say there's a pattern of behavior of

1 violating the rules over a long period of time?

2 A. Yes, I would.

3 Q. So moving on, did you -- you testified you diagnosed
4 him with antisocial personality disorder; is that right?

5 A. Yes, that's correct.

6 Q. And that diagnosis remains the same today?

7 A. I believe so. It certainly remains the same as of the
8 time I submitted the report of the evaluation.

9 Q. So when you did your addendum, you didn't -- you
10 didn't re-interview Mr. Nix?

11 A. No, I did not.

12 Q. Did you get any new evidence or new records?

13 A. No.

14 Q. Okay. So everything was based -- in your addendum and
15 your report, everything was based on what you had at the
16 time you did the initial report in 2022?

17 A. Yes, that's correct, and the diagnosis did not change
18 from January 2023 to June 2023. That remained constant
19 across both reports that were submitted.

20 Q. Would you agree that Mr. Nix has engaged and is
21 engaged in repeated behaviors that were grounds for
22 arrests, including thefts, sexual offenses and community
23 supervision violations?

24 A. Yes.

25 Q. Would you agree that his behavior is repeated and

1 impulsive and reckless behavior?

2 A. Yes.

3 Q. You did not -- you testified you didn't diagnosis him
4 with paraphilic disorders -- any paraphilic disorder; is
5 that right?

6 A. That's correct.

7 Q. And we'll talk about dynamic risk factors, but there
8 is a dynamic risk factor for sexual deviance; is that
9 right?

10 A. As measured by the Violence Risk Scale Sex Offense
11 version, yes. It's called sexually deviant preference.

12 Q. Do you think Mr. Nix has sexually deviant preference?

13 A. I think he exhibited evidence of that and I believe
14 he was assigned that risk factor because of his behaviors
15 between 2008 and 2009 and then also possessing that image
16 in 2022 while he was on probation. I saw that as evidence
17 of that type of pattern, but, again, not to the degree that
18 he actually has a diagnosable specific paraphilic disorder.

19 Q. But you did -- you just used the word "pattern". So
20 he established a pattern of behavior, sexually deviant
21 behavior?

22 A. Yes. So between 2008 -- December 2008 and I believe
23 May 2009 where the different charges and convictions
24 occurred for the behaviors that we've talked about and then
25 the 2022 violation of probation, right, so having the nude

1 image screen-shotted on his phone, yes, I believe that all
2 of those behaviors are consistent with that dynamic risk
3 factor and that's why I assigned that dynamic risk factor
4 to him in my evaluation.

5 Q. Okay. So in order to meet the criteria for a sexually
6 violent predator, Doctor, does someone have to have
7 lifelong convictions for sexual offenses?

8 A. No, that's not necessary.

9 Q. Well, how many do they need?

10 A. A single conviction. So by statute there is a
11 requirement that somebody has been convicted or found not
12 guilty by reason of insanity or found incompetent to stand
13 trial on some sort of sexually violent offense, one of
14 those specific sex offense they outline in the law.

15 Q. So with his antisocial personality disorder, would
16 you agree that the traits associated with his personality
17 disorder have remained consistent over time?

18 A. Yes, I would.

19 Q. And would you agree that he continued to engage in
20 sexually problematic behavior involving minor females as
21 recently as 2022?

22 A. I would, yes, because of the violation of probation.
23 So having that screen-shotted image, I -- I saw that as
24 similar to that sexual exploitation of a minor third
25 degree conviction that he had from 2008 and 2009 because

1 of similarities of the type of image that was described
2 from what he had at the time.

3 Q. Would you agree with this statement. That Mr. Nix
4 continued to engage in sexually problematic behavior
5 despite sanctions?

6 A. Yes. Again, because of that probation violation from
7 2022.

8 Q. So when you think about all of that stuff, Doctor,
9 would you agree that Mr. Nix has a longstanding pattern of
10 difficulty controlling his sexual behavior?

11 A. Yes. Between 2008 and 2009 for the sexually violent
12 offenses and then again in 2022 because of the violation of
13 probation, so the way I conceptualized it was yes, he was
14 experiencing those problems during those times.

15 Q. Would you agree that his sexual offending and his
16 difficulty inhibiting this behavior appears to be directly
17 related to his antisocial traits?

18 A. Yes, I agree with that.

19 Q. So you would say that his sexual offending was caused
20 by his antisocial personality disorder?

21 A. Not to get too pedantic or technical, but there is
22 some debate of whether, you know, a diagnosis can cause
23 something, it can create maybe some circular reasoning.
24 So, for example, if a person has a disorder because they
25 do something or they do something because they have the

1 disorder, so the causation of something can be a little
2 tricky; however, I do -- probably the best way to answer
3 that is I do think that the sexual offenses were related to
4 the antisocial personality disorder just because -- I just
5 want to maybe give a little bit of hesitancy with using
6 that specific word.

7 Q. I want to take it a little further here. Would you
8 agree that his personality disorder is a mental condition
9 that has affected his emotional and volitional capacity to
10 engage in acts of sexual violence?

11 A. Yes.

12 Q. And that that predisposes him to engage in such
13 behavior?

14 A. I do, yes, and that is my opinion.

15 Q. Well, let's move onto your risk assessment. I want
16 to delve into that just a little bit further. So you gave
17 him a 3 on the Static-99R and that's the average risk
18 category?

19 A. Yes.

20 Q. Okay. And you scored him on the VRS-SO, the violence
21 risk assessment. That's sexual offending, right, for
22 sexual offenses?

23 A. Yes, that dynamic risk assessment tool. Correct.

24 Q. So you testified that he scored a 31 out of 51?

25 A. Correct.

1 Q. So on the VRS-SO, did that place -- the Static places
2 in categories. So does the VRS-SO have categories as well?

3 A. Yes, it does.

4 Q. Okay. Now a 31, the pretreatment dynamic score of 31,
5 kind of what category does that put Mr. Nix in?

6 A. I don't remember off the top of my head. Let me look
7 if I have it here. I believe it's in the Category 4A,
8 which is the above average risk category, just based on the
9 dynamic risk factors alone.

10 Q. So 4A. Let me break this down. What different levels
11 of categories are there?

12 A. So they use what's called a common risk assessment
13 language. So it's a way of standardizing and communicating
14 risk across different tools that someone might be using
15 or different types of risk. So for sex offending,
16 violence, whatever the outcome of interest is. And so the
17 way this common risk language works is it goes from Level
18 1, Level 2, Level 3, Level 4A, 4B. 4B is the highest
19 category, which corresponds with a well-above average risk,
20 and then Level 1 would be the lowest amount of risk that
21 someone has.

22 Q. So you're saying he's 4B?

23 A. No, I believe 4A.

24 Q. I'm sorry, 4A.

25 A. Which is the above average risk category.

1 Q. And that's just off solely for the dynamic --
2 pretreatment dynamic risk number?

3 A. Yes and no. It's also, I believe, the combined as
4 well, but, yes, for the VRS-SO dynamic tool itself, just
5 that one score of 31, that in and of itself, separate from
6 everything else, would place him in the 4A category on
7 dynamic risk alone.

8 Q. And that's similar to the Static by itself of the 3.
9 It's in the average risk category?

10 A. Right. That's a Level 3. That would be a low -- one
11 level or group lower than that.

12 Q. And so then you give him the treatment change score;
13 is that right?

14 A. Yes.

15 Q. And he scored a zero?

16 A. That's correct.

17 Q. Hypothetically someone could have -- could someone
18 track off numbers from their pretreatment score?

19 A. Well, it never would be below zero, so there would be
20 no negative score, but theoretically it could go as high
21 as 17 points, maybe even more. Not in an SVP or sexually
22 violent predator context though. I would say the highest
23 in this sort of case, someone who's maybe done tons of
24 treatment on every single risk factor imageable, they could
25 theoretically have 17 points of change.

1 Q. And that 17 points of change, would that come off the
2 pretreatment?

3 A. Well, so they're separate scores. So the way that it
4 would work is when you combine, say, like in a statistical
5 formula, his static score, his pretreatment score and his
6 change score, all three data points are giving unique
7 information. And so, yes, if there is an elevated change
8 score, one point, two points, three points, whatever it
9 is, that will serve to reduce the risk of the static and
10 dynamic risk factors they have coming into treatment, but
11 it doesn't necessary come off on the front end. They're
12 separate data points.

13 Q. Right. And you're getting to where I'm going. So you
14 combined all these three scores together?

15 A. Yes, that's correct.

16 Q. So it takes into account static historical risk
17 factors, it takes in account the dynamic risk factors, it
18 takes in account any sort of treatment change they may have
19 had?

20 A. Yes, that's correct.

21 Q. And then you come up with a score, a combined risk
22 assessment?

23 A. Right. Yes. It's used to generate an overall
24 probability or absolute recidivism estimate based on all
25 three pieces of information that's used in the statistical

1 equation.

2 Q. And after you've combined all three of these numbers,
3 what category did Mr. Nix fall into?

4 A. So as I testified before, it was the 4A category,
5 which is the above average risk category.

6 Q. That was his final -- based on all those combinations,
7 his final risk assessment probability?

8 A. Right. Yeah, based on all three of those pieces of
9 information.

10 Q. And that was -- according to your report, the 10-year
11 risk recidivism was 24.41 percent; is that right?

12 A. I'd have to double-check. Yes, that's correct.

13 Q. Now, Doctor, in your report tell us what does it mean
14 -- or what do the makers or the developers of the VRS-SO,
15 what do they say about individuals in the above average
16 risk category?

17 A. Right. So it's quotations, so I just want to make
18 sure I say it accurately, have a large number of
19 criminogenic needs and require high prioritizations of
20 services and require intervention in any domain of need,
21 graduated supervised release and intensive community
22 monitoring to mitigate risk and prevent recidivism. That's
23 how the author was describing people who are within that
24 category of risk.

25 Q. All right. Moving on, the -- and then we'll jump to

1 your -- the new matrixes that you used in your addendum.

2 Doctor, I'm curious, the Kelley study, was that available
3 to you in 2023 when you did this report?

4 A. I wasn't aware of it at the time. I think the online
5 publication came out in 2022, so it would have been
6 available online before, yes.

7 Q. Did you study with Dr. Kelley?

8 A. I did, yeah. Well, I didn't study. She was a
9 supervisor, someone I was -- at the same secure treatment
10 center for my forensic fellowship. She was one of the
11 primary supervisors that was responsible for training
12 fellows in how to do these types of evaluations.

13 Q. And do you still communicate with her?

14 A. I do, yes.

15 Q. But you weren't aware of the study that she did?

16 A. January of 2023 I was not, no.

17 Q. Okay. How about the Thornton Lifetime Risk
18 Calculator. I think in your footnote it says it came out
19 in 2021. Was that not available to you in 2023?

20 A. Yes, it was, and I was aware of it at the time.

21 Q. But you chose not to use it?

22 A. Right. Because, again, as I think I testified earlier
23 on direct, for the January 2023 report my decisionmaking
24 and being able to provide an opinion in this type of case
25 was really based on that risk category that I was just

1 explaining and talking about and so these types of
2 extrapolations, so for undetected offending like that
3 Kelley article or the lifetime recidivism for the Thornton
4 article, these are basically ways of quantifying an
5 additional part of risk that the actuarial tools don't
6 have. It doesn't really impact anyone's category. So, in
7 other words, whether someone -- you know, whether I was
8 aware of the Kelley article or the information from there
9 or whether I used the lifetime recidivism calculator, it
10 wouldn't really change his category of risk at that time,
11 it would still have been 4A. So the way I kind of
12 approached it was that wasn't information that was needed
13 or necessary at that time because I wasn't making my
14 opinions based on probability, based on specific
15 percentages, but fast-forward to June of 2023 that changed
16 and I really wanted to be able to find a way to quantify
17 that additional information, when I was now dealing with
18 absolute recidivism percentages. That's -- that the reason
19 for the change and why that information was included then,
20 but not before.

21 Q. So now your opinions -- you just testified now your
22 opinions are only based on one statistical number?

23 A. No, I wouldn't say that because, again, it's gonna
24 be based on a lot of different types of risk information.
25 It's gonna include the static risk factors, dynamic risk

1 factors, any treatment change the person may have made,
2 and it's also gonna account for information beyond the
3 tools. So it's really actually several different numbers
4 and how they're combined in different ways and different
5 statistical techniques to reach a final opinion is
6 certainly the case, but it's not just one number. It's a
7 lot of different information that gets combined together.

8 Q. Okay. Let talk about his dynamic risk factors. You
9 just testified earlier that he has -- you assigned sexual
10 deviance; is that correct?

11 A. Yes, that's correct.

12 Q. Okay. What about sexually deviant lifestyle?

13 A. I'm sorry. It's sexual deviant preference.

14 Q. Okay.

15 A. So I misspoke. That's the name of the item on the
16 VRS-SO. It's deviant sexual preference and, yes, I
17 assigned that risk factor.

18 Q. So sexually deviant preference?

19 A. Yes. That's the name of the specific item on the
20 VRS-SO. That's what it's called.

21 Q. What was his sexual deviant preference to?

22 A. So in this case, it was gonna be for minor females.
23 So it's hard to get more specific than that because of the
24 variability of offense history, but it is a preference for
25 minor females between 2008, 2009 based on those offense

1 behaviors that he had and then because of the violation of
2 probation in 2022, the image that he had. So that was the
3 information that was used in scoring that specific item.

4 Q. Okay. How about sexually deviant lifestyle? Was that
5 assigned to him?

6 A. Yes.

7 Q. Okay. And just explain to us how you assigned that to
8 him.

9 A. Right. So a sexually deviant lifestyle, that goes
10 beyond just offenses. It's really what the overall
11 lifestyle of the individual is focussed on, sexual
12 deviance, and so part of it was the offenses, but then the
13 other part of it was other types of behaviors that he was
14 doing around the time of the offenses contributing to
15 sexual offending. Those were also factored in and why I
16 assigned that risk factor for him.

17 Q. Okay. Did he have -- at the time he was offending
18 against his daughter, did he have age appropriate sexual
19 partners?

20 A. I believe so, yes. I believe he -- I believe he did.

21 Q. Well, how does that factor into your opinion when
22 someone has age appropriate sexual partners, but --

23 A. So it speaks to preference that first item. So, for
24 example, if someone does have access to an age -- a similar
25 age, consensual age partner and they're choosing to have

1 sex with someone who's a minor, that might speak that that
2 could be a preference at least at that time for the person.
3 The other part of it is also with assigning whether a
4 personality disorder, like antisocial personality disorder,
5 whether it's predisposing for a specific person. So, you
6 know, antisocial personality disorder is not predisposing
7 for everyone. People can have that disorder and commit a
8 lot of different types of crimes. So that specific example
9 about whether someone has access to an adult partner and
10 they still choose to sexually offend related to their
11 personality disorder, that's also evidence that it could be
12 a predisposing disorder for that person.

13 Q. And I guess I should have gone back to this. How many
14 categories of dynamic risk factors are there? I don't
15 think we got into that on direct. How many categories are
16 there?

17 A. There's three different factors. So these are
18 scientifically or empirically derived or formed factors
19 that make up seventeen items on the VRS-SO. A way to put
20 it is that items kind of group into one of three categories
21 and there's two of the seventeen items that don't really
22 fit. They're kind of standalone items that don't really
23 belong to a factor on its own.

24 Q. Okay. So the sexual preference and the sexually
25 deviant lifestyle, they fall into what's called sexually

1 deviance -- a sexual deviance factor?

2 A. Yes, that's correct.

3 Q. Now when we're just talking about the sexual deviance
4 factor, would you agree that Mr. Nix has not learned any
5 strategies or independent skills that could help him
6 mitigate the risk posed by those factors?

7 A. Yes, I believe so.

8 Q. And so the next one I have here is criminality. Is
9 that one of the factors?

10 A. Yes.

11 Q. Okay. Did you assign any dynamic risk factors to
12 criminality?

13 A. I did, yes.

14 Q. What were they?

15 A. Criminal personality, impulsivity, poor compliance
16 with community supervision and poor community supports.

17 Q. Okay. Explain to us how those affect Mr. Nix's risk.

18 A. Okay. So -- yes, those are items that are from the
19 VRS-SO, right, they have different scoring criteria, and
20 the way he demonstrated the criminal personality is similar
21 with his antisocial personality disorder, so kind of that
22 lack of remorse and not really accepting responsibility
23 for the sexual offense and other problematic behaviors.
24 The impulsivity, as I testified earlier. That's acting
25 really without thinking ahead of consequences, so that

1 serves to increase his risk by having that risk factor.
2 His probation violations that I talked about earlier kind
3 of fit in with that poor compliance with community
4 supervision risk factor. And then poor community support.
5 Again, not having a really well-established diverse support
6 network out in the community that can hold him accountable
7 and his own ability to potentially benefit from that
8 support network also factored into why that dynamic risk
9 factor was assigned. And, again, higher scores increase
10 someone's risk, so getting points on those items serves to
11 increase his risk.

12 Q. So you would agree that given those extensive problems
13 in adhering to community supervision and complying with the
14 supports in the past, his community support remained an
15 on-going risk factor for Mr. Nix?

16 A. Yes. If I'm understanding the question correctly,
17 those risk factors I just talked about I believe they were
18 active risk factors for him at the time of the evaluation.

19 Q. Okay. So this kind of next category or factor,
20 Doctor, is treatment responsivity. Talk to me about -- or
21 does Mr. Nix have a lack of insight?

22 A. Yes, specifically a lack of insight into his sexual
23 preferences.

24 Q. Could you just explain that a little bit further?

25 A. Right. So insight is someone who has an understanding

1 into the precipitating factors or the reasons why a sex
2 offense occurred, so that's an area of need for Mr. Nix, is
3 being able to understand why these things happened the way
4 they did.

