STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED
MAY 24 2012
S.C. Supreme Court

Certiorari to Charleston County

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2012-UP-003 (S.C. Ct. App. filed 1/4/2012)
06-CP-10-783

IN THE MATTER OF THE CARE AND TREATMENT OF GILBERT GONZALEZ,

PETITIONER

APPENDIX

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INDEX

INDEX i

OPINION (NO. 2012-UP-003, FILED JANUARY 4, 2012) 1

PETITION FOR REHEARING 3

ORDER DENYING PETITION FOR REHEARING 15

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Care and
Treatment of Gilbert Gonzalez, Appellant.

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2012-UP-003
Heard October 31, 2011 – Filed January 4, 2012

AFFIRMED

Appellate Defender Lanelle C. Durant, of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Attorney General Deborah R. J. Shupe, all of Columbia, for Respondent.

PER CURIAM: Gilbert Gonzalez appeals his civil commitment to the South Carolina Department of Mental Health for long-term control, care, and

treatment, pursuant to the Sexually Violent Predator Act (SVPA), South Carolina Code sections 44-48-10 to -170 (2002 & Supp. 2010). We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court abused its discretion in denying Gonzalez's requested jury charges, the record demonstrates that the trial court's extensive jury charge accurately and fairly stated the applicable law: In re Care & Treatment of Canupp, 380 S.C. 611, 616, 671 S.E.2d 614, 616 (Ct. App. 2008) (citations omitted) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. To warrant reversal, a circuit court[']s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); Davis v. Tripp, 338 S.C. 226, 237, 525 S.E.2d 528, 534 (Ct. App. 1999) (holding the trial court did not err in refusing to give the requested instruction and stating: "We have examined the court's charge to the jury and conclude that, when viewed in its entirety, it fairly and sufficiently sets forth the applicable law in this case.").

2. As to whether the trial court abused its discretion in allowing the State to contend in its closing argument that the jury could draw an inference from the absence of Gonzalez's expert at trial, we find no abuse of discretion: Von Dohlen v. State, 360 S.C. 598, 609-10, 602 S.E.2d 738, 744 (2004) (citation omitted) ("The [closing] argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom."); Johnson v. Life Ins. Co. of Ga., 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955) (citations omitted) ("Control of the arguments of counsel rests in the discretion of the trial judge, and considerable latitude is generally allowed in the matter of drawing and arguing inferences and deductions from the evidence.").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

Opinion No. 2012-UP-003

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's commitment to the Department of Mental Health pursuant to the Sexually Violent Predator Act (SVPA), South Carolina Code sections 44-48-10 to 44-48-170 (2002 & Supp. 2010) on January 4, 2012. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, appellant submits the following:

Gonzalez argued two issues on appeal where he believed the trial court erred: (1) in denying Gonzalez's two requested jury charges; (2) and in allowing the state to argue in his closing argument that the jury could draw an inference from the absence of Gonzalez's expert at trial.

The Court of Appeals affirmed the trial court on both issues. On Issue One, the Court held that the record demonstrated that the trial court's jury charge accurately and fairly stated the applicable law which was that a jury charge was correct if, when read as a whole, it contained the

correct definition and adequately covered the law. On Issue Two, the Court held that the trial court did not abuse its discretion because content of the closing argument should stay within the record and reasonable inferences could be drawn therefrom.

It is respectfully submitted that the Court of Appeals misapprehended the issues.

ISSUE ONE: Gilbert Gonzalez was convicted in 1985 for approaching a four year old girl and an eight year old girl in K-Mart. He pled guilty to pulling up the skirt of the four year old and touching her genitals. ROA. 9, ll. 7 – 25; ROA. 10, ll. 1 – 25; ROA. 22, ll.11 – 25; ROA. 23, ll. 1 – 25; ROA. 24, ll. 1 – 20. Although he pled guilty, Gonzalez denied touching the girl's genitals. ROA. 71, ll. 1 – 15.

In 1986, he pled guilty to two crimes. One was committing a lewd act on a minor where he allegedly had a five year old girl get into his truck at a location where he was working and installing flooring in a house. He pled guilty to putting his hand in her pants and underwear and rubbing her vaginal area. When this incident occurred, he was on bond for the first incident and was scheduled to go to court the next day. ROA. 27, ll. 19 – 25; ROA. 28, ll. 1 – 24. He denied touching the girl's vagina. ROA. 71, ll. 16 – 19.

The second crime he pled guilty to at the same time in 1986 was CSC with a minor first degree where he admitted that he took a six year old girl into the garage of the house where he was working and performed oral sex on her. She left and he called her into the garage a second time where he performed oral sex again and rubbed her vagina with his penis until he ejaculated. His semen was found in the child's vagina and vulva. ROA. 29, ll. 21 – 25; ROA. 30, ll. 1 – 25; ROA. 31, ll. 1 – 23. He admitted to this incident and expressed remorse about it. ROA. 71, ll. 20 – 25; ROA. 72, ll. 1 – 25; ROA. 73, ll. 1 – 9.

Dr. Crawford's testimony was that Gonzalez had a mental abnormality of pedophilia attracted to females. She also diagnosed him as having an antisocial personality disorder. ROA. 46, ll. 10 – 25; ROA. 47, ll. 1 – 25; ROA. 48, ll. 1 – 25. Her opinion was that Gonzalez met the criteria under the statute to be a sexually violent predator. ROA. 39, ll. 7 – 12. She testified that he had difficulty controlling his sexual behavior and would be at high risk of sexually re-offending against young children. ROA. 50, ll. 2 – 19.

Gonzalez testified that he had been incarcerated twenty years and that he had changed. ROA. 66 – 108. He explained that he had been saved while in jail in 1986 and had repented. ROA. 72, ll. 1 – 25. He said that the spirit of sexual perversion had overtaken him when he committed the crimes, but he had assumed responsibility for them. He said he has learned to control his behavior. ROA. 73, ll. 18 – 24.; ROA. 74, ll. 1 – 25; ROA. 75, ll. 1 – 25; ROA. 76, ll. 1 – 9.

He then gave testimony about the activities he participated in while in prison which included sex offender treatment. ROA. 76, ll. 10 – 25; ROA. 77, ll. 1 – 25; ROA. 78, ll. 1 – 21. He presented thirteen exhibits which included thirty-five certificates of programs he had completed while incarcerated. ROA. 57, ll. 11 – 15 Respondent's Exhibit 10. Among these was an Associate of Arts Degree from the Baptist College of Charleston (Charleston Southern University), and a letter of congratulations from the Senior Deputy Warden for being selected inmate of the month by the Christians in Action . He was bilingual and helped other inmates with learning English and Spanish. ROA. 87, ll. 18 – 25.

His girlfriend of eleven years, Pam Donahue, testified on Gonzalez' behalf. ROA. 137,ll. 15 – 25. Her testimony was that they met when her son was incarcerated under the Youthful Offender Act (YOA). She explained that Gonzalez was working at that prison and that Gonzalez helped her son turn his life around. She said she thought her son was into drugs but that he had stayed out of

trouble and was working successfully. ROA. 138, ll. 1 – 25; ROA. 139, ll. 1 – 25; ROA. 140, ll. 1 – 25. She and Gonzalez had continued their relationship since then and had talked of getting married. ROA. 141, ll. 1 – 25.

At the close of the respondent's case, the judge asked for jury charges. ROA. 165, ll. 3 – 25. After the judge told what she planned to charge, respondent's counsel asked the judge to charge three of the jury charges she had submitted. There were Number Five, Number Six, and Number Twelve. The judge denied all three of these charges. However, she agreed to make the three charges one court exhibit. ROA. 167, ll. 14 – 25; ROA. 168, ll. 1 – 25; ROA. 169, ll. 1 – 25; ROA. 169, ll. 1 – 25.

Respondent's Request to Charge No. Five was:

> The Sexually Violent Predator Act's involuntary commitment procedures are "only used to control a 'limited subclass of dangerous persons' and not to broadly subject any dangerous person to what may be indefinite terms of confinement". In Re Treatment and care of Luckabaugh, 351 S.C. 122, 144, 158 S.E.2d 338 (2002).

Court Exhibit One.

In denying the request to charge Number Five, the judge stated:

> And I will not charge number five. I don't think it's factually appropriate, nor is it within what the accurate statement of the law is.

ROA. 168, ll. 1 – 8.

Respondent's Request to Charge No. Twelve stated:

> The good character of a party, when it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact.
> State v. Lee-Grigg, 374 S.C. 388, 410, 649 S.E.2d 41 (Ct. App. 2007).

Court Exhibit One.

In denying this charge, the judge ruled that number Twelve drew more attention to one thing than another. She said that she gave a very general charge as to how to judge witness credibility and believability which was balanced. She said that she did not like "charges that were too fact specific". ROA. 168, ll. 21 – 25; ROA. 169, ll. 1 – 25; ROA. 170, ll. 1 – 25; ROA. 171, ll. 1 – 25; ROA. 172, ll. 1 – 4.

An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion. Cole v. Raut, 378 S.C. 398, 404, 663 S.E.ed 30, 33 (2008). In Fairchild v. South Carolina Department of Transportation, 683 S.E.2d 818 (Ct. App. 2009), the Court of Appeals held that a trial court must charge the current and correct law. The Court cited Fernaders v. Marks Construction of S.C., Inc, 330 S.C. 470, 473, 499 S.E.2d 509, 510 (Ct. App. 1998) which held that a trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence.

If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Id. To warrant reversal, the party seeking the requested charge must demonstrate error and prejudice. Cole v. Raut, *supra.*

The judge made an error of law in refusing to charge Number Five on the basis that it was not the "accurate statement of the law". The Sexually Violent predator Act at S.C. Code Section 44-48-20 provides:

> The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predator predators exists who require involuntary civil commitment in a secure facility for long term control, care and treatment.

The South Carolina Supreme Court held in In re Care and Treatment of Harvey , 355 S.C. 53, 584 S.E.2d 893 (2003), that the purpose of the requirements of the SVP Act is to ensure that involuntary commitment procedures under the Act are only used to control a limited subclass of dangerous persons and not to broadly subject any dangerous person to what may be indefinite terms.

The judge made an error of law in not charging Number Twelve as their was ample evidence presented of Gonzalez' good character. He presented thirty-five certificates of the good work he was doing at the Department of Corrections (DOC). In addition, his girlfriend served as a witness to his good character in that he helped her son.

Based on her ruling, the judge misinterpreted the meaning of the charge. The judge appeared to understand that the charge referred to the credibility and believability of witnesses instead of to respondent's good character.

This was prejudicial to Gonzalez because the jury needed to understand that they could consider his good character evidence. The jury also needed to understand that the SVP Act was meant for a limited subgroup of dangerous people. If the judge had instructed the jury on these charges, this would have made it clearer to the jury instead of confusing them, contrary to the judge's observations.

The Court of Appeals misapprehended the issue. The SVPA makes it clear that the statute is meant for the most dangerous group of sexual offenders, and the case law stated this succinctly in In re Care and Treatment of Harvey, *supra.* Rule 404(a), SCRE, as well as the case law, provides that evidence of a pertinent trait of character offered by an accused may be allowed. Gonzalez presented evidence of his good character since he had been incarcerated. The judge should have given these two charges because they comport with the law. The charge, viewed as a whole, simply did not cover the properly requested charges.

ISSUE TWO: At the beginning of the trial in a pretrial motion, respondent's counsel renewed her previous motion for assistance in obtaining another expert. [1] The told the court that she had made a motion before a circuit court judge in writing but it was denied. Judge Jefferson denied her request but told her the issue was preserved for appeal. ROA. 5, ll. 1 – 25; ROA. 6, ll. 1 – 25; ROA. 7, ll. 1 – 25; ROA. 8, ll. 1 – 18.

Defense counsel then asked the judge regarding jury arguments and questions concerning respondent's failure to call an expert witness but the judge told her she would take argument on it "contemporaneously". ROA7. 19, ll. 18 – 25. During the trial, counsel brought up the issue of the state being allowed to draw a negative inference from respondent not having an expert to testify. The judge ruled that the state could ask Gonzalez if he had been evaluated but said the "rest of it goes to how he argues it to the jury." She said that "you could always draw a negative inference from a witness not being called." The judge went on to say that the state could "certainly argue lack of a witness." ROA. 59, ll. 19 – 25; ROA. 60, ll. 1 – 22.

Counsel argued that this was different from a consulting witness. The judge said the expert was retained so it did not come within the discovery rules because the discovery rules apply to an expert who is consulted. Counsel argued that it was prejudicial to her client and outweighed the value of such procedure. Counsel argued that a person could bring up the fact that a witness was not called if the witness is equally available to both parties or is unavailable. Counsel said Dr. Martin was not available to her client. ROA. 60, ll. 23 – 25; ROA. 61, ll. 1 – 25; ROA. 62, ll. 1 – 25; ROA. 63, ll.1 – 25.

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[1]In the first trial, January 16-17, 2007, which ended in a mistrial, counsel filed a Motion for Assistance in Obtaining Second Expert on Behalf of Respondent filed December 8, 2006 wherein she stated that a second independent psychiatric examination was needed because the first expert, Dr. Tom Martin, would not testify on Respondent's behalf.

The judge said that the state would be very limited in what they could ask Gonzalez which would be limited to asking if he were evaluated. However, she said the state could argue that since the expert was not at trial, the jury "should assume he did not have something favorable to say." She said this was a civil case. ROA. 64, ll. 1 – 22.

During the state's cross examination of Gonzalez, respondent's counsel objected when the state began to question Gonzalez about a second evaluation. The judge did not allow speaking objections but had counsel approach the bench. She then overruled counsel's objection. The state asked Gonzalez if he been evaluated by. Dr. Tom Martin which Gonzalez said yes. ROA. 115, ll. 18 – 25; ROA. 116, ll. 1 – 13.

During his closing argument, the state's attorney told the jury that it was clear from the evidence that respondent was allowed to get an independent evaluation by a psychiatrist of his choice, Dr. Tom Martin. Respondent's counsel objected which was overruled after a discussion at the bench. ROA. 185, ll. 1 – 19.

The state's attorney then argued to the jury:

> As I was saying, the respondent, after getting the evaluation done by Dr. Crawford, was entitled to get an independent evaluation and he got one by Dr. Tom Martin. Dr. Martin is not here. I would submit to you that you can draw an inference from his not being here that if he was here his testimony would be adverse to the respondent's case.

ROA. 185, ll. 20 – 25; ROA. 186, ll. 1.

The Sexually Violent Predator Act involves involuntary civil commitments to the Department of Mental Health. S.C. Code Sec. 44-48-20 (1998). However, the Act includes significant components of the criminal law. These include a probable cause determination and hearing. S.C. Code § 44-48-70 (1998). A person subject to the Act is entitled to the assistance of legal counsel at all stages, and the person is entitled to a jury trial. S.C. Code 44-48-90 (1998).

Although this right to counsel is not constitutional, it is statutory. In re McCoy , 360 S.C. 425, 602 S.E.2d 58 (2004). The burden for a finding by the jury that the person is a sexually violent predator is 'beyond a reasonable doubt". S.C. Code 44-48-100(A) (1998).

The Act involves criminal convictions in that the Act defines a sexually violent predator as a person who has been convicted of a sexually violent offense as listed in the Act and suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. S.C. Code Sec. 44-48-30(1) (1998). The Act itself involves the taking of personal freedom through the involuntary commitment.

Because of these components of criminal law, the Act is a hybrid of civil and criminal law. The evidence and testimony at a trial under the SVP Act is concerned primarily with criminal acts the defendant or respondent has committed and future criminal acts he may commit. If found to be a sexually violent predator by a jury, the person's personal freedom is taken, maybe for his life time. This is the same result as a criminal conviction.

Because the same burden applies to these SVP trial as the burden in a criminal trial, and because of the other similarities to the criminal law, the same constitutional rights and rules of evidence should apply as well. The state told the jury in his opening statement that the state had the burden of proof which was beyond a reasonable doubt. SUPP. ROA. 1, ll. 2 – 25; SUPP. ROA. 2, ll. 1 – 3; SUPP. ROA. 3, ll. 1 – 23. Although the judge said the state could argue a negative inference because Dr. Martin was not present since this was a civil trial, she committed reversible error in allowing the state to shift the burden of proof to the respondent.

In Douglas v. State, 332 S.C.67, 504 S.E.2d 307 (1998), the Supreme Court wrote that the jury should ordinarily be instructed not to draw inferences from the neglect of a defendant to call witnesses.

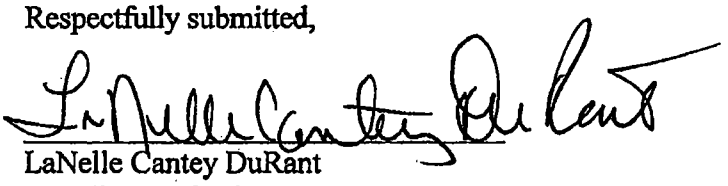
Rule 403, SCRE, provides that any relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The judge's rulings regarding the expert witness were prejudicial. The judge denied funding for a second expert because the first expert refused to testify. Then the judge allowed the state to tell the jury they could draw a negative inference because Gonzalez' expert did not testify. This placed Gonzalez in a catch 22 situation where he could not win. This was prejudicial to Gonzalez.

In Chaffee v. State, 294 S.C. 88, 362 S. E. 2d 875 (1987) the Supreme Court ruled that the denial of right to present evidence of adaptability to prison life in capital murder case was unconstitutional. This same principle should apply to Gonzalez where the judge refused to allow him to obtain a second opinion and then in effect allowed that fact to be used against him.

The Court of Appeals misapprehended the issue. The trial court abused its discretion by allowing the state to shift the burden of proof to Gonzalez when the state argued in its closing that the jury could draw an inference from Gonzalez's expert not testifying. The inference was that the expert could say only negative things about Gonzalez. The trial court abused its discretion by denying Gonzalez's request for a second expert, and then allowing the state to use that denial against Gonzalez.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its rulings.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

This 19th day of January, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of January, 2012.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day
of January, 2012.

(L.S.)

Notary Public for South Carolina

My Commission Expires: December 4, 2017.

The South Carolina Court of Appeals

In The Matter Of The Care And
Treatment Of Gilbert Gonzalez, Appellant.

The Honorable Deadra L. Jefferson
Charleston County
Trial Court Case No. 2006-CP-10-00783

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

J. Short.

J. Williams

J. Geathers

FILED
March 2012

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

RECORD ON APPEAL

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INDEX

INDEX i

TRIAL TRANSCRIPT 1

TESTIMONY
DR. PAMELA CRAWFORD 9

MOTION FOR DIRECTED VERDICT 58

TESTIMONY
MR. GILBERT ZUBIA 66
MS. PAMELA DONAHUE 137

MOTION FOR DIRECTED VERDICT 164

CHARGE CONFERENCE BY COURT 165

CLOSING ARGUMENT 175

FINAL JURY INSTRUCTIONS 209

VERDICT 221

POST-TRIAL MOTIONS 222

PETITION PURSUANT TO THE SEXUALLY VIOLENT PREDATOR ACT WITH EXHIBITS 1 THROUGH 10 231

ORDER PURSUANT TO S.C. CODE §48-44-90 ASSISTING RESPONDENT IN PAYING FOR INDEPENDENT PSYCHIATRIC EXAMINATION (OCTOBER 3, 2006) 298

MOTION FOR ASSISTANCE IN OBTAINING SECOND EXPERT ON BEHALF OF RESPONDENT 300

STATE'S REPLY TO RESPONDENT'S MOTION FOR ASSISTANCE IN OBTAINING SECOND EXPERT ON BEHALF OF RESPONDENT 303

ORDER (DECEMBER 15, 2006) 308

MOTION TO RECONSIDER RESPONDENT'S REQUEST FOR ASSISTANCE IN OBTAINING AN ADDITIONAL EXPERT WITNESS 309

ORDER (DECEMBER 29, 2006) 313

STATE'S REPLY TO RESPONDENT'S MOTION TO RECONSIDER RESPONDENT'S REQUEST FOR ASSISTANCE IN OBTAINING AN ADDITIONAL EXPERT WITNESS 314

ORDER OF COMMITMENT (FEBRUARY 12, 2009) 319

COURT'S EXHIBIT 1 (RESPONDENT'S REQUESTS TO CHARGE NO. 5 AND NO. 12) 320

RESPONDENT'S EXHIBITS 1-13 322

CERTIFICATE OF COUNSEL 371

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OR COMMON PLEAS
2006-CP-10-783

THE STATE of SOUTH CAROLINA, in the care and treatment of,

Plaintiff,

v.

GILBERT GONZALEZ.

Defendant.

TRANSCRIPT OF RECORD

FEBRUARY 9, 11 and 12, 2009
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

MR. JAMES BOGLE, Assistant Attorney General
Representing the Plaintiff

MS. CHRISTINE COMPANION VARNADO, Esquire
Representing the Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

(Whereupon, the proceedings in this matter before the Court were adjourned.)

* * * * *

I N D E X

WITNESSES

All Witnesses:	Page
Preliminary matters by THE COURT	1:1
Jury Voir Dire by THE COURT	1:15
Preliminary matters by THE COURT	17:1
Preliminary Jury Instructions by THE COURT	24:23
Opening Statement by MR. BOGLE	31:10
Opening Statement by MS. VARNADO	35:19
Motion for Directed Verdict by MS. VARNADO	122:22
Motion for Directed Verdict by MS. VARNADO	231:15
Charge Conference by THE COURT	232:9
Closing argument by MR. BOGLE	243:5
Closing argument by MS. VARNADO	256:25
Closing argument by MR. BOGLE	273:2
Final jury instructions by THE COURT	277:7
Jury Note by THE COURT	290:14
Verdict by THE COURT	292:2
Post-trial motions by THE COURT	297:17
DR. PAMELA CRAWFORD for State	
Direct Examination by BY MR. BOGLE	41:18
Cross-Examination by BY MS. VARNADO	89:9
MR. GILBERT ZUBIA for Respondent	
Direct Examination by BY MS. VARNADO	130:7
Cross-Examination by BY MR. BOGLE	173:13
Redirect Examination by BY MS. VARNADO	197:6
MS. PAMELA DONAHUE for Respondent	
Direct Examination by BY MS. VARNADO	203:25
Cross-Examination by BY MR. BOGLE	216:12
Redirect Examination by BY MS. VARNADO	228:15
Redirect Examination by BY MS. VARNADO	229:20
Recross-Examination by BY MR. BOGLE	229:11
Recross-Examination by BY MR. BOGLE	230:5

EXHIBITS

For Respondent:

1 through 13
In Evidence 104:14

For State:

1 Indictment/sentencing sheet 1985
In Evidence 55:21

2 Indictment/sentencing sheet 1986
In Evidence 59:17

3 Indictment/sentencing sheet 1986
In Evidence 62:12

4 Prison disciplinary history
In Evidence 83:16

THE COURT: When do we anticipate starting Gonzalez?