5 Q. Okay. So you would agree that his responses showed
6 poor understanding of his sexual offense history and his
7 underlying precipitating factors?

8 A. Yes.

9 Q. What does it mean when someone justifies their
10 offenses?

11 A. So providing like an excuse or a rationalization for
12 why they did what they did.

13 Q. Did Mr. Nix do that?

14 A. Yes.

15 Q. Is that what's considered a cognitive distortion?

16 A. Yes.

17 Q. Could you explain to us what a cognitive distortion
18 is?

19 A. So it's a faulty or incorrect thinking or belief or
20 attitude about sexual offending, and that's one type of
21 cognitive distortion.

22 Q. So would you agree that his presentation in the
23 interview with you suggested distortions remained -- these
24 distortions remained an active risk factor for him?

25 A. Yes.

1 Q. Now, again, Doctor, and before we go on, I think you
2 testified to this, I know we heard testimony yesterday, but
3 dynamic risk factors are something that someone can be
4 treated for; is that right?

5 A. Yes, that's correct.

6 Q. Okay. Let's talk about -- did you assign a risk
7 factor of treatment compliance?

8 A. I did, yes.

9 Q. And why is treatment compliance an issue for him?

10 A. Because as I testified earlier about how he only
11 showed up to one sex offender treatment session while he
12 was on probation and then stopped attending and ultimately
13 that contributed in part to why his probation was revoked.
14 So, again, it doesn't show that someone was compliant with
15 sex offender treatment when they have the opportunity to
16 do so.

17 Q. Okay. So you would agree that his responses to you
18 suggested a limited motivation to change and no commitment
19 to pursue sex offender treatment?

20 A. I believe so. I'm not sure if those were the exact
21 words from the report, but that sounds accurate.

22 Q. Okay. In speaking to that, is it your understanding
23 that -- whether or not he has any community supervision
24 when he -- if he were released?

25 A. I don't believe he has any anymore. So they can't --

1 while someone's awaiting trial for sexually violent
2 predator proceedings, their probation time runs while
3 they're incarcerated. So based on the information I got
4 from my evaluation, I don't believe Mr. Nix would have
5 court-mandated supervision now if he was released, whereas
6 before he would have, but that's no longer the case now.

7 Q. So with that in mind and your prior testimony about
8 his limited motivation and no commitment to pursue it, is
9 it your opinion that he's not likely to seek sex offender
10 treatment if not mandated?

11 A. I believe that would be unlikely based on his prior
12 behavior and responses during the interview.

13 Q. Okay. How about release -- another dynamic risk
14 factor, released to high risk situations. Could you
15 explain that to us?

16 A. Right. So it's someone who -- there's a -- basically
17 they're going back into a high risk setting connected to
18 sexual offending and so it might not even be of their own
19 fault, but it also involves being able to manage high risk
20 settings, so developing tools or skills that you can manage
21 that to prevent sexual offending in the future.

22 Q. Do you think that Mr. Nix has an issue with release to
23 high risk situations?

24 A. I do and I assigned that risk factor for him.

25 Q. Now the last one, I think you talked about this

1 additional needs. What are those?

2 A. So as I mentioned earlier, there were those two items
3 of seventeen that don't fit onto one of those big factors,
4 so they're kind of captured in this catchall category of
5 additional needs because they don't load onto one of the
6 bigger factors.

7 Q. Does he have any additional needs?

8 A. Yes.

9 Q. And what does he have?

10 A. Intimacy deficits.

11 Q. And what are those?

12 A. So as I testified earlier, it's, you know, difficulty
13 forming really emotionally close, trusting bonds with --
14 with others as part of an intimate usually romantic
15 relationship.

16 Q. Okay. You were asked some questions on direct, and
17 I just want to clarify, you have a protocol you testified
18 in which that all DMH experts follow in doing these
19 evaluations?

20 A. What I testified to is that everyone is using the
21 Static-99R and the Violence Risk Scale Sex Offense version
22 for these evaluations outside of maybe a specific case
23 example. Just to maybe give a quick example for that,
24 maybe someone who has a sexually violent offense on their
25 record and the only one is sexual exploitation of a minor

1 for having like child pornographic materials, those tools
2 might not be appropriate for that type of person. So in
3 those unique case specific examples, we wouldn't use maybe
4 these types of tools because they would be inappropriate
5 for that offender, but generally speaking for the
6 traditional typical cases we're using those two scales
7 consistently across evaluations.

8 Q. And as a forensic psychologist, Doctor, if you wanted
9 to do something that was outside of that, would you be
10 allowed to? Could you do that?

11 A. So long as it's within the guardrails provided
12 within the justice system. But, yes, there's certainly
13 variability within that.

14 Q. Okay. So you could pick and choose. That's what
15 I'm getting at. You can pick and choose what tests or
16 assessments or records in anything that you review?

17 A. Right. So you can use your expertise in a case by
18 case example to maybe use a tool which might be more
19 appropriate for a specific individual or not use a tool
20 which might be inappropriate for a specific individual as
21 long as the tools you are using are valid and reliable and
22 generally accepted within the field. I mean, I couldn't
23 just create something in my basement and come out and start
24 using it. That would not be generally accepted. So, you
25 know, you can't do just anything. So there are some

1 guardrails and rules in place about what can and can't be
2 used.

3 Q. Well, for example, you were asking about the MMPI. Is
4 that generally accepted in your field?

5 A. Certainly. It's a really well-established broadband
6 personality assessment inventory. Again, how it's
7 generally acceptably used for sexually violent predator
8 evaluations is less certain, but the tool itself is -- you
9 know, has good research support and certainly can be used
10 in a lot of different clinical practices.

11 Q. And you've used it in the past you testified?

12 A. Yes, I have on a case by case basis. When I think
13 there's something to gain from it, I have used it in those
14 types of cases.

15 Q. Okay. I want to ask you just some hypotheticals,
16 Doctor. So hypothetically you have someone who presents
17 with -- we'll just say a paraphilic disorder.

18 A. Okay.

19 Q. We won't be specific. Just a paraphilic disorder.
20 You diagnosed with a paraphilic disorder and by your
21 matrixes and calculations and tools that you use you come
22 up with a 60 percent -- this person has a 60 percent
23 probability to re-offend sexually --

24 A. Uh-huh.

25 Q. -- but they have really good support structures, they

1 have a really good understanding of their paraphilic
2 disorder, they are in treatment, they're able to function,
3 but they have a 60 percent, would someone like that meet
4 the criteria to be?

5 A. Well, that's quite the hypothetical case because
6 that's assuming they're still at 60 percent when their risk
7 is being dragged down by all those positives that they're
8 doing. I mean, theoretically, yeah, I mean, that would
9 mean that they have tons of risk elsewhere, right? Like if
10 someone is 60 percent likely to commit a sex offense doing
11 all those positive things, that means they've got lot of
12 problems somewhere else that they're not dealing with in
13 order to keep that risk that high. So theoretically, yes.
14 It's just in actuality would that happen, you know, it's
15 kind of like -- change kind of begets change. If someone's
16 making a positive change in a lot of areas like this
17 example, it's hard to imagine that they'd have that much
18 risk still being untreated or unidentified that would
19 still put them at that amount of risk. It's possible
20 theoretically, but, again, probably -- probably unlikely
21 or difficult to see that in a real case off the top of my
22 head.

23 Q. I'm not asking you about a real case. I'm asking you
24 about a hypothetical. In my hypothetical, the person has a
25 sexually violent offense, they have a paraphilic disorder

1 that they've acted on.

2 A. Which is predisposing?

3 Q. Correct. Yeah. And they have a 60 percent risk based
4 on the calculations and the actuarials, but have all these
5 things that they're doing right. They understand their
6 condition, they understand how to manage it, they're in
7 treatment. Could you -- would you -- not you, but could a
8 forensic psychologist say that they don't meet the criteria
9 to be committed?

10 A. If they said that they don't meet the criteria?

11 Q. Yeah, don't meet the criteria.

12 A. Based on those specific pieces of information in this
13 hypothetical, they would still be very risky. They would
14 be more probably than not to commit a sex crime likely
15 because of all this other unmanaged dynamic risk factors
16 and historical risk factors that they have that's driving
17 that risk up. So, yes, it's possible people can make
18 positive changes in treatment and still be very, very risky
19 and be more probably than not to commit a sex crime.

20 Q. Okay. Well, on the flip side of that coin, let's ask
21 another hypothetical. If a person has the same paraphilic
22 disorder, they've been convicted of a sexually violent
23 offense, they've, you know, acted out on it, they don't
24 understand -- or, no, they have the same treatment, you
25 know, they have the same treatment things and they're doing

1 well and they have protective factors, but they score a
2 23 percent. I mean, could they be considered a sexually
3 violent predator?

4 A. I would say no, and this is actually the really --
5 this is really the strength of the method that I'm
6 using because it's allowing us to really consider all
7 the different types of relevant risk information, not
8 just focussing on one number, which is how much change
9 someone's made in treatment. As I testified earlier, that
10 information's important, it adds incremental value beyond
11 the historical dynamic risk factors someone had and the
12 static risk factors, those historical factors they had,
13 but it doesn't negate them, and that's really, really
14 important to know, that a comprehensive risk assessment
15 involves all these areas together and so someone can make
16 a lot of treatment change and someone can make a very
17 little amount of treatment change and their overall risk,
18 you know, could look very, very different.

19 A great example of this actually comes from some of
20 the research. When you get super high risk guys that come
21 into treatment, the highest risk guys you can think of,
22 maybe they have seventeen of all seventeen dynamic risk
23 factors, that's a lot of area to improve on. You can
24 almost kind of think of it like your house. If it's a real
25 fixer upper, right, you can put a lot -- make a lot of

1 changes into that house, but the end result might not still
2 be the same. So the reason I say that is someone can make
3 a lot of change in treatment and still be incredibly risky.
4 Just like you can make a lot of improvements on your fixer
5 upper house and it can still be a clunker. That I think is
6 the best way to really think of this because each piece of
7 information is salient and important in the overall risk of
8 that person, not just one thing.

9 Q. Okay. And actually the last hypothetical, this will
10 be my last one, you have someone who has low risk, okay --

11 A. Right.

12 Q. -- 23 percent or whatever, they have a sexually
13 violent conviction they've acted on, they have a
14 predisposing mental abnormality, but all of your
15 assessments show a probability of 23 percent likelihood
16 of lifetime re-offense, but during the interview they tell
17 you Dr. So and So, the first thing I'm gonna do when I
18 leave this room is I'm gonna go out and I'm gonna find
19 X, Y and Z and I'm gonna sexually assault them. How does
20 that -- I mean, how does that factor into your actuarials?

21 A. So, yeah, that's a really good point. I remember
22 actually talking about this very issue when I was a fellow
23 up at Wisconsin and talking to different evaluators and
24 how they'd approach that situation and that was I'd say
25 consistently across the twelve or thirteen evaluators,

1 that was a situation where a clinical override could be
2 appropriate. That was the only one. And I think it's
3 really important -- well, I remember what a supervisor told
4 me. They said it's not just them saying they're gonna do
5 it, you want to know why are they telling you that because
6 sometimes people will say things for a lot of different
7 reasons. There are people that I've talked to that don't
8 want to leave incarceration, so they could say yeah, I'm
9 gonna go out and do it again just because they want to
10 stay. They're not being truthful with that disclosure, but
11 I remember when I was talking to the evaluators up at Sand
12 Ridge, that was the example they talked about, was when
13 someone genuinely believed that they could not control
14 their sexual offenses and they had a plan in place and that
15 they were gonna go out and sexually assault a very specific
16 person, and that is the rare lone example. They called
17 it the black swan example of when justifying a clinical
18 override could be appropriate, and that was the only one.

19 Q. I guess that's my point, Dr. Gillen, is that with all
20 these assessments and everything you still have to use your
21 clinical judgment; isn't that correct?

22 A. Well, I think clinical judgment goes into every step
23 of the process. It goes in with assigning diagnoses,
24 assigning whether that -- there being a predisposing
25 condition or not for that person or not, in scoring

1 actuarial risk assessment tools, right, how you perceive
2 and interpret different information from the records and
3 what people are telling you gets filtered into a clinical
4 judgment. So, yes, clinical judgment is certainly used
5 throughout the entire evaluation process. The danger comes
6 in when you use clinical judgment -- and this is not just
7 me saying it, this is the research -- the danger comes in
8 when you think you know better than an actuarial tool, when
9 it shows -- that degrades accuracy, degrades reliability,
10 opens yourself up to biases. So if you just have a hunch
11 or a clinical feeling that this guy doesn't seem right, but
12 my actuarial tools and my risk assessment is saying he's
13 well below a threshold and you consistently start
14 overriding that, what you're doing is it's like you're
15 going to the casino and thinking you're gonna beat the
16 house every single time. It doesn't work. Now that's why
17 I think it's okay to acknowledge those very rare, very
18 isolated incidents where someone says I have a plan, I'm
19 gonna offend against this specific person if you let me
20 out, this is how I'm gonna do it and when I'm gonna do it,
21 by all means take that seriously. But in the vast majority
22 of cases if you override what the comprehensive risk
23 assessment's telling you, you're gonna be wrong a lot more
24 than you're gonna be right, and that's what the research
25 says.

1 Q. All right. Doctor, some final questions here. You
2 diagnosed Mr. Nix with antisocial personality disorder?

3 A. I'm sorry. Could you repeat that question?

4 Q. You diagnosed Mr. Nix with antisocial personality
5 disorder?

6 A. Yes, that's correct.

7 Q. And you believe that the disorder appears related
8 to his sexually violent offending and other sexually
9 problematic behavior?

10 A. Yes.

11 Q. You believe that he demonstrated a pattern of
12 difficulty controlling his sexual arousal and behavior in
13 the community consistent with volitional impairment due to
14 a predisposing mental condition?

15 A. Yes.

16 Q. And based on your -- your actuarial assessments, you
17 believe he has -- he's in the above average range to
18 re-offend sexually?

19 A. Yes, that correct.

20 Q. And that he has a 34 percent lifetime risk to
21 re-offend sexually?

22 A. Yes, that's correct.

23 MR. RUNYAN: No more questions, Your Honor.

24 THE COURT: Redirect.

25 MS. JOHNSON: Just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. JOHNSON:

Q. Dr. Gillen, I'll be really brief. You mentioned that the screen shot was part of the reason -- the 2022 screen shot was part of the reason why you came up with your opinion that he engaged in sexually problematic behavior even with sanctions; is that right?

A. Yes, that's correct.

Q. Okay. And that is because you did not give him the benefit of the doubt regarding those pictures, right?

A. That's right. I didn't give him the benefit of the doubt. I think you could argue it the other way around. You know, he wasn't charged with a sexual offense. There's no indication explicitly that it was like child pornography that he had on his phone, but I didn't give him the benefit of the doubt specifically because the description of that nude image was very similar to the types of images that he had when he was convicted. So because of that history, I did not give him the benefit of the doubt on that one.

Q. And, in fact, those pictures if it had been anybody else without Mr. Nix's history, you wouldn't really have thought anything of them, correct?

A. Well, I wouldn't say that. I would still definitely put some stock into it. You know, it still would count as a violation, it's still very problematic. I think anyone

1 with a sex offense record probably should not be having
2 those types of images, whether they're sexual or not on
3 their device, but I would not have viewed it as sexual
4 recidivism maybe in the same way I did for Mr. Nix because
5 of that history of that type of image being on his phone
6 back in 2008, 2009.

7 Q. You mentioned that he has areas of need because of his
8 category score -- well, his categorization under 4. Was
9 that above average risk?

10 A. Yes, that's correct.

11 Q. Okay. But those areas of need can also be treated in
12 the public, they don't require involuntary commitment
13 necessarily, do they?

14 A. Yes, that's true. The setting in which treatment is
15 delivered doesn't necessarily match on. The other thing,
16 too, a lot of those criminality factors that I talked
17 about, impulsivity, compliance with rules, not having a
18 great community support system, you know, not really having
19 the best remorse for lack of a better term, these are all
20 things that can actually be accomplished outside of sex
21 offense specific treatment. These are general problems
22 that people have that they get counselling for to help
23 mitigate that. You know, even just seeing a therapist,
24 for example, could work on your ability to control your
25 impulses. Because, again, those problems aren't sex

1 offense specific for Mr. Nix. Theoretically they could --
2 you know, he could work on those areas even outside of sex
3 offense specific treatment if he wanted.

4 Q. And to that end, even denial is not necessarily a risk
5 factor of sexual recidivism, is it?

6 A. That's correct. Denial in and of itself is not
7 related to risk.

8 Q. And when you talked about these areas of need, what
9 about his -- you mentioned some -- you referenced some sort
10 of cognitive distortions; is that correct?

11 A. Yes.

12 Q. Can you tell me -- can you go into that a little bit
13 more and tell me what that means?

14 A. So cognitive distortions, these are different types
15 of beliefs, attitude, thinking that someone has that are
16 distorted or faulty or incorrect about sex offending, so
17 they can take a lot of different forms or kinds. They
18 could be someone who thinks the types of clothing that a
19 woman wears means she was asking for being sexually
20 assaulted. That's a common type of distorted thinking that
21 some rapists would have. Or that children enjoy sexual
22 abuse, that this is some way of communicating love or some
23 other type of distorted fault or thought that they have
24 about that behavior. So there's a lot of different types
25 of sexual offense distorted attitudes that people can have

1 and for Mr. Nix he doesn't have a lot of the variety of
2 those types of distortions. His distortions were gonna be
3 more limited to like that excusing, minimizing, justifying
4 his specific behaviors, rather than these more broad types
5 of thinking supportive of having sex with children or,
6 you know, thoughts supporting rape. You know, he wasn't
7 communicating those types of thoughts when I was meeting
8 with him.