MR. BOGLE: Wednesday was the original day you selected. Lot of that had to do with the availability of the State's psychiatrist.

THE COURT: And that is the day she is available?

MR. BOGLE: Yes, Your Honor.

THE COURT: How many witnesses does Mr. Gonzalez have?

MS. VARNADO: Two, Your Honor.

THE COURT: Okay. Do we have the jurors out there? Bring them in.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Ladies and gentlemen, we are going to select a jury for the case entitled in the matter of the care and treatment of Gilbert Gonzalez. This is a case that is being tried pursuant to the state's Sexually Violent Predator Act, which seeks to civilly commit the respondent for secure treatment.

If counsel for the State would stand introduce themselves and any members of his office, and also counsel for the defense -- respondent will provide us with the same information.

MR. BOGLE: Thank you, Your Honor. My name is

THE COURT: Is the state ready to proceed?

MR. BOGLE: Yes, Your Honor.

THE COURT: Is the respondent ready to proceed?

MS. VARNADO: Yes, Your Honor, but we do have a motion in limine.

THE COURT: I generally don't hear motions in limine in advance, I don't have a reference of how the testimony is going to develop. I ask that you stay away from any of those issues in opening, and as the issues come up if you would make a contemporaneous objection, or make me aware they need to be heard in camera.

I did review some of them, however. I suspect there would be no exhibits attached to those exhibits.

MS. VARNADO: We have gone over the indictments introduced last time and had them premarked.

THE COURT: So that issue is moot. Disciplinary, if they form the basis of in the care and treatment, and that's pursuant to the Eltele case.

So preliminarily those would be admissible, but you need to make a contemporaneous objection so

that I can hear the matters contemporaneously with the evidence that the State would be seeking to introduce the evidence if in fact they do.

MS. VARNADO: Yes, Your Honor.

THE COURT: But let me see here. Prison infractions would also be admissible if they form the basis of the expert's opinion, and form the expert's opinion about whether the success of treatment as well as the respondent's ability to control his behavior in the future. And that is also pursuant to the Eltele case.

And I would imagine there will be no exhibits 9 and 10 to the petition, correct? The state will not be seeking to introduce those?

MR. BOGLE: Give me a minute, Your Honor.

THE COURT: That refers to a memo from judge --

MR. BOGLE: No, Your Honor.

THE COURT: Pardon me?

MR. BOGLE: The memo is a courthouse memo from the solicitor employee. No, we are not going to try to put that in. We just have the indictment, the sentencing sheet and one sheet of paper that relates to a prison infraction.

THE COURT: And as regards to his failure to

call an expert, we will cross that bridge when we come to it. But this is a civil case, it is not a criminal case, in reference to lack of witnesses or lack of proof can always be interpreted.

MS. VARNADO: Thank you, Your Honor. And with that I again renew my previous motion that my client be allowed assistance in obtaining another expert witness.

THE COURT: He has already had one, correct?

MS. VARNADO: Yes, he has, Your Honor.

THE COURT: And that is what the statute provides for, correct?

MS. VARNADO: Well, I don't think the statute limits it to one.

THE COURT: I think the statute is plain in its language and it's not to be expanded and it provides for funding for an expert.

MS. VARNADO: Okay. And just so that my request is noted, Your Honor. And just on that point of the failure to call an expert witness, the expert witness, we would argue, Your Honor, is --

THE COURT: I'm going to take argument on it contemporaneously. I'm asking primarily where it's headed.

MS. VARNADO: Thank you, Your Honor.

THE COURT: Just make sure you make a contemporaneous objection and we will make a full record.

Did you make a request for an additional expert before a circuit judge in writing?

MS. VARNADO: Yes, Your Honor.

THE COURT: And it was denied?

MS. VARNADO: And moved to be reconsidered, it was denied.

THE COURT: Okay. I think that would then have to be considered on appeal. I should not then -- that would be like me asking the appellate court when one of my colleagues has authority.

MS. VARNADO: Just to preserve it --

THE COURT: I think it is preserved for the record. And if you've already made your motion and it was denied and reconsidered, I think it is preserved.

MS. VARNADO: Thank you, Your Honor.

THE COURT: All right. Anything further before we proceed with the opening arguments and the Court's opening instructions?

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

THE COURT: Anything further from the

involved and listen to what Gilbert has to say. And listen to also Pam Donahue who has come here today to also testify in his behalf.

Ladies and gentlemen, I thank you. I look forward to spending this time with you.

THE COURT: Mr. Bogle, you may proceed.

MR. BOGLE: Thank you, Your Honor, may it please Court. We call Dr. Pamela Crawford.

THE COURT: Doctor, come to the witness stand to be sworn.

DR. PAMELA CRAWFORD,

after having first been duly sworn to state the truth, the whole truth and nothing but the truth, testified on her oath as follows:

THE COURT: You may proceed, Mr. Bogle.

MR. BOGLE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BOGLE:

Q Dr. Crawford, will you please tell the jury where you work right now?

A I work at G River Run Psychiatric Hospital, which is an acute in-patient psychiatric hospital in Columbia. I also work part-time at the South Carolina Department of Corrections, probably about eight hours per week.

I'm also a consultant with the South Carolina Law Enforcement Division, particularly helping assisting about hostage negotiation. I'm also an adjunct clinical professor at the University of South Carolina. So I teach in terms of sometimes students come with me, they don't get official lectures, but I do some training of students.

Q And prior to that, were you employed with the Departmental of Mental Health at some time?

A Yeah, I am still with the Department of Mental Health. I have been with the Department of Mental Health since coming to South Carolina in 1997.

Q Okay. What educational or professional degrees do you possess?

A I attended Emory University and got my bachelor's degree in psychology in 1983. I then went to Emory University School of Medicine and became a physician and finished that in 1988.

I then did a four year residency in psychiatry, also at Emory. And I became board certified in general and forensic psychiatry.

Q And basically, just for the record, what is the study of psychiatry? How can we define that for the jury?

A Psychiatry is one of the fields of medicine

that deals with mental health issues, it deals with the biology of mental illness, prescribing medications if they are called for, treating patients with a variety of difficulty.

Q And as a psychiatrist, are you licensed to practice medicine in South Carolina?

A I am.

Q Since about when?

A When I came to South Carolina, I believe it was probably in 1997 and I got my license here. I practiced in Georgia before that and then in California when I was in the air force.

Q Okay. How long did you serve in the air force?

A Three years.

Q And what did you discharge as?

A I was a major. I had gone to medical school with a scholarship through the air force, and then I did three years practicing psychiatry in the air force.

Q Now, Doctor, what is forensic psychiatry? When you hear the word forensic put in front of psychiatry, what are we talking about?

A Forensic psychiatry is a subspecialty of psychiatry, just like cardiology is a subspecialty of

medicine. And the subspecialty is what involves psychiatry and the law, the legal aspects of psychiatry.

So first you become a psychiatrist, and then you specialize in all areas in which psychiatry and the law intersect. For example, there could be issues of whether someone was sane at the time that they committed a crime; whether someone, in civil issues, has post traumatic stress disorder as the result of an accident or injury. There are a tremendous amount of areas in which the two intersect.

So for about three years I was the head of forensic psychiatry at Hall Institute. I was in charge of all the forensic psychiatric evaluations for the state of South Carolina, for whether people were criminally responsible for crimes. And I treated a good number of patients as well who were involved with the legal system as well as having major psychiatric issues.

Q Doctor, have you been board certified in forensic psychiatry?

A Yes.

Q What does board certified mean? What do you have to do to be called board certified?

A First you have to be board certified in general psychiatry, and that involves a written exam and then the oral examination by your peers -- not by your peer, by your superiors. And I did that in the early '90s.

And then when I came through there was an option of either doing a fellowship in forensic psychiatry or taking an examination and demonstrating that you had a bunch of experience in the field of forensic psychiatry. So I was able to demonstrate that I'd had this experience and took the examination and passed it.

Q Are you married?

A Yes.

Q Do you have any kids?

A Four.

Q Now, Doctor, have you previously lectured to people about the field of psychiatry, forensic psychiatry?

A Yes.

Q What types of groups and on how many occasions, roughly?

A I cannot tell you how many occasions, a lot of occasions. In each time that I have worked, I have been affiliated with the university, University at

Davis in Davis, California, Emory University and here.

In addition for a good period of time I was doing lectures for probate judges about psychiatric issues. I did several for circuit court judges on issues to do with the sexually violent predator law. And just talk to numerous groups, the bar association, I have given lectures.

Q And have you been previously recognized by the circuit courts of this state and testified as an expert witness in the field of psychiatry and forensic psychiatry?

A Yes. Probably close to 300 times or more.

MR. BOGLE: Your Honor, at this time I would move for Dr. Crawford to be recognized as an expert witness in the fields of psychiatry and forensic psychiatry.

THE COURT: Any objections or questions?

MS. VARNADO: No objection, Your Honor.

THE COURT: So admitted.

Q (By Mr. Bogle) Now does your job over this last 10 years allow you, or require you in some cases, to evaluate people under South Carolina sexually violent predator law?

A Yes. For a five-year period ending about a

year ago, that was the primary job that I had. I always have sort of a primary job with mental health, and then some secondary things like with SLED or the department of corrections.

But my primary job, for 37.5 hours a week, involved during the sexually violent predator evaluations that were ordered by the Court. So every time one was ordered by the court, I had to do that evaluation.

Q And approximately how many individuals have you evaluated under the sexually violent predator law?

A I think it has been about 250 or 260 people that I have evaluated for this law.

Q Now of those people, about what percentage have you determined not to meet, or not to fit the criteria of a sexually violent predator?

A Most of them. There is a pretty long screening process before these folks get to me for the evaluation. And of the people that have actually gotten to me, where the evaluation I guess in a lot of ways determines whether it goes to court or not, I would say about only about 30 percent have I felt met the standard.

Most of them -- to be safe let's say a third

of the people that I have seen I thought met the standard.. Two-thirds, or up to 70 percent, I did not think met the standard. And that was after a pretty extensive selection procedure before they even got to me.

Q Now this particular case we are dealing with here, were you appointed by the circuit court to conduct an evaluation of Gilbert Gonzalez?

A I was.

Q And did you, pursuant to that, did you interview him and evaluate him pursuant to the sexually violent predator act?

A I did.

Q Did you meet and interview with him?

A I did.

Q And is he present in the courtroom today?

A Yes, he is. He is sitting next to his attorney in a sweater and, black with gold.

MR. BOGLE: Let the record reflect she identified the respondent.

Q (By Mr. Bogle) Now how many times did you meet with Mr. Gonzalez in order to perform your evaluation?

A I did face-to-face interviews with him on two occasions. The process is such that what happens is

the person is brought to Columbia for the evaluation and we begin. I do an evaluation that ranges, usually the first time, from anywhere from an hour and a half to two and a half hours, sometimes longer.

It's only ever shorter if the person refuses to cooperate and wants to leave. Typically, I don't know what the shortest ever is, but the first would be about an hour and a half. It usually runs about two hours.

We then administer some testing. I gave him it's a test where there is multiple choice, yes/no responses. So I did that on the first occasion. And then he was brought back and then we have a technician administer two other additional tests, something called a PPG and an Able screen.

And then in his case I saw him yet another time and spent about an hour with him after getting those testing results and to discuss more issues. So I met with him on two occasions, and we did testing on a third occasion.

Q Okay. So why is it necessary that it take this much time to interview someone and go through everything?

A Well --

Q You mentioned the testing. Is there any other

reason?

A Well, the testing takes time and the testing is sort of a mixed issue. The testing is sort of helpful because it can point out sort of red flags to me in case I missed something, it's useful in terms of that. But it takes a little while to establish rapport, to feel the person is comfortable with you, to go over information.

A lot of times when I see them the first time, I will go back to the records. I mean I usually have a very thick file and I find things that I really want to ask them about in more detail later or something will come up in testing and I'll want to say, help me understand this.

So it takes a process of seeing them on a couple of occasions.

Q Now, Doctor, in addition to the interview did you receive a file of information on Mr. Gonzalez?

A I did.

Q What type of information was in that file?

A I received an order by the court to do the evaluation. I received an incident report and investigative reports related to his offenses; I received arrest warrants; witness statements; victim statements; information from the department of

corrections, his discipline record at the department corrections, how he had done there in general and other administrative records.

His attorney provided a pretty good stack of information about the courses that he participated in and what he had done while he was there.

I also looked at psychiatric records from South Carolina state hospital when he was evaluated in 1986. A psychological evaluation in the prison from 1992. And then the testing, we did the multiphasic sex inventory, two psychosexual tests, the Able screen, the penile plethysmograph. I also did an actuarial assessments/tools to look at risk of re-offending.

I also reviewed a laboratory report from the South Carolina Law Enforcement Division dated January 4th, 1986 which gave details regarding his sexual assault on the six-year-old girl. I was also able to look at the sexual assault protocol for one of his victims that was provided by MUSC.

And some letters that were written from the families of the victims to the judge. I also had an opportunity to interview Dr. Dunlap, one of the doctors who did an earlier evaluation of him in 1986. And I was able to review some transcripts of the

previous testimony.

Q Now, Doctor, is the information that you are talking about, the things that you looked at in the file in doing this evaluation, is this information that is typically relied upon by experts in your field?

A It is.

Q And why is it necessary to have all this information?

A I mean it's kind of a tough job. I mean what we are looking at is trying to help determine future risk of what a person is going to do. So we have to get as much information as possible. It's very important to have the initial incident report and all that information to see if the person now understands what they did and has some perspective that makes it less likely they're going to do something like this again.

It's just a tremendous amount of information that has to be gone over and checked and double-checked.

Q Okay. Did you consider and rely upon this information in forming your opinion and your evaluation of Mr. Gonzalez?

A I did. On some of it more than others of it.

I mean obviously everything does not have equal weight, but everything in here that I've talked about I looked at in terms of what this means in terms of my opinion about his dangerousness.

Q Did you make any efforts to try to contact members of Mr. Gonzalez's family, addresses and names that might have been provided to you during the course of this case?

A I did. I was unable to reach his family members.

Q Now, was the information you looked at, did it form part of the basis of your opinion?

A It did.

Q Were there any things in your report that you -- you've gotten the chance to review the report, were there any things in your report that might be an error or might be a mistake?

A Yeah, there is one thing that I wanted to bring up, just for the sake of exactness. I had said in my report that he had seven sisters and one brother. And it was brought to my attention that in fact he had seven brothers and one sister. So that was an error.

The other thing that has come out is that he told me he never had substance abuse treatment when I

asked him about his history, but in fact when his attorney provided us with the records, it looks like he did have substance abuse treatment.

So those would be the two things that if I go back to my initial report that I would say I have different information about.

Q About substance abuse treatment, you mean treatment he had while he was in the department of corrections?

A While he was in the prison, uh-hum.

Q Okay. Now based upon your review of the file, the documents you looked at, was Mr. Gonzalez convicted of a sexually violent offense of offenses?

A Yes. He was convicted of three.

Q Okay. And are those convictions listed in the law as sexually violent offenses?

A Yes, all three of those are considered by South Carolina law as sexually violent.

Q I'd like to hand you, it's pre-marked as State's Exhibit 1, a certified copy of the indictment, sentencing sheet, from -- it's a 1985 indictment?

A Yes.

Q Is that the first conviction that you looked at?

A Give me just a minute, here. Yes, it is.
Q And what is the date he was sentenced on that?
A He was sentenced --
Q Did he plead guilty or was there a trial?
A He pled guilty. April --
MR. BOGLE: If I may approach, Your Honor?
THE COURT: Yes.
Q (By Mr. Bogle) Sorry, help speed things along. Right here?
A June 4th, 1985.
Q Okay. What was the crime he pled guilty to?
A The crime he pled guilty to was lewd act on a minor.
MR. BOGLE: Your Honor, we move to introduce into evidence this first certified copy of the conviction of a lewd act on a minor.
THE COURT: Any objection?
MS. VARNADO: No, Your Honor.
THE COURT: Marked and admitted without objection.
(Whereupon, State's Exhibit No. 1 is admitted into evidence.)
Q (By Mr. Bogle) Now, Doctor, tell the jury about the underlying facts. Let me backup a second. Is it necessary for you, in order to make your

evaluation, to look behind just the indictment and sentencing sheet and look at what actually happened, look at the underlying facts?

A Absolutely.

Q Okay. Tell the jury what happened in this case?

A Okay. In this case Mr. Gonzalez, or Mr. Zubia, he says Gonzalez is not his name but I will refer to him as Gonzalez because that's the records that we have. Mr. Gonzalez approached two girls at a K-mart and they were ages of 4 and 8, and asked if he could see their underwear. And these were girls he did not know.

The girls refused, and he pulled up the skirt of the 4-year-old girl and placed his hand in her underwear and fondled her genitals. Again, he did not know either of the victims. The 4-year-old was examined by a pediatrician at MUSC and it was the opinion that the vagina had been presented. So that was the first offense.

Q What about his behavior, the time he did these things, was significant to you in making your evaluation?

A Several things were important on this. He actually at the time that this occurred was on parole

from another offense. So here we have someone, and that's something that we look at, who is under some sort of court observation or legal observation, and even when on parole he sexually offended against this child.

The other thing is that he did this in a public place to a stranger victim. This is very important in terms of diagnosis, in terms of looking at someone who has impulse control. In looking at someone who is a pedophile, someone who is sexually attracted to children, that is willing to put themselves at risk by doing this in a place where they can be observed. That's very significant. Also the child's age is significant.

The vast majority of sex offenses, including ones that I evaluate for the statute, are on family members, and people who have close proximity to children. So this is the unusual and from what we know the more dangerous type is folks who are willing to do this in a public arena.

Also his way of discussing what he did, even today, is problematic in terms of his risk of re-offending.

Q In your interview with him, did he acknowledge committing this crime?

A He says he can't remember. What he says is that he may have asked to see their underwear, but that he cannot recall whether he put his hands and touched the vagina of a 4-year-old.

What he says is that he does acknowledge that he was sexually attracted to the children, but says that this kind of came on him out of the blue, was unable to have any insight into just that this happened, that he had this attraction.

I questioned him pretty significantly about whether he was intoxicated, looking for reasons why he might forget. He said he was not intoxicated during this time, and there was no clinical, medical reason for him not to remember it.

So what concerns me is that he was not taking responsibility for a sexual assault on a stranger, very young child even today. Even after he has had some sex offender treatment, he still minimizes and tried the avoid responsibility.

Q Now can you tell the jury about his second -- you said there were three -- what about the second sexually violent offense? And before you do, let me approach and hand you a certified copy from Charleston County of an indictment, sentencing sheet, the indictment has a 1986 number on it. The

sentencing sheet is dated November 5th, 1986, State's Exhibit 2 and pre-marked. Is that the second crime that you looked at in your consideration of Mr. Gonzalez?

A Yes.

Q What was the crime he was convicted of?

A He was convicted of lewd act on a child.

Q Was it a guilty plea?

A Yes.

MR. BOGLE: Your Honor, move to introduce into evidence State's Exhibit 2, the second crime.

THE COURT: Any objection? No editorial comment.

MS. VARNADO: No objection.

THE COURT: Marked and admitted without objection.

(Whereupon, State's Exhibit No. 2 is admitted into evidence.)

Q (By Mr. Bogle) Now, Doctor, tell the jury what is significant, or tell them about the underlying facts of the second crime.

A The second crime is also very concerning. This crime happened the day before he was going to court to plead guilty on the crime against the 4-year-old in the K-Mart.

So he was on bond actually for the sexual assault on that child when he committed this crime and was to go to court the next day.

In this incident he was working on a crew that was installing flooring in a house. And he -- there was a 5-year-old girl that he did not know who was a relative of the people whose flooring he was installing.

He told the child to get into his truck with him. She got into his truck and he asked her if she was sunburned. She replied that she was not, and showed him, pulled her own blouse up to expose her stomach. He then put his hand in her pants and underwear and rubbed her vaginal area with his fingers.

Q What was significant -- now other than these underlying facts you told us about, what about his actions really stood out to you in this particular case?

A Again, stranger victim is unusual. A stranger, very young child in a public arena. And actually the child got out of the car when somebody saw him in the car with the child and said, get out of there.

It's right before he is going to court to be

sentenced on another lewd act on a child. All of this goes to his ability to control his actions.

He -- when I interview him regarding this, he says that even though he pled guilty, he says no, Dr. Crawford, this was not a sexual assault on a child. What he says is that he did get her into the car, into the truck, and that he asked to see her sunburn.

So when I did this evaluation of him, after 20 years in prison or however many years, he is still saying that he didn't do it despite pleading guilty, still doesn't take responsibility, still doesn't see how someone who has committed a sexual act against a 4-year-old should really not be in a car with a 5-year-old stranger asking to see their sunburn.

Has no understanding, despite having treatment, despite having a very, very firm religious foundation, despite all these things he is still saying, I didn't do it and I just wanted to see her sunburn. And still not acknowledging his sexual attraction.

Q Okay. Now you said he was convicted of a third sexually violent crime. I hand you a certified copy also from Charleston County of a conviction on the same day, November 5, 1986. Is that a third crime that you looked at?

A Yes.

Q What was he convicted of? What did he plead guilty to?

A This was a crime that he pled guilty to criminal sexual conduct with a minor, first degree.

MR. BOGLE: Your Honor, move to introduce this into evidence as the State's Exhibit 3.

THE COURT: Any objection?

MS. VARNADO: No objection.

THE COURT: Marked and admitted without objection.

(Whereupon, State's Exhibit No. 3 is admitted into evidence.)

Q (By Mr. Bogle) Now the sentencing date I said was the same a minute ago. Tell the jury the details about this crime; when it happened and what the underlying facts were.

A Okay. Just to give you a little perspective. He was sentenced on the child in the K-Mart. The night before he got sentenced on that he sexually assaulted this 5-year-old-girl, but was not found out about that until later.

This crime happened in April of 1986. So this was almost a year later. He was working with a crew installing carpet at the house of this child. And

this involved a stranger 6-year-old girl.

The child was playing in the yard of her house when Mr. Gonzalez called her into the garage and told her to lie down. She complied with him. He performed oral sex on the child on the floor of the garage. She then returned to the play in the yard.

He called her again into the garage and told her to lie down and told her to open her legs. He performed oral sex on her a second time and rubbed her vagina with his penis until he ejaculated.

While he was rubbing his penis on the child's vagina he asked the child repeatedly if it felt good. He told the child not to tell anybody about the assault. The child reported the assault to her parents and told them that Mr. Gonzalez had hurt her.

A laboratory data I was able to look at from SLED showed that Mr. Gonzalez's semen was found in the vagina and vulva of the 6-year-old victim. This is the only offense that he admits to.

When interviewing him about this he says he feels bad about it, he wishes it hadn't happened. He said that he believed that he did this because a spell had been put on him by an ex-girlfriend.

Q A spell?

A Yes.

Q Did he elaborate what kind of spell this ex-girlfriend put on him?

A He said that he believed that she was angry with him and somehow had given some magical spell had been put upon him that made him act and have sex with this child. And that was his belief, his belief was that the spell was no longer there, therefore this would not happen again.

And this is the only one that he admitted to me that he had done.

Q Now, Doctor, in the course of your interview with Mr. Gonzalez, did he discuss his religious beliefs with you?

A He did.

Q Did you listen carefully to everything he had to say about that?

A Yes.

Q How does his religious beliefs interact with the conduct you've seen in these three crimes?

A It's very, very tough to say. He has been religiously very active in prison. And he professes a very profound faith. And I'm in no way can judge whether or not he does have that faith.

What I do know, from working for years with people with sex offenses against children, is that

people can be very, very religious and have very deep faith, and yet be overpowered by their urges if they have an illness like pedophilia, sexual attraction to children, and can re-offend again. That in my experience, dealing with large numbers of people, that has not been enough to say that a person will not re-offend sexually.

So that while I respect that his faith is very important to him, I'm not able to look at that and say, well, because of that he is not going to do these things. Because what we know about this illness and his illness is that he has shown, he has demonstrated difficulty controlling these urges.

Now he hasn't been around young children for a long period of time. But we know this illness does not go away. We know, based on his behavior, that he has a fundamental sexual attraction to children. And religion, in my experience working with hundreds of sex offenders, is typically not enough to say that someone will not re-offend.

Q Now, Doctor, you mentioned a minute ago in your testimony that there were some other evaluations done of this man while he was in the prison system maybe in preparation for one of his convictions. You mentioned a Dr. Dunlap.

A Dr. Dunlap --

Q What was the purpose of Dr. Dunlap's evaluation of the respondent?

A Dr. Dunlap was court ordered to do an evaluation of him before he went to trial, that's a fairly standard thing that happens, to see if there is a reason that he is not competent to stand trial, or that he has a mental problem that makes him not responsible for his action.

And Dr. Dunlap was of the opinion that he was competent. That he didn't have a psychiatric illness that made him not competent to stand trial.

Q Is anything in Dr. Dunlap's evaluation -- was the nature of Dr. Dunlap's evaluation such that he made any finding about whether or not Mr. Gonzalez was a sexually violent predator under this law?

A No. In fact that was the program I ran for three years doing these evaluations. When you do these evaluations, he was being charged with these acts. As a psychiatrist, you can't even take those into account in terms of -- I mean he hasn't been convicted so he may or may not have done them at the time you are doing the evaluation.

So you're not doing the evaluation to see if somebody is a sex offender or sex predator, you are

doing an evaluation to see if there are major psychiatric reasons that they can't go to court.

Q Now there has also been reference, and I think we will hear more about it later, Respondent's Exhibit 7 is a psychological evaluation done by Dr. Chezno back in 1992. Is that a document you had a chance to review?

A I did.

Q Was he in prison when that evaluation was done?

A He was. Do you mind if I look at it?

Q Sure. Let me hand you this copy right here.

Was Chezno, I guess, a department of corrections psychologist or something?

A Yes.

Q And what was the purpose of that evaluation as you understood it when you reviewed it?

A Dr. Chezno, the psychologist, did an evaluation to determine a level of custody, whether he would be safe to be in a less-confined setting; meaning a maximum security as opposed to a medium security. So he evaluated him to see if he would be a risk in terms of that.

Q In your work with people in the prison system, are their different levels of custody where people

are confined in the prison system?

A Yes.

Q Do those different levels have different levels of freedom and movement and activity?

A Yes.

Q When you change levels, is an evaluation of some type usually required by the department?

A No, I cannot answer that. I'm not sure how they do that. I don't participate in those evaluations.

I think at the time that they did that clearly this is what this was. Because the reason for the referral is, assess an inmate's suitability for advancement in custody status.

Q Is there anything in that evaluation done by the psychologist that affected or impacted on whether or not Mr. Gonzalez is a sexually violent predator?

A You know, obviously I've looked at everything that I'm given. This was an evaluation to determine custody. It was not a sex offender evaluation in any way, shape or form. It was not designed -- the testing that was done was not relevant to whether he would be a sexually violent predator.

It sounds like that he had a good rapport with the psychologist. That the psychologist thought that

he would adapt well to a higher level of custody. It was interesting it said that he readily acknowledges being guilty of the sexual offenses which resulted in his current confinement, which is interesting because he now does not. So that was sort of -- I'm not -- either he has changed his story now or this psychologist didn't have all of the information.

But it said here that he readily admitted these things. Said he was active in rehabilitation programs sex offender treatment programs. Said he was open and talkative.

Q Okay, Doctor, in the course of the evaluation that you were doing, were you also shown another evaluation done while the respondent was in prison by Dr. Schlamer?

A Yes.

Q I hand you what has been marked Defendant's Exhibit 8, is that a copy of that evaluation?

A Yes.

Q When -- it was done about 18 years ago?

A Yes, this was done in 1990.

Q Now again, to make your evaluation of Mr. Gonzalez, is it necessary to look at previous evaluations done Schlamer's other people like this psychologist here?

A Sure. Any opportunity I have to look at additional information is a good thing.

Q Was there anything about Dr. Schlamer's evaluation that you found significant?

A Again I think he had a good rapport. This was an evaluation for advancement in custody. This was in 1990.

He, you know, talked about he did some testing, none of which related to sex offender treatment, IQ kind of testing with him. So there wasn't a tremendous amount that was that useful in terms of whether he is a risk of re-offending.

This gentleman did say that he thought he had better insight into his own needs than any people I have evaluated who graduated from the C-Star series. So clearly this doctor was impressed with what he thought was his insight.

Again I don't know what access he had in terms of what the offenses actually were.

Q Okay. On the second page, this doctor did say at the end of the first paragraph on the second page that he anticipated Mr. Gonzalez would not re-offend.

A Yes, he did. That was also unusual. He said, I would anticipate that he would not again become involved in this sort of crime as long as he had

moderate success with readjustment in the community.

Which is interesting because this was not a sex offender evaluation. We look at what he reviewed, and he didn't have information from the incident reports, and so that's just sort of an unusual statement.

Q Okay. Was there anything about this evaluation done by Dr. Schlamer's back in 1990 that impacts on your determination as to whether or not Mr. Gonzalez is a sexually violent predator?

A No. I clearly believe that he meets the criteria under the statute.

Q Now, Doctor, has Mr. Gonzalez had any sex offender treatment while he was in prison?

A He did.

Q What type or how much did he have?

A He had -- there was at the time that he was taken into treatment there was a three-part called C-Star 1, 2 and 3. With C-Star 1, and that's sex offender treatment. C-Star 1 is sort of the educational portion. C-Star 2 is getting more in depth about sex offending behavior. And C-Star 3 is when the person needs to take responsibility and talk about their offenses.

Now he completed the first two parts and did

quite well. And during the third part apparently the sex offender treatment was stopped for a while in the department of corrections. It was again restarted, but at the time that he was doing it it was stopped. So the reviews of how he was doing were good, that he was participating.

Q Okay. But based upon your evaluation was that enough sex offender treatment for him? The stuff he had in prison?

A I say no. The reason I say no is that where he is at when I evaluated him was still in major denial about the causes of the offenses, the actual facts of the offenses, what led up to them, ways he could avoid further offending. So that he didn't finish sex offender treatment through no fault of his own, and he did have a good bit.

But he still doesn't get it. And still has all the hallmarks of someone who would be a very high risk of sexually assaulting very young children.

Q Now what behaviors did you observe, based upon your review of the records and your evaluation of Mr. Gonzalez, the interviews you did, lengthy interviews, what behaviors did you observe which you found significant?

A The behaviors of his offenses or behaviors --

Q Yes. The main thing, or many of things are the age of the children; the fact that these are stranger victims; that there are multiple stranger victims; that he was on some sort of parole or bond status at the time of assaulting these victims; that he continues to deny responsibility; that he continues to reflect responsibility onto an outside source, such as a spell made him do it. All of these factors are very significant.

And the testing that we looked at certainly didn't bring up anything that was contrary to that. The testing also showed, was consistent, with his lack of accepting responsibility for his --

Q Let's talk about the testing for just a minute. You mentioned some tests earlier that were done. Would you please relate to the jury what psychological testing was done. Just start with the first one.

A Okay. What we did is -- and I'd like to preface this in talking about testing -- in my opinion testing in this field is not that great. That testing is based on data that we have involving people who have been caught sexually re-offending. We do know that a large number of people who offend sexually never got caught. So the database on which

these tests are made is not great.

What I use them for is to see if the test show something that in my interview I really missed, then I can bring the person back in and we can talk about it. It also gives talking points.

So, for example, if somebody responds sexually to something in one of the pictures, I can ask them about it. I never use the testing as the be all and end all. I don't say, oh, well he passed this test or he failed this test that means he's going to sexually offend against children, you can't do that. But you can use the information as part of the evaluation so that's my disclaimer.

The first test that we did is I gave him something called the multiphasic sex inventory II. This is a -- it has multiple questions about sexual interests and activities, several hundred questions, and that is something he takes pencil and paper and sits down with.

And then we take that test and send it to the company that makes it, and they come up with scoring and just sort of they look at the information and they can point out things. For example, for him what it said was that he seriously minimized having deviant sexual thoughts about children. He seriously

minimized ever attempting to physically interact with and groom a child for sexual purposes.

He did disclose having molested female children. He uses justifications and excuses to keep from accepting full accountability for his sexual assault behaviors. The testing said he shows little contrition for his actions, and that suggests he might not have much incentive to change.

It says that he does not report that he wants counseling or is in need of treatment, but he would prefer treatment to incarceration. It said that some of -- he was trying to make himself look good to such an extent that some of the tests showed him to look better than the doctor who looked at these thought he was.

All of this was very consistent with my evaluation and my interview with him.

Q Okay. What other tests were administered on Mr. Gonzalez pursuant to the evaluation that you conducted?

A We did what's called a penile plethysmograph. And what that is is a test in which a blood pressure cuff or something similar to it is put on the person's penis, and then they are shown and they listen to sexual material and they have to -- it's to

measure sexual arousal.

Again, to me, there are pluses and minuses in this. The validity of it, even at its best to me, has some questions. But what it does do is it allows you to raise issues to talk to the person about.

In this case what happened was that he deliberately, according to the testing person, he didn't participate as directed. He deliberately avoided looking at certain stimuli. And so the test was considered not valid.

Q Any other tests that were run?

A We did an Able Assessment for sexual interest. And this test showed sexual attraction to Caucasian adolescent females, adult females, African-American preschool females, grammar school females, adolescent females and adult females.

Q So that's kind of everybody across the board, isn't it?

A Yeah, children and adults.

Q Now was there anything -- these tests that you've described, are these tests commonly used by psychiatrists in conducting evaluations of this nature?

A They are used. I think some people put more weight on them than others. I probably put less

weight on them then most people using them.
Q But in order to conduct a full investigation of this man, did you feel it necessary to have these tests done?
A I thought it would be helpful.
Q Did anything about these tests change what you developed from him in your clinical evaluation of him?
A No.
Q And review of the records.
A It didn't. For example on the PPG it showed that he was sexually attracted to infant males. That was not something that was consistent with the interview so that's a piece of information that I took from looking at it and said, no, that doesn't really fit, so would not look at that as a serious thing.

But I would say that the testing, with that one exception, was pretty consistent with my clinical impression of him, minimizing, not accepting responsibility and therefore being a risk.
Q Now, counsel commented to the jury about how Mr. Gonzalez has been in the jail awaiting this trial. Are you aware of any other -- have you been given -- let me backup. Are you aware of any other

evaluations done on him since yours?

A Since mine, yes, he was evaluated by --

MS. VARNADO: Objection, Your Honor.

MR. BOGLE: Let me rephrase the question.

THE COURT: Please approach.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: You may proceed. Rephrase.

MR. BOGLE: Let me rephrase the question.

Q (By Mr. Bogle) Dr. Crawford, did you base your opinion about Mr. Gonzalez on any other reports or evaluations other than the ones you've described today so far?

A No.

Q Okay. Now in this particular situation, based upon your analysis of Mr. Gonzalez, your analysis of the records, do you have an opinion to a reasonable degree of medical certainty as to whether or not Mr. Gonzalez possesses a mental abnormality or a personality disorder?

A He does.

Q What mental abnormality does he possess or did you diagnose?

A He meets the criteria for a diagnosis of pedophilia, sexually attracted to females,

nonexclusive. And what that means is pedophilia is a sexual disorder in which someone has repeated sexual desires, behaviors, fantasies regarding children before puberty, prepubescent children. He clearly fits in that his victim range is between actually 4 and 8 years old because there were two girls at the K-Mart.

But the ones he actually offended against were between the ages of 4 and 6. So it's pedophilia, sexually attracted to females, and nonexclusive. And what nonexclusive means is that he at least reports sexual attraction to adult females. So if someone only has sexual attraction to children you say exclusive. If they also have sexual attraction to adult females you say nonexclusive. So that was the first diagnosis.

Q What about, did you develop a diagnosis as to a personality disorder for Mr. Gonzalez, again to a reasonable degree of medical certainty?

A Yes.

Q What would that be?

A He meets the criteria for a diagnosis of antisocial personality disorder. And antisocial personality disorder is a pattern of behavior beginning with showing evidence in adolescence of

unlawful behaviors, violating the rights of others, lack of remorse, and he has, he -- his history is such that he meets those criteria.

Q Now do pedophilia and anti-personality disorder play into his sexual offending, as you observed it, based on the records you looked at?

A Yes.

Q Can these things be cured?

A Pedophilia, from what we know, cannot be cured. Pedophilia is -- it's a hard-wired sexual attraction to children. And I guess the best way to sort of understand that is pedophiles experience this with the same intensity that a heterosexual man will feel sexual attraction to a woman or a woman to a man.

So, it's a situation in which this is a very fundamental sexual attraction. So, no, that does not go away.

Q And can pedophilia, as you've diagnosed it, and anti-social personality, again as you diagnose it, can they be treated?

A Yes, they certainly can. Pedophilia, with someone with his type, which again it's with strangers, it's not insist pedophilia. When you have somebody who's an incest pedophile, a lot of times

your sense can be, well if they're not around children, if the proximity isn't there that's helpful.

But somebody who's a non-incest pedophile like him, he has got to learn specific ways of handling it, of recognizing his urges, of accepting responsibility for what he has done so that when these things can come up again, when he is again in the proximity of young children, he can recognize warning signs that he is becoming attracted.

And that's a very concern when we have somebody who has committed these kind of acts and who still says, it was a spell, it was something put outside. What that shows us is that this person does not have the training, the mechanisms in place to deal with when they become aroused by a child again.

There can also be medication that can be very helpful to divert urges towards children, and actually retain urges towards adult females. Some of the medications have been shown to actually help preserve the normal urges, and help thwart the abnormal ones.

So there is medication and then there is treatment and people -- but you have to be very, very motivated, you have to be willing to look at these

issues.

Q Dr. Crawford, I have series of questions to comply with the law. Here's the next one. Do you have an opinion, based upon your evaluation of Mr. Gonzalez, meeting with him, reviewing the records and the tests that were run, again to reasonable degree of medical certainty, as to whether or not this pedophilia and antisocial personality disorder affect Mr. Gonzalez's emotional or volitional capacity so that it makes him predisposed to re-offend in a sexually violent nature?

A Yes.

Q What is that opinion?

A I think that given his pedophilia, and the characteristics of that, and his antisocial personality disorder that he has a great deal of difficulty, and has shown that, controlling his impulses sexually and would be at a high risk of sexually re-offending against very young children.

Q When conducting these evaluations, you mentioned that one of the things you looked at was the information from the department of corrections. In developing, in looking at whether or not a person can control themselves, is it also necessary for you to look at whether or not they have committed

disciplinary infractions while confined in the department of corrections?

A I look at those and I consider disciplinary infractions.

Q Okay. I'll show you what has been pre-marked as State's Exhibit No. 4, is this a copy of a printout of some disciplinary infractions that you looked at on behalf -- that Mr. Gonzalez was involved in?

A Yes.

MR. BOGLE: Move to introduce this as Exhibit No. 4, Your Honor.

MS. VARNADO: Without objection.

THE COURT: Without objection, marked and admitted.

(Whereupon, State's Exhibit No. 4 is admitted into evidence.)

Q (By Mr. Bogle) Would you please describe, based on that paper, what was the disciplinary infraction; what was his classification, major or minor; and was he convicted or not?

A He had four major disciplinary infractions; one was fighting without a weapon in '97; possession of contraband in '96; fighting without a weapon in '94; and striking an inmate in '91.

Q Okay. Now, Doctor, do you have an opinion based upon a reasonable degree of medical certainty as to whether or not Mr. Gonzalez has a propensity to be dangerous and commit future sexually violent offenses?

A I think he does. I think he is very high risk.

Q Why is that?

A For all of the reasons that I have been stating in terms of his lack of insight, the young victim pool, the stranger victim pool, the number of incidents, and his current -- his at the time of the evaluations his understanding of the nature of his offenses.

Q Well now, Doctor, the crimes that I have introduced into evidence happened back in the 1980's, almost 20 years ago?

A That's correct.

Q I think it has been mentioned, I think counsel might have mentioned it in her opening argument, he spent 20 years in jail you might have said it too?

A He did.

Q We are talking things that happened 20 years ago, how can your opinion still be in 2009 that that's the case with this guy based on something he

did so long ago?

A Because it's not just based on something he did, it's based on what we know about pedophilia and his kind of pedophilia. It's also based on the assessment of how he continues to deal with these issues.

We know it's something hard-wired. We know he has been away and not had access to children for 20 years. And we know that he does not have the understanding that he needs to not do this again.

Q Do you have an opinion, again to a reasonable degree of medical certainty, as to whether or not Mr. Gonzalez has serious difficulty controlling his behavior?

A It is my opinion that he does. He demonstrated this clearly when he was not incarcerated. We know the illness is still there. We know that this is a very severe illness for him and that he has not been treated adequately.

Q And again, based upon your opinion to a reasonable degree of medical certainty, does the pedophilia and the antisocial personality disorder make him likely to engage in acts of sexual violence if he is not confined in a secure facility for long term care, control and treatment?

A It is my opinion that that is correct.
Q Is there, based upon your analysis and in your opinion, does he fit the criteria as a sexually violent predator?
A Yes, he does.
Q Is there a facility where, if the jury finds that's the case, the judge would commit him to?
A Yes.
Q Okay. Is that a secure facility?
A Yes.
Q And would he receive long-term care and treatment at that facility?
A He would.
Q Is outpatient treatment the right step for this guy? Go free and see a doctor on a part-time or outpatient basis?
A Outpatient treatment cannot be mandated under the law. Any outpatient treatment he would get would have to be his choice. What he made clear to me, and on the testing, was that he did not feel like he needed treatment. He thinks that he is okay.

I think given the kind of acts that he has done, the kind of sexual interest, it would be very, very high risk for him to not be in a secure facility when getting the treatment.

Q Has he completed his criminal sentence for these crimes?
A He has.
Q Is he on probation, meaning being watched again by the State to your knowledge?
A No. When this proceeding is over, if he is not committed, he will go free and have no supervision.
Q So by no supervision, is there anything hanging over his head to make him go to treatment?
A No.
Q Do you know of any program that can guarantee that he'll receive the appropriate treatment other than the process, the commitment process that we are dealing with today?
A No.
Q Who would be at risk if he is released without further treatment?
A Very young children.
Q And do you believe, do you have an opinion, again to a reasonable degree of medical certainty, as to whether his likelihood to commit these sexual violent offenses would be reduced if he receives treatment at the department of mental health?
A I think it can be. I think if he's very

motivated for treatment and participated in treatment it can be. Particularly with the use of medication.

MR. BOGLE: Okay. Doctor, thank you very much. Please answer any questions counsel may have or the Judge may have.

THE COURT: Madam Forelady, ladies and gentlemen, we are going to take advantage of this break in testimony to take a short morning recess. During the break please do not discuss the case, please leave your notepads in your seats. If you go with the bailiffs, please.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Doctor, you may step down. Please don't discuss your testimony. We will be at ease until 11:55.

MR. BOGLE: Thank you, Your Honor.

THE COURT: You're welcome.

(Whereupon, a recess was taken.)

THE COURT: Are we ready to proceed from the State?

MR. BOGLE: Yes, Your Honor.

THE COURT: Is the respondent ready for cross-examination of the witness?

MS. VARNADO: Yes, Your Honor.

THE COURT: Please bring in the panel.

Q Okay. Hand you what has been marked as Defendant's Exhibit No. 9.

MS. VARNADO: And actually just as a housekeeping matter, Your Honor, I think we have discussed with counsel during the break --

THE COURT: No speaking in front of the jury. Please approach with Mr. Bogle.

MR. BOGLE: Yes, Your Honor.

(Whereupon, a discussion was held at the bench off the record.).

THE COURT: Respondent's Exhibits will be marked and admitted without objection.

You may proceed.

(Whereupon, Respondent's Exhibit Nos. 1 through 13 are admitted into evidence.)