9 Q. Okay. And so you still believe that things like his
10 -- the cognitive distortions that you did note, that he
11 could use some treatment for them, correct?

12 A. Correct. I still believe that there was enough
13 concern in that area to warrant being what's considered a
14 treatment need on the VRS-SO. In other words, his score
15 was high enough that it would suggest it's something that
16 a provider should work on him with in treatment.

17 Q. But not high enough to warrant involuntary
18 institutionalization?

19 A. Well, I would say overall his risk does not warrant
20 involuntary civil commitment and treatment on an
21 involuntary basis based on his overall risk assessment.
22 Not necessarily with one particular item or factor.

23 Q. You don't have any particular relationship or friendly
24 association with Mr. Nix that would cause you to endorse
25 him going out into the community despite -- really despite

1 concerns that he was going to sexually re-offend?

2 A. I don't know Mr. Nix personally. I met with him on
3 one occasion for a clinical interview, so my interactions
4 with Mr. Nix were strictly professional. I don't know him
5 outside of that context.

6 Q. So you're not just trying to be -- your opinion that
7 he does not meet the criteria is not just because you're
8 trying to be friendly or because you think he was --

9 MR. RUNYAN: Objection, Your Honor. That's outside
10 the scope of cross.

11 THE COURT: Overruled. He can answer the question.

12 THE WITNESS: Sure. Can you repeat it?

13 BY MS. JOHNSON:

14 Q. So your opinion is not because you think he's a nice
15 guy or you're just trying to be friendly. That is not the
16 reason why you have decided to say that he doesn't meet the
17 criteria in your opinion for a sexually violent predator?

18 A. No. I like to think I'm a nice guy, but I don't think
19 that has any bearing on -- on my opinion or why I came to
20 the conclusion I did.

21 MS. JOHNSON: No further questions, Your Honor.

22 THE COURT: Recross.

23 MR. RUNYAN: No, Your Honor.

24 THE COURT: All right. The witness may step down.

25 (Witness excused.)

1 THE COURT: If you-all would approach real quick.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: All right. Ladies and gentlemen, we'll
4 go ahead and break for lunch now. It's about five till
5 one. I'd like you back in your jury room at 2:00 and
6 we'll finish up the afternoon, okay?

7 Please don't discuss the case while you're out and
8 have a nice lunch.

9 (Whereupon, the jury was excused for lunch at
10 12:57 PM.)

11 THE COURT: Okay. So we're gonna come back at two
12 and continue on with the next witness. Today might be
13 tough. I don't know we can finish today or not.

14 MS. JOHNSON: Your Honor, if **VICTIM**
15 testifies, that will be our last witness.

16 THE COURT: So depending on when you finish. Is it
17 you-all's desire to get it done today?

18 MS. JOHNSON: I would love to get it done today,
19 Your Honor, but if we don't, then --

20 THE COURT: Well, my thing is this. I don't like the
21 idea of a jury getting a case at 4:30.

22 MS. JOHNSON: Right.

23 THE COURT: So, I mean, if it comes down -- we'll
24 just have to play it by ear. The charge is ready.

25 MR. RUNYAN: I mean, most -- I've done probably

1 too many of these cases over the past four years, but
2 typically if we get done somewhere in the 3:30 to 4:00
3 range and the jury's charged, we're usually done before
4 5:00. So I think if we go past four, we're probably --
5 we probably should go into the next day.

6 THE COURT: Okay. Well, just play it by ear, but
7 you-all be ready to close on short notice.

8 And you might have another witness?

9 MS. JOHNSON: **VICTIM**, who is the
10 victim. I've been asking about whether she -- the doctor
11 whether she recanted or not and she's in Horry County and
12 does not have transportation.

13 THE COURT: Is that where the initial thing happened?

14 MS. JOHNSON: No. I think she just lives there.

15 THE COURT: I haven't looked at the sentencing sheets.
16 I don't know.

17 MR. RUNYAN: No, it's here in Lexington.

18 MS. JOHNSON: She just lives there and she does not
19 have transportation and she's indicated that she would
20 like to come in and testify and that she would even be
21 able to do it via video or something, but she can't get
22 here.

23 THE COURT: Let's go ahead and break for lunch. We
24 can chat briefly about it in chambers.

25 MS. JOHNSON: Okay.

1 (Whereupon, a luncheon recess was taken at 1:00 PM.)

2 (Back on the record at 2:34 PM.)

3 BAILIFF: All rise.

4 THE COURT: All right. This will be a remote witness
5 in the virtual courtroom.

6 All right. Are we ready to bring in the jury?

7 MS. JOHNSON: I'm ready, Your Honor.

8 THE COURT: And, ma'am, can you hear me okay? Can
9 you hear me okay?

10 MS. **VICTIM**: Yes, sir.

11 MS. JOHNSON: **VICTIM**, if you see me raise my hand or
12 something like that, that means stop testimony because
13 there might be an objection or something, so be aware of
14 that, okay?

15 MS. **VICTIM**: Yeah, I will.

16 (Discussion off the record.)

17 THE COURT: All right. Let's bring the in the jury.
18 Thank you.

19 (Whereupon, the jury returns to the courtroom at
20 2:36 PM.)

21 THE COURT: All right. Ladies and gentlemen,
22 welcome back. I hope you had a nice lunch. We're ready
23 to proceed with our next witness here.

24 Ms. Johnson, are you ready to call your next witness?

25 MS. JOHNSON: Yes, Your Honor. We are calling

1 VICTIM to the stand.

2 THE COURT: All right. Madam Clerk, if you would
3 swear her in, please.

4 (Whereupon, VICTIM was duly sworn by
5 the Clerk of Court.)

6 THE CLERK: Thank you. And if you would please just
7 state your name and spell your last name for the record,
8 please.

9 THE WITNESS: Yes. It's VICTIM .
10 Last name's spelled VICTIM .
11 VICTIM ,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. JOHNSON:

15 Q. VICTIM, can you hear me okay?

16 A. Yes, ma'am.

17 Q. And just to be clear, your first name, will you spell
18 that? Because it's a little bit of a different spelling,
19 isn't it?

20 A. Yes, it is. So it's VICTIM .

21 Q. VICTIM, you understand that you're here as a witness.
22 You're going to be questioned, there's gonna be some
23 cross-examination?

24 A. (Nods head.) Yes, ma'am.

25 Q. And you have to speak out loud.

1 A. Yes.

2 Q. Okay. And you can hear me okay? Everything's okay
3 with that, right?

4 A. Yes, ma'am. Yes.

5 Q. Okay. So how old are you, VICTIM?

6 A. I'm twenty-seven.

7 Q. And where are you from?

8 A. I am from Lexington, South Carolina, but I spent a
9 good portion my childhood in foster care, so I bounced
10 around a lot, but I was born in Lexington. I -- I did not
11 grow up in Lexington though.

12 Q. Okay. Are you married? Single? Divorced?

13 A. I'm currently separated.

14 Q. VICTIM, do you know Phillip Nix?

15 A. I do.

16 Q. Tell me how you know him.

17 A. He's my dad.

18 Q. He's your dad. Okay. And has he been part of your
19 life for all of your life?

20 A. No. Like I said, a good portion of my childhood was
21 spent in foster care. I was in and out since I was -- I
22 think the first time I was in foster care I was like four
23 or five, something like that.

24 Q. Now let me just address something because you're --
25 you're not here in the courtroom. Did you -- was it your

1 preference to have been here physically in the courtroom?

2 A. Yes, I would have preferred to be there, but I didn't
3 have anybody for, one, to watch my two children and, two,
4 I don't have transportation and I live in Myrtle Beach,
5 which is about three hours away from where you guys are
6 currently located and I had no way to get there.

7 Q. Okay. **VICTIM**, do you acknowledge being one of the
8 victims in a case involving sexually violent offenses that
9 your father was convicted of?

10 A. Yes.

11 Q. Okay. And did that happen on or around 2008, 2009?

12 A. The allegations were, yes.

13 Q. Okay. And you acknowledge that Mr. Nix, your dad, was
14 convicted?

15 A. Correct. Yes.

16 Q. Okay. And today you are here testifying on his
17 behalf; is that correct?

18 A. Yes, ma'am.

19 Q. Do you understand the proceedings that are going on
20 right now with Mr. Nix?

21 A. I am aware that they are having a hearing to
22 determine whether or not he should be allowed to be
23 released and -- and have his freedom back or if he should
24 be institutionalized in an inpatient therapeutic situation.

25 Q. Okay. That's absolutely correct. Very good.

1 **VICTIM**, do you -- do you remember that at some point
2 your father was actually released from prison?

3 A. Yes.

4 Q. And that would have been within the last couple of
5 years; is that right?

6 A. Yes. Yes, ma'am.

7 Q. And at some point he was -- his probation was revoked.
8 Are you aware of that?

9 A. Correct.

10 Q. Okay.

11 A. Yes.

12 Q. Are you aware that you were involved in some of the
13 underlying reasons that his probation was revoked?

14 A. Yes.

15 Q. Okay.

16 A. Yes.

17 Q. What is your understanding of your involvement or how
18 you came to be a part of his probation revocation?

19 A. So he and I had contact with each other, which was
20 something that he apparently was not supposed to be doing.
21 Apparently there was some type of protection order that was
22 put in place when I was a lot younger that was, I guess,
23 still in effect.

24 Q. But you were still talking to him?

25 A. Correct. Yes.

1 Q. And were you willingly speaking to him?

2 A. Yes.

3 Q. Were you still actively having a parental relationship
4 with your father?

5 A. What do you mean? Was he still acting as a father
6 figure? Yes.

7 Q. Yes. Okay. Apparently there was some -- and because
8 I want to kind of narrow this down so we don't get all over
9 the place, but apparently there was some photos that were
10 taken that were found on Mr. Nix's phone. Are you aware of
11 that?

12 A. Yes.

13 Q. Okay. And those photos were -- in those photos, do
14 you recall whether you were in the photos or not?

15 A. I believe so, yes.

16 Q. Okay. And --

17 A. I actually remember the day that it happened because
18 it was the only time that I had ever answered the phone in
19 that condition.

20 Q. Okay. Were you the only one who -- to the best of
21 your knowledge, were the only one in the photos or was
22 there somebody else?

23 A. There was somebody else. My daughter.

24 Q. Your daughter.

25 A. His granddaughter.

1 Q. Okay. And how old was she at the time?

2 A. She was two.

3 Q. She was two.

4 A. You know, she was a baby.

5 Q. Were you -- and I -- and I don't want to ask anything
6 indelicate, but, of course, I have to -- you know, I have
7 to ask the appropriate questions.

8 A. Yes.

9 Q. Were you clothed during that phone call?

10 A. No. I -- me and my daughter were just now getting out
11 of the -- back at that time she was still breastfed and I
12 was taking a shower and she came in wanting milkies and,
13 of course, you know, moms don't ever get any time to
14 themselves, not even to take a shower, so I let her drink
15 some milk and we took a bath together. I washed, her
16 washed myself, and went to get out.

17 Q. Okay. But there was a -- you ended up with these
18 pictures. So at what point did you end up talking to your
19 dad during that?

20 A. At the very end of the shower when we were getting out
21 he called.

22 Q. And did he video call?

23 A. Yes, it was a video call.

24 Q. Were you aware that it was a video call?

25 A. I was.

1 Q. Why did you then answer the phone without clothes on
2 if it was a video call?

3 A. Because that kind of thing is -- to me it's not
4 inappropriate, it's not sexual. I don't view -- I don't
5 view if a -- if a -- if a human body is not actively doing
6 something sexual, then it's not -- just a human body is not
7 a sexual thing. It's what you do with it that makes things
8 sexual.

9 Q. Okay. So had you ever been on the phone nude with
10 your father?

11 A. No, that was the first time and I only answered to
12 tell him that I was getting out of the shower and I would
13 have to call him back.

14 Q. Okay. And so was it a long phone call or was it a
15 short one?

16 A. It was short.

17 Q. At -- when it was over, how long was it before you
18 discovered that your father might have been in trouble for
19 the photos?

20 A. It was quite some time later. It wasn't like
21 immediately.

22 Q. Was there anything sexual in nature going on with --
23 during that interaction where you were on the video call
24 with your father?

25 A. No.

1 Q. No?

2 A. No.

3 Q. Okay. What about with your daughter? Was there any

4 -- and I apologize --

5 A. Never.

6 Q. -- that I have to ask you this.

7 A. Never. Absolutely never.

8 Q. Let me finish my question. Was there anything --

9 A. Sorry.

10 Q. -- sexual going on even between -- or, you know, from
11 what you perceived between your father and your daughter at
12 the time? Was there anything inappropriate or sexual at
13 the time?

14 A. No, ma'am.

15 Q. Okay. What about between you and your daughter? Was
16 there --

17 A. No.

18 Q. Okay.

19 A. No.

20 Q. And did you talk to the probation officers about this?

21 Did you -- have you talked to anybody about this?

22 A. I attempted to make several different phone calls to
23 several different individuals and --

24 Q. And I don't -- I don't want you to tell me what they
25 said.

1 A. Right. I -- I attempted. Yes, I did attempt.

2 Q. Okay. And were you attempting to let them know that
3 it was not a sexual --

4 A. Yes.

5 Q. -- interaction?

6 A. Yes. Yes.

7 Q. Okay. Was that largely unsuccessful?

8 A. When I was able to speak to somebody, they would
9 hear me out and claim they were going to relay my message,
10 give me a call back, whatnot, but I never heard anything
11 further.

12 Q. Okay. And I want to be really careful that we don't
13 go into testimony where people are not here and --

14 A. Oh, I'm sorry.

15 Q. No, that's totally fine.

16 A. It was very typical.

17 Q. Okay. **VICTIM**, you've -- you've known your father
18 most of your life, if not your whole life, even though
19 you've been -- you haven't been with him the entire time,
20 right?

21 A. Correct. Yes.

22 Q. Do you think that he would be a hazard or unsafe in
23 the community if he was released --

24 A. No.

25 MR. RUNYAN: Objection, Your Honor.

1 A. Never.

2 THE COURT: What was the objection?

3 MS. JOHNSON: Stop. Stop.

4 THE COURT: All right.

5 MR. RUNYAN: Speculation.

6 MS. JOHNSON: I just muted it.

7 THE COURT: Okay.

8 MS. JOHNSON: I can rephrase that question.

9 MR. RUNYAN: I don't think she can opine on what his
10 dangerousness is if that's --

11 THE COURT: Well, generally speaking I -- I agree,
12 but she's also had a unique perspective in light of the
13 totality of this case.

14 So let me ask you a quick question.

15 (Proceedings held at the bench; not reported.)

16 THE COURT: I'm gonna un-mute her, Ms. Johnson.

17 MS. JOHNSON: Okay.

18 **VICTIM**, can you hear me?

19 THE WITNESS: Yes.

20 BY MS. JOHNSON:

21 Q. Okay. I just have a few quick questions for you and
22 then --

23 A. Yes.

24 Q. -- and then I'll be done, but do you feel like you
25 are in -- in any danger or are you scared for your safety

1 if Mr. Nix is released into the community?

2 A. No.

3 Q. Okay. What about your daughter? Do you have any

4 fears for her safety if Mr. Nix --

5 A. No.

6 Q. -- is released into the community?

7 A. No.

8 Q. Okay. And by and large are you in favor of him being
9 released?

10 A. Yes.

11 MS. JOHNSON: Your Honor, at this time I have no
12 further questions.

13 THE COURT: All right.

14 MS. JOHNSON: VICTIM, if you'll just answer the
15 questions from the State, okay?

16 THE WITNESS: Yes.

17 THE COURT: Cross-examination.

18 MR. RUNYAN: Thank you, Your Honor. May it please
19 the Court?

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. RUNYAN:

23 Q. Good afternoon. Is it okay if I call you VICTIM?

24 A. That's fine. I have a ridiculously long last name.

25 Q. Thank you. Now, VICTIM, you understand that I have

1 a job to do here?

2 A. Yes.

3 Q. And I may -- you know, some of the questions I might
4 ask may be difficult, but I'm not doing it with any sort
5 of --

6 A. That's fine.

7 Q. -- malicious intent, okay?

8 A. I understand.

9 Q. So I believe you, **VICTIM**, when you say that the --
10 the images that you were involved with you don't believe
11 that they were sexual, but do you think it was appropriate
12 for you to answer the phone while in the shower with your
13 2-year-old daughter in the -- in the nude state you were
14 in when your father called? Do you think that was
15 appropriate?

16 A. I could see how some might not view it as appropriate,
17 but, like I said, I don't view the naked body as sexual or
18 inappropriate unless there's an inappropriate act, sexual
19 act, going on. I don't view a toddler in the bathtub as
20 sexual. I don't view myself in the bathtub as sexual.
21 Everybody has to bathe and, I mean, what grandmother, what
22 grandfather, what mother, what father has not seen their
23 toddler taking a bath? To me, that's not sexual. To me,
24 that's not inappropriate.

25 Q. Okay. So -- but you testified you knew that your

1 father was on -- on community supervision; is that right?

2 A. I did know he was on community supervision; however,
3 I did not all of his rules, like what he was and was not
4 allowed to do. I was made aware later.

5 Q. So he -- he didn't tell you that -- that he shouldn't
6 have these types of images on his phone?

7 A. All he said was that he was not supposed to be in
8 communication with me, that he was not supposed to be on
9 drugs or interacting with any former inmates.

10 Q. So you knew he shouldn't be in communication with you?

11 A. Correct.

12 Q. And you answered the phone when he -- he video called
13 you?

14 A. Yes, because we were in contact with a lawyer. I'm
15 trying to remember his name. I --

16 Q. **VICTIM**, I don't mean to interrupt you, but we don't
17 want to talk about something somebody said, so just with
18 that in mind.