Q (By Ms. Varnado) I have handed you what has been marked as Exhibit No. 9. Can you tell the jury what that is, please?

A What this looks like to me is an undated letter, to whom it may concern, from somebody by the name of Muriel Bellow, mental health counselor.

Q Was that something you took into account in rendering your opinion?

A I believe I saw this. At some point, yes, as far as my opinion today, yes, I have seen this prior

room. We will resume the trial of this case at 2:30.

I assume the State has rested or does the State have additional witnesses?

MR. BOGLE: The State would rest as this time, Your Honor.

THE COURT: And also I have some matters of law that I'm going to need to take up with the attorneys that's going to take us a little bit longer, that's why we have the lunch hour is a little extended.

Again during the break don't allow yourselves to be exposed to any media coverage about this case. And don't do any independent research of any type regarding any matter or issue involved on the Internet or otherwise. When you return, you'll return directly to the jury room and I anticipate we will begin promptly at 2:30. Have a good lunch, you're excused.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Are there any motions now that the State has rested their case?

MS. VARNADO: Yes, Your Honor, I'd like to make a motion for directed verdict based upon the State's failure to present sufficient evidence of Mr. Gonzalez's propensity to commit a sexually violent

act beyond a reasonable doubt.

THE COURT: Would the State like to respond?

MR. BOGLE: Yes, Your Honor, briefly. Viewing the evidence in the light most favorable to the non-moving party, we would submit that the State has indeed submitted sufficient evidence on both of its elements of proof; one being the commission of a sexually violent crime; and number two being the expert testimony of Dr. Crawford that the respondent does indeed suffer from both a mental abnormality, pedophilia, and a personality disorder, which is the antisocial disorder. Ask the motion be denied.

THE COURT: The motion for directed verdict is denied. Viewing the evidence in the light most favorable to the State as the non-moving party, all inferences, the evidence is susceptible to more than one inference. And the State at this juncture has met its burden of proof.

Is there anything further before we break for lunch from the state?

MR. BOGLE: No, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: Your Honor, I do want to bring up one issue and that is the State's desire to draw a negative inference from my client not having an

expert testify. If that's going to be allowed, then there are some areas of questioning of my client I would need to go into.

But if that is not going to be allowed, I don't need to address that.

THE COURT: Do you plan to go into that, Mr. Bogle?

MR. BOGLE: Yes, Your Honor. I have some authority in support of that if Your Honor would like to hear it.

THE COURT: I think he is entitled to ask him if he has been evaluated. Now the rest of it goes to how he argues it to the jury. You can always draw a negative inference from a witness not being called.

It is no different than an automobile accident when you don't call a driver as a witness, or you don't call a passenger or any other witnesses. You can also argue. Of course we will take that up later when it's appropriate. But just for the benefit of your guidance, I think most of what you are arguing goes to how he may argue it, certainly is able to argue lack of a witness.

MS. VARNADO: Well, Your Honor, I think that's incorrect in this situation in that it's a situation of like having a -- not a consulting witness --

THE COURT: It's not the same under the statute. It says clearly that the person is retained. So it does not come within the discovery rules. We did some research on this during the last trial.

The discovery rules apply to an expert who was consulted but not retained. Under the statute the words is clearly within the statute, the plain meaning of the statute, the statute uses the word retained, which means an expert is retained.

So it comes outside of those discovery rules and it's not encompassed by that. I'm bound by the words of the statute, I don't need to expand or restrict it.

MS. VARNADO: No, I understand that, Your Honor. But I think that also I think that the prejudice outweighs -- to my client outweighs the value of such testimony. Because first of all generally you are allowed to bring up the fact that someone does not call a particular witness if that witness is unavailable, and materially, and not equally available to the State.

The State could have, if it is the case that he has been retained, State could have brought Dr. Martin and they didn't try to do it. And he is not

available to my client.

THE COURT: Dr. Martin is not available to your client?

MR. VARNADO: No.

THE COURT: He is available, you can call him, he just isn't going to say what you want him to say. That's different.

MS. VARNADO: I can't make him come, Your Honor.

THE COURT: You can subpoena Dr. Martin all day long.

MS. VARNADO: He is in Columbia.

THE COURT: You can subpoena Dr. Martin from Columbia, and he'd come here if you subpoenaed him. Dr. Crawford is here from Columbia and I had doctors the last two weeks from Columbia.

MS. VARNADO: Right and they can come voluntarily, I don't have control over that.

THE COURT: I'm sure if you wanted Dr. Martin here, you subpoenaed him, he certainly would make sure he is here.

MS. VARNADO: Your Honor, I still submit that the argument that that inference can be drawn, the State could also bring him.

THE COURT: Then you can argue that. I'm not

going to deal with closing argument right now. That's premature for me. I haven't heard all the case. I don't know what's going to be argued. I'm not going to sit here and debate what's going on in closing argument. I think it's premature, okay?

MS. VARNADO: Again, Your Honor, the reason I brought it up at all was because it depends on that.

THE COURT: If you want to cover your client being evaluated in your questioning of him, I think it's certainly appropriate and I would not preclude you form doing that. Just keep in mind that he is not a medical expert so he is not going to be able to opine about what the doctor thought. He can only talk about what he contemporaneously did.

Keep in mind, however, he could open a Pandora's box by doing that because the State still could call Dr. Martin and at great detriment to your client. Probably more than the State arguing an inference. So you might want to think about that during lunch.

I'm not going to tell you how to try your case. One deficit I have is I get -- I'm not an advocate. I get to see the whole picture. I get to see what's coming down the road. My daddy used to say, you can also see the stop sign. I get to see

them. You all don't see them because you're advocating. Your perspective is obscured to some extent.

But I can kind of see where it's headed. And you might want to -- and again I'm not telling you strategically how to try your case, that's not my prerogative. I can just tell you where that might lead.

MS. VARNADO: Correct, Your Honor, that's why I don't want to go into that. But if the State is going to assert a negative inference.

THE COURT: The State would be very limited in what they would be able to ask him. I would limit them to only being able to ask, were you evaluated, when was it. They would not be able to ask what the doctor said, that's hearsay. Or what the doctor's opinion was, that's hearsay.

Now if they want to argue that he is not here and that the jury should assume from him not being here he did not have something favorable to say, it's certainly no different than any other case. This is a civil case.

However, again I will just tell you, however you want to question him that's your prerogative. But just be very careful of opening any doors to

where the State may on rebuttal bring him. And then the jury would not be left with an inference hanging out there what he may or may not said, they will know what he said, what his opinion is.

Again, looking down the road. You can tactically decide, discuss with your client how you want to proceed with it.

Okay, we will be at east until 2:30. Have a good lunch.

(Whereupon, a recess was taken.)

THE COURT: Is the State ready proceed?

MR. BOGLE: State is ready, Your Honor.

THE COURT: Is the respondent ready to proceed?

MS. VARNADO: Yes, Your Honor.

THE COURT: Okay, please bring in the panel.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Ladies and gentlemen, I hope that you all had a pleasant luncheon recess. We will now resume with the trial. Ms. Varnado, you may proceed.

MS. VARNADO: Thank you, Your Honor, I call my client the respondent to the stand, please.

THE COURT: Sir, if you would come to the witness stand to be sworn.

MR. GILBERT ZUBIA,

after having first been duly sworn to state the truth, the whole truth and nothing but the truth, testified on his oath as follows:

THE COURT: Thank you, you may proceed, Ms. Varnado.

DIRECT EXAMINATION

BY MS. VARNADO:

Q Good afternoon, Gilbert. Just so that because you have been referred to as Gonzalez in addition to Zubia, can you explain to the jury the confusion with your name?

A The confusion comes when I was arrested on April 2006. And when I got here to the jailhouse, they suppose to have a warrant for my arrest and the warrant had Gilbert Gonzalez. And I'm trying to tell the officer my name was not Gonzalez. And he sort of with a threatening voice and threatening manner told me I better sign my name as Gonzalez.

So I felt like I was threatened with harm perhaps and I just signed Gonzalez.

Q And have you been known as Gonzalez ever since that point?

A Ever since I have been in the system Gonzalez, yes.

Q But your true name when you were born is

Gilbert Zubia, right?

A Yes, ma'am.

Q Okay, Gilbert. The other thing I want the jury to know first off is you have had some health issues in the past couple years, and that makes it difficult for you to speak and be understood. So explain to them what went on.

A I'd a bought with Bells Palsy back in 2004. And back then my throat kind of paralyzed and I kind of healed from that.

And back here in 2007, I had another bought with Bells Palsy, and this happened as a result of the facial nerves getting irritated or swollen. So I had another bought with Bells Palsy and this caused paralysis on the right side of my face.

And my mouth also got a little bit, well, paralyzed and my speaking is not very clear.

Q And, Gilbert, you've improved but you are not back to 100 percent, right?

A Yes, ma'am.

Q Okay. And that is what is affecting this side of your face?

A The right side, yes, ma'am.

Q I'm going to stand back here because I know sometimes I know I talk quietly. So if I can't hear

you that means the jury cannot hear you, but I would like to make sure you do speak into the microphone so that they can hear you.

A Yes, ma'am.

Q Gilbert, let's let the jury know a little bit about your family background to start with. Can you tell us about your family?

A I was one of seven brothers and one sister. And I was the second to the youngest. My mom left the house when I was about nine years old. She just felt the need to leave. So she left the house when I was nine years old.

Q And so you were left in the care of your father?

A Yeah, my father was my caretaker back then. And he tried very hard to, you know, raise us up the best way he could. He had to go work and support us. So but he did a good job considering.

Q And you were in a car wreck when you were 14, correct?

A Yes, ma'am.

Q Tell the jury about that?

A My mom had left to Illinois, and at that point, at that time I had gone to visit her. And my brothers were older too. And back then it was a gas

crisis, and people just in the road were very I guess mean. And I think, well a truckdriver kind of ran us off the road.

So me and another brother were the worst in the accident. And I was in the hospital in a coma. And I have a brother that is in a wheelchair as a result of the accident.

Q Your brother is in a wheelchair and he also has some mental deficits now, correct?

A He is challenged, yes, ma'am.

Q Gilbert, it's a painful topic but you were sexually exploited as a child, correct?

A Yes, ma'am. I had some neighborhood friends and their father molested me when I was young. About the age of nine years old.

Q Now you came to South Carolina when, Gilbert?

A Well I came here the first time back in the '70s, '72. I kept -- the reason I am coming back here to South Carolina is I have an older brother and he has passed away since, when he got out of the Navy he used to live in Charleston and John's Island and I came to visit him at that time. I was in the eighth grade.

Q When did you move to South Carolina?

A In '85 I came to South Carolina, transferred.

I was older and transferred to South Carolina.

Q Okay. Make sure you get a little closer to that microphone, it's getting difficult to hear.

A Yes, ma'am.

Q Okay. Now and before you went to prison, you had had some issues, some run-ins with the law, correct?

A Yes, ma'am.

Q And tell the jury a little bit about that?

A I had a robbery, two robberies as a matter of fact. And one was back in about, let's see, about '80 or '82. And the first one I just got probation for. The second one I went to prison for.

Q And now let's talk about the crimes for which the State is looking to put you under this sexually violent predator act.

Now you pled guilty to three counts of lewd act on a minor, correct?

A Yes, ma'am.

Q Did you tell Dr. Crawford you forgot what happened in relation to those crimes?

A No, I never did tell Dr. Crawford that. I told her that I had very different all of them. What I did tell her was I finally concluded after a lot of soul-searching that I was overtaken with the spirit

of sexual perversion. That's what I told her.

But I never did tell her that I forgot about why I committed that crime.

Q Now the victims of your crimes as alleged were a four-year-old, a five-year-old, and a six-year-old. How do you feel about the victims?

A You know, since I have done a lot of soul-searching for that. And why I have role myself at that point, especially when I always been around kids and kids have always liked me and we don't be doing that. It's really been hard for me to deal with because I have done that. But what Dr. Crawford said is not what I told her. The first incident I did tell the little girl to lift her dress up. I never did place my hand on her.

I told her, I told Dr. Crawford also that the second incident that I pled guilty to I never did nothing to her, never did lay my hands on her. And I told Dr. Crawford that.

And as far as the third incident, well I admitted that. I did commit that crime. I never have denied it. So, the fact that I have done a lot of soul-searching and take a look at myself and like you all heard that report that when I was the first from Barrows, and it was in references to me

confiding in her what I was incarnated for, not for anything else.

So she's saying I was in therapy with her it worked well, getting counseling with her. So if she's saying that, and five more years I have done some more soul-searches, why would I come to court now in 2006, and deny that? I don't see myself doing that. And I never done that.

Q And, Gilbert, do you feel remorse toward your victims and what happened?

A If I -- the bible talks about ungodly repentance as opposed to a holy repentance. The difference is in holy repentance it's because you repent because you got caught. As opposed to a Godly repentance, you admit what you did. And because you are sorry, feel sorry for that, well, that leads to salvation and that's what I received back in '86.

I mean I wrote right here in the jail at Charleston County jail, I had an experience with the Lord I asked to be my savior and ever since then I have been walking with him. And probably jailhouse religion, whatever you choose to call it. All right. I really went up to the Lord. So because of that, I got repentance.

It's different to do with that, to affect what

I did to another child, to realize that I hurt another child. And, well, I can't -- nothing to say other than I've served my sentence.

But because I'm sorry how I feel, I know that I won't do it again. I know I cannot see myself hurting another child or anybody for that matter.

Q Gilbert, you know what you did was harmful to the child, right?

A Yes, ma'am.

Q What is your understanding as to why you acted as you did when you committed this sexual act of a minor?

A It's like I said, I have always been -- I have always liked kids, I have nieces and nephews that I have been around, you know. And kids have always liked me. And to what I did with that small child, the girl, well, it wasn't like me.

Dr. Crawford says the first experience when I told her a spell, that's the word I used, but if anybody that's familiar with the bible it's nothing you don't learn because spirits are nothing new. A person in this world, anybody can be open to that evil, particular sprit in my case of sexual perversion is what happened in my case.

And after all these years that I take a look

at myself, and I realize what I did. Now to Dr. Crawford it might have my girlfriend, which was I treated her bad. The fact of the matter is that I was only taking the spirit.

Q But do you accept responsibility for what you've done?

A I have never denied responsibility. I've always said it's my responsibility. And because, like I said a minute ago, because I have accepted responsibility, I have been able to heal and to become a better person as a result of that now.

Q And you are talking about healing and becoming a better person, have you learned to control your behavior?

A I realize that because, you know, I was out in the world and I was hating or fighting. Anger is a real powerful force. And a lot of people don't realize or don't deal with. And I -- there was a point in my program was I had a lot of anger in me.

And even from prison, well, I justify my relations with somebody, get some information. But, standing by I found myself going to lock-up, getting disciplined for that. And back in '97, I had anger and hurt somebody. Well, I was in lock-up again and discipline.

But this time I have my father telling me, son, what's wrong. I also had my heavenly father telling me, I did not see to hurt people like that. So that exact point I said, Lord, I need some help with this anger.

And see, God can't help you if you don't admit something that you have a problem. So I admitted that anger in me and he began to work on it, work in me. Well, that's a very painful process because I'd my things stolen, I have been assaulted, I have been attacked with a lid and cut.

And the year before I left the system in 2006 I was attacked, and I chose not to retaliate. Well, that's just what the Lord did with my anger. The worst case, you know, the bible says that he takes care of, you know, we don't react to our own hands. The bible says vengeance is mine, that's what God says, so I leave that on him.

So even now here at the jailhouse I have been attacked, I have had my stuff stolen a few times, I have been spit on. I say this, ladies and gentlemen, not because I want you to feel sorry for me. I want you to know that anger is a very powerful force for my life at one time, but it has no more. And because that anger is no longer in me, everything else is

everything else.

Q So, Gilbert, you were spat upon and attacked, and how did you react?

A Well I know that we have authorities, guards and things for the purpose of protecting us. So, I tell the guards about it. What they do after that that's on them. But I know I think I can look at myself and say, well, I am reacting in anger so I still don't hurt anybody else.

Q Do keep a memory of talking into that microphone. Let's take a look at what you have done to keep yourself busy while you were incarcerated and in serving your sentence.

I'm going to hand you some of the exhibits, we will also put them on the board here so that folks can see them. I'm going to put them in a pile here, and we can start with No. 2.

Let's tell the jury, first of all, what this document is?

A This document is a regulation of a C-Star program, which was explained to you a while ago. As you can see it has completed and the graduation is excellent. And I feel that I was able to give a lot of input and help people going through that program too.

So I was very active in the program, in the C-Star, first C-Star 1.

Q All right. So C-Star 1 is the sex offender?

A Back then it was a program that they had for sex offenders.

Q Okay.

A But, like I said, even before I had this program I was already -- keep in mind that I left here a regular life. And once I got to the first institution I was at which is Lieber, I went to help myself, counseling. And that's when Ms. Bellows comes in the picture. Even before the C-Star program came around.

So I think that speaks a lot for as far as me admitting what I had done and accepting help.

Q You mentioned Ms. Bellows, so let's take a look at that. Now who was Ms. Bellows? I will get a document for you, but go ahead and tell the jury who Ms. Bellows was?

A Ms. Bellows, she's like a counselor at Lieber Correctional Institution. Even before that I was already searching for somebody to talk to, groups to be involved with. And she was one of the first persons that I came across. And we started meeting on a weekly basis.

And I think the same letter that Dr. Crawford talked about a little while ago, talks about me being responsible for what I did, sharing about the things that are painful in my life, and about me really being remorseful for what I'd done. This was not about talking about no other subject but my crime.

Q When you say your crime you mean the sexually -- sexual charges that you were serving time for?

A Yes, ma'am.

Q And you were -- were you open -- were you able to be open with Ms. Bellow about those crimes?

A Yes because she was a very -- she had a manner that would help me to be open with her. And I remember one of the questions that I asked her, because I heard the word pedophile, and I had asked her if I was a pedophile, to her opinion if I was pedophile, now keep in mind I have mentioned everything that I was in prison for, and one of the first thing she said was that I was not a pedophile.

So, we continued with the classes and carrying on until she left the institution.

Q So she was your counselor?

A Counselor back then.

Q So that was -- and you saw her even before you started the C-Star program?

A Yeah, before the C-Star program.
Q Then you participated in the C-Star program, going back to Exhibit 2, you were an active participant and got an excellent rating of your participation; is that correct?
A Yes, ma'am.
Q If you'll read for the jury the comments in the section of Exhibit 2 that were provided about you?
A Comments says, Gilbert Gonzalez was a participant in the Phase 1 of C-Star program. Says Phase 1 is an educational group. It says Gilbert Gonzalez seemed to have a good understanding of nature and concepts -- materials and concepts presented in those classes and class sessions.
Q Okay. And you participated in C-Star, got your C-Star Phase 1. You also participated, let's see, so that if you look at Exhibit 3, the jury can see that -- let's tell the jury what Exhibit 3 is.
A This is a certificate that I received from participating in the C-Star program. So that's -- see sometimes I was in the institution when they didn't have nothing else to offer. So I repeated Phase 1, Phase 2 for a couple times because they didn't have nothing else at that time.

And this is just a certificate of training for having completed -- just completed Phase 1 from the C-Star.

Q Okay, so that's Phase 1. And again if you look at Exhibit 4 is also --

A Yes, ma'am.

Q -- participation again in --

A The participation was excellent.

Q Okay. And then look at Exhibit 5. Tell the jury what that is?

A That is C-Star, Phase 2 that I participated in. And says 10 months or 100 hours of intensive, intensive participation. And again this is an excellent rating for that because again there are people that I was involved in helping them out, helping the person, the social worker in charge of the group that time.

I was involved in helping her out too, and getting the rest of the guys going to that program, getting them more involved, and that's why I received an excellent participation.

Q Gilbert, you have in front of you in addition -- you also -- let's talk also and finish the C-Star information. You did participate in the Third Phase of C-Star, correct?

A Yes. The same lady, Ms. Craig that I had taken for C-Star 2, and somewhere along the way they cancelled Phase 3. So I was no longer able to complete that. They stopped.

Q How long had you been in Phase 3 before it was cancelled?

A Say about two months. Two months on Phase 3 before they cancelled it.

Q Okay. And did you find the C-Star programs helpful to you?

A Well, like I said it was best thing they had there. And of course the person that is wanting to better themselves and help themselves or anything, anything is good.

So I think it was a good program and again, you know, the ratings are excellent, that should say a lot for the fact that I participated in this group and I went to help other people out too.

Q In addition to the sex offender treatment at the facility, you took advantage of other opportunities?

A Uh-hum.

Q Look at Exhibit 10, tell the jury what that is?

A What Exhibit 10 is is I got an associates

degree from formerly know as Baptist Light Charleston, Charleston Southern University. Back then on the system a person had an opportunity to take college classes. So I was fortunate concerning I could take those classes. So I focused on that too.

I sat going over my life during that time, I was able to focus on my associate of arts from Baptist Light Charleston.

Q Okay. And after you received your associates of arts degree, did you work on any other educational courses?

A I left Lieber in '90. And I was at Columbia now and again there was an opportunity for more classes for college. And I got involved in certain classes from USC and I was headed towards my bachelor's.

But then this institution closed down so I -- well, actually I had a back injury during one of those semesters and because I was taking some kind of medication I wasn't able to complete my studies so I didn't get my bachelor's from USC.

But I found myself in another institution within Columbia, and they were offering classes from Livestone Business College, so I got involved in that

program and started. Anytime you change college you have to at least have 30 hours from that different college to get a degree. So even though I would have had enough hours for a bachelor's, I still have to get 30 hours from that Livestone Business College.

So I started going along, taking classes and then I was about 10 hours short when I stopped that program altogether. So I wasn't able to complete my college classes.

Q Going back to the C-Star Phase 3, just because I forgot to bring it up, the C-Star program was discontinued when you were in Phase 3. Was there ever an opportunity for you at any institution you were at after that point to complete phrase 3?

A No, they never had it. And if they did, I wasn't in an institution where they had it at. Every institution that I got to, that I went to, I would ask around and they never had Phase 3, it was discontinued.

Q Is that something you would have gone to if it was available to you?

A Of course. Of course.

Q All right. In addition to educational courses you took advantage of other types of courses that were available in the prison system. Let's look at

Exhibit 11. And I'm not going to take the jury and you through each one of them because the jury will have the opportunity to look at them back when they consider the evidence.

But let's take a look at some of them. First, Exhibit 11, very first page, just tell the jury what that certificate is about.

A This is for a substance abuse class that I was involved with that I completed successfully. And I really learned a lot about that. And again I have, in my past, I have experience with drugs, substance abuse. So this just gave me a more reason to find out about myself and to understand myself better.

Q The next one I want you to focus on a little bit is the page three of Exhibit 11. And that's the transitional care unit counselor training. Tell the jury what that's about.

A Transitional care unit, it doesn't exist in the system no more, but what it is was I work transition with people having problems, they've got to transition from being free to now being locked up. And they had a professional staff, and this was in certain institutions only, and Lieber just happened to have that unit.

And it would help people to cope with their

time. And some people just didn't -- they just have emotional problems and weren't capable, could not cope at certain times. So we had a professional staff during the day and were sent to the unit.

And as an evening counselor, we would help the staff throughout the day. And once the staff would leave in the evenings, we would sort of take over and help run the unit until morning, or through the weekend to the following Monday or whatever.

But we, you know, many of us couldn't get that job. A person would have to go through a screening process and to get that job. So I was fortunate to be able to be an inmate counselor and help other people too.

Q Also the inmate assistance training, was that also in part of the transitional care unit?

A Yes, same thing. The same thing. And we would have people on probation, people come from the outside and help us to be more effective, better counselors and to regularly assist the population.

Q There is also the self-development training. Tell the jury about that.

A These are just one of a number of things that I took to take a look at yourself and understand yourself better, and to be able to see potential and

to develop that potential to better yourself and be more effective, you know, to return back to society.

Q And throughout the rest of the Exhibit, Gilbert, there is also some other substance abuse, self-esteem exhibits.

A Yes, ma'am.

Q But let's turn to the reading for today instructor training program and tell the jury about that.

A I was, you know, growing up the odds were stacked against me as far as education-wise. And but I have this teacher that when I was in fourth grade and she saw something in me. And she would take me to her house in the evenings and to help me do my homework and keep up my homework and to be my family. And she would take me to her house on the weekends too and spend time with the family.

So that was really encouraging for me that she did that. And even though the odds were stacked against me throughout the years, I still managed to complete my high school and take college classes.

So when I was sent up at Lieber, I used to work in education. And the principal inquired, I was working education to take these literacy classes for illiterate people. So I was thankful for that that I

was able to participate in that training because I truly love to teach. And as challenging as it may be, we well know that once we get older it's hard to teach a person that's older than it is for a person who's younger.

So it was very challenging for me but I still found it very worthwhile and rewarding to be able to teach other people and help them read and to be able to see the expression on their faces when they would learn how to read as opposed to not being able to read not even their names or the spelling of it.

So I'm really thankful for that that over the years I was able to help other people. And I got a master's degree on -- master's certificates for that, and that was thousands of hours that I helped people. So I am thankful for that opportunity to work with the inmates.

Q And are you bilingual, Gilbert?

A Yes, ma'am. I can speak and write English and also Spanish. So I was able to help people at learning English, and also some people that wanted to learn some Spanish. I was able to help both groups.

Q Let's now turn to the member of the month for Lieber Christians in Action. And tell the jury what that was about.

A Back then there was a group called Christians in Action that I became very involved with. And being that I was involved in other things at that time at Lieber. And I was being a member of that group, I was also a provider and I was involved in getting a lot of money.

So this certificate goes beyond that. It goes beyond that in a sense that they gave me this certificate because of who we represent in this group, and how you carry yourself in an institution. So that's when I was able to get that.

Q Again, don't forget to speak into the microphone. And Exhibit 12, can you describe what Exhibit 12 is for the jury?

A For those not familiar with the prison fellowship, this was a person that was caught up into a Mexican era scandal. And Chuck Fulson (phonetic) started this group while he was in prison. And this prison fellowship is established on a seminar that I participated in.

And this is throughout the world actually. And you -- helps me to become a better sacrament of reading the bible, so that's what it's going to.

Q And you were active in that for several years, correct?

A Yes, ma'am. I was involved in that.
Q And Exhibit 12 contains -- and you don't need to go through all of them -- but contains several certificates memorializing some of your activities, correct?
A Yes, ma'am.
Q What is the world winners program? Tell the jury about that, please.
A I don't see it.
Q You don't see it? It should be page seven of Exhibit 12. You don't see it?
Q Okay, yeah, there it is. This program again it's a program that is geared towards helping you become a better person and helping you prepare when you get out to society.
And that's for pretty active people involved in the ministry. Some people coming out of prison, they understand that people have broken the law and made wrong choices, decisions and they're ready to help people to prepare and go out in society. And that's what the world of winners was, the program.
THE COURT: Ms. Varnado, I need to interrupt you for one second. Do you smell something?
MS. VARNADO: Yes, I do.
THE COURT: I need somebody to check and make

sure nothing is going on.

Okay, you may continue. I just wanted to make sure it was all safe. You may continue.

Q (By Ms. Varnado) Just a couple more on Exhibit 12, Gilbert. Kershaw Christian Ushers, can you tell the jury, you got a certificate for that in 2003, and just tell them what that involved?

A Even before they had a -- since I got to Lieber, keep in mind that I left here as a man, I was saved, I had order in my life, so everything changed in my life; my thinking, my acting, my way of being.

So even before I had anything legitimate anyway, I was already helping out in the church services and being active. And this certificate is acknowledging the fact that I was involved in that ushering. And that is something that I continue doing throughout the years. And even after I left the last institution I was at I was still active in the church.

Q And finally, the last certificate, the participation in as a mentor in Alpha from July of 2005. Can you tell the jury about that? Should be the very last page.

A Again, this is something that has to do with the church. And the word Alpha means beginning. And

it's a real active class for people that are really serious about their walk with the Lord.

And I had gone through this group. Again, after that, this ministry had really become very popular in the institution. And a lot of people were signing up for that program. So most of us that had been involved in the ministry were asked to be mentors.

And, you know, to be a mentor is not just something that anybody could do. Your actions speak louder than words, so people were looking at -- would ask you to be a mentor because they saw who you were and as far as your walk with the Lord.

And this group of mentoring is in charge of a group of people, and would meet every Thursday. And at first people who begin to walk with the Lord, get involved and to talk with them on a regular basis and to find out how they're doing and become involved in their lives. And that's what this program was about.

Q Okay. And in addition to the these programs, did you also have employment while you were incarcerated?

A I was. I did about 20 years and 8 months in the department of corrections. And I -- there was a couple of times there that I wasn't employed and that

was because either I was sick or back injury, or when I got disciplined a couple of times.

But other than that I was employed throughout the whole almost 21 years. And lot of it was in education. And even when I had other jobs I was still -- they'd give me a chance to tutor other people on the side as a volunteer. As far as working, I was working throughout those years.

Q In addition to education type jobs, what other jobs did you have within the prison system?

A I had the TCU unit. Teaching. I had -- the institution I was at they had a company on the outside had an inmate leader, so I was working with them for a while.

Q In addition you also -- I think we talked about some of it earlier -- but you also had counseling and evaluations while you were incarcerated on various occasions, correct?

A Uh-hum.

Q One of your counseling sessions was of course with Ms. Bellows that we have already talked about?

A Yes.

Q But you also had an evaluation. Let's see, let's look at the exhibits here.

I hand you Exhibits 6, 7 and 8. Let's start

with Exhibit 6. You were evaluated by Dr. Dunlap; is that correct? Do you recall that evaluation? That would have been at the beginning of your incarceration.

A Yes, ma'am.

Q Do you recall that evaluation?

A Yes, ma'am.

Q Did you cooperate and participate in that evaluation?

A Yes, ma'am.

Q Okay.

A To the fullest.

Q To the fullest, okay. Exhibit 7 is -- can you identify that for the jury, please?

A This is a psychological evaluation from when I was in SCDC.

Q Which was in 1992?

A Yes, ma'am.

Q And who performed the evaluation?

A This was done by --

Q It would be on the third page.

A This done by Dr. Chezno.

Q All right. Do you recall that evaluation with Dr. Chezno?

A Yes, ma'am.

Q Okay. And in talking with Dr. Chezno, did you tell him about all of the sexual crimes that you pled guilty to?

A Like every time I was in a counseling session, setting, that's all we talked about actually. So with Dr. Chezno was no different.

Q Also look at Exhibit 8. 1990 did you have a psychological evaluation by Dr. Schlamer?

A Yes, ma'am.

Q And do you recall that?

A Yes, ma'am.

Q And did you feel comfortable talking with Dr. Schlamer?

A Well, I sure did. You know, he seemed like a pretty nice person, and concerned with my progress and gave a lot of encouraging words.

Q Were you open, were you able to be open and honest with Dr. Schlamer about the crimes that you had committed and your feelings about those crimes and the victims?

A Yes, ma'am, I sure was. I talked to him about everything and my remorse, why I had admitted that.

Q Were you able to explore with Dr. Schlamer how you had learned to deal with the problems that led you to commit your sexual crimes?

A Yes, ma'am.

Q Okay. Were you able to explore with him how you might cope with those issues should you be released?

A One thing that has really happened a lot is again people might call it jailhouse religion. But to me it was a normal thing by God to get in touch with my spirituality.

And because of that, and I can't speak for nobody else but for me, the Lord is real. He is alive. And, you know, when I talked to Dr. Crawford, I wanted to find out where she was in relation to her role. Because I know that the state and church don't go along. And I wanted to find out where she was with the Lord so that we could discuss about that. Well, she didn't want to talk about that.

My understanding of the Christian faith is that you want to share with other people. She wasn't willing to do that.

Well, I know what the Lord has done in my life. I cannot speak for nobody else, just myself, what the Lord has done in my life. And where he brought me from. And it hasn't been a easy journey, it's been very painful healing myself, and who I was. And but I know who I am now. And I don't have

nobody. But I believe based on what I need, I don't have nobody.

Well, not everybody would be in jail right now and most of the people I share with their understanding of it, they can relate to it. And others can't. But the fact that I know to talk with whether my counselor and in a counseling setting when this one appears, I have nothing to hide. I talk with anybody.

So people now, you know, the bible talks about welcoming the enemy, seeing the great of man and the word of testimony. That's where I am right now in my testimony. And people come into the system right now in the jailhouse and I'm able to share my testimony.

I would prefer not to because I get judged a lot. And based on this type of crime it's not your average stuff. But I'm at the point right now where I am encouraged to show my testimony. And when somebody can say, well, you know, I can trust you with my daughters before anybody else, or as soon as you get out I want you to give me the address and phone number to be in touch with you.

So there is something to say a lot about me, you know. So like I said in a counseling session setting, talking with my peers, that's where I am

now. And when I get out, it's going to be the same thing. I'm not going to have nothing. I can't have nothing.

When people are saying -- I hear my testimony -- and are saying, I am going to accept the Lord and I'm going to turn from my ways, that says a lot. Not for me, I don't want no credit, that's the role of a witness.

So, you know, I don't have nothing for nobody, I have nothing to hide from nobody. I will share with anybody, my testimony with anybody. Because I know that I'm not the same person that I was 23 years ago.

Q Now, Gilbert, you mentioned Dr. Crawford. And you mentioned in your testimony that you give fairly freely to others. How did your session go with Dr. Crawford?

A Well, like I said, I wanted to find out where she was at, and she wasn't going for that, I don't know what the reason was.

And from the get-go she was very threatening to me. And from the very get-go she was literally calling me a liar, you know. I have nothing to lie about. I wasn't wanting to confer with her about anything.

And she told you all that, you know, she threatened me with the polygraph test. Well, she sounded very nice telling you all about it. I told her, she didn't just tell me, she was very harsh, very harsh words, you know, very mean. And whatever I tell you, you know, God is my witness that I am not making that one up.

So the fact that she came across in that way, you know, calling me a liar and threatening to me, like it says something, well, you know, that that's her opinion.

Q Did it make it very difficult for you to communicate with her?

A Of course. Of course. When a person in that position to have a session with where she is making themselves threatening, she was anything but friendly. That makes it hard for somebody to be able to talk to a person like that or open up to a person like that.

Q Now how long did she meet with you, Gilbert?

A She says an hour, hour and a half, it wasn't an hour and a half. It was at the most 30-minute sessions. Wasn't very long. Maybe she got that wrong, maybe she got confused. For very long was the test that was given. We are not talking about 50

questions, we are talking about hundreds of questions.

I spent hours doing that, answering those multiple choice things, questions. And when I say it's not just a couple of questions, it was hundreds of questions.

But as far as the sessions, me and her talking, again, God is my witness, you know, maybe 30 minutes at the most, you know.

Q And so there were two sessions, correct?

A Two sessions, yes, ma'am.

Q And were you trying to be open with Dr. Crawford?

A I prayed about this even before I got there, you know. When all this began to unfold, began in 2006, and I was being told I was being labeled, was being attached to my name now, well, I had to really seek the Lord in this matter because it was really a point for me because I was expecting to go out once I finished my time.

And I was -- I had fasted, and got word of my brother at the institution I was at. And I just, you know, was real hard that I couldn't communicate with her in that matter because like I said I prayed about this matter and just said, oh, Lord, a person is

where the doctor is, you know, find my faith good to go forward with that and it was anything but that.

Q Again, the microphone. We are losing you a little bit there. Now let's talk about the tests. Dr. Crawford indicated that you did not cooperate with one of the tests. Can you explain what happened with that test?

A This test was they place a band on your penis, supposedly to detect whatever, they have some pictures being shown. And again, I have no reason why to want to not cooperate with her. I went in there twice just to make sure it was clamped on right. Now what she said about that I must have done something to it or something, I don't know I didn't do nothing to it.

I was looking somewhere else, I couldn't, I was looking directly at the screen. But, you know, if I see something there, you know, and if I'm not getting aroused, some pictures they are showing, why would I want to do anything to manipulate that, you know. I just can't see it. She apparently felt that I had done something, I came out bad.

Q Did you follow the directions as you understood them?

A Followed the directions exactly as she said.

Q Did you attempt to cooperate in every way with that?

A Yes, ma'am.

Q Let's talk now about your plans when you are released. Do you have some plans?

A There's a scripture that says in all things God works it up for the good. To those who never are called upon to His purpose. He has a purpose for each one of us. Our responsibility is to line up with his will.

It's 23 years, going on 23 years now that I have been walking for the Lord. He's brought me a mighty long way in my life, he's made me a new, whole different person now. Just as I am now, people in my room call me spiritual advisor, call me Pops. Well, why? Because I healed myself.

And this is just going to be a start of everything, it's more than years, once he healed me.

MR. BOGLE: Your Honor, can we approach?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: You may continue.

Sir, you may continue your answer.

A Thank you. See a person -- a person, you

know, doesn't love himself, a person that cannot accept themselves, a person that is not doing well, he cannot be at one with anybody.

MR. BOGLE: Your Honor, the objection was it's non-responsive to the question that was asked.

THE WITNESS: Makes no difference, ma'am.

THE COURT: The objection is sustained. Please restate the question so that the witness can answer.

Q (By Ms. Varnado) Gilbert, just if you'll tell the jury what your plans are upon your release?

A Well, my plans are to continue helping people. Be there for people just like I needed help at one time and somebody comes and helps me. There are people right now that are on the outside too that are enslaved to alcohol, to drugs, to violence.

Now it's my turn to go out and testify to people about what I have done with my life. I plan to re-establish back with my family. My parents have passed away. My oldest brother passed away. But I still got some other brothers and a sister that love me and are waiting for me to get out.

I want to establish with my kids, I have three children, two sons and a daughter. And I have some grandkids too that I want to get to know. And I want

to get out there and work. Get a job. Be involved in the ministry, go to church, follow the ministry in that sense.

Now the last time I was asked whether I needed help, and I said, well, if I need help I will go and seek it. And the last time I was asked of me and I said, no, I don't need the help.

The person can understand they have need to be close with the Lord. But the closer I get to the road, the more assurance I can get. He brought me a mighty long way for me to just heal me and make me this person. For me to go back to the wrong way, I don't see it. And He has done a lot of things very good.

And for me to go out there and as the state implies that I go back and I'm a threat to society, the only one I'm threat to is sinners, I'm going to go out there a help people out. As far as me breaking the law, can't happen. I can go as far as saying that I can be one of your all's best neighbor.

Q Gilbert, let's talk about a relationship. Do you have any plans in that regard?

A Well, I got my girlfriend, Pam. We have known each other for about 11 years now. And we have been together for that long, and been through a lot

together. And I plan to be with her.

Q How did you meet Pam?

A Well, again, the Lord has assisted me in many ways throughout the years and in this particular time I was in an institution where they have people that are under a sentence of YOA, youthful offender act. Guys that are youths, 16, 17.

And her son was in this certain institution and the Lord just happened to cross our paths since I was teaching at school and he was a student. Even beyond that to share the Word and move to be together.

And her son made an aggressive change in no time at all. Again I don't want credit for it, I just think that the Lord that he used me for that purpose. That's how I met Pam. That's how he, the son, introduced us and we have been together ever since.

Q Have you had the opportunity during the time you were incarcerated to be around young girls, young children while you were in prison?

A There is in the institution, there is custody A, B, C. Custody A, B is the least security-wise. And Dr. Chezno gave me an evaluation for the purpose of going to a higher level of institution.

And I was in this place, or even before that, I was already at the institution, before I say, I was part of Christians in Action. Because I was involved with a project supervisor, I had the privilege of being in the visiting room every weekend. Kids were around, you know.

But to go beyond that, now it's an institution where visitors were on the outside, you know, people can go on the outside, outside the fence. And kids running around and hanging around and their fathers visits their kids.

You know, of course I had kids were around. But I am sure, you know, a person want to make a move but I didn't want to. I can't, you know, that's far from my heart.

Q Did you have any problems controlling your behavior around these children?

A No problems. Like I said, you know, even in the visiting room, father's they know who I am, they know my crime, they bring their kids to meet me. And same with the institution where I was on the outside, you know. I never had any problem with that.

Q Gilbert, are you a sexually violent predator?

A I believe not. I believe not. I told you all there is a gentleman about the spirit that overtook

me. You know, those spirits exist and overtook me that time. I don't know why me. Why it led to that. Why I was not aggressive toward children and have me, brought in me.

But I know that I have come a long way and I'm healed, I'm healed personally and I can't -- won't ever go back to that again, that behavior that caused me to be incarcerated for almost 21 years.

Q Do you have antisocial disorder?

MR. BOGLE: Objection, Your Honor, that's a scientific --

THE COURT: Please approach.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Sustained. You may rephrase the question.

Q (By Ms. Varnado) Gilbert, do you believe that you have antisocial personality disorder?

A That word has a broad meaning. Well, we know antisocial was what Dr. Crawford described that I would lash out on others. Well, that was there in '97.

As far as the other side of the spectrum, I think antisocial is a person that don't want to be around people. And so over the years I have been

around people, I've helped people, I have been in the ministry. So I don't see where they come up with antisocial meaning, or for that matter predator or pedophile or mental abnormality. I don't know where that is.

Q Gilbert, do believe if you were released to the community again, will you harm young children again?

A Never. Never in my life. Never. For that matter, I won't harm nobody. I intend to go out and be a law-abiding citizen, an example to people, the community and get involved.

But as far as me going back out there doing the same thing, no.

Q Thank you, Gilbert. Now do you have -- have we covered all of the topics with you that we needed to address?

A It's like I said a minute ago, what the bible says, in all things, God works out for our good. Whatever is out there is offered to destroy lives, illness. But for the grace of God. And now it's all about the Lord, helping people out. I know he has a purpose for me in my life. My purpose is not to go and harm other people, young girls, no one for that matter.

MS. VARNADO: Thank you, Gilbert. Please answer any questions that the State's attorney has.

THE WITNESS: Yes, ma'am.

THE COURT: Madam Forelady, ladies and gentlemen, we are go to take advantage of this break in testimony to take a short afternoon recess. You all have been sitting an hour and a half, I would imagine you need a little break after lunch.

Please leave your notepads in your seats, and please do not discuss the case during this break. We will be out about 10 to 15 minutes, just enough time to allow you to use the restroom, maybe get something to drink. If you would go with the bailiffs, please.

(Whereupon, the jurors exit the courtroom.).

THE COURT: Sir, you may step down. Please do not discuss your testimony during this recess. We will be at ease.

(Whereupon, a recess was taken.)

THE COURT: Okay, is there anything else before we resume with cross-examination from the State?

MR. BOGLE: No, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: No, other than we need to get my client back in.

THE COURT: Sir, if you would re-take the stand.

Please bring in the panel.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, ladies and gentlemen, I hope you all had a great break. We can now resume with the cross-examination of the witness.

Mr. Bogle, you may proceed.

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

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. BOGLE:

Q Mr. Gonzalez, let's just be clear about things, first. The first offense from back in 1985 -- may I approach, Your Honor?

THE COURT: You may.

Q (By Mr. Bogle) Right here you signed it Gilbert Zubia, correct?

A Yes, sir.

Q And it says, we appear and plead guilty to within the indictment. So that is something you did in front of a judge, right?

A Yes, sir.

Q So you pled guilty in front of a judge, and

you had a lawyer with you, right?
A I think so, yeah.
Q A lawyer represented you and was done in open court just like we are doing right now?
A Uh-hum.
THE COURT: Sir, say yes or no, please and speak directly into the microphone.
A Yes, ma'am.
Q (By Mr. Bogle) It was done in open court just like we are right now, right?
A Yes, sir.
Q And it wasn't appealed or set side or anything like that, this is what happened to you?
A Yes, sir.
Q Then on Exhibit No. 2, on the back part of the indictment here it says, were you signed it Gilbert Zubia, that's your signature, right?
A Yes.
Q And it says, we appear in person and plead guilty to the within indictment, and you signed it?
A Yes, sir.
Q So this plea was also to lewd act on a minor and that was done in open court, right?
A Yes, sir.
Q You had a lawyer representing you?