19 A. Okay. Well, no, no, no. It's not something that
20 somebody said. It -- we were in contact with a lawyer and
21 we were in the process of getting his original charges
22 dropped, like getting -- like going back to court with this
23 new lawyer and me taking a polygraph stating that -- that
24 he never ever --

25 MR. RUNYAN: Your Honor --

1 A. -- sexually assaulted me.

2 THE COURT: Okay.

3 MR. RUNYAN: I'm gonna object to that.

4 THE COURT: What's that?

5 MR. RUNYAN: I'm gonna object to that.

6 THE COURT: I understand and just to -- I'll sustain
7 the objection.

8 If you can hear me, **VICTIM**, we're not gonna
9 relitigate the previous cases from --

10 THE WITNESS: Okay.

11 THE COURT: -- from calendar year 2000 --

12 MR. RUNYAN: 9.

13 THE COURT: -- 9. 2009.

14 THE WITNESS: Yes, sir, Your Honor.

15 THE COURT: Thank you, ma'am.

16 MR. RUNYAN: All right. I'll move on from here.

17 BY MR. RUNYAN:

18 Q. So what I want to go onto is were you aware -- and,
19 like I said, I believe that you -- that you didn't believe
20 there was anything sexual about these -- this phone call
21 or video call, but were you aware that your father was
22 snapping -- doing snapshots of your call?

23 A. No.

24 Q. Were you aware that over a 55 second time span he --
25 he captured eight different images of you and your daughter

1 in the shower?

2 A. No.

3 Q. Are you just hearing that for the first time today?

4 A. I -- I didn't -- I mean, I knew that he had taken a
5 screen shot, but I did not know how many and I did not know
6 for how long.

7 Q. And you had no idea what he might use these photos
8 for?

9 A. I mean, of course, no. I -- I -- I don't know his
10 thoughts.

11 Q. Okay.

12 MR. RUNYAN: Thank you, VICTIM. I don't have any
13 other questions. I appreciate it.

14 THE COURT: Any redirect?

15 THE WITNESS: Yes, sir.

16 MS. JOHNSON: No, sir.

17 THE COURT: How about go ahead and let her know that
18 she's -- she's done.

19 MS. JOHNSON: Okay.

20 VICTIM, your testimony is finished. Thank you so
21 much.

22 THE WITNESS: And can I say one thing?

23 THE COURT: No. I'm sorry. You cannot. You're just
24 hear to answer questions of the attorneys.

25 THE WITNESS: Okay.

1 THE COURT: Thank you for your time. We appreciate
2 it.

3 THE WITNESS: Thank you.

4 THE COURT: All right.

5 (Witness excused.)

6 THE COURT: All right. The virtual courtroom is
7 closed.

8 (Discussion off the record.)

9 THE COURT: All right. Next witness.

10 MS. JOHNSON: Your Honor, may I just have a brief
11 second to talk to --

12 THE COURT: Do you want to take five minutes?

13 Let's take a five-minute recess, ladies and
14 gentlemen. We'll get you back in here momentarily.

15 Please don't discuss the case.

16 Thank you.

17 (Whereupon, the jury retires to the jury room at
18 2:55 PM.)

19 MS. JOHNSON: Your Honor, may we approach?

20 THE COURT: Yes, ma'am.

21 (Proceedings held at the bench; not reported.)

22 THE COURT: All right. So we've gone through two
23 witnesses now.

24 Mr. Nix, we spoke earlier. You're still under oath.

25 THE RESPONDENT: Yes, sir.

1 THE COURT: Basically you've had a chance to talk
2 with your attorney. You've heard the sworn testimony that
3 was provided by the witnesses in your case. Do you intend
4 to testify still or do you intend to not testify?

5 THE RESPONDENT: I think that I'll not testify so we
6 can go ahead and wrap everything up. I think that's best.

7 THE COURT: It's entirely up to you.

8 THE RESPONDENT: Yes, sir.

9 THE COURT: So we don't have to wrap everything up
10 right this minute. I don't want you to feel that way at
11 all, but if you feel like at this point that it would be
12 in your better interest to not testify, that will be your
13 decision.

14 Is that your decision?

15 THE RESPONDENT: Yes, sir.

16 THE COURT: Okay. So be it.

17 Ms. Johnson -- you can have a seat now.

18 Ms. Johnson, anything else?

19 MS. JOHNSON: Your Honor, if I may, can I renew my
20 motion for directed verdict?

21 THE COURT: Absolutely. But you have to rest first.

22 MS. JOHNSON: Yes. We are resting our case --

23 THE COURT: Very well.

24 MS. JOHNSON: -- and we would renew our motion for
25 directed verdict.

1 THE COURT: Any additional information you want to
2 share post -- I mean --

3 MS. JOHNSON: It would be based on the same as the
4 original, Your Honor.

5 MR. RUNYAN: I would have no different argument than
6 what I had earlier and I think the testimony that we've
7 seen on her side even supports, you know, our position
8 and this case should go to the jury.

9 THE COURT: Okay. All right. Then let's -- I'll,
10 again, deny your directed verdict motion. The record will
11 reflect that your motion has been renewed and preserved.

12 Why don't we just shoot for between -- let's just
13 say fifteen minutes we'll get the jury back in here. When
14 they come back in, you'll rest, and I'll just tell them
15 it's time for closing arguments, pay attention, et cetera,
16 okay?

17 MS. JOHNSON: Okay. Thank you, Your Honor.

18 THE COURT: Is that good?

19 MR. RUNYAN: Thank you.

20 THE COURT: We'll be in a short recess here.

21 Thanks.

22 (Recess taken at 2:59 PM.)

23 (Back on the record at 3:17 PM.)

24 BAILIFF: Keep your seats. Court's back in session.

25 THE COURT: All right. Are we ready to proceed?

1 MR. RUNYAN: A quick bathroom break?

2 THE COURT: Sure.

3 (Pause in proceedings.)

4 THE COURT: All right. So before I -- when I bring
5 them in, I'll just say next witness, Ms. Johnson, and you
6 say you will rest and then I'll take it from there, okay?

7 MS. JOHNSON: Okay.

8 THE COURT: All right. Let's bring them out.

9 (Whereupon, the jury returns to the courtroom at
10 3:19 PM.)

11 THE COURT: All right. Ladies and gentlemen,
12 welcome back. We'll continue where we left off.

13 Next witness, Ms. Johnson.

14 MS. JOHNSON: Your Honor, at this time we rest.

15 THE COURT: Very well.

16 Ladies and gentlemen, the respondent has rested his
17 case. It is now -- the parties have presented their
18 evidence in this case. It's now time for the attorneys
19 to make their closing arguments. The arguments of the
20 attorneys are not evidence in this case. Their statements
21 and arguments are meant to help you understand the evidence
22 and apply the law to the evidence. You should disregard
23 any remark, statement or argument which is not supported
24 by the evidence presented during the trial or the law that
25 I'll explain to you after the arguments.

1 At this time please give your complete and undivided
2 attention to the attorneys as they make closing arguments.

3 MR. RUNYAN: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. RUNYAN: Thank you.

6 Ms. Johnson.

7 Good afternoon, ladies and gentlemen. This may be
8 the last opportunity I have to talk to you and I do want
9 to say -- I thanked you in the beginning and I want to
10 thank you in the end, and I sincerely mean this because
11 we really couldn't do our jobs without you. There's very
12 serious questions that we need to have answered and it's
13 you -- you guys's job to do that and we really do from the
14 Attorney General's Office, we thank you for being here,
15 thank you for your service. I hope you understand that I
16 really do mean that.

17 The second thing I want to thank you for is I asked
18 you to do something for me in my opening statement. If
19 you remember, I asked that you listen to the evidence and
20 I've watched you throughout the trial believe it or not
21 and I've watched you be attentive and I've watched you be
22 attentive not only to the evidence that the State put on,
23 but I've watched you be attentive to the evidence that
24 Mr. Nix put up, and I thank for doing that. That's all
25 I can ask because that's how you're going to form your

1 opinion and answer this -- the very serious question that
2 we need to have answered today.

3 Ladies and gentlemen, Mr. Nix is a sexually violent
4 predator. In 2008, 2009 he offended against his daughter
5 sexually assaulting her on multiple occasions and he was
6 convicted of that criminal sexual conduct with a minor in
7 the second degree. He also had images of his daughter,
8 stepdaughters and others, on his phone, and he was
9 convicted of that sexual exploitation of a minor in the
10 third degree. He served his sentence. He was criminally
11 punished for that. He went to prison for a little over
12 twelve years. He got out and within months he was already
13 engaging in sexually problematic behavior. He was failing
14 to go to sexual offender treatment like he was mandated
15 to do.

16 Now this has been a short case and I'm not gonna
17 insult you guys with a detailed recitation of all of the
18 hours of testimony that you heard. Because like the
19 judge told you, it's up to you to remember the evidence
20 as you remember it. I'll do the best I can to present
21 the evidence as I remember it and as accurately as I can,
22 but if you disagree with me in any way you must go with
23 what you remember and not how I present it to you.

24 And you'll also remember that the State has a very
25 high burden in this case. It's beyond a reasonable doubt

1 and the judge is gonna explain that to you in a little
2 while. When he tells you what it is, that's what you go
3 with. Don't go with what I say, but I think he's -- I'm
4 suggesting he's gonna say if you're firmly convinced after
5 hearing the evidence, then you should return a verdict
6 that Mr. Nix is a sexually violent predator, but I believe
7 it's my duty since we have that high burden that I need to
8 go over some highlights of the evidence to kind of prove
9 those two elements that we've talked about that we have
10 to show you beyond a reasonable doubt.

11 And that first one is has he been convicted of any
12 sexually violent offenses and just one sexually violent
13 conviction is all the statute requires. The second thing
14 is does he have a mental abnormality or personality
15 disorder that makes him likely to engage in acts of sexual
16 violence if he's not confined for long-term control, care
17 and treatment, and I'm gonna break those up for you.

18 The first one is does Mr. Nix have a sexually violent
19 offense? And I don't think that this will be really
20 contested too much. Well, here they are and you'll have
21 these back there in the jury room with you, and as I said
22 before the first one is criminal sexual conduct with a
23 minor in the second degree. And you'll have this and I
24 encourage you to read it. It's not long. It's got a few
25 things on here. I encourage you to read the indictment.

1 The second one, his second sexually violent
2 conviction, is sexual exploitation of a minor in the
3 third degree. And it's a short document and you'll have
4 it back there with you and you can take a look at that
5 while you're there. I think that we've proven that he has
6 been convicted of at least one sexually violent offense.

7 The second thing, you know, I told you in opening
8 that we need the help of mental health experts. We need
9 them to tell us whether or not someone suffers -- and
10 they can diagnose a disorder, whether he suffers from a
11 mental abnormality or personality disorder that makes him
12 likely to engage in acts of sexual violence, and that
13 likely to engage in acts of sexual violence is a defined
14 term, and the judge is gonna define that for you, and
15 we've talked about it. It's someone has a predisposition
16 to engage in acts of sexual violence and that they will
17 more probably than not engage in those acts of sexual
18 violence to such a degree they pose a menace to the health
19 and safety of others.

20 And so we brought in Dr. Emily Gottfried and they've
21 put on their expert, Dr. Christopher Gillen, and you heard
22 from them, and I've got to tell you I didn't see a lot
23 of differences in what the two doctors said. I didn't
24 see a lot of differences in what the doctors diagnosed
25 and I didn't see a lot of differences in what their risk

1 assessment was. In fact, both doctors at one point in
2 time said that Mr. Nix meets the criteria to be committed
3 as a sexually violent predator.

4 When we're talking about -- we'll move first to the
5 mental abnormality or personality disorder. Both doctors
6 testified to you about the DSM-5 TR. Dr. Gillen and
7 Dr. Gottfried both testified they use this book when
8 they're diagnosing disorders. Both doctors testified to
9 you that they looked at paraphilic disorders as a part of
10 their referral question. Paraphilic disorders, remember,
11 those are the ones -- anything that's not normal, sexual
12 attraction that's not normal. And both doctors told you
13 that they couldn't find a paraphilic disorder, but what
14 else did they tell you?

15 They told you that while there's insufficient
16 evidence that he had a paraphilic disorder, he had a
17 sexually deviant interest in teenage girls, and that's
18 problematic and they both explained to you why that's
19 problematic, and I think that's important for you to
20 know.

21 The second thing is they looked at personality
22 disorders. Both doctors discussed antisocial personality
23 disorder, and that is in the DSM-5, and they had the
24 criteria for that. And if you remember, I think both
25 doctors said first that the person had to have a pervasive

1 pattern of disregard for the violation of rights of others
2 occurring since age fifteen as indicated by three or more
3 of the following. I think both doctors said he had at
4 least four of the criteria. If you remember, both doctors
5 testified that he had juvenile convictions, that he had
6 gone to DJJ, that he had some shoplifting before age
7 fifteen. Both of them had that information. They both
8 said that he failed to conform to social norms by acting
9 out for -- repeating grounds of arrest I think is the
10 term they used. Dr. Gottfried testified in a span from I
11 think it was 1994 to 2022, even into 2023 at the detention
12 center, he acted out in ways that were not only grounds
13 for arrests, but he was convicted for a lot of things.
14 Remember, he was convicted in prison for carrying a
15 concealed weapon. That they didn't just give him a
16 disciplinary, they convicted him. He served two years
17 concurrent with his sexually violent offenses. So he had
18 this repeated pattern of violating the rights of others,
19 a repeated pattern of doing things that are criminal in
20 nature and grounds for arrest.

21 They both testified that he's impulsive. Remember
22 that both Dr. Gottfried and Dr. Gillen said he had
23 impulsive behavior. They testified that he was reckless.
24 I think Dr. Gillen testified that was evidenced by his --
25 you know, his driving offenses and his substance abuse

1 offenses, that they were reckless.

2 And I think importantly both doctors testified of
3 his lack of remorse. He just doesn't think that he did
4 anything wrong. Both doctors say he justifies his actions,
5 that, you know -- I believe they said he believes these
6 charges were made up, that they didn't happen. So both
7 doctors came to the conclusion that he suffers from
8 antisocial personality disorder.

9 And then we go onto whether or not that antisocial
10 personality disorder predisposes him to engage in acts
11 of sexual violence, and I think you heard testimony from
12 both doctors on the stand, I know Dr. Gottfried testified
13 to it and I heard Dr. Gillen testify to it today when I
14 asked him the question, and he said yes, his antisocial
15 personality disorder predisposes him to engage -- or
16 predisposed him to engage in the acts of sexual violence
17 that he did.

18 Then we go on to the risk assessment. And, again,
19 both doctors initially, remember Dr. Gillen had that
20 initial evaluation that he did in January and
21 Dr. Gottfried's that she did in I believe it was April
22 of 2024, both doctors told you how they assess risk, and
23 it's very similar. Both doctors told you that they use
24 the static risk factors, the historical things. They told
25 you about the dynamic risk factors, which are things that

1 can be treated, and they went over those, and they went
2 over the different assessments that they used, and they
3 weren't that far off.

4 They both used the Static-99R. Dr. Gottfried used
5 the Static-2002R. Dr. Gillen used the violent risk
6 assessment for sexual offenses, the VRS-SO he talked
7 about, which was a calculator for dynamic risk factors,
8 and Dr. Gottfried talked about the Stable-2007, which was
9 the assessment she used to assess dynamic risk factors.
10 And they both talked to you how they combined those
11 matrixes or those assessments to come up with a risk.
12 And Dr. Gottfried scored him on the Static-99R and gave
13 him a score of 2, which was in the average risk category.
14 She scored him on the Static-2002R with a score of 5,
15 which put him in the above average risk category. When
16 she added that to the Stable, he scored in the -- what she
17 called the high range need, I think it was, high density
18 range of criminogenic needs when she combined the Stable
19 and the Static-99R and Static-2002R, and the bottom line
20 for me is once she combined those two actuarials she came
21 up with that he is in the above average, that 4A category,
22 above average risk to re-offend sexually. It's not risk
23 to re-offend any risk, it's a specific risk to re-offend
24 sexually, in that above average category, and then when
25 she combined the 2002R with the Stable-2007, it put him

1 in the Level 4B category, which was the well-above average
2 risk category. So for Dr. Gottfried he falls into the
3 above average to well-above average risk to re-offend
4 sexually.

5 When Dr. Gillen did his initial evaluation, he
6 combined his Static score, which was a 3, and his Static
7 score was even higher than Dr. Gottfried's, but it still
8 fell into the average risk range. When he combined that
9 with the VRS-SO, he came up -- he talked about the
10 pretreatment score and the -- I think it was a treatment
11 compliance score, but when all was said and done when he
12 combined those together it placed Mr. Nix's risk in the
13 above average, that 4A above average risk category.

14 I think that's important because when we're dealing
15 with risk we're talking about -- I don't think you can
16 just boil it down to a number. When you're talking about
17 risk, it's weird because -- and I like to use a baseball
18 example. I don't know if anybody's a baseball fan, but
19 if a baseball player bats a 350, that means 35 percent
20 of the time. When they get up to the plate and hit the
21 ball, that means they fail 65 percent of the time they
22 get up to hit the ball, but if you say somebody is batting
23 350, well, they're a well-above average batter. They're
24 designated hitters. When they get on the plate people
25 think well, he's more probably than not gonna hit the

1 ball because he's such a good batter, so that's how I
2 think about it.