A Yes, sir.
Q Done in front of a judge just like the judge here?
A Yes, sir.
Q And the same day this happened, back in 1986, you also pled guilty to the charge of criminal sexual conduct with a minor. Do you remember that?
A Yes, sir.
Q And in this particular case you were indicted for -- actually, they originally charged you with four different things, had they not?
A I couldn't recall.
Q Let's look here. Count one was criminal sexual conduct with a minor in the first degree, and that's what you pled guilty to?
A Yes, sir.
Q And they also charged you with some other stuff that they dismissed in return for that plea, correct?
A I can't -- it has been a long time, I guess that's what happened there.
Q Because you didn't plead to count two, right there, which says criminal sexual conduct. And you didn't plead to count three or count four. In fact on the back it says right here, has those counts 2,

3, and 4 marked off and says non-pros, right? See that?

A Yes, sir.

Q So you had a lawyer at that case too, did you not?

A Yes, sir.

Q And it was done in front of a judge and you got a deal because they dropped three charges when you pled to one, right?

A Yes, sir.

Q That's what you got the 30 years for. Says 30 years in prison right there for criminal sexual conduct with a minor.

And then now you mentioned earlier when you were seen by Dr. Chezno, psychological evaluation, do you remember you were asked about that?

A Yes, sir.

Q And in that particular evaluation, I will show you Respondent's Exhibit No. 7, right there. And in the third paragraph down, I'm sorry, second paragraph down, right here in the middle it says, he readily acknowledges being guilty of the sexual offenses which resulted in his current confinement.

A Uh-hum.

Q And he attributes this conduct to personal

problems and unresolved conflicts going on in his life at the time.

A Uh-hum.

Q So you told Dr. Chezno you were guilty, you acknowledged your guilt of all these crimes, right?

A Yes, sir.

Q But when you met with Dr. Crawford you denied being guilty of two of them, right?

A Yes, sir.

Q Okay. Now when you also saw Dr. Schlamer, and this is in Respondent's Exhibit No. 8, hand you a copy right here. At the very bottom of the page it says, and I quote, he has used uppers, downers and hallucinogens at periods in his youth. Do you see where I am reading?

A No, sir.

Q Look down at the bottom, right here. He has used. See where it says uppers, downer and hallucinogens?

A Uh-hum.

Q And the next sentence says, alcohol use has also been substantial with episodic abuse. Though there has been tolerance increase reported and blackouts for a time. So there was a time when you had a real problem with drugs; is that right?

A Yes, sir.
Q Both hallucinogens, uppers, downers as well as alcohol?
A Yes, sir.
Q It says here, as a matter of fact it says, it likely he is addicted. So that's why you went to the substance abuse courses; is that right? Because of your problem with alcohol and other substances?
A Yes, sir.
Q Okay. And you agree with me that, I know things happen in prison, but isn't it more likely than not that it's harder to get alcohol and drugs in prison than on the outside?
A I would say it's easier.
Q You would say it's easier?
A Yes, sir.
Q You would agree with me, though, if you were released you would have open access to about any kind of alcohol you wanted to, about any kind of drugs; is that right?
A Sir, what you don't understand, though, is what I said a minute ago is that the experience that I had, the spiritual experience I had, alcohol and drugs are just as easily found in prison, and I chose not to buy it and I chose not to get involved with

that.
Q I understand, that was not my question. My question is --
A So as far as it goes if I get out right now, I don't have a need for that, sir.
Q My question is if you wanted to get alcohol or drugs on the outside, that would be easy to do, would it not?
A I don't need for that, though.
Q But if you wanted to --
A Yes, sir.
Q You could.
A Yes, sir.
Q But there never was an alcohol issue in these three crimes. You weren't drunk when you did these things?
A I wasn't drunk.
Q After Dr. Crawford evaluated you, remember she evaluated you, met with you, did her evaluation, did you then get a second independent evaluation?
MS. VARNADO: Objection.
THE COURT: Basis?
MS. VARNADO: Your Honor --
THE COURT: Please approach, no speaking objections.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Overruled.

Q (By Mr. Bogle) I think my question was, after Dr. Crawford did your evaluation, did you later get an independent evaluation by a psychiatrist?

A Yes, sir.

Q And that would be Dr. Tom Martin, correct?

A Yes, sir.

Q And you traveled to Columbia to have that done back in, I want to say it was October of 2006. Do you remember that?

A Yes, sir.

Q Now do you feel remorse to your victims for what you did?

A Do I feel remorse?

Q Remorse, yes. Are you sorry for what you did?

A Yes, sir, I sure do.

Q Explain to me and the jury, how you can be sorry for something you did if you try to say you didn't do it?

A What do you mean I didn't do it?

Q Well you told Dr. Crawford that you didn't commit the first crime back in '85, and the second crime right here. How can you be sorry for something

if you say you didn't do it?
A Well what it's saying here where it says he acknowledges, he readily acknowledges being guilty. I'm sure that I told him what I was guilty of. And same thing I told you, and the same thing I told my lawyer, the same thing I told Dr. Crawford, and I still did that all the time, I don't have no reason to lie, sir, Mr. Bogle.
Q Okay. But you acknowledge that you denied certain things in those -- two of those crimes to Dr. Crawford that you didn't do it the way the indictment said it, right?
A I didn't do it.
Q Didn't do it?
A Uh-hum.
Q In your prison term that you served at the department of correction, did you what they call max out your prison term?
A Yes, sir.
Q That means you finished all the time you possibly could have done?
A Yes, sir.
Q Were you up for parole during your prison term?
A I had about 14 parole.

Q 14 parole hearings, all of them were denied?
A Denied, yes, sir.
Q You mentioned, I believe this came out through Dr. Crawford's testimony or your testimony earlier, that one of these crimes was caused by a spell put on you, and the spell was from an ex-girlfriend?
A I think Dr. Crawford misquoted me, sir.
Q Well, she did. Was the criminal sexual conduct with a minor, this thing with the little girl, was that caused by a spell being put on you?
A What I told Dr. Crawford is that after I was able to take a look at myself and see what I had done and everything, I told her that it was a spirit overtaking me.
Q A spirit overtaking you?
A A spell, as I told her. But I did not say just one incident, I said it made me commit whatever I committed.
Q Okay. So all of these crimes were caused by a spell or a spirit overtaking you?
A Yes, sir.
Q Was it a spirit or a spell put on you by an ex-girlfriend?
A That's what I told her. I believe, sir, it was.

Q Okay. Where is this ex-girlfriend now? Is she in your life now?
A No, no.
Q Where does she live now?
A I believe she's in Texas.
Q Do ex-girlfriends have the power, in your experience, with your life experiences, to put spells on you?
A Well, my understanding is that we know that spirits exists, okay. And persons, according to their lifestyle, whatever, are open vessels for a spirit to overtake this person.
Q But this was caused by a girlfriend, not just some spirit rooming around in the sky. Some girlfriend did this to you, right?
A That's what I'm saying, yes.
Q Okay. That's like a demon?
A Yes, sir.
Q Like a urge?
A A demon.
Q It was an urge you couldn't control which lead you to do these crimes, right?
A It was, yes, a demon, yes, sir.
Q There are demons out there I guess?
A They are, yes, sir.

Q And they're still out there?
A Still out there.
Q And those demons can cause urges that people cannot control; is that right?
A It can.
Q That's what happened you?
A Back then, yes, sir.
Q Have you ever heard the term triggers when used in the context of say your substance abuse training, or your alcohol abuse training?
A Something triggers that to relapse?
Q Yeah. Like for example if drinking is bad for you and you know it, then you know to stay away from bars or stay away from people drinking at a party because that's a trigger, right?
A Yes, sir.
Q Okay. What triggers exist regarding your pedophilia, your attraction to little girls?
A What triggers that?
Q What triggers do you have to avoid regarding little girls?
A Well there is no triggers no more, sir.
Q They've gone away?
A Yes, sir.
Q But the spirits are out there, the demons are

out there?
A Yeah. But see the thing is that a person has the power to rebuke those spirits. God gives us power to rebuke the spirits and that's what I have done in my life.
Q Now --
A When it was the spirit of drug abuse, spirit of alcohol abuse, all of those are rebuked spirits, sir.
Q Now this Ms. Bellows that you saw, there was some talk earlier of a counselor that met with you, Ms. Bellows. How much time did you spend with her?
A I would say about a few months.
Q Few months?
A Yes, sir.
Q Like how many sessions? How many times a week would you meet with her?
A I would say about -- it has been such a long time -- I would say about six months or so.
Q No, it occurred over six months?
A Yes, sir.
Q The counseling?
A Uh-hum.
Q How many times a month would you see her?
A Well depends on her schedule.

Q Okay. Do you remember how many times you saw her?

A No, not a particular number.

Q Not too long. Is Ms. Bellows here today?

A No, sir.

Q Now this Dr. Chezno, one of the -- I think he was the psychologist that saw you. I show you, if I approach again.

THE COURT: You may.

Q (By Mr. Bogle) I think you've got a copy of it right here, this would be it, Respondent's Exhibit 7. At the very top where it says reason for referral. Do you see that?

A Uh-hum.

Q It says, to assist in the assessment of inmate's suitability for advancement in custody status, right?

A That's what it says.

Q Because one of the things you learned was there's different levels of custody in the prison system, right?

A Uh-hum. Yes, sir.

Q And some levels come with more freedom, correct?

A Yes, sir.

Q More liberties. Some have more trust, correct?
A Yes, sir.
Q But so before they are going to elevate you to a better level, they have to evaluate you, right?
A Yes, sir.
Q That's what this was?
A Uh-hum. Yes, sir.
Q Now the one from Dr. Schlamer, which would be State's Exhibit -- Respondent's Exhibit 8, see that right there?
A Yes, sir.
Q Look at the thing where it says reason for referral, right there. It says, psych eval for custody advancement to aid custody?
A Yes, sir.
Q That's kind of like the last one. You were moving up to a higher level of custody, right?
A Yes, sir.
Q A Level is pretty much near the top, right?
A Back then, yes, sir.
Q So back then you had advanced through different levels of custody, correct?
A Yes, sir.
Q You wanted to go to a higher level of custody

with more freedoms and more liberties, correct?

A I mean your -- every one of them was just to be advancing.

Q Yeah, advancing you. And before they can do it they had to evaluate you?

A Yes, sir.

Q So that's what this is?

A Uh-hum.

Q This piece of paper here is to evaluate you for custody?

A Yes, sir.

Q Has nothing to do with sex.

A No.

Q It's all about custody. And neither Schlamer or Chezno, they're not here, are they?

A No, sir.

Q Okay.

A But that's not to say that the system doesn't know what you have been accused of. They know of it. So they still, I'm sure, are taking that into consideration.

Q You mentioned being around young girls. And one of those things when there is prison visitation?

A Yes, sir.

Q When families come to visit, some of the

inmates, they might bring their little kids, right?
A Yes, sir.
Q But there are plenty of guards around supervising that all the time, are they not?
A Not plenty. Especially when I was in the A custody, there was no guards.
Q So you're saying that inmates were allowed to visit with their families and there was not a single guard in the room?
A There was no room in the outside, sir.
Q No guards outside?
A One guard in his room, in his post. But everything there, picnic area and everything, everybody was just running around.
Q But you cannot name a single prison official that let you be alone with a young girl, did they?
A Why would I be alone with them? They're not my daughter, they weren't visiting with me.
Q So you weren't alone with any young girls?
A They were all running around all over the place.
Q Okay.
MR. BOGLE: One moment, Your Honor.
THE COURT: Uh-hum, take your time.
Q (By Mr. Bogle) I need, if you can, to explain

to the jury when you met with Dr. Crawford you told her you had, in the past, there was a sexual attraction to children. So did that exist in the past? Do you remember telling her that?

A No, I don't think I told her that, not a sexual attraction.

Q Okay. Well when you saw the two little girls in the K-Mart, was there a sexual attraction to them that made you come up to them?

A Like I said, I don't think it's a sexual attraction as much as it is a spirit that's controlling you.

Q A spirit, okay. So when you -- do you remember asking to the see the two little girls underwear, the underpants?

A Yes, sir. It was wasn't two little girls, it was just one.

Q Okay, one was 8 and one was 4. You asked to see her undergarments, right?

A Just one of them.

Q Just one of them. Which one, the 4-year-old or 8-year-old?

A 4-year-old.

Q Why not the 8-year-old?

A I don't know.

Q All right. And when they pulled up the skirt you placed your hands inside the underwear and touched her genital area?
A I did not do that, sir.
Q You did not do that. But you pled guilty to doing that, right?
A Yes, sir.
Q And when you plead guilty, do you remember pleading guilty? The judge asks you a series of questions; does she not or does he not?
A Yes, sir.
Q To make sure you are pleading guilty freely and voluntarily?
A Yes, sir.
Q And before they ask you that question, that judge puts you under oath, right?
A Yes, sir.
Q Same oath you took today?
A If I may explain on that, expound on that, sir.
Q If I could -- wasn't responsive. My question was --
THE COURT: Sir, I need you to answer yes or not and then you may explain your answer.
Q (By Mr. Bogle) Same oath you took today,

right?
A Yes, sir.
Q And then in the case involving the other lewd act, what caused you to commit the lewd act on this 5-year-old girl? Was it another spirit?
A I didn't do that.
Q You didn't do it?
A I didn't commit that crime.
Q But you pled guilty?
A Pled guilty.
Q Under oath.
A Yes, sir.
Q Same oath as today?
A Yes, sir.
Q Okay. And the one you did do was the criminal sexual conduct where you, pardon me for saying it, stuck your penis into a 6-year-old girl, right?
A It wasn't said like that from the get-go. I didn't penetrate her.
Q Criminal sexual battery. You heard her testify about the lab report that found your semen inside that girl?
A That wasn't said at the first trial, though.
Q How do you think it got there?
A It wasn't said that it was penetration at the

first trial, and now all the sudden I'm saying penetration?

Q Do you think that's a violent act to stick -- an adult man to stick his penis in a 6-year-old girl?

A Of course it is.

Q And if I'm correct looking at the dates, you mentioned on direct examination you had some prior run-ins with the law, some robberies and things like that when you were younger?

A Yes, sir.

Q So you would have been on parole for one of those crimes when you got arrested for this thing back in 1985, right?

A Yes, sir.

Q Does that mean you had a parole officer you were supposed to report to?

A I was reporting to a parole officer.

Q Like once a month, once a week, how often were you supposed to report to the parole officer?

A Once a month.

Q Was it somebody here in South Carolina?

A Yes, sir.

Q And then when you got sentenced, Exhibit No. 2, this is the second lewd act charge you pled to. It says the crime happened on the 3rd day of June,

1995. Do you remember that from the indictment?
A Uh-hum.
Q That's what it says. And that was the day before you got sentenced on the 4th day of June in this crime right here?
A Uh-hum.
Q So the day before you got sentenced you were asking to see this little girl's underwear or asking her into your truck or something like that or a carport, which was it?
A I did not do none of it, sir.
Q You did not do it?
A I deny it, didn't do it. As God is my witness.
Q Okay. And you mentioned that your -- I don't mean -- I'm not trying to be critical, so I understand the dates.
A Sir, it's a trial, you do that.
Q Your acknowledgement of how religion came into your life, was that 1986 or '87?
A '86.
Q Okay. After you were in prison, not before?
A Not -- well in jail here. In jail.
Q Yeah, but after you had been arrested for these charges?

A Yes, sir.
Q After you pled guilty to I guess at least one of them. But long before you were found guilty of these disciplinary actions while at the department of corrections, correct? The dates here are '97, '96, '91 on three of them. So that's sometime after the religious experience, correct?
A Yes, sir.
Q So the religious experience, I know how much you've said it changed your life, but it apparently was not enough to prevent these major discipline infractions from happening, was it?
A In '97 it wasn't.
Q Were these caused by spells?
A No, no. That's just part of the growing process.
Q Part of the growing process.
A Part of the growing process. And as I mentioned a while ago --
Q So fighting without a weapon --
MS. VARNADO: Your Honor, excuse me. Can he finish his answer.
THE COURT: He needs to answer yes or no and then he may explain his answer?
Sir, answer yes or no, and then you may

explain your answer.

THE WITNESS: I did answer, ma'am.

THE COURT: You may explain your answer.

A That was prior to when I said '97, '97 I wrote a letter to the parole board and I said, this is where I am now, and my anger. And after that I never got in trouble again.

Q Okay, but prior to that you had?

A The bible says if anybody is in Christ, it's a new creation, all things are passed away, everything becomes new. This isn't happening overnight. It's a growing process.

Q Not to debate religion with you, but I guess what you're saying is once you've accepted your salvation, all prior sins are forgiven?

A All prior sins are forgiven.

Q But the spirits are still out there, right?

A They are.

Q Demons are still out there, right?

A They are. But they don't have control over a person that is with the Lord now.

Q So your urges are still out there, right?

A They are out there, but they don't have control over me.

MR. BOGLE: Thank you, Your Honor, no further

questions.

THE COURT: Any redirect of the witness?

MS. VARNADO: Yes, Your Honor.

THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MS. VARNADO:

Q Gilbert, there are drugs and alcohol available in prison, correct?

A Yes, ma'am.

Q You could have taken advantage of them being there if you chose to?

A If I chose to, yes, ma'am.

Q Did you?

A No, ma'am. I didn't have no desire, no urge, no need.

Q Okay. Now, Gilbert, you've denied certain elements of the crimes that you have been charged with?

A Yes, ma'am.

Q But you admit that asking a 4-year-old child to look at her underwear was a harmful and wrong thing to do?

A Yes, ma'am.

Q You admit that, as you pled guilty to, performing oral sex on a 6-year-old child was a

harmful and wrong thing to do, correct?

A Yes, ma'am.

Q And while we are on that subject, looking at Exhibit 3, while there were four counts, the only count that you pled guilty to was count one which involved cunnilingus or oral sex, correct?

A Yes, ma'am.

Q And you did not plead guilty to a charge involving penetration of that child, correct?

A I did not, yes, ma'am.

Q There has been a lot of discussion about the kinds of spell or evil spirits or I think you described it at one point in your testimony as a demon of sexual perversion?

A Yes, ma'am, that's what I described it as.

Q Are you armed in the defense to being overtaken by a demon of sexual perversion again?

A Can you repeat that question gain?

Q Are you armed today with a defense against being overtaken by a demon of sexual perversion?

A As I mentioned a while ago, God gives us the power to rebuke the spirits. And those spirits can never get close to me again, whether it be drugs, alcohol, any kind of spirit can never come close to me again.

Q Are you telling the jury this is something that just happened one day and you were all over it, or was it a process?

A Talking about the --

Q Overcoming.

A Overcoming, it has been mentioned a while ago, anybody is in Christ is a new creation, all things are passed away ,all things become new. It does not happen overnight. It does not happen overnight. But as you continue this walk with the Lord and He continues to empower you, you step over those things that used to give you trouble.

Q So that's why in '98, excuse me, '86 when you had your first religious experience, it wasn't until '97 where you got to the point where --

MR. BOGLE: Objection, leading.

THE COURT: Sustained, leading.

MS. VARNADO: Your Honor -- excuse me.

Q (By Ms. Varnado) Gilbert, explain again the process then from '86 to '97?

A Talking about the fighting?

Q And in controlling your behavior.

A Okay. It's like I mentioned a while ago. If a person doesn't admit to the Lord he needs help, he can watch for forgiveness and He will forgive him.

But if you don't think it's a problem for you, you don't even ask for help.

But a point comes when you are going to realize it is causing problems in your life. And then you can ask the Lord for help and then He begins to work in you.

Well, that point came in '97. And I reacted to a situation and I caused myself back being disciplined. But I not only had my father telling me, son, what's wrong, but also my Heavenly Father telling me, I didn't create you to be a crime.

So, at that point I made a decision to say, Lord, I need help with this. So, and the letter to the parole board testifies to that. So, once I admitted that I needed help with this, the Lord began to help me with this letter.

And the record shows from '97 up until I got out of prison in 2006, I never again had another discipline. That does not mean I was not attacked, I wasn't hit and beat. But I chose not to respond in a negative way and hurt somebody.

Q Let me hand you the State's Exhibit 4. And is that what you are talking about, there is no more disciplinary infractions after '97?

A Yes, ma'am.

THE COURT: Is there anything we need to take up before we proceed from the state?

MR. BOGLE: There is none, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: No, Your Honor.

THE COURT: Please bring in the jury.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Ladies and gentlemen I hope that you all are a restful evening. We will now proceed with the trial. Ladies and gentlemen, just go ahead and pass the notebooks down as you realize that it is not yours so they can be quickly distributed.

Everyone situated?

Ms. Varnado, you may proceed.

MS. VARNADO: May it please the Court. I call Pam Donahue to the stand

THE COURT: Ma'am, if you would come to the witness stand to be sworn.

MS. PAMELA DONAHUE,

after having first been duly sworn to state the truth, the whole truth and nothing but the truth, testified on Her oath as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. VARNADO:

Q Good morning, Ms. Donahue.
A Good morning.
Q Can you tell the jury where you live, please?
A I live in Pageland, South Carolina. I'm on the North Carolina, South Carolina border.
Q And tell the jury a little bit of background of yourself, your marital status and how many kids you have?
A I am divorced. I have been divorced now for quite some years. I have two grown sons that I am very proud of; one is 28 and the other one is 30.
Q And you are here today because of the involvement with the trial. Do you know the respondent in today's trial, Gilbert?
A Yes, I do.
Q Can you identify him?
A Yes, I can. He is seated over there with a black and tan sweater on.
Q And how did you meet Gilbert, Ms. Donahue?
A I met him when my oldest son was doing a YOA sentence in Turbeville. After my son went into Turbeville for a couple months, he kept speaking of Gilbert and how Gilbert was helping him to get his life straightened out.
And that he wanted me to meet Gilbert along

with my mother. And so we were put on the visitation list. And we did joint visitations with Gilbert and my son. That was in Turbeville.

Q What was your son incarcerated for?

A I'm not exactly sure of the charge. It was more or less of a gang type situation where a bunch of boys on one side were against a bunch of boys on the other side.

Q And around that time were you having problems with your son's behavior?

A Yes, I was. I sure was. I couldn't control him. He was out of control. He had begin to drink. I suspect he was on drugs however I never did see him do drugs.

But his attitude, the way he acted and everything made me think that he was partaking in drugs along with the people that he hung out with.

Q When you say YOA, can you tell the jury what that means?

A YOA.

Q Excuse me, YOA?

A It's the youthful offender's act.

Q Okay.

A It's for people that is not yet an adult to go into adult type setting, prison. It's to give them a

chance to try to get their lives back on track.