3 Think about it in terms of risk. You also think
4 about risk. You know, if someone told me I had a -- I
5 love chocolate cake. So if someone told me I had a
6 99 percent chance of stubbing my toe if I ran up the
7 stairs to get a piece of chocolate cake, I'm gonna take
8 that risk, right, but if someone told me that I had a
9 less than one percent chance that my water was radioactive,
10 if I lived next to a nuclear plant and my water was
11 radioactive, you know, maybe I'm not taking that chance,
12 maybe I'm not drinking that water. So I think we have to
13 look at that in terms of -- when we're looking in terms
14 of risk, of sexually violent risk, I think Dr. Gillen's
15 ultimate opinion was he said a 34 percent lifetime risk
16 to re-offend, and we're talking about risk to sexually
17 re-offend, risk that there's another victim of a sexual
18 crime, is that risk too high? Is that risk more probably
19 than not? I believe it is. I believe it is.

20 But I want to talk briefly about the dynamic risk
21 factors because I think they're important to go over
22 and there really wasn't much difference between what
23 Dr. Gillen and Dr. Gottfried had to say. Both doctors
24 believe he had a sexual preference or a deviant sexual
25 preference for teenage girls and they explained to you

1 why that's problematic and I think we see that in his
2 community's -- the supervision revocation.

3 I've got to tell you I believe -- I believe his
4 daughter when she says she doesn't think that what she
5 did was sexual, but it's not about what she thinks, and
6 she said that. She said I don't know what's in his
7 thoughts. If you remember, she said I don't know what's
8 in his thoughts. Why was Mr. Nix taking those pictures?
9 She was unaware that Mr. Nix was taking those pictures.
10 And as Chris Catoe testified, over 55 seconds, and I
11 don't know if you guys have every timed 55 seconds, I'm
12 not gonna do it here, but it's a long time. And over that
13 span of time he snapped eight different screen shots of
14 his daughter in the shower with his granddaughter, and he
15 got his community supervision revoked. That's sexually
16 problematic.

17 Both doctors talked about his sexually deviant
18 lifestyle, his lack of cooperation with supervision or
19 treatment. I think we've talked enough about that. We
20 know he violated multiple violations of his probation.
21 His lack of concern for others, his criminal personality,
22 his impulsive acts. And I think one of the most important
23 things is his lack of insight. Both doctors talk about
24 Mr. Nix's lack of insight. He has no insight into why he
25 offended sexually. He doesn't understand it. He doesn't

1 care about the rights of others because of his antisocial
2 personality disorder and he will do whatever he wants when
3 he wants it.

4 So they talked about his lack of insight. They
5 talked about his lack of insight into his need for
6 treatment. Both doctors talked about that. Dr. Gillen
7 talked about it even more today. That he doesn't
8 understand the need for treatment. He minimizes the need
9 for treatment. And, in fact, we see that in his community
10 supervision revocation. He was mandated by the court and
11 his probation, his community supervision, to go and take
12 sexual offender treatment, and he didn't do it. Both
13 doctors testified that he has no community supervision
14 if he were to be released today. So my argument is if
15 nobody's there to make it him do it and he wouldn't do it
16 when he was required to do it, why should we believe he's
17 gonna do it? Especially when he has no insight into his
18 sexual offending.

19 Ladies and gentlemen, I'm gonna leave it in your
20 hands now. I believe the State has proven beyond a
21 reasonable doubt that Mr. Nix is a sexually violent
22 predator and I ask that you return a verdict of yes, he
23 is a sexually violent predator.

24 I thank you for your time.

25 THE COURT: Yes, ma'am.

1 MS. JOHNSON: Your Honor, may I have the lights
2 lowered for this?

3 So, ladies and gentlemen, we've come to the end and
4 I really want to thank you for your service and I want to
5 thank you for paying such close attention. I'm sure it
6 was quite tough sometimes because these things can be
7 quite long and drawn out and hopefully this PowerPoint
8 presentation and my closing argument will not be long and
9 drawn out.

10 I just want to take some time to kind of sum up all
11 of this evidence because you got a lot of information
12 thrown at you and because I want to make sure that I'm
13 doing the responsible thing for my client, Phillip Nix.

14 That being said, what I'm saying to you today is
15 argument and it is what I believe that the evidence shows,
16 but ultimately you are the ones who judge the evidence
17 and you should believe your own ears and your own eyes
18 before you take my statements as your own, okay?

19 So Phillip Nix. First, I -- I talked to you earlier
20 about -- during opening argument about how we were gonna
21 be dealing with some very difficult matters and I always
22 thought that this particular quote from Nelson Mandela --
23 can everybody see this okay? Okay. Was really important,
24 especially for cases like this, and it says just a nation
25 should not be judged by how it treats its highest citizens,

1 but its lowest ones, and I'm not certainly saying or I
2 don't want to imply that Phillip is one of the nation's
3 lower citizens, but I have to acknowledge that we are
4 dealing with a subject matter that people just don't like.
5 They don't like to hear about children being harmed, they
6 don't like to hear about sexual assaults or sexual crimes.
7 A lot of people don't even like to hear about re-offenders,
8 but I think it's important that we still honor your oath
9 as jurors and that we still give my client, Mr. Nix, his
10 due. So I'm just saying to you today that I know it might
11 be hard to separate some of these allegations, but you
12 swore an oath and you have to do it.

13 So the State has the burden of proving each element
14 beyond a reasonable doubt and, of course, that's the
15 highest burden of proof in the land and it's really
16 important because it involves my client's liberty, it
17 involves his freedom, and so it's important that just as
18 everybody has a job here to do today, that you make the
19 State do their job and you hold their feet to the fire
20 and you make them prove their case. And not just the
21 whole case, but every element.

22 So, you know, when we're talking about beyond a
23 reasonable doubt, you'll see that all that stuff in the
24 black, that person, that's reasonable doubt and the only
25 way that he can be considered an SVP, a sexually violent

1 predator, is if you are firmly convinced and you are
2 convinced beyond a reasonable doubt.

3 So let's get into the acts. The sexual violent
4 predator as defined by South Carolina statute is a person
5 who's been convicted of a sexually violent offense,
6 suffers from a mental abnormality or personality disorder
7 that makes the person likely to engage in acts of sexual
8 violence if not confined in a secure facility for long-term
9 control, care and treatment. And the statute even goes
10 on to define likely to engage in acts of sexual violence,
11 and you'll note as I mentioned to you yesterday, that
12 involves that the person is predisposed to engage in these
13 acts and more probably than not will engage in acts of
14 sexual violence to such a degree as to pose a menace to
15 the health and society of others.

16 So the first element, convicted of a sexually
17 violent offense. I have to acknowledge that my client
18 has convictions for the sexual violent offense and I know
19 you heard me asking several of the witnesses about whether
20 the victim recanted, and I won't even get into all of that.
21 I will only acknowledge that he has the convictions on his
22 record and those are the two.

23 So the next one is the mental abnormality or
24 personality disorder and you remember that I went through
25 ad nauseam with Dr. Gillen the types of personality

1 disorders that he could have and yet he only had one.
2 That was the antisocial personality disorder and I think
3 that's really important because we're not talking about
4 somebody who's, you know, walking around the community
5 and is just incredibly ill. We're talking about somebody
6 who has been diagnosed with one personality disorder.

7 The next element is that it makes that person likely
8 to engage in acts of sexual violence if not confined in
9 a secure facility for long-term control, care and
10 treatment. And, again, we talked about that portion that
11 involves that he has to be considered a menace to the
12 health and safety of others.

13 So think of it like this. That his mental health
14 has to make him so unable to control himself that he's
15 likely to commit more acts of sexual violence and he's not
16 just a danger to the community, but he's a menace to the
17 health and safety of others. That is what you have to
18 believe beyond a reasonable doubt.

19 So why are we here? Well, the Department of Mental
20 Health says that my client was not -- did not meet the
21 qualifications to be considered to be a sexually violent
22 predator and that wasn't enough. I have a lot -- I have
23 a tremendous respect for this Court and for Mr. Runyan,
24 but I have to say that I'm concerned that they got a
25 second opinion because I think the Department of Mental

1 Health, they did their job, and I think that Dr. Gillen
2 was quite thoughtful about this whole process.

3 In the beginning, you know, he's been a witness for
4 the State and he was a witness here for us today, but
5 you notice that at first he was like no, I think your
6 guy needs to go in and then he gave it some thought, he
7 kept abreast of the law and he changed his mind, and I'm
8 really grateful that he put as much work and effort and
9 thoughtfulness into his decision and his opinion.

10 So they got Dr. Gottfried and she gave them results
11 that were kind of in line with what I think they wanted
12 and, boy, was it expensive.

13 So Dr. Gillen, he's the State's doctor and the
14 State of South Carolina has entrusted one agency to do
15 all of the initial evaluations of these pre-commitment
16 sexually violent predator cases, just one, and that's
17 the South Carolina Department of Mental Health. They
18 all start there and that's who Dr. Gillen works for. He
19 works for the go-to agency that this state says is the
20 one and he evaluates sex offenders exclusively, almost
21 exclusively. And we know he doesn't have bias because he
22 came in here and said yeah, you guys, Mr. Nix, he's got
23 antisocial personality disorder. It wasn't that he was
24 just trying to do Mr. Nix a favor. He was just being
25 forthright with the Court and even then he said that he

1 did not believe my client is a sexually violent predator.

2 Now let's compare that to Mr. Gottfried, who works
3 for MUSC, and she does all types of evaluations. She gets
4 paid quite handsomely or at least MUSC does to turn out
5 those results and she doesn't have the same focus and
6 experience. MUSC, you heard her testify, was also a
7 research lab and a teaching facility for other mental
8 health areas and, in fact, she relied on Dr. Gillen's
9 opinion, the Department of Mental. They were really
10 close, too. I have to acknowledge when Attorney Runyan
11 said that their rankings, their scores, were quite close,
12 I believe he's correct, and yet she came up with a
13 completely different opinion that my client has a sexually
14 violent personality disorder.

15 And when we look at the assessment tools, we've got
16 really four that Dr. Gillen used and I think probably
17 there may be some thought that well, Dr. Gottfried, she
18 used a lot more so maybe her opinion is more thorough, but
19 that's why I asked Dr. Gillen about that example because
20 I don't think it's thorough. I think if anything the
21 testimony shows that it was overkill and so that's why I
22 asked is it a little bit like going to the doctor for a
23 cold and getting an MRI and an x-ray. It's overkill.

24 Most of these are personality tests. I noticed that
25 when I asked her about some of the results a lot of times

1 that she didn't seem to appreciate the questions I asked
2 because they maybe looked like they were in favor of my
3 client. She would say oh, well, that was a -- that was
4 a self-assessment, he answered those questions himself.
5 Well, lots of those tests were, and ultimately do you
6 believe that the test is accurate and worthy of being
7 given or not? Because if you just want to chalk it up to
8 being a self-assessment and it must be wrong, then I don't
9 know why you're giving any of the self-assessment tests.

10 My issue with Dr. Gottfried, and I'm certainly not
11 here to attack her because I think everybody wants the
12 right thing to happen in this courtroom and I think that
13 everybody respects the legal process, but my concern is
14 that she wants her result and she's gonna get it by any
15 means necessary. For example, she gave him a test, she
16 asked him questions and, you know, he tells her positive
17 things about himself and then she says oh, he's lying
18 and he's exaggerating these traits. She allowed him to
19 explain that some of the allegations against him, not
20 all of them, were not true. Then she blamed that he was
21 minimizing and he was in denial, extreme minimization,
22 I believe, but denial is not even an established risk
23 factor. She criticized him for getting infractions even
24 at SCDC, but yet she seemed to give very little, if any,
25 weight or attention to the fact that it's been several

1 years since he's been in any trouble.

2 If we talk about the scores, these are Dr. Gillen's
3 scores. The first round of the report he looked at
4 that Static-99R, the VRSO and he came up with about
5 16.2 percent. And if you remember, I asked him, I was
6 very intent about asking, I'm not so great with
7 measurements, but one of the things I like to ask is,
8 you know, give me a real world scenario. So if we had
9 a hundred men, you know, is that what this percentage is
10 about? And actually in these initial scores, the ones
11 from the first report, that's what he did say that it
12 was reasonable to say; that if a hundred men came in with
13 these scores that he calculated about 16.2 percent would
14 be likely to re-offend. 16.2. So that means that my
15 client has about an 84 percent chance even if Dr. Gillen
16 -- even with all of his assessments and if we took
17 Dr. Gillen at his word and his analysis of everything,
18 an 84 percent chance in the beginning that my client
19 would go home and we would never ever see him again for
20 a sexually violent offense.

21 Then he did the second report and he did this Kelley
22 and it gave a 5-year recidivism risk of about 19.2 percent.
23 And don't worry, I'm not gonna belabor these scores that
24 much because, you know, these numbers are numbers, but I
25 think what's most important is what's gonna happen in real

1 life, and he came up with this residual risk of 34 percent
2 lifetime risk, but I think even that is inflated because
3 that's when he was looking at that probation violation and
4 those photos that my client had on his phone in a manner
5 that was not -- that did not give my client the benefit of
6 the doubt and I think it's important that we do give him
7 the benefit of the doubt, first of all, that beyond a
8 reasonable doubt that my client does get the benefit of
9 the doubt, but also **VICTIM** said that those -- there was
10 nothing sexual in nature during that interaction. But
11 you will also remember that every witness that I asked
12 about those photos, not one of them said that on their
13 face those pictures were sexual. Not one of them. So I
14 think it's really important that even that 30 percent is
15 probably quite inflated.

16 So Dr. Gillen's final opinion, and I -- and I wrote
17 this on here because I wanted to hone in -- I wanted to
18 remind you guys of the fact that he didn't just roll over
19 and give my client an opinion that we would like, you
20 know, he kept -- he kept to it that my client has an
21 antisocial personality disorder, but based on, as he said,
22 this unique combination of his static and dynamic risk
23 factors and he considered his residual and remaining
24 lifetime risk and the impact of even undetected recidivism,
25 Mr. Nix is not more probably than not to -- likely to

1 sexually re-offend, and his final opinion is that my
2 client's previous diagnosis, even with antisocial
3 personality disorder, does not appear to make him likely
4 to sexually recidivate and he does not fall into the
5 extremely dangerous group of individuals who require
6 involuntary commitment to a secure facility. So in
7 Dr. Gillen's opinion, Phillip Nix does not meet the
8 criteria to be considered a sexually violent predator.

9 So we talk about beyond a reasonable doubt and I --
10 and I pose this question to you, that do you feel that
11 there is enough -- that you've been presented with enough
12 impactful and convincing evidence that you are convinced
13 beyond a reasonable doubt such that you are willing to
14 withhold his liberty, Mr. Nix's liberty, from him? Is it
15 enough for you to prevent him from waking up in his own
16 bed, from going to sleep when he wants to, from seeing his
17 family, from falling in love and marrying, from starting
18 his life over again? Are you firmly convinced that this
19 is the only way, the only means, to -- to accomplish this
20 goal? And I would suggest that the State has not proven
21 their case beyond a reasonable doubt.

22 Here's some -- here's some of the doubt that I've
23 had during this case. First of all, here's a huge
24 reasonable doubt. That one of the evaluators, the
25 State's main evaluating agency, said that Mr. Nix is not

1 a sexually violent predator and he also didn't find any
2 paraphilic disorders. He acknowledged that my client has
3 had stable and successful employment. He acknowledged
4 no interpersonal aggression, no domestic violence in his
5 criminal history. He acknowledged, and so did
6 Dr. Gottfried, as I recall, that most of the crimes that
7 my client committed were property crimes and minor
8 infractions like traffic offenses. You will note that
9 Dr. Gillen said yeah, there might have been some substance
10 use, even some substance abuse, but that didn't cause him
11 to sexually offend. Dr. Gillen, in fact, mentioned that
12 his emotional control problems did not cause him to offend
13 sexually in the past and, of course, those 2022 photos
14 that everybody was -- that all of the witnesses really
15 seemed to be using to suggest that my client was just up
16 to some old antics, when we get the real story from people
17 who were there, **VICTIM**, they were not sexual, that even
18 the witnesses, as I said, said on its face, yeah, the
19 pictures weren't sexual.

20 And here's another reasonable doubt. The fact that
21 there exists viable alternatives to institutionalization.
22 Basically that treatment is available in the community.

23 The main reasonable doubt, and I think this is
24 really, really important, is that he has no other sexual
25 offenses.

1 Now the State and the doctors both talked about how
2 the best indicator of future behavior is past behavior.
3 I don't disagree, but when we look at it we have this
4 period of time around 2009 that my client had these
5 allegations against him. Before then, not even one. And
6 I know that I talked about oh, you know, where are these
7 charges, where are these convictions, and I think it's
8 important to note there was no charge, there was no
9 conviction, there was not even a whisper of an iota that
10 there was even an allegation before 2009 that my client
11 had ever committed a sexual offense against anybody. And
12 even after that no sexual offenses. Never convicted of
13 a sexual offense.

14 And I know that the State said well, those pictures,
15 unh-unh, those were sexually inappropriate. Perhaps if
16 you read it that way, but the person who was there,
17 **VICTIM**, she didn't think so, she didn't think they
18 involved any sexually inappropriate activity, and I think
19 **VICTIM**'s testimony was extremely compelling when we
20 listened to what she said. Not only did she say that
21 the interaction was not sexual, she said it lasted --
22 that conversation lasted, and she -- you'll see that it
23 matched up with the other evidence, that it was a quick
24 conversation. 55 seconds I believe is what has been in
25 evidence. That's how long the conversation lasted.

1 That she picked up the phone because she was out of the
2 shower, she wanted to talk to her dad and then hung up
3 very quickly thereafter.

4 But I think when -- one of the most compelling
5 things that **VICTIM** said was that if Mr. Nix was out in
6 the community she, **VICTIM**, who many witnesses have said
7 during this trial, and she acknowledges, was considered
8 original victim of his convictions, the victim said she
9 wouldn't be in fear of her safety. And not only did she
10 say that, but she said she wouldn't even be in fear of
11 her daughter's safety if Mr. Nix got out. I think that's
12 extremely compelling because, you know, the State and the
13 law requires that my client be considered to be a menace,
14 but yet the very victim of his convictions said she didn't
15 fear for her safety if he were out. And, you know, again,
16 zero other allegations.