Q And so has Gilbert helped your son?

A He helped my son very, very much. I truthfully feel like if it was not for Gilbert my son would have came out and he would have been a repeat offender.

However my son came out, he found God throughout Gilbert's help, the bible studies that they participated in, the bible studies that Gilbert held there at Turbeville, and I'm very proud to say that he is able to stay out of the system. He is a very successful electrician, has been doing electrical work now for 11 years.

Q And that is your son, correct?

A Yes.

Q Okay.

A That is my oldest son.

Q So you met Gilbert initially through your son?

A Yes.

Q Did your relationship with Gilbert develop?

A Yes, it did.

Q How did it develop?

A Throughout the bible studies and everything like that, small talk and everything, we realized that we wanted to carry it to another level. There

was feelings there and we wanted to be closer together. So even after my son got out from Turbeville I continued to visit with Gilbert in Turbeville before he was transferred.

And our relationship continued to grow. This started back in '96 and I have stood by Gilbert all this time. There was a time that we had spoke of getting married, he was in Evans at the time, we went as far as to get the license, we had a pastor there that was going to marry us, we got the wedding bands and everything and then Gilbert, he is a very humble person, and he felt like this would put too much of an emotional strain on me.

And I thank him for being concerned over me, but however it did not change anything. I have still stood by him.

Q And have you continued to maintain your relationship with Gilbert even after you decided to postpone the wedding?

A Yes, we have wrote many, many a-letter, many a-phone call, many a-visits from one facility to another facility. Some facilities we were able to participate in Bible study on our visits, and at other facilities if you got out there first and you were able to get a Bible then we were able to do our

Bible study.

But, however, we did not have to have a Bible to do a Bible study. Because Gilbert is so knowledgeable of the Bible I can almost ask him any question and he can tell me. If he cannot tell me he would write me and tell me what I needed to know, where to find it in the Bible.

Q So has Gilbert helped you?

A Yes. Gilbert has helped me. I joined a church at 12 years of age. And I kind of got off track myself. I did not get into no trouble or anything, but I was not active in the church the way I should be. I was your typical teenage girl and everything.

And through Gilbert I have found salvation again. I have been rebaptized and he supports me to the very fullest. And my religious faith. It's very hard to have a relationship with someone who is confined to a facility. But if you have a true love there, and a true belief that the two of you are meant to be together, and you all both believe in the same, then it's not as hard as people think it is.

Q Pam, have you also been able to observe Gilbert interact with people other than your family members?

A Oh, yes, yes.

Q What have you observed?

A On visitations people would be coming up to our table, some of his inmates would be coming over to speak with us, introduce their wife, introduce their children. And he has been very, very nice to everybody.

Everybody that I have come in contact with at any of these facilities have always thought a lot of Gilbert and spoke highly of Gilbert and how he has helped them in one shape, form or another. Whether it be a Bible study, whether it be education, how to deal with maybe anger, how to deal with another inmate without getting into trouble, a lot of people looked up to Gilbert.

Q You mentioned children. Have you been able to observe Gilbert and interacting with young children, young girls?

A Oh, yes. Yes, uh-hum. And I have never ever seen or heard anything that was wrong at all. If I had have, I would not be here today.

Q And directly have you observed any behavior on Gilbert's behalf when he was around young children or young girls that evidenced he has had problems controlling himself?

A Excuse me?
Q When you watched Gilbert interact with young girls or young children?
A Yes.
Q Did you see anything that led you to believe that he had problems controlling himself?
A No. There was no problems whatsoever.
Q Did you observe anything that indicated to you he was having a sexual attraction to young girls?
A No. No.
Q Now you've told me some, but tell the jury what about the Gilbert that you know?
A Gilbert is a completely different person than he was in his past whenever he got into this problem. I can truthfully say that Gilbert has made a 360 degree turn. He has not put on a show for 20-plus years. He has never changed or anything.

He has always been the same kind, humble person. He is very trustworthy, he is very honest, and I can only say good about Gilbert. And I am not saying this because I am with Gilbert, I am saying this as an open mind and me observing Gilbert.
Q Was Gilbert open with you about the crimes for which he was incarcerated?
A Yes, he was. He sure was. After we started

developing a relationship he wanted me to know. He did not want to mislead me and he wanted me to know while he was in prison and what had happened.

And he did not want to lead me on and then let me down because he didn't know how I would feel about it. And I did give it some thought, but then I gave him the shadow of a doubt and I kept listening to him, observing him, how he wrote to me in letters, how he spoke to me on the phone, how we talked on the visits, he was a completely changed man who needed that next chance.

Q And, Pam, did he talk to you about his feelings regarding his victims?

A Yes. He has deep, deep regrets to the victims and to the families of the victims. It's not something -- if he could undue it, he would undue it. But he cannot undue it. Just like all the rest of us we make a mistake and we wish we could go back and undue something, but we can't undue it.

But we can take from that and learn and make something positive come out of it like Gilbert has done in all these years in prison. He has really worked on himself a lot. He has worked with others a lot.

Q If Gilbert is released, do you have any

concerns that he would be released and hurt others, hurt young children again?

A No, I have no concerns at all. If I did, again, I would not be here. Because I do not believe in anybody, any child, any adult, male or female, being hurt in that manner because that does put a mental impact on a person.

Some people can overcome it, other people can not overcome it. But I have not a shadow of a doubt that Gilbert would only do good.

Q Now have you made some plans for Gilbert's release?

A Yes. My next-door neighbor, well not next-door but a couple doors down from me, has opened up his home, he is an elderly gentleman, he is here with me today, and he is going to give Gilbert a place to stay that will be safe.

And between my neighbor and myself we can take Gilbert wherever he needs to go to. If he should need counseling, if he should need to get resource help to get him back into society, whatever needs to be done we can be there for him.

I also have a church family. And my church family knows of Gilbert, and they are willing to accept Gilbert into our church.

Q And have you looked into the available resources in your area?

A Yes, I have.

Q And what are they?

A We have a Tri-county Mental Health. They have a wide range of counseling. They help people out with counseling, they help people out to get back on track whether it's just counseling alone or if they need medication, whatever.

And they have told me that they do have someone, more than one, that can work with Gilbert, and help guide him. Also the vocational rehabilitation is willing to help Gilbert to get back into society and to try to re-train him so that he can go to work somewhere.

Q And in looking into the place to live for Gilbert, first of all can you just point out to the jury your neighbor who's here with you today?

A Yes, it's Mr. Bill Dodge. He's sitting on the second row next to the back with navy suit on, white shirt and glasses. He is very good man. He is a wonderful person.

Q Is Mr. Dodge's home near a church or a school?

A No, it's not.

Q Okay. Now we talked about your son. Is there

a reason why your son isn't here today?

A Yes. This is my youngest son, and he had to stay home to get my grandson to school and to be at work. Otherwise he would be here. We have had long discussions over this. And he is very comfortable with Gilbert being around.

Q Now based on your involvement with Gilbert do you have an opinion about his character?

A He is a very trustworthy person. He goes out of his way to do good deeds. He will try to help you in any way he can, if he can't find the answer he'll do the research to find the answer. He puts other people before himself a lot of times.

He is like, I say, a completely different person than when he did this crime. He is a good Christian man. I -- not only has he saved my son and myself, but I feel like there is many more people out there that he has helped to get back on the right track.

He is overly concerned that people live right, do right, learn from their mistakes. Make something positive out of their life.

Q And do you have an opinion as to Gilbert's reputation for truth and veracity.

MR. BOGLE: Objection, Your Honor, may we

approach?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Please rephrase.

Q (By Ms. Varnado) Do you have an opinion as to Gilbert's reputation for truth and veracity in the prison community?

MR. BOGLE: Object again, Your Honor.

THE COURT: Basis?

MR. BOGLE: There's no foundation.

THE COURT: No speaking objections, please approach.

MR. BOGLE: Lack of foundation.

THE COURT: Approach.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: You may proceed and rephrase.

Q (By Ms. Varnado) Within the context that you know Gilbert, visiting him in the prison setting, do you have an opinion as to his reputation for truth and veracity within that confine?

A Yes. He is a very truthful person. He will tell you to the best of his knowledge what he knows, if he doesn't know it he'll tell you he doesn't know

it. He is a very humble person, he is remorseful. He has repented. He is a very honest, positive thinking person.

Q And, ma'am, do you have any doubt about that?

A I have no doubt at all.

Q Thank you.

THE COURT: Any questions for the witness?

MR. BOGLE: Yes, Your Honor, thank you. May it please Court.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. BOGLE:

Q Ms. Donahue, bear with me just some background. You live in Pageland right now, how long have you lived there?

A I have lived there all of my life but for six years.

Q Okay. Was those six years a long time ago or were they recent?

A I have been back in Pageland since 2003.

Q Okay. What is your educational background?

A I have 14 years.

Q High school plus two years?

A Yes.

Q And what do you do for a living?

A I am not working now. I volunteer at the primary school. Since I was volunteering helping teachers out, but since they cut the substitutes out now I'm a substitute teacher along with a tutor for students. Now I started out with two, now I have four.

I am a volunteer with the adult female domestic violence association. And also I work with the elderly in the church and the shut-in.

Q Do you have any source of income from these volunteer activities?

A No, sir, I do not.

Q What is your source of income to live on?

A My son lives with me and supports me.

Q Is that the older son or the youngest son?

A The youngest one.

Q Is the son that lives with you, he would be about 28; is that right?

A Correct.

Q Is he married?

A No.

Q Does he have any children?

A Yes.

Q How many children does he have?

A One.

Q Is that a boy or a girl?
A Boy.
Q How old is the boy?
A He is 7.
Q And the other son who's 30, he lives somewhere else, right?
A He lives in Monroe, North Carolina.
Q Is he married?
A No, he is divorced now.
Q Does he have any children?
A Yes.
Q How many children does he have?
A One.
Q Is that a boy or a girl?
A Girl.
Q How old is that girl?
A 3.
Q Now you mentioned that you met Mr. Gonzalez back in about 1996 when one of your son's was serving a youthful offender sentence, right?
A Correct.
Q And youthful offender generally means, and are you aware that it means, people who are sentenced between ages 17 and 25?
A Yes.

Q Your son was somewhere in that range when he was sentenced?
A Yes, sir.
Q And your exposure to Mr. Gonzalez has been in the context of a prison visitation setting; is that right?
A Yes, sir.
Q You never had a chance -- because he has been in prison all this time it's obvious you've never had a chance to see him out in the community, correct?
A Not out in the community but in the visitation room it's kind of like everybody does what they want to do depending on the facility. Now they have tightened down on the facilities.
Q But you never had a chance to go out with Mr. Gonzalez to a restaurant, have you?
A No.
Q Or go to church with him, other than the Bible study at prison?
A Yeah, the Bible study at prison.
Q And you've never seen him interact with people outside of the prison system, like people in the community outside the prison system, have you?
A I have seen him interact with the visitors that come in.

Q Okay. And at the prison visitation where you have been, there's always been prison guards in the vicinity, have there not?

A They're out front. And then they have one that sits at a desk there.

Q And you've never seen him go off alone with a child at those prison visitations, have you?

A Not alone. I mean I have been with him, while -- I mean but it wasn't his child, you know, it would be like the child wanted a candy bar or something and I would go up there and purchase a candy bar.

Q So you've seen him interact with small children, the families of other prisoners, correct?

A Correct.

Q But it has been in that visitation room with a guard standing nearby?

A Not nearby.

Q In the area.

A In the area, yes, sir.

Q And he has never had a chance to be alone with a child that you know of?

A Well in those visitation rooms they are so large if a person wanted to do any harm they could do harm. Because I have seen a lot of adults doing things that adults shouldn't be doing in a visitation

room.

Q But listen to the question. You never have seen Mr. Gonzalez alone, just him and some child, alone by themselves with nobody else in those visitation rooms, have you?

A I have seen -- because he cannot approach the machines to purchase anything, I have been with him with children.

Q Okay. I'm going to ask you one more time. I don't mean to bear on you, but you need to listen to the question, please answer the question. Have you ever seen Mr. Gonzalez go off alone with a child where he was alone with a child and no one else was near him?

A I can recall him going and picking up some games to play.

Q Did the children go with him?

A Yes.

Q Were they within sight the whole time they were with him?

A Yes, pretty much so. I mean depending on their size and everything. It could have been where, you know, it was a younger child or maybe a child like 5, 6, 7 years old, and it's very crowded in there so.

Q But you never saw the prison guards or whoever was watching the lobby him to go off someplace out of sight with a small child, have you?

A No, sir, it's a confined area.

Q Have you -- how much prisons -- since you met him in 1996, how many prisons has he been in that you know of?

A He was in Turbeville, he was in Evans, he was sent to one over near Clemson somewhere, I know it was a long ways off. But they made a mistake in sending him there, and then they brought him back to Evans. Then he went from Evans to Kershaw. And from Kershaw he was supposed to max out. Which he did max out.

Q Yeah, he's maxed out his prison sentence, right?

A Yes.

Q Did you attend any of his parole hearings?

A No, sir, I did not.

Q Were you aware that he was denied parole a number of times?

A Yes, sir.

Q These crimes that he has pled guilty to, did you discuss these crimes with him?

A Yes.

Q Did he admit doing them to you?
A The one where he is accused of touching the little girl, he was only looking at her sunburn.
Q Well, let's talk about the first one, the one that happened in the K-Mart --
A I think that is the one.
Q Did he tell you that he had done that?
A He told me that he was only looking at her sunburn and he swore he never did anything to her sexually.
Q Did this concern you that he pled guilty to it yet he's telling you something else?
A Well, when the court time comes up they have this way of bribing people. If you'll plead guilty to this, we will drop all of this.
Q But you were never present at any of his guilty pleas, were you?
A No.
Q Because you did not meet him until almost 11 years after they occurred?
A Correct.
Q So you have no idea, do you, what happened at his guilty pleas, other than what he has told you?
A I have a transcript at home.
Q Other than what he told you?

A Well, he told me and what paperwork he has sent to me from the court hearings.

Q But you were not present at those hearings?

A No, I was not present.

Q You were not present when his lawyer gave him legal advice about what to do and what his options were, were you?

A No, sir.

Q Okay. Then the second crime, the crime that happened when he was doing the work at the house when he got the girl in his truck, did you discuss that crime with him?

A Yes.

Q Did he admit to you he had done it?

A Yes, sir, he did admit to that. That was oral sex.

Q I'm talking about touching the girl where he asked to see her suntan and then she lifted up her dress in his truck.

A No.

Q Has he admitted all three of these crimes?

A He has admitted to all three of them, but he has not said he was guilty of all of them.

Q Well, help me out here. How can you admit you've done them and not say you are guilty?

A It was what the attorney wanted him to do so he could get something dropped for a lesser charge.
Q Okay. Now in the crime where he pled to criminal sexual conduct in the first degree, the count one, which talks about having oral sex on this 6-year-old girl, he admitted that to you, he told you he did that?
A Yes.
Q What about the other charges about having -- rubbing his penis up against the girl to the point where his semen was found inside the little girl according to SLED. He discussed that with you?
A Yes, he did.
Q Did that cause you some concern?
A Yes, it did.
Q Certainly that kind of conduct with a 6-year-old girl is bad, is it not?
A Yes, it is.
Q Miss --
A That was during the time that he was having these problems.
Q Spells put on him, right?
A You could call it spells. In my belief I call it the devil wants me to do something. He tries to misguide me and the devil wants me to do something

that's not appropriate. I call it the devil in my religion.

Q You were here yesterday watching this trial, weren't you?

A Yes.

Q You saw Mr. Gonzalez testify?

A Yes.

Q You heard him call it a spell, right?

A Yes.

Q Did he discuss with you where -- did he talk to you about where these spells came from, like his ex-girlfriend put one on him?

A In brief he had.

Q Did he discuss the possibility of these spells ever occurring again?

A He said that they would not occur again because he has given his heart and his sole to the Lord.

Q Okay.

A And he can now.

Q Now you said he was a different person now than when he did these crimes?

A Correct.

Q But you did not know him when he did these crimes back in 1985 and 1986, did you?

A But he told me the type of person he was.
Q Right. So the knowledge you have about what type of person he was back then is based on what he has told you?
A Yes, sir.
Q In a prison visitation room?
A Yes, sir. But I believe him to be telling me the truth.
Q I understand. I understand.
You mentioned that Mr. Dodge, who is sitting back there, has got a room in his home for Mr. Gonzalez to live?
A Yes.
Q So if Mr. Gonzalez is released he is not going to live with you?
A No.
Q Okay.
A I don't believe in anything like that. I believe that he needs to get out and get his life together first. And then, not that I won't be around him or anything because I will be part of helping him, and having him in church and stuff like that.
But I don't believe in shacking up or anything like that.
Q I understand. Do you all still have plans to

get married?

A It is very possible in time but I want to give it time.

Q Okay.

A Because he may see a part of me that he doesn't like.

MR. BOGLE: One moment, Your Honor.

THE COURT: Uh-hum.

MR. BOGLE: Thank you, Ms. Donahue.

Thank you, Your Honor.

THE COURT: Any redirect?

MS. VARNADO: Yes. Thank you, Your Honor.

THE COURT: You may proceed.

REDIRECT EXAMINATION

BY MS. VARNADO:

Q Ms. Donahue, you have a granddaughter and a grandson?

A Yes.

Q And as you know Gilbert, the man he is today, do you have any concerns that he would harm your grandchildren?

A No. No. If I did, he would never ever be around my children -- my grandkids. No. No. I would not let anyone do any harm to my grandchildren. They're my heart and my soul.

And I would not -- you know, I would be protective over children even in my church and everything. Children at school. If I found out that a child was being abused at school or at church I would report it. Because I do not believe in abuse.

I don't care if it's sexual, mental, physical I do not believe in abuse. The child does not ask for this.

MS. VARNADO: Thank you.

RECROSS-EXAMINATION

BY MR. BOGLE:

Q Now your son who's 30 years old, he is the one that has the granddaughter, correct?

A Correct.

Q He is not here today, is he?

A No, he is at work.

MR. BOGLE: Thank you.

THE COURT: Anything further, Ms. Varnado?

REDIRECT EXAMINATION

BY MS. VARNADO:

Q Does your son who's 30, has he met Gilbert?

A He is the one that Gilbert led to salvation. And he is the one that has carried on the life that Gilbert set out an example for him to carry on.

MR. BOGLE: If I may, Your Honor, is it

to take up with the attorneys that will be very brief. Depending on how we are going to proceed, if there is no rebuttal testimony we will be proceeding with closing argument and charge.

I would ask that you be very careful and not to discuss this matter during the break. Please leave your notepads in your seats. The break will be very brief.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Are there any motions now that the defense has rested. Respondent has rests?

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

THE COURT: Any motions?

MS. VARNADO: Your Honor, I just renew my directed verdict motion.

THE COURT: State wish to respond?

MR. BOGLE: Your Honor, we would submit that given the proper legal standard and viewing the evidence in the light most favorable to the non-moving party, the State has met its burden sufficient to go to the jury. Ask the motion be denied.

THE COURT: The motion is denied. The Court relies on its earlier ruling regarding the motion.

There is more than sufficient evidence in the record for the matter to go to the jury.

Is there anything further that we need take up other than charge conference?

MR. BOGLE: Not nothing from the State, Judge.

THE COURT: Anything from the defense before we proceed with charge conference?

MS. VARNADO: No, Your Honor.

THE COURT: I will give the jury a general charge regarding their responsibility and my responsibility. How they are to judge witness credibility and believability. Give a general charge regarding expert witness testimony.

Then I will charge the elements of the sexually violent predator law which we all know well. I will charge Victor versus Nebraska on reasonable doubt. The elements will use Kansas versus Crane language and I will define mental abnormality and likely to engage in acts of sexual violence.

Then give the jury some boilerplate language regarding being fair and impartial. Verdict being -- unanimity of the verdict, et cetera. Then they will be released to begin their deliberations.

Are there any exceptions from the State?

MR. BOGLE: Just that -- and I know it's in

your charge, Your Honor, that as you define the statute you charge the jury that a lewd act on a minor and criminal sexual conduct in the first degree are sexually violent crimes. Other than that --

THE COURT: They're included. I just, in the interest of time, did not go through all of them.

MR. BOGLE: Right. I've heard your charge pretty much --

THE COURT: Both times in the last week and a half.

MR. BOGLE: Pretty much I have heard it.

THE COURT: I would imagine. I pretty much know it by heart myself.

MR. BOGLE: For the record, no exceptions.

THE COURT: Any exceptions from the respondent?

MS. VARNADO: Your Honor, since I don't have the experience of having heard your charge, when you said Kansas versus Crane do you mean that --

THE COURT: The exact verbiage from Kansas versus Crane as required by the Unites States Supreme Court.

MS. VARNADO: That he suffers from a mental illness that he can't sufficiently control without the care and structure provided by the mental health?

THE COURT: Is that the language from Kansas versus Crane?

MS. VARNADO: Your Honor, I'm sorry, I just --

THE COURT: That's okay. It's the exact verbiage from Kansas versus Crane. I did not deviate from it, I put exactly what the Supreme Court requires. And I am referring to the United States Supreme Court.

MS. VARNADO: Yes, Your Honor, and I apologize I'm not clear on exactly what that verbiage is.

THE COURT: That verbiage is that the mental abnormality or disorder, personality disorder, causes him serious difficulty in controlling his behavior.

MS. VARNADO: And the other charges I would put to you are my requested charge number five and number six.

THE COURT: Wait one second for me, I have to look at them. I'm not sure I have them. Give me one moment.

That is verbiage from the Lawfall (phonetic) case and that is not a -- that is dicta, that is not something the Court would charge. The Court is required to charge the applicable law which are the elements. I will charge -- this is a civil commitment proceeding that's what the State's burden

is.

And I will not charge number five, I don't think it's factually appropriate, nor is it within what the accurate statement of the law is. If you want to argue that you can, but I'm not going to charge that.

MS. VARNADO: May I just have that marked for the record.

THE COURT: I'm going to mark all of them.

MS. VARNADO: Thank you. And also six.

THE COURT: Number six, I'm not going to charge that either. That's dicta from that case. I don't think it's an accurate statement of the law. It could very well be taken out of context. It has a tendency, as well as number five, to confuse the jury. The Court's charge is an accurate statement of the law as approved by the Supreme Court, United States Supreme Court.