17 So I think one of the main things we talk about,
18 this whole Sexually Violent Predator Act, is about
19 recidivism. It's about people re-offending. That
20 they've got something wrong with them that makes them --
21 this personality disorder, this mental health disorder,
22 that makes them unable to control themselves and they're
23 just gonna do the same things over and over again.
24 They're gonna -- they're gonna commit sexually violent
25 offenses over and over again, and yet that's just not

1 the situation here.

2 So, if anything, I think that one of the things that
3 the evidence shows is that Mr. Nix can control himself.
4 I'm not going to pretend like he doesn't have a criminal
5 history, but I'm certainly not going to sit here and
6 suggest that he is some out of control sex offender
7 because I don't believe that the evidence shows that.

8 So as I wrap up, Phillip and I are asking you today
9 for a verdict that Phillip is not a sexually violent
10 predator, and -- and I don't think that I'm putting an
11 undue burden on you because I don't think the State has
12 proven that he is beyond a reasonable doubt, and so I'd
13 like for you to send Phillip home.

14 So as I part, I just want to, once again, thank you
15 for your service. You know, the jury system has been
16 called the handmaid of freedom and Thomas Jefferson once
17 said that jury trial is the only anchor by which a
18 government can be held to the principles of the
19 Constitution and it's so important that many experts
20 believed that great civilizations, like Roman Sparta fell
21 because they didn't have a jury system.

22 So I say all of that to say thank you for your
23 service and we ask that you find Phillip is not a
24 sexually violent predator and send him home.

25 Thank you.

1 THE COURT: Reply?

2 MR. RUNYAN: Yes. Briefly, Your Honor.

3 THE COURT: Very briefly.

4 MR. RUNYAN: Ladies and gentlemen, you know, I
5 appreciate Ms. Johnson's advocacy for her client. As
6 she said in the beginning, you know, we're professionals
7 here, you know, and friends and she's a good advocate for
8 her client, and I appreciate that. But there are some
9 things I think she said in her closing that need to be
10 addressed.

11 First of all, I think there was some -- she was
12 painting the impression that we didn't like Dr. Gillen's
13 opinion, therefore, we went out and got some hired gun
14 to give an opinion that we wanted, and that's simply not
15 what the evidence shows.

16 Dr. Gillen in January of 2023 issued an opinion in
17 favor of the State saying that Mr. Nix meets the criteria
18 to be a sexually violent predator. During the process of
19 the proceedings Dr. Gillen changed his opinion in June of
20 2023. It's only at that point that the State engaged
21 Dr. Gottfried because at that point the State had -- you
22 know, at the point that Dr. Gillen initially said he
23 should be committed, they could have gotten a second
24 opinion. When Dr. Gillen changed his opinion, it was our
25 turn to get a second opinion, and that's what we did. We

1 didn't just automatically disagree with Dr. Gillen and go
2 out and look for some other opinion.

3 And I also want you to remember the testimony of
4 Dr. Gottfried because I asked her this. She testified
5 that she does do evaluations for both the State and
6 respondents have engaged her on a couple of occasions to
7 do evaluations for them as well, so it's not like she's
8 just a -- just a hired gun for the State of South Carolina
9 or the Attorney General's Office. She does do other
10 sexually violent predators for respondent's -- or
11 evaluations for respondents.

12 And she also testified to you that this idea that
13 she was paid this money directly, she wasn't. The Medical
14 University of South Carolina received this money, and
15 as she told you, she gets a salary. She gets a salary
16 just like Dr. Gillen. Dr. Gillen's paid by the State.
17 Dr. Gottfried's paid by MUSC. Not paid for their opinion.
18 They're paid to give an evaluation, an honest evaluation,
19 and I think they both did that.

20 There was some testimony or some argument that
21 somehow Dr. Gottfried is incorrect or wrong or bad because
22 she did a thorough evaluation and she gave a lot of tests
23 to corroborate, and she explained to you why she did that,
24 to get that reliability and that corroboration between all
25 the things, and that's her protocol. She does that in

1 every sexually violent predator evaluation. And I asked
2 Dr. Gillen today, if you remember, what's your protocol?
3 Are you allowed to pick the test and assessments that you
4 want to use, and I think he said he was. So, I mean,
5 every evaluator does it a little differently, but if you
6 look at Dr. Gillen and Dr. Gottfried's evaluations,
7 there's not much difference between the way they did
8 them. So I don't think it was overkill. I think it was
9 Dr. Gottfried doing what she does in every sexually violent
10 predator evaluation and I think it's what -- Dr. Gillen's
11 doing what he does in every sexually violent predator
12 evaluation, and there's nothing wrong with that.

13 Just a few more points here. You know, there's this
14 idea that you're given that to be a sexually violent
15 predator somebody has to have a pervasive long line of
16 sexually violent convictions going from childhood all the
17 way to today. That's just not the case. And that's the
18 case when you're diagnosing antisocial personality
19 disorder, there's a pervasive pattern over time, since
20 fifteen years and all those things that's the case, but
21 when you're talking about sexually violent convictions
22 and Dr. Gillen testified to it today and Dr. Gottfried
23 testified to it, it only takes one. It only takes one to
24 initiate this process. I want to you keep that in mind
25 when you're thinking about this, and he has two.

1 And I think when we're talking about **VICTIM** and,
2 again, I told you in my initial closing that I believe
3 her. I do. She didn't think that what she did was
4 inappropriate or sexual, but, again, that's missing the
5 point. The point is, like she said, I don't know what's
6 in his thoughts. Why was he snapping the pictures is
7 what's important. That's the sexually problematic
8 behavior. That's what Dr. Gillen and Dr. Gottfried are
9 concerned about. So think about that.

10 It's not what **VICTIM** thanks, it's what Mr. Nix is
11 doing. What is his sexually problematic behavior, and
12 I think they've established a pattern of behavior of
13 sexually offending, and the first thing he does when he
14 gets out is start reengaging in sexually violent behavior.

15 Ladies and gentlemen, this is the definition of a
16 sexually violent predator and I ask that you return a
17 verdict of yes.

18 Thank you for your time.

19 THE COURT: All right. Mr. Foreman, ladies and
20 gentlemen of the jury, it's now my duty as the trial
21 judge under the Constitution of this state to charge you
22 and instruct you on the law applicable to this case. It
23 is your duty as jurors to accept and apply the law as I
24 will now state it to you.

25 The State has brought this case under the sexually

1 violent predator law of South Carolina. The State seeks
2 the civil commitment of Phillip Byron Nix, the respondent,
3 for long-term control, care and treatment in a secure
4 facility. This is not a criminal proceeding seeking
5 incarceration, but rather is a proceeding seeking civil
6 commitment. The State of South Carolina alleges or claims
7 that the respondent, Phillip Byron Nix, is a sexually
8 violent predator under the law. Respondent denies that he
9 is a sexually violent predator and the burden of proof is,
10 therefore, on the State to prove by evidence sufficient to
11 satisfy each of you beyond a reasonable doubt that the
12 respondent is a sexually violent predator. If the State
13 is unable to meet that burden of proof as to one or more
14 of the elements of this claim, the respondent is entitled
15 to a finding that he is not a sexually violent predator.

16 Now, ladies and gentlemen, I want to make sure that
17 you understand the respondent is not accused of committing
18 a crime in this proceeding. As you heard from the
19 testimony, he did have a previous charge for which he was
20 sentenced by the Court. The respondent has now completed
21 his sentence for that charge and the State is now alleging
22 that the respondent is a sexually violent predator. The
23 State has the burden of proof in this case and must prove
24 its case beyond a reasonable doubt. If you find the State
25 has not met this burden, the respondent will be released.

1 If you find that the State has met its burden of proof
2 and find the respondent is a sexually violent predator,
3 he will not be released, but he will be committed to a
4 secure treatment facility in Columbia operated by the
5 South Carolina Department of Mental Health.

6 Now during this trial you and I had separate duties
7 to perform. As the trial judge, it is my responsibility
8 to preside over this trial and I also have the duty to
9 rule upon the admissibility of evidence offered during
10 the process of this trial. In that regard, you are to
11 consider only the competent evidence before you and you
12 are to disregard from your mind any testimony ordered
13 stricken from the record of this case during the progress
14 of this trial if there was any. You are to consider only
15 the testimony which has been presented from the witness
16 stand together with any exhibits admitted into the record
17 of this case and any stipulations of counsel made into the
18 record if there were any.

19 Furthermore, I have the additional duty to charge you
20 on the applicable law of this case and in that regard I'm
21 the sole judge of the law in this case. It is your duty
22 to accept and apply the law as I now state it to you. If
23 you have any preconceived ideas as to what the law is or
24 what the law ought to be and it does not agree with what
25 I tell you the law is, you are obligated under your oath

1 to abandon these preconceptions because you are sworn to
2 accept the law precisely as I now state it to you.

3 In this trial, you are the sole and exclusive judge
4 of the facts and I'm the judge of the law. Do not infer
5 that I have any opinion about the facts in this case from
6 anything I have said during the course of this trial in
7 ruling upon the admissibility of evidence or otherwise or
8 for anything that I say now during the course of this
9 charge to you.

10 In this regard, the law simply does not permit me to
11 have an opinion about the facts. As jurors, it is your
12 duty alone to determine the effect, value, weight and
13 accuracy of the evidence presented during the course of
14 the trial.

15 While argument of counsel is a beneficial part of
16 every trial, you should remember that the statements made
17 by counsel are not evidence. In presenting arguments,
18 counsel offer refer to evidence, however, you should
19 base your verdict on the evidence as you remember it.
20 Therefore, if there are any conflicts between the
21 recollection of counsel about the evidence and your own
22 recollection, you should rely upon your own understanding
23 of the evidence.

24 Now, ladies and gentlemen, in most civil cases tried
25 in the Court of Common Pleas the burden of proving a claim

1 is by a preponderance or greater weight of the evidence.
2 However, in this type of case under this particular
3 statute, the State's burden is greater than that. Here
4 it must be beyond a reasonable doubt.

5 As already stated to you, the State has the burden
6 of proof under the law of this state according to the
7 Sexually Violent Predator statute. The State must prove
8 its case to the standard of proof beyond a reasonable
9 doubt. If the State fails to meet this high burden, then
10 you must find that the respondent is not a sexually violent
11 predator.

12 Now what is a reasonable doubt in the law? Proof
13 beyond a reasonable doubt is proof that leaves you firmly
14 convinced that the respondent is a sexually violent
15 predator. Ladies and gentlemen, there are very few things
16 in this world that we know with absolute certainty and in
17 this type of case the law does not require proof that
18 overcomes every possible doubt. If, based on your
19 consideration of the evidence, you are firmly convinced
20 that the respondent is a sexually violent predator, you
21 must return a verdict for the State. If, on the other
22 hand, you think there is a real possibility that he is
23 not a sexually violent predator, you must give him the
24 benefit of the doubt and return a verdict for the
25 respondent.

1 Reasonable doubt may arise from evidence that is
2 in this case or from the lack of evidence in this case.
3 Evidence may be direct or circumstantial. Direct
4 evidence is testimony by a witness about what the witness
5 personally saw, heard or did. Circumstantial evidence is
6 indirect evidence; that is, it is proof of one or more
7 facts from which one can find another fact. You are to
8 consider both direct and circumstantial evidence. The
9 law permits you to give equal weight to both, but it is
10 up for you to decide how much weight to give any evidence.

11 In determining what the facts are in this case you
12 must judge the credibility, which means the believability
13 of the witnesses and the value of weight to be given to
14 their testimony. You alone must decide the force, effect
15 and accuracy of the testimony. In making this decision,
16 there are many things you may and should take into
17 consideration such as the appearance and manner of the
18 witness on the stand, a characteristic often referred to
19 as the demeanor of the witness. Was the witness hesitant
20 -- excuse me. Was the witness forthright or hesitant?
21 Was the witness's testimony consistent or did it contain
22 discrepancies? Was the ability of the witness to know
23 the facts -- or excuse me. What was the ability of the
24 witness to know the facts about which he or she testified?
25 Was there some reason a witness would want to give

1 testimony which would help or hurt one side or the other?
2 In other words, was the witness biased or prejudiced? Was
3 the testimony of the witness reasonable when considered in
4 the light of all the evidence in the case and in light of
5 your own experience and common sense? Was the testimony
6 of the witness corroborated or made stronger by other
7 testimony and evidence or was it made weaker or impeached
8 by such other testimony in evidence?

9 As jurors, please understand you have the right to
10 believe a small portion of a witness's testimony and
11 disregard the large portion or vice versa. You may
12 believe all of the witness's testimony or none. You may
13 believe the testimony of a single witness against that of
14 many witnesses or the other way around. And, of course,
15 you do not determine the case merely by counting the
16 number of witnesses presented by each side.

17 The fact testimony is not controverted does not mean
18 you must accept it as valid and is undisputed. You must
19 still gauge the credibility of the witness to determine
20 the believability of the facts offered through the
21 testimony. In exercising your mental processes and
22 attempting to decide the accuracy of the testimony, the
23 law simply requires that you exercise your good judgment,
24 your common sense, your sense of logic and reason, and
25 your experiences in life. You then apply these attributes

1 to the evidence and apply the law as I am now going to
2 state it to you and, thus, arrive at a verdict.

3 During the course of this trial you also heard
4 testimony of expert witnesses. The rules of evidence
5 ordinarily do not permit witnesses to testify to opinions
6 or conclusions. Instead they can testify as to facts
7 they perceive, such as what they saw, smelled, heard or
8 touched; however, an exception to this rule exists for
9 witnesses we call expert witnesses. A witnesses who has
10 special knowledge, skill, experience, training or education
11 in a particular field may state an opinion as to relevant
12 and material matters in which the witness claims to be an
13 expert. In determining the weight to be given such an
14 opinion, you should likewise consider the qualifications
15 and credibility of the expert and the reasons given for
16 the opinion. You are not bound by such opinion; rather
17 you should give it the weight, if any, which you think it
18 deserves. The value and effect of expert testimony is a
19 matter to be solely estimated by you, the jury. No opinion
20 of an expert can be accepted in and of itself as accurate
21 and reliable, but must be weighed by you and convince your
22 judgment beyond a reasonable doubt with same other force
23 and effect as any other fact proved in this case before you
24 can rely on it. You must consider expert testimony in the
25 same manner as you do other testimony and give it such

1 weight as you believe it to be entitled when considered
2 with all the other evidence in this case. Such testimony
3 is given for the purpose of helping you and not for the
4 purpose of controlling your judgment.

5 The elements which the State -- the elements which
6 the State must prove beyond a reasonable doubt are, one,
7 that the respondent has been convicted of a sexually
8 violent offense. I charge you that criminal sexual
9 conduct with a minor second degree and sexual exploitation
10 of a minor third degree are sexually violent offenses.

11 And, two, the respondent suffers from a mental
12 abnormality or personality disorder. And, three, the
13 mental abnormality or personality disorder makes the
14 person likely to engage in acts of sexual violence if not
15 confined in a secure facility for long-term control, care
16 and treatment. Inherent in these elements is that the
17 State must prove the requirement that the respondent's
18 mental abnormality or personality disorder causes him
19 serious difficulty in controlling his behavior. In other
20 words, the State must prove beyond a reasonable doubt
21 that if the individual seeks to commit -- the individual
22 it seeks to commit suffers from a mental illness which
23 cannot sufficiently -- which he cannot sufficiently
24 control without the structure and care provided by a
25 mental health facility rendering him otherwise likely

1 to commit a dangerous act.

2 In order for you to better understand the elements
3 of the State's cause of action, I'm going to define for
4 you some of the terms I have just used. One, mental
5 abnormality means a mental condition affecting a person's
6 emotional or volitional capacity that predisposes the
7 person to commit sexually violent offenses. This mental
8 abnormality or personality disorder must cause respondent
9 to -- must cause respondent serious difficulty in
10 controlling his behavior.

11 Two, likely to engage in acts of sexual violences
12 means that a person is predisposed to engage in acts of
13 sexual violence and more probably than not will engage
14 in acts of sexual violence to such a degree as to pose a
15 menace to the health and safety and others.

16 The burden of proof is on the State to prove to your
17 satisfaction beyond a reasonable doubt that the respondent
18 has been convicted of a sexually violently offense as I've
19 instructed you and also suffers from a mental abnormality
20 or personality disorder that makes him likely to engage
21 in acts of sexual violence if not confined in a secure
22 facility for long-term control, care and treatment.

23 Again, I remind you that the respondent has already
24 pled guilty to a sexually violent offense. He received a
25 criminal sentence for that crime and has already satisfied

1 that sentence. South Carolina's sexually violent predator
2 law was not enacted to add to the criminal punishments
3 imposed upon individuals that commit sexually violent
4 offenses; therefore, your decision whether to commit the
5 respondent in this way may not be influenced by your
6 personal opinions regarding whether the respondent
7 received an appropriate criminal punishment. If the State
8 carries the burden of proof and convinces you beyond a
9 reasonable doubt as to each of the two elements of its
10 cause of action, it is entitled to a finding that
11 respondent is a sexually violent predator. If the State
12 does not meet that burden of proof as to one or all of the
13 elements, the respondent is entitled to a finding that he
14 is -- that he is not a sexually violent predator.

15 And, Mr. Foreman and ladies and gentlemen of the
16 jury, as you retire to begin your deliberations I wish
17 to express the hope that each of you will be mindful
18 of the importance of your responsibility. You are not
19 called upon to serve as jurors very often and the proper
20 performance of the duty requires each of you to reach the
21 height of freeing your mind of all improper influences.
22 As the presiding officer of this court, I am vitally
23 concerned that whatever verdict you find will be the
24 result of your going into that jury room and confining
25 your consideration to the evidence and the law that you

1 have heard in this courtroom, weighing it fairly and
2 impartially as I have every confidence you will do.
3 Your verdict in this case cannot be based on sympathy,
4 passion, prejudice or emotion or some other consideration
5 not found in the evidence. Remember, your verdict must
6 be unanimous.

7 I will now explain the verdict form and possible
8 verdicts.

9 Mr. Foreman, the verdict form is a one -- one page.
10 The main part essentially says we, the jury, unanimously
11 answer the following question. Yes, Phillip Byron Nix is
12 a sexually violent predator or no, he is not a sexually
13 violent predator, and you will have to sign and date it
14 upon reaching a verdict.

15 I ask now that you return to the jury room and do
16 not begin your deliberations until -- until you are told
17 by the clerk or bailiff to do so. There are some matters
18 which must be discussed with the attorneys before you
19 can begin your deliberations. I will give you a copy
20 of these instructions in written form. During your
21 deliberations you may refer to the instructions to guide
22 your decisionmaking. You must consider the instructions
23 as a whole and not follow some and ignore others. Please
24 return these instructions along with the verdict form to
25 the Court at the time your verdict is rendered.

1 Mr. Foreman, if you will now head on back to the
2 jury room and please do not discuss the case yet.

3 Thank you.

4 (Whereupon, the jury retires to the jury room at
5 4:25 PM.)

6 THE COURT: Any -- any issues with the charge?

7 MS. JOHNSON: No, sir.

8 MR. RUNYAN: No, Your Honor.

9 THE COURT: Anything else before we bring the
10 alternates in?

11 MS. JOHNSON: No, sir.

12 THE COURT: All right. So there's the evidence. I
13 make the charge a court exhibit and send it back. That's
14 what I do.

15 (Court's Exhibit Number 2 was marked for
16 identification.)

17 (Whereupon, the alternate jurors enter the
18 courtroom.)

19 THE COURT: All right. Mr. Crouch?

20 ALTERNATE JUROR: Yes, sir.

21 THE COURT: All right. And Mr. Sykes?

22 ALTERNATE JUROR: Yes.

23 THE COURT: All right. Well, first of all, thank
24 you-all for your service over the last two days. We've
25 reached the point now we're gonna give the case to the

1 jury. We didn't lose anybody. More often that you
2 think we lose somebody, but we didn't need to call any
3 alternates.

4 On behalf of all of us thank you for your service.
5 You're free to go, but you're also free to stay if you so
6 desire, but I'm gonna give the case to them shortly and I
7 can't do it with the alternates.

8 So thank you for time.

9 (Pause in proceedings.)

10 (Whereupon, the evidence was submitted to the jury
11 at 4:30 PM.)

12 THE COURT: All right, folks. We'll be on standby.

13 MS. JOHNSON: Yes, sir.

14 (Recess taken at 4:31 PM.)

15 (Back on the record at 6:28 PM.)

16 (Discussion off the record.)

17 THE COURT: I'm gonna put this note in front of the
18 jury.

19 Let's make it the next Court's exhibit.

20 (Court's Exhibit Number 3 was marked for
21 identification.)

22 (Pause in proceedings.)

23 THE COURT: They wrote on the back we will continue
24 today. Thank you.

25 (Recess taken at 6:32 PM.)

1 (Back on the record at 6:38 PM.)

2 THE COURT: All right. We have a verdict.

3 All right. Are you ready to bring them in?

4 MR. RUNYAN: Yes.

5 THE COURT: All right. Anything else before we bring
6 them in?

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

8 MS. JOHNSON: Nothing, Your Honor.

9 THE COURT: Bring them in, please.

10 (Whereupon, the jury return to the courtroom at
11 6:40 PM.)

12 THE COURT: All right. Mr. Foreman, I understand you
13 have a verdict; is that correct?

14 FOREPERSON: Yes, sir.

15 THE COURT: Is your verdict unanimous?

16 FOREPERSON: Yes, sir.

17 THE COURT: Please hand it to the bailiff.

18 Madam Clerk, if you would publish the verdict.

19 THE CLERK: Yes, sir.

20 The State of South Carolina, County of Lexington,
21 Case Number 2022-CP-32-02497, in the Matter of the Care
22 and Treatment of Phillip Byron Nix, has the petitioner,
23 the State of South Carolina proved beyond a reasonable
24 doubt that respondent Phillip Byron Nix is a sexually
25 violent predator under the South Carolina Sexually

1 Violent Predator Act?

2 We, the jury, unanimously answer the question as
3 follows. Yes, Phillip Byron Nix is a sexually violent
4 predator, and it is signed by the foreperson of the jury
5 on August 13, 2024.

6 THE COURT: Any motions -- or any matters for the
7 jury?

8 MS. JOHNSON: None, Your Honor.

9 THE COURT: All right. Anything else from the State
10 before the jury is dismissed?

11 MR. RUNYAN: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, I
13 know you just came in yesterday morning. You've put in
14 a full two days. We recognize that it is tough work
15 doing these cases sitting on a jury sometimes, and make
16 no mistake, serving on jury duty is public service and
17 you've certainly done that for the last two days. We
18 appreciate your attention, we appreciate your patience,
19 and we thank you for your service.

20 So at this time you are free to depart and on behalf
21 of all of us at the courthouse thank you for your service
22 this week.

23 (Whereupon, the jury was dismissed at 6:42 PM.)

24 THE COURT: All right. I think other than signing
25 an order -- do you have a proposed order?

1 MR. RUNYAN: We have a proposed order.

2 THE COURT: Before -- is there anything,
3 Ms. Johnson, anything for the record you want to make
4 before he departs?

5 MS. JOHNSON: Not at this time, Your Honor.

6 THE COURT: All right. I'll allow ten days for any
7 post-trial motions that you wish to make.

8 MS. JOHNSON: Thank you, Your Honor.

9 THE COURT: All right. Nothing else for the record?

10 MR. RUNYAN: No, Your Honor.

11 THE COURT: All right. Off the record.

12 (Whereupon, the proceedings were concluded for
13 August 13, 2024, at 6:43 PM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
August 12th-13th, 2024.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

January 21, 2025

Is/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

COUNTY OF LEXINGTON

CLERK OF COURT

IN THE COMMON PLEAS / GENERAL SESSIONS / FAMILY COURT

CASE NO. 2022 CP 32 02497

JUDGE W. McLeod

CT. REP. Stacy Johnson DATE 8/12/24

CLOCK - IN AREA

(NOTES) Court's Exhibits
 (1) Core person Selection
 (2) Jury Charge
 (3) Judge's Note to Jury/Response

PLAINTIFF State

VS.

DEFENDANT Phillip Byron Nix

Atty. Christopher Runyon

Atty. Kindle Johnson

NO.	ID.	EV.	DESCRIPTION	NO.	ID.	EV.	DESCRIPTION
<u>1</u>	<u>✓</u>	<u>✓</u>	<u>Indictment / Sentence Sheet</u>				
<u>2</u>	<u>✓</u>	<u>✓</u>	<u>Indictment / Sentence Sheet</u>				
<u>3</u>	<u>✓</u>	<u>✓</u>	<u>Community Supervision Rev.</u>				
<u>4</u>	<u>✓</u>	<u>✓</u>	<u>Cellbrite Extraction Report</u>				

CT. REP Stacy Johnson

REC. BY Phillip Nix

VERIFIED _____

TITLE Deputy Clerk

TITLE _____

WHITE: COURT RECORDS * YELLOW: EVIDENCE VAULT * PINK: FILE

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE VS.

Philip Byron Nix

AKA:

Race: White Sex: M Age: 37

DOB: PBN DOB 1976 SS#: PBN SSN#

Address: 2280 Calks Ferry Rd

City, State, Zip: Lexington, SC 29073-8551

DL#: PBN DL# SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

K Smayes
Solicitor64191 Philip B Nix
SC Bar# DefendantPhilip B Nix
Defendant

Attorney for Defendant

002202
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years

and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment

of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1460 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ — plus 20% fee: \$ —

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS3202896

A/W#: J848831

Date of Offense: 12/1/2008 - 3/12/2009

S.C. Code § : 16-03-0655(b)(1)

CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS ALford

(D-20)

plea accepted: *Wally Smith*

2060

Judge

3/5/13



— days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. —

May serve W/E beginning —

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —

\$ — paid to Public Defender Fund

Other: —

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2107

Sentence Date: March 11, 2013

Lex. Cd. C.G.C.P., G.S. & F.C.

WITNESSES

Lexington County Sheriffs Department

Charles Lint

Law Enforcement Case #: 09040298

SMB

ARREST WARRANT NUMBER

J848831

(Amended Indictment)

ACTION OF GRAND JURY

Ron Brasington
Foreperson of Grand Jury
Date: *2-4-13*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009GS3202896

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

THE STATE

vs.

Philip Byron Nix

CDR #: 0396

Indictment for

Criminal Sexual Conduct with a Minor-
Second Degree

§ 16-03-0655(B)(1)

DONALD V. MYERS, SOLICITOR

Lex. Co. C.C.C.P., G.S. § 15-3-101
A TRUE COPY

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Criminal Sexual Conduct with a Minor-Second
Degree

§ 16-03-0655(B)(1)

At a Court of General Sessions, convened on November 2009, the Grand Jurors of Lexington County present upon their oath:

That **Philip Byron Nix** in Lexington County, South Carolina on between December 1, 2008 and March 12, 2009 did attempt to engage in or did engage in a sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: sexual battery including genital intrusion upon **VICTIM** date of birth **VICTIM DOB** 1997, in violation of Section 16-3-655(B)(1), S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayes
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Philip Byron Nix

AKA:

Race: White Sex: M Age: 37DOB: PBN DOB 1976 SS#: PBN SSN#Address: 2280 Calks Ferry RdCity, State, Zip: Lexington, SC 29073-8551DL#: PBN DL# SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Sexual exploitation of a minor, Third degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012CS3201834A/W#: J827688Date of Offense: 12/1/2008 - 5/12/2009S.C. Code §: 16-15-0410(A)CDR Code #: 0381

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS Alfordin violation of § 16-15-0410 of the S.C. Code of Laws, bearing CDR Code # 0381

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTORNEY

QSN Hayes64191Phillip B NixC. J. ...002202WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009 - 65-82-2896
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1460

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5
 3% to County (if paid in installments) \$130 \$ 130
 TOTAL \$ 130

Clerk of Court/ Deputy Clerk Debra A. ...Court Reporter: Michael ...

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge Howard ...Judge Code: 2107Sentence Date: March 11, 2013

Lex. Ct. C.C.C.P., G.S. & F.C.



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
SEXUAL EXPLOITATION OF A MINOR -
THIRD DEGREE

§ 16-15-0410(A)

At a Court of General Sessions, convened on FEBRUARY 2013, the Grand Jurors of Lexington County present upon their oath:

That **Philip Byron Nix** did Lexington County, on or about December 1, 2008 through May 12, 2009, commit the offense of third degree sexual exploitation of a minor, unlawfully and while knowing the character or content of the material, did possess material that contained a visual representation of a minor engaging in sexual activity, to wit: photographs and/or digital images of **VICTIM** date of birth **VICTIM DOB** **VICTIM DOB** 1997 and/or **VICTIM 2** date of birth **VICTIM 2 DOB** 2000 and/or a visual representation of a female minor, whether known or unknown, engaged in sexual activity as defined in Section 16-15-375 (5), in violation of South Carolina Code of Laws Section 16-15-410, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Suzanne Mayo
ASSISTANT SOLICITOR

A TRUE COPY
Chloe Green
Lex. Co. C.C.C.P., G.S. & F.C.

WITNESSES

Lexington County Sheriffs Department

Charles Robby Lint

Law Enforcement Case #: 09040298

LSM

ARREST WARRANT NUMBER

J827688

(Indictment Amended)

ACTION OF GRAND JURY

Don Brasington

Foreperson of Grand Jury

Date: 2-4-13

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3201834

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

THE STATE

vs.

Philip Byron Nix

CDR #: 0381

Indictment for

SEXUAL EXPLOITATION OF A MINOR -
THIRD DEGREE

§ 16-15-0410(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF [County]

STATE

Phillip Nix
-vs-
Defendant

00970454
SID #

00317044
SCDC# or DOB

FILED

2022 MAR 25 AM 11:53

LISA M. COMER
CLERK OF COURT
LEXINGTON, SC

IN THE COURT OF GENERAL SESSIONS
No. 09 -GS- 32 - 02890

Count

Community Supervision
REVOCATION ORDER

This matter was brought before me on the 11 day of March, 2022, pursuant to a [warrant or citation] charging the Defendant with violating the Defendant's Community Supervision Program and asking the Court to revoke the Defendant's community supervision. I find;

1. The terms of the Community Supervision Program are fair and reasonable;
2. The Defendant has not complied with all terms of the Community Supervision Program;
3. The Defendant has willfully violated terms of the Community Supervision Program;
4. The Defendant should not be continued in the Community Supervision Program under its current terms or under other terms and conditions;

IT IS ORDERED that the Defendant be in the custody of the South Carolina Department of Corrections for a term of _____ days _____ months 1 year (total may not exceed one (1) year).

- credit for 14 days. Time satisfies all money.
SCDPPPS is authorized to destroy the phone that was collected for evidence as they see fit.

This 11 day of March, 2022

Newberry

S. C.

R. Keith Kelly
Presiding Judge
8th

Judicial Circuit



This is to certify that I have received this order.

Offender=s
Signature

Phillip Nix

Witnessed by

[Signature]

Signed this 11 day of March, 2022, at

Newberry

SC

A TRUE COPY
Lisa Comer
Lex. Co. C.C.C.P., G.S. & F.S.



Extraction Report - Cellebrite Reports



Summary

Cellebrite Physical Analyzer version	7.52.0.36
Report creation time	1/27/2022 10:47:02 AM -05:00
Time zone settings (UTC)	Original UTC value
Examiner name	Chris Catos
Location	Newberry County
Case number	001
Case name	Phillip Byron Nix
Evidence number	374
Department	Digital Forensic Unit - Central Office
Organization	SCDPPPS
Investigator	Lindsey Brown

Source Extraction

Advanced Logical (1)	
Extraction start date/time	1/27/2022 10:05:21 AM -05:00
Extraction end date/time	1/27/2022 10:08:23 AM -05:00
Unit identifier	1158113960
UFED version	7.52.0.152
Internal version	7.52.0.152
Selected manufacturer	Detected Model
Selected device name	WTCELERO5G
Username	18035370309
Machine name	WIN-H54JKKTSME4
Connection type	Cable No. 100
Extraction type	Advanced Logical [Android Backup]
Extraction ID	9A8A779D-0529-45D7-B450-444D68EC6893
Extraction (UFD) file data integrity	Intact
Report type	Phone
Advanced Logical (2)	
Extraction start date/time	1/27/2022 9:36:13 AM -05:00
Extraction end date/time	1/27/2022 9:38:13 AM -05:00
Unit identifier	1158113960
UFED version	7.52.0.152
Internal version	7.52.0.152
Selected manufacturer	TCL
Selected device name	60622 Rev1 2 Plus
Username	18035370309
Machine name	WIN-H54JKKTSME4
Connection type	Cable No. 170
Extraction type	Advanced Logical
Extraction ID	1C553431-7456-4AC1-A43C-1EAA9F74756D
Extraction (UFD) file data integrity	Intact
Report type	Phone

Device Screenshots (1)	
Extraction start date/time	1/27/2022 10:40:52 AM(UTC-5)
Extraction end date/time	1/27/2022 10:40:52 AM(UTC-5)
Unit identifier	1158113960
UFED version	7.52.0.152
Internal version	7.52.0.152
Selected manufacturer	Chinese Android phones
Selected device name	Android MTK
Machine name	WIN-H54JKKTSME4
Extraction type	Device Screenshots
Extraction ID	DD23E340-B003-4E90-A142-02AA83E9FF41
Extraction (UFD) file data integrity	Intact
Device Screenshots (2)	
Extraction start date/time	1/27/2022 10:19:33 AM(UTC-5)
Extraction end date/time	1/27/2022 10:19:33 AM(UTC-5)
Unit identifier	1158113960
UFED version	7.52.0.152
Internal version	7.52.0.152
Selected manufacturer	TCL
Selected device name	6062Z Revvl 2 Plus
Machine name	WIN-H54JKKTSME4
Connection type	Cable No. 170
Extraction type	Device Screenshots
Extraction ID	74A464C8-98E7-4548-B117-69391C3E5500
Extraction (UFD) file data integrity	Intact
Device Screenshots (3) - Selective apps decoding	
Extraction start date/time	1/27/2022 9:44:17 AM(UTC-5)
Extraction end date/time	1/27/2022 9:44:17 AM(UTC-5)
Unit identifier	1158113960
UFED version	7.52.0.152
Internal version	7.52.0.152
Selected manufacturer	TCL
Selected device name	6062Z Revvl 2 Plus
Machine name	WIN-H54JKKTSME4
Connection type	Cable No. 170
Extraction type	Device Screenshots
Extraction ID	A6316119-4CBC-469A-A833-04C2F88CA124
Extraction (UFD) file data integrity	Intact

Image Hash Details (3)

Hash data is available for this project.

#	Name	Info
1	Backup	Path Size (bytes) SHA256 Detected Model_WTCELERO5G.zip 117041355 7C112C13A0EB80684ED483EECD0CF30E79D3E3E8A74F3B09C15B15E13846E400
2	XML	Path Size (bytes) Report.xml 318857
3	XML	Path Size (bytes) Report.xml 319695

Plugins

#	Name	Author	Version
1	PreProject	Cellebrite	2.0
2	ProjectProcessorFinisher	Cellebrite	2.0
3	PostProject	Cellebrite	2.0

Contents

Type	Included in report	Total
Instant Messages	25	72
Data Files	8	25
Images	8	25
Device Screenshots	9	9

Instant Messages (25)

* These details are cross-referenced from this device's contacts

#	Source	From	To	All timestamps	Content	Deleted								
1		+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 3:49:56 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><th>Participant</th><th>Delivered</th><th>Read</th><th>Played</th></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Unread Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West				
Participant	Delivered	Read	Played											
+18034069106 West														
2		+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 3:29:20 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><th>Participant</th><th>Delivered</th><th>Read</th><th>Played</th></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Unread Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West				
Participant	Delivered	Read	Played											
+18034069106 West														
3		+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 3:29:19 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><th>Participant</th><th>Delivered</th><th>Read</th><th>Played</th></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Unread Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West				
Participant	Delivered	Read	Played											
+18034069106 West														

4	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 1:40:19 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Unread Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
5	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 1:20:43 PM(UTC-5)	Direction: Incoming Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
6	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 1:06:06 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
7	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:48:01 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
8	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:42:34 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												

9	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:42:08 PM(UTC-5)	Direction: Incoming Body:

01

13	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:38:04 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
14	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:35:26 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (1) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
15	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:34:18 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
16	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:33:49 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												

17	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:21:23 PM(UTC-5)	Direction: Incoming Body: [REDACTED] Participants: ParticipantDeliveredReadPlayed +18034069106 West Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low
18	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:20:51 PM(UTC-5)	Direction: Incoming Body: [REDACTED] Participants: ParticipantDeliveredReadPlayed +18034069106 West Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low
19	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:20:37 PM(UTC-5)	Direction: Incoming Body: [REDACTED] [REDACTED] Participants: ParticipantDeliveredReadPlayed +18034069106 West Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low
20	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:20:05 PM(UTC-5)	Direction: Incoming Body: [REDACTED] [REDACTED] [REDACTED] [REDACTED] Participants: ParticipantDeliveredReadPlayed +18034069106 West Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low
21	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:07:59 PM(UTC-5)	Direction: Incoming Body: [REDACTED] [REDACTED] Participants: ParticipantDeliveredReadPlayed +18034069106 West Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low

22	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 12:00:48 PM(UTC-5)	Direction: incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
23	+18034069106 West *	+18034069106 West *	Timestamp: 1/25/2022 11:59:56 AM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
24	+18034069106 West *	+18034069106 West *	Timestamp: 1/24/2022 7:58:04 PM(UTC-5)	Direction: Incoming Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Attachments:  file transfer original Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												
25	+18034069106 West *	+18034069106 West *	Timestamp: 1/24/2022 7:40:30 PM(UTC-5)	Direction: Incoming Body: Participants: <table><tr><td>Participant</td><td>Delivered</td><td>Read</td><td>Played</td></tr><tr><td>+18034069106 West</td><td></td><td></td><td></td></tr></table> Source Extraction: Advanced Logical (2) Status: Read Message Type: MMS Folder: Inbox Priority: Low	Participant	Delivered	Read	Played	+18034069106 West			
Participant	Delivered	Read	Played									
+18034069106 West												

Data Files (8)

Classification data will appear in blue indicating this is enriched data from Cellebrite and didn't come from the device

Images (8)

#	File Info	Additional file info	Thumbnail	Deleted
1	Name: rtc-snapshot-1816996088558296590.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-1816996088558296590.jpeg MD5: a3508d004268bcd8a30bf90de5cf2 Duplicates(1)	Size (bytes): 85781 Created: 1/24/2022 10:44:38 PM Source Extraction Classifications: ☞ Nudity (98%) ☞ Suspected CSA (43%) Meta Data: Orientation: 0		
2	Name: rtc-snapshot-1750507023056002992.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-1750507023056002992.jpeg MD5: d697c68ef390f4a112d1ca538e4f554 Duplicates(1)	Size (bytes): 55571 Created: 1/24/2022 10:44:21 PM Source Extraction Classifications: ☞ Nudity (99%) ☞ Suspected CSA (67%) Meta Data: Orientation: 0		
3	Name: rtc-snapshot-2911353892010730393.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-2911353892010730393.jpeg MD5: 1514abfc32e97b55fc9fe67175cccd58 Duplicates(1)	Size (bytes): 49905 Created: 1/24/2022 10:44:07 PM Source Extraction Classifications: ☞ Nudity (86%) ☞ Suspected CSA (62%) Meta Data: Orientation: 0		
4	Name: rtc-snapshot-4831250869588305238.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-4831250869588305238.jpeg MD5: 3381c28a50973ec32bb98c30678b5e0d3 Duplicates(1)	Size (bytes): 86515 Created: 1/24/2022 10:44:51 PM Source Extraction Classifications: ☞ Nudity (92%) ☞ Suspected CSA (52%) Meta Data: Orientation: 0		
5	Name: rtc-snapshot-5082906958891074585.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-5082906958891074585.jpeg MD5: 6979cc9ecfd3bdfdc0383671f184e271 Duplicates(1)	Size (bytes): 46948 Created: 1/24/2022 10:43:56 PM Source Extraction Classifications: ☞ Nudity (83%) ☞ Suspected CSA (71%) Meta Data: Orientation: 0		
6	Name: rtc-snapshot-5357693742006169704.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-5357693742006169704.jpeg MD5: 263161f771a0a2c2f38563e1bedb5349 Duplicates(1)	Size (bytes): 47375 Created: 1/24/2022 10:43:59 PM Source Extraction Classifications: ☞ Nudity (98%) ☞ Suspected CSA (72%) Meta Data: Orientation: 0		

7	Name: rtc-snapshot-6632318057112499315.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-6632318057112499315.jpeg MD5: fb93387e9e2c67ae9d6e97fab7e83785 Duplicates(1)	Size (bytes): 53585 Created: 1/24/2022 10:44:18 PM Source Extraction: Advanced Logical (1), Advanced Logical (2) Classifications: Nudity (84%) Suspected CSA (85%) Meta Data: Orientation: 0	
8	Name: rtc-snapshot-907853461552809042.jpeg Path: Media/Internal shared storage/Pictures/Messenger/rtc-snapshot-907853461552809042.jpeg MD5: a7c63377687c3bd9f2261b2f225f1526 Duplicates(1)	Size (bytes): 55390 Created: 1/24/2022 10:44:16 PM Source Extraction: Advanced Logical (1), Advanced Logical (2) Classifications: Nudity (83%) Suspected CSA (49%) Meta Data: Orientation: 0	

Device Screenshots (9)

Installed Applications - (4)



#	File Info	Additional file info
1	Name: image0001.png Path: Phone/image0001.png MD5: f62d0d27c8f0bda7cd242836138cf99	Note: Size (bytes): 705814 Created: 1/27/2022 10:35:18 AM(UTC-5) Source Extraction: Device Screenshots (1)



#	File Info	Additional file info
2	Name: image0002.png Path: Phone/image0002.png MD5: 79086fb14c7172cbce685fd3756e66ff	Note: Size (bytes): 2231485 Created: 1/27/2022 10:37:18 AM(UTC-5) Source Extraction: Device Screenshots (1)



#	File Info	Additional file info
3	Name: image0003.png Path: Phone/image0003.png MD5: 2b0d0c5e6ecd87082a14df5b00533a7	Note: Size (bytes): 1365660 Created: 1/27/2022 10:37:38 AM(UTC-5) Source Extraction Device Screenshots (1)



#	File Info	Additional file info
4	Name: image0004.png Path: Phone/image0004.png MD5: f3db9867a49f4241372f73e38e0ad83b	Note: Size (bytes): 2223703 Created: 1/27/2022 10:37:49 AM(UTC-5) Source Extraction Device Screenshots (1)



#	File Info	Additional file info
1	Name: image0001.png Path: Phone/image0001.png MD5: 94d0cb7f138a6cdb105dc9eb4317ccbf	Note: Size (bytes): 2028084 Created: 1/27/2022 10:17:45 AM(UTC-5) Source Extraction Device Screenshots (2)



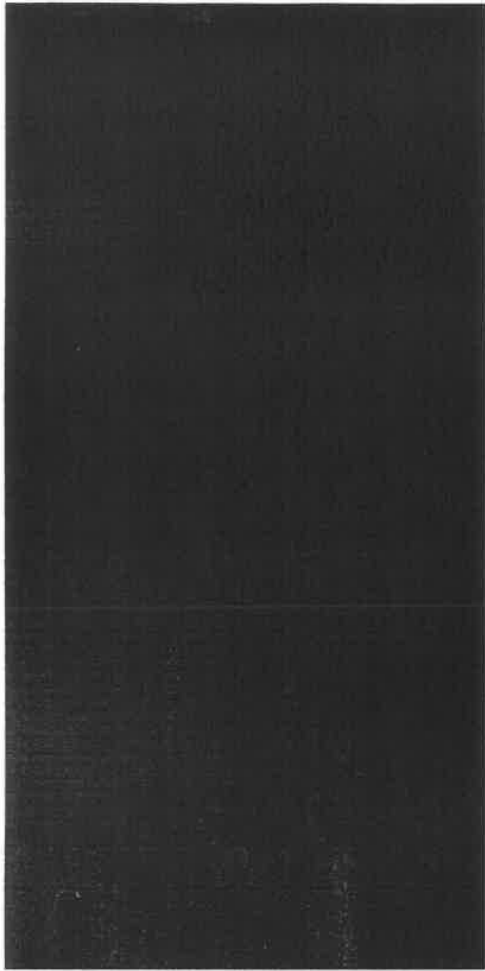
#	File Info	Additional file info	
2	Name: image0001.png	Note:	
	Path: Phone/image0001.png	Size (bytes):	123908
	MD5: 10c2542bb20d3f6d817d445e128ee105	Created:	1/27/2022 9:40:08 AM(UTC-5)
		Source Extraction	Device Screenshots (3)



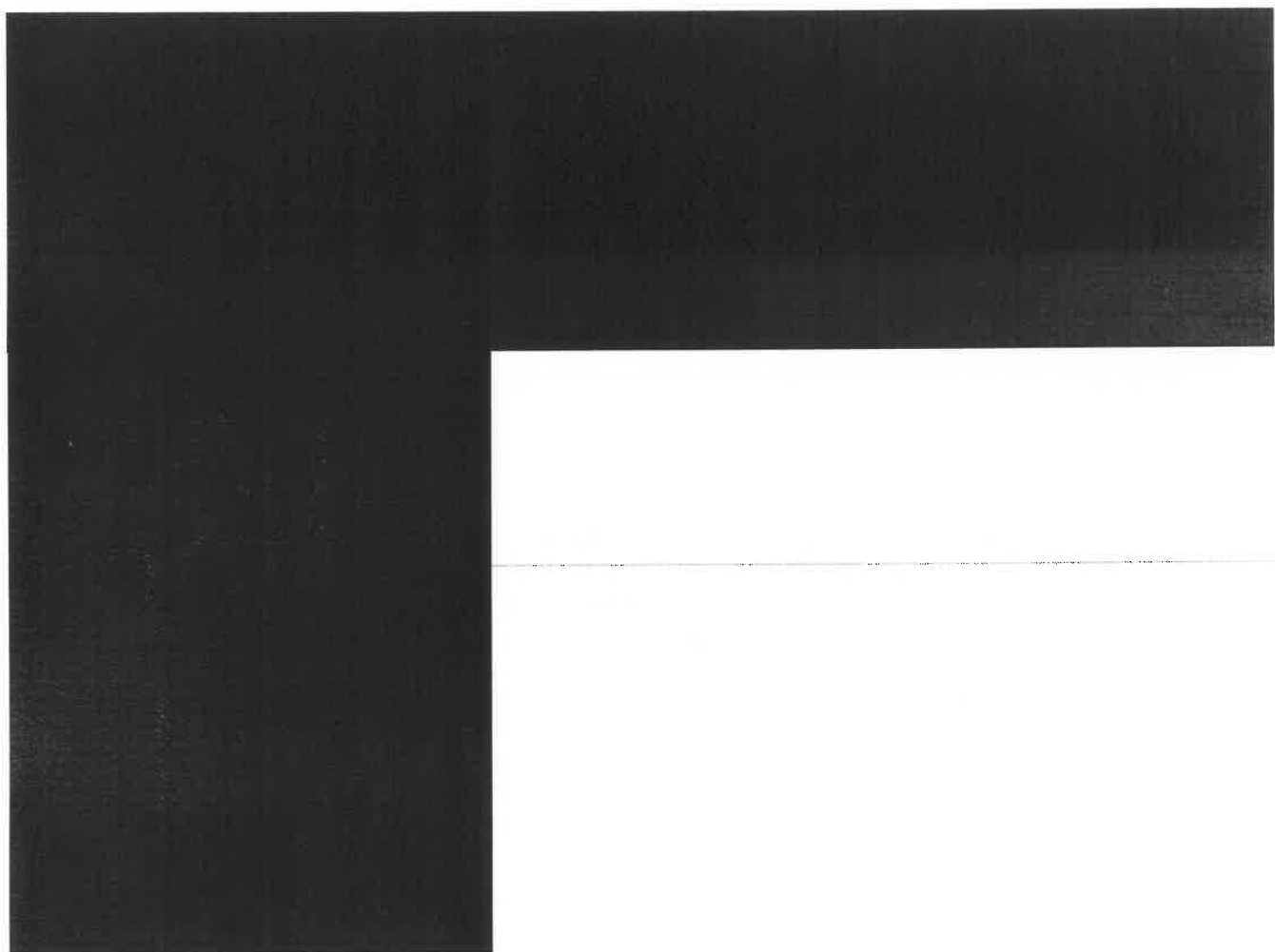
#	File Info	Additional file info
3	Name: image0002.png Path: Phone/image0002.png MD5: c51d9e8f5b2cd10ed6463f81e9c17646	Note: Size (bytes): 126348 Created: 1/27/2022 9:40:24 AM(UTC-5) Source Extraction: Device Screenshots (3)



#	File Info	Additional file info	
4	Name: image0003.png Path: Phone/image0003.png MD5: bcadd982a9d2d12288c3aacf0521f0f8	Note: Size (bytes): 1290472 Created: 1/27/2022 9:41:38 AM(UTC-5) Source Extraction	Device Screenshots (3)

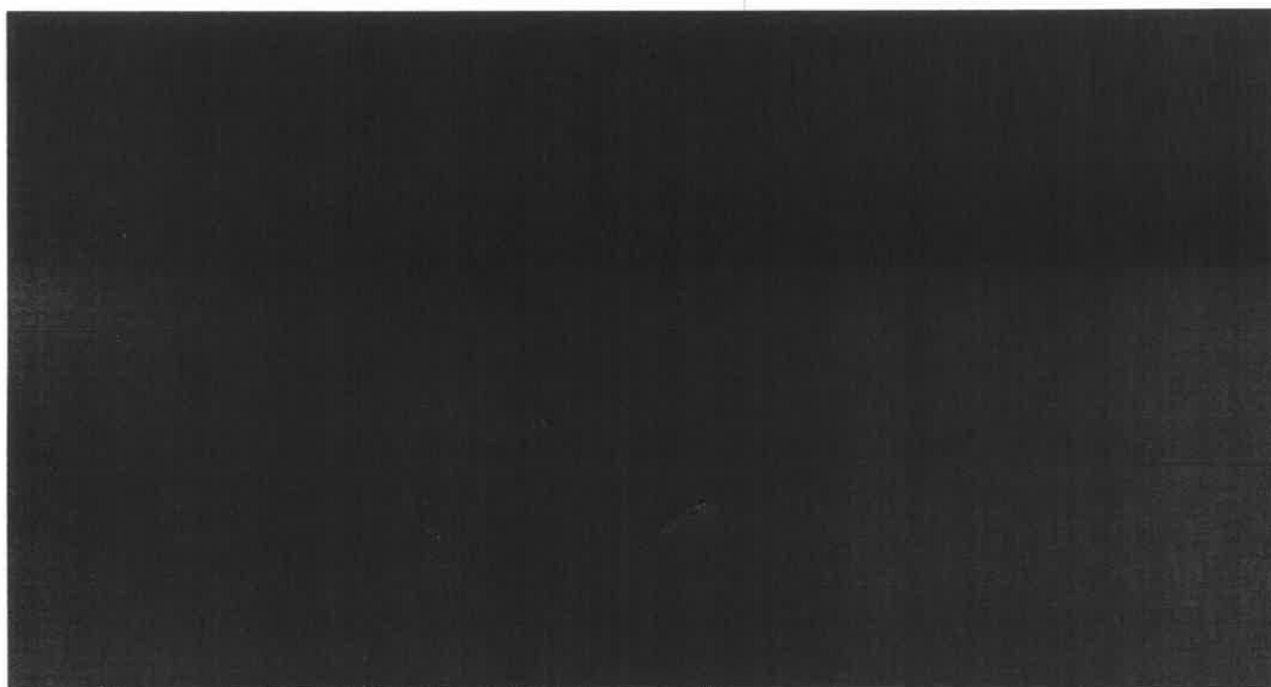


#	File Info	Additional file info
5	Name: image0004.png Path: Phone/image0004.png MD5: aa542e8e3d9674b021e824a4fb0a2b7e	Note: Size (bytes): 189922 Created: 1/27/2022 9:42:35 AM(UTC-5) Source Extraction Device Screenshots (3)















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IF YOU WOULD LIKE
TO RESUME DELIBERATIONS
TOMMORROW MORNING AT 9:00 AM
YOU MAY DO SO.

IF YOU PREFER TO CONTINUE
NOW THAT IS FINE TOO

JUDGE MCLEOD

8/13/2024

We will continue today/
Thank You