All of your charges will be marked as Court's exhibits.

MS. VARNADO: And finally, Your Honor, number 12.

THE COURT: I am going to charge the jury how they're to judge witness credibility, believability. I don't think that's an inappropriate charge on the

facts and I will not charge that. I think it would be an inappropriate comment as to whether he has good character or not. And I think what I will charge the jury regarding witness creditability and believability is more than accurate for them to determine credibility and believability of witnesses.

MS. VARNADO: And, Your Honor, I would just point out that in this State versus Lee Griggs, that pursuant to rule 404(A) (1) of the South Carolina Rules of Evidence, that it is admissible evidence and that also a charge --

THE COURT: It is completely admissible and I've allowed you to elicit that testimony. But I'm not -- a charge -- the Court is required to charge the applicable and appropriate laws as supported by the facts of the case.

When it comes to charging regarding witness credibility and believability, the Court has a wide amount of latitude. In this case I just do not believe this is appropriate. And I have a standard charge regarding witness credibility and believability that I use in every case that I think is neutral, it's fact neutral and I think it's an accurate statement of the law. And that is what I will be using.

Your exception will be noted for the record.

MS. VARNADO: Thank you, Your Honor.

THE COURT: You're welcome.

MR. BOGLE: Your Honor, just for the record --

THE COURT: I guess I should have asked, I neglected to do that and I apologize. Let me do this another way. I apologize.

Does the State have any exception to respondent's request to charge number five?

MR. BOGLE: Your Honor, we would move that request to charge number five be denied on the grounds that the language there is based on dicta from the case, not appropriate charge.

THE COURT: And what is the State's position regarding respondent's request to charge number six?

MR. BOGLE: We would object to charge number six based on the fact it is dicta and not law. It's not applicable whether or not he meets the actual standard we have to prove.

THE COURT: What is the State's position regarding respondent's request to charge number 12?

MR. BOGLE: Under the facts of this case, Your Honor, the State's position is that there is -- the facts support your general credibility and believability charge. I do not believe the facts in

Lee Grigg are the same as here. Lee Grigg is a case that as a matter of fact I tried it. And there were a number of character witnesses that testified about Ms. Lee Grigg, about her character in the community, she ran a group home for abused women, a case that had to do with forgery of expenses and transporting women.

So there were a number of character witnesses from out of the community who testified. So we would object to number 12 based on those grounds.

THE COURT: The problem that I have with number 12 is that it draws more attention to one thing than the other. The charge that I give is very general as to how to judge witness credibility and believability. I believe it's very balanced.

I don't like charges that are too factually specific, it takes the Court out of its rule of simply charging the law. This is too factually specific. Basically what you are asking me to do is ask the jury to weigh something else more than something else. And I may not be articulating this as well as I'd like.

I am already going to charge them that they can consider all of these elements, that they're to give it the weight that they think it should deserve

as the fact finder. And I think this actually in some ways would be cumulative. In addition, I believe that my charge is an accurate statement of law and it's sufficient.

Okay, I will mark your request to charge as Court's Exhibit, as one exhibit, Court's next in line.

Is there anything further before we proceed with charge conference?

MR. BOGLE: Nothing from the state, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: Your Honor, if we may have a restroom break.

THE COURT: I will give you that. I need to make sure there is nothing else in terms of the law before we take that break.

MS. VARNADO: No, Your Honor.

THE COURT: We will break until 11:00. And I assume the State has no rebuttal testimony?

MR. BOGLE: No, Your Honor, it does not.

THE COURT: We will resume at that time to closing arguments and charge.

MS. VARNADO: Thank you, Your Honor.

THE COURT: Before we do that I need you all

to look at the verdict form.

Are there any exceptions to the form of verdict from the State?

MR. BOGLE: No, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: No, Your Honor.

THE COURT: Wonderful. You all make sure all of the exhibits are in place and then you all have your break until 11:00.

(Whereupon, a recess was taken.)

THE COURT: You may be seated. Before we get started, before we resume, I wanted to look at the respondent's request to charge number 12 which dealt with evidence of good character just to make sure I was accurate in my assessment.

And I have had, during the break, the opportunity to read the case. And I stand by my original decision. The Grigg case is not factually -- it's factually dissimilar to this case. It was a criminal case, it's not an SVP case. And actually what was the actual language from the case, some of it was presented but not all of it, but the actual language from the case is generally where requested there is evidence of good character, the defendant is entitled to an instruction to the effect that

evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury along with the other evidence in determining the guilt or innocence of the defendant.

So again factually it is not applicable. It's a criminal case. While we employ the beyond a reasonable standard in this case in a civil commitment, this is not a case determining the guilt or innocence of the defendant. So it is factually dissimilar and the Court will use its standard charge on the witness credibility and believability.

Okay. Please -- anything before we bring in the panel? You all made sure all the evidence was in place?

MR. BOGLE: Yes, we did, Your Honor. Nothing further from the State.

THE COURT: Is the State going to open and close?

MR. BOGLE: Yes, Your Honor.

THE COURT: How long do you all expect your arguments to be? I'm not putting a limit on you, I just need to know for purposes of having the jury's lunch delivered, make sure when it gets here it's hot. But again don't feel --

undivided attention. Mr. Bogle, you may proceed.

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

THE COURT: Yes, sir, you may proceed.

MR. BOGLE: Ladies and gentlemen, now we have reached the point, the evidence is in. You heard the testimony from the witness chair. You've got these exhibits which have been put into evidence without objection by anybody. So now the question is to decide has the State met its burden of proof.

Again, Her Honor will charge what the burden of proof is. She will talk about what beyond a reasonable doubt means and I ask you listen carefully to that instruction. Because she tells you the law. She will also tell you the law as regards to a sexually violent predator case.

I would submit to you we have to prove two things to you. First, has the respondent been convicted of a sexually violent crime, and he has. We have a bunch of them over there, we have three of them. We have lewd act on a minor child, another lewd act on a minor child, and the criminal sexual conduct in the first degree. And I will talk about those a little bit more in just a second.

The next thing we have to establish beyond a

reasonable doubt is does he suffer from a mental abnormality or a personality disorder that makes him likely to re-offend in the future if not confined in a secure facility for long-term control care and treatment.

And in this case he has both. He has the mental abnormality, pedophilia, attracted to females. Also the personality disorder was antisocial personality disorder. You heard from Dr. Crawford testifying about that.

Like I mentioned at the beginning when we started this thing, there is an overriding theme in this case and that is risk. What is the risk this man presents? It's compounded by the fact that the crimes he committed were 20 years ago. But where he has been during those 20 years? He has been in prison, or in the county jail.

So all of these exhibits right here that the defense has put in, and I will talk about two of them specific, but what do they tell us? They tell us that in many respects your tax dollars have done for the department of corrections and Gilbert Gonzalez what they're supposed to do. They rehabilitated him.

If he were to get parole or get out, it looks like he has seemed to have learned his lessons as far

as he is a good prisoner. It tells you he has been a good prisoner in the prison system once he got past those early offenses. Remember the offenses he did and his conduct in prison where he got cited for some major disciplinary infractions, once he got past that -- he said it's his faith and if that's what it is that's wonderful -- but once he got past that it seems like he has been a very good prisoner. So your tax dollars have helped that happen.

The question is, this is in a structured situation, it's in a prison. There's guards, there are rules, there are security. It's not out in the community, and that's the problem we have here.

That's where we go back to Dr. Crawford's testimony about the problem he has. I think the word she said was hard-wired when she described his mental abnormality, his pedophilia issue. Think about risk. Look at the crimes.

The first crime he committed, lewd act on child, on June -- when he pled guilty to it on June 4th, 1985 he was on parole for something else. He was under the control of the State, he's supposed to behave himself and what does he do? He commits a lewd act on a 4-year-old girl.

And then the day before he is supposed to be

sentenced on another charge he does it again. So here he is out on bond for the first trial, he's got the sentencing date coming up, and use your common sense. I figure from your common sense you'd know those sentencing dates are scheduled probably several days in advance if not weeks in advance. It's not like his lawyer would have come to court and said, come to court right now.

So the day before he is going to be sentenced for this crime he does it again. This time it also a very young girl, under 6 years of age, I think in his truck.

What is concerning to Dr. Crawford and to the State is these are total strangers. These aren't people he would normally have access to like a family member, these are total strangers. And it happens in a place where he could easily be discovered, like a K-Mart. It's not like he dragged someone off in the woods or a kidnapping or something like that, or take them where they cannot be see. This is a public place, a K-Mart during business hours.

The part of the case where it involved his truck, he was at a house doing some kind of maintenance work there and lures the girl into his truck. So that's the second one.

The third thing is the most serious and, coincidentally, the one he admits to, criminal sexual conduct with a minor in the first degree, 6-year-old child. Now counsel was very good about pointing out that of the four charges he was facing, he got a deal, he only pled to the first one. The first one refers to oral sex on that little girl.

But remember what Dr. Crawford looked at? And she testified that her job in making this analysis, she has got to look at everything, all the records, give the man every benefit of the doubt, collect as much information before you make a decision. And that makes sense, that's how I think all of you would do it.

So what does she do? She finds the SLED lab report which finds evidence of his semen inside that 6-years-old girl's vaginal area. Now he didn't plead guilty to the count that had to do with penetrating her, but, folks, look as what you consider, look at what's out there, what do you think happened.

Now there is the risk. He is on parole, he commits an offense. Out on bond, commits another. And then we have a third. And the fact that he denies the first two should cause you all concern.

Because remember he testified on my

examination, I said, weren't you under oath at that guilty plea? I mean when the Judge takes a guilty plea, she places the defendant under oath, makes sure that the defendant is telling the truth when he responds to all those questions about pleading guilty freely and voluntarily and you know you're guilty and you did it, you're sorry and all that. Put them under oath.

That's the same oath he took here from this witness stand yesterday. So when is he telling the truth? Is he telling the truth then and not now? Is he telling the truth now and not then? That is a risk factor.

He said to Dr. Crawford, he said to us from the witness stand that a spell was put on him, that's what caused this. A spell by an ex-girlfriend. Again, use your common sense. Was he predisposed to do this because he has a mental illness, or are these spells working out there that suddenly are being dropped on you, you go out and do something like this to 6-year-old or a 4-year-old girl.

Now look at Dr. Crawford's testimony. I would step back and look at her. She was appointed by the Court to conduct the examination. Yes, she gets paid for by the State. Her salary is paid by the State

just like mine and probably like the Judge and the court reporter. But the point is she was court-appointed. And I think if you look at her testimony it appeared to the State, appeared to me, and I think you'll agree with me, she tried to be neutral. She looked at everything she had, she tried to give him the benefit of the doubt whereever she could.

For example, when she talked about the psychological test that they administered, the Able Assessment Test and the other test she talked about, she was first to say that she personally doesn't place much stock in them. She uses them to help look for other things she might have missed in her interviews, or maybe point out some red flags she might have overlooked.

Okay. So she is not coming in here and saying, hey, this is a great test and he flunked it. She pointed out the test's weaknesses, she conceded that. So I would submit to you that shows she is trying to be fair to this guy and give him every benefit of the doubt where she could. Despite all that though, she came up with a very firm diagnosis, pedophilia, attracted to females, young children, little girls.

And antisocial personality disorder, that's a personality disorder that he also has. And that is evidenced by not just these crimes, but his prior illegal activity, the robberies that he admitted to on the witness stand, the things she looked at in her analysis.

The defense has introduced into evidence two reports done, one by Dr. Chezno, one by Dr. Schlamer. They're right here, No. 7 and 8, look at them if you want to. But I would submit to you this. Look at the context in which they were done and when. One of them was 16 years ago, one was almost 18 years ago.

And they were done for what reason? He was trying to -- he was in the prison system, been there for a long time, remember he was up for parole, what, how many times, so a dozen, denied every time.

But differently, you can move your custody level up, get more freedoms and more rewards within the structure of the prison system. But each time you do that, you have got to be evaluated. He acknowledged that when I asked him on cross-examination.

That's what these were for. These two guys, one was a psychologist, one was a psychiatrist, they evaluated him to see if he could be trusted enough to

move up to a higher level of custody again within the prison system. They were not sexual evaluations, they were not sexually violent predator evaluations.

And one of them, Dr. Chezno, says, referring to the respondent, says, he readily acknowledges being guilty of the sexual offenses which resulted in his current confinement. Well, was he being truthful to Dr. Chezno but not truthful to us when he was saying he didn't do two of those things? I don't know, when do you believe him? That is a factor of risk.

Dr. Schlamer talked about a history in his youth of using uppers and downers and hallucinogens, as well as alcohol abuse leading to blackouts, saying, quote, it is likely he is addicted.

Now the respondent tried to say that it's easy to get alcohol and drugs in prison. I imagine it is if you know the right people. In prison there are bad prisoners and there are good prisoners. But don't you think that his accessability to those things are much more easy on the outside than they are in the structured setting?

So, what does all this do for us, all these exhibits right here from the defense? These two evaluations don't do anything. Dr. Dunlap's

evaluation also referred to back in 1986, that was to see if he was competent to stand trial, did he know what was going on, could he assist his attorneys in his defense, that's all. Had nothing to do with him being a sexually violent predator. That's when you call in the experts.

If you are going to have your transmission fixed, you don't go to the guy that does the oil change. You call in someone that fixes transmissions. And that's what Dr. Crawford does. she does these types of cases. She has testified as an expert many times in these types of cases.

Now the Judge will tell you, I think, that you're to give the witness as much credibility as you want to. You can believe all of what a witness says, disregard part of it, you can believe none of what a witness says, it's your choice, you are the fact finders. You have got to decide, based on what you've heard.

You've got to observe credibility and demeanor and try to think about things like what they have to gain or lose from their testimony when you're deciding how believable somebody is. I would submit to you that Dr. Crawford's testimony met all the criteria of being very believable.

Now she is an expert witness. She was qualified as an expert based on her training and her education. And I think the Judge will probably tell you that even with expert witnesses you can give them as much weight with their testimony as you want to. You can disregard their testimony.

But I would submit to you that stepping back and looking at everything you've heard, the only expert you've heard from is her. The only one that appeared in this courtroom is her. Now it's also clear from the evidence that the respondent was allowed to get an independent evaluation by a psychiatrist of his choice, Dr. Tom Martin.

MS. VARNADO: Objection.

THE COURT: Please approach.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Overruled.

MR. BOGLE: Thank you, Your Honor.

As I was saying, the respondent, after getting the evaluation done by Dr. Crawford, was entitled to get an independent evaluation and he got one by Dr. Tom Martin. Dr. Martin is not here. I would submit to you that you can draw an inference from his not being here that if he was here his testimony would be

adverse to the respondent's case. Doctor Schlamer, Dr. Chezno, they're not here.

Now what are his plans if released? There was one thing that caught my attention. He testified yesterday about what he's going to do if he is released and he went into helping people and getting a job and doing all these things, didn't say a word about Ms. Donahue. She seems to be a very sincere woman, he did not even mention her until prompted by his attorney when she got up and said, what about a relationship if any, oh, yeah, Ms. Donahue.

And I think Ms. Donahue's situation, I think it's clear that she truly cares for this man. But her experience with him again, just like all of our experiences, are limited to a structured set situation. Her only experience with this man is confined to a visitation room at the state prison.

Absent today is the son of hers that has the granddaughter. Now Ms. Donahue has no problem with the respondent being with her grandchildren, what about the father? He is not here, we don't know why. There is no testimony from Ms. Donahue why he couldn't be here. Her other son couldn't be here because he is working, but nothing about the other one.

Again there is a risk in the inconsistency of what you've heard. There is a risk about these spells. There is a risk about committing crimes when you are under supervision. Dr. Crawford used the phrase, I wrote this down -- and again if I remember something different than you, please rely on your memories of the testimony. I wrote down she said, he had incredible denial as to sexual attraction to children. And that he was hard-wired.

Her diagnosis of pedophilia was that's where this guy is and he just doesn't get it. He does not see the insights, he does not see that that's a problem and that concerns her.

One thing that's a difficult problem with this case, unlike many others, is these crimes happened a long time ago. And that is something you're going to have to consider. He has been in jail over 20 years.

But we still come back to the question was, has he gotten over or somehow gotten past the diagnosis of pedophilia, being attracted to young girls? Has he gotten past that sufficiently to be released, or should he be confined in a secure place for treatment, get treatment, and then maybe then after the treatment works then he get released.

I submit to you, that is what the State is

asking you to do. So, to conclude again, it's a case about risk. Is there a risk of re-offending? Does he suffer from a mental abnormality? Yes, he does. Does he suffer from a personality disorder? Yes, he does. Are they likely to make him re-offend again? The doctor says they were. She is the only expert to testify about that.

In addition, does he pose a menace to the health and safety of others? What are his targets? Young girls. Has he been exposed to young girls? No. He has seen some in the prison visitation room where the security guards were out. He's never been alone with them so we don't know.

So that's the case, ladies and gentlemen. I would submit to you that the State -- go back and look at these things, look at all of this stuff -- I would submit you that we have met our burden in proving both of these elements, the crimes, the mental abnormality, beyond a reasonable doubt.

Thank you, Your Honor.

THE COURT: You're welcome.

Ms. Varnado.

MS. VARNADO: May it please the Court.

THE COURT: You may proceed.

MS. VARNADO: Ladies and gentlemen of the

jury, I thank you for your patience and your attention to this very serious and very important matter for my client.

You know, ladies and gentlemen, as the mother of two children under the age of 5, the crimes with which Mr. Gonzalez or Gilbert was charged, crimes he has admitted to, I mean their heinous. You can't say anything about that. The harming of a child is horrible.

But the point is that is something that took place, that he has admitted that he did, back in 1985. And that he has done considerable work, the work that the penal system wants him to do in attending courses, in attending educational courses, attending sexual offender courses, attending substance abuse courses, attending self-help courses attending religious services, attending courses to help him teach others. To actually not just talking the talk but walking the walk.

He has helped others. Those people who cannot speak English and people who do speak English to learn to read and write. He has helped people to find a path in their religious life. He has helped people, Ms. Donahue testified how he helped put her son on a good path. Helped turn her son away from

gang violence to where the man is a successful electrician today and has not been involved in criminal activity. She credits Gilbert for that. The man that Gilbert is today. Dr. Crawford admitted people can change. Gilbert told you he has changed.

Now let's take a look at what the State needs to do here. The State needs to prove to you beyond a reasonable doubt that Gilbert, if released, would not be able to control himself. That he would harm someone. That there is a great likelihood, beyond a reasonable doubt, that he would go out and do that.

Now this doubt, when we are talking about reasonable doubt, doubt is enough doubt to just give you pause. If you have enough doubt to give you pause the State has not demonstrated that Gilbert is going to go out and likely harm a child. Then you need to come back and find that Gilbert is not a sexually violent predator.

Let's look at Gilbert's honesty on the stand. He tried to tell you, as he tried to tell Dr. Crawford, as he says he told everybody, where in little bits and pieces of those indictments it differs from what he will tell you actually happened. But in the end, he also admits he pled guilty for the charges and he has served his time for the charges.

He tries very hard and his reputation is, as testified by Ms. Donahue, to be truthful, to be honest. He has faced the facts of what he's done.

And he's tried -- and he said it's not something that goes away overnight. He has been working on this and working that and working on his character and working to improve himself and it did not happen overnight. And he was in the prison system from '86 to '97 before he finally got to the point where -- he had come to point where he could control himself and he is not going to act out in anger anymore.

He told you that truthfully. And by the records the State has provided, you'll see their Exhibit 4, he has had no disciplinary infractions since '97. Nonetheless he testified that he has been attacked with a can opener, his things have been stolen, he has been spat upon by other inmates. Did he fight back? Did he react, other than what is appropriate to do, report it to the authorities? He didn't even defend himself, ladies and gentlemen.

Someone who can't control their behavior as Dr. Crawford says, would not be able to control himself in such a way to not react when attacked. Dr. Crawford admits a person can change. Gilbert has

changed, ladies and gentlemen.

The purpose of the prison system is not to just rehabilitate our prisoners, the inmates, to be good prisoners, it's to rehabilitate them to come out and function in society.

And you saw, and I ask you please take a look at the evidence, the documents that we have provided. He had excellent participation in all the activities that he participated in. Including, what is most key to our discussion today, the C-Star programs 1 and 2, that were available to him. Excellent participation, excellent insight, showed great progress in the sexual offender therapy that was available to him in the prison system.

And the point is not from a sexual offender to of the C-Star program to being a good prisoner. The point is to train the individual so that when he is released he can go out in the community and be a good member of the community.

The C-Star 3 program, he was in it for several months and it ended. Because the system ended it, and he never had an opportunity to do it again. But he testified he got a lot out of that portion as well, and that he used that to help him on his path to change.

I'd like to talk now about Dr. Crawford. Dr. Crawford was an enthusiastic witness for the State. It's her job after all. For five years that's all she did. And do the math, ladies and gentlemen, she's testified over 300 times in the course -- over 70 times in sexually violent predator cases during this five-years period where this was her main part of her job.

Of course, at the same time that she was doing the evaluations and testifying in sexually violent predator cases, she also listed on her resume other jobs that she's doing at the same time, being a clinical professor, consulting for SLED and having a private practice.

She's a busy lady, ladies and gentlemen. So busy she did not record how much time she spent with Gilbert. She took no notes of that. Now she tells you that based on what she does in all her other evaluations, it's her practice to spend an hour and a half with folks. Gilbert tells you, he talked to her for half an hour. The rest of the time he is taking tests. Tests, ladies and gentlemen, that she admits because she has to, are not very good and not very reliable.

Ladies and gentlemen, in addition to Gilbert's

demeanor, also take a look at and evaluate Dr. Crawford's demeanor. Obviously someone is on one's best behavior on the stand. I think you can evaluate whether it comes through as to whether -- what her demeanor would be in talking to Gilbert.

Gilbert testified she did not want to hear him talk about religion. And when he tried to talk with her about the way his religious views color how he views and sees what has gone on in his life, she didn't want to hear it. She didn't want to hear it, ladies and gentlemen.

She agreed when I asked her, do you need trust, does a therapeutic relationship, does there need to be trust before people can be open and have a good conversation and she agreed with that. But here is the point. Gilbert told you he felt threatened by her. She threatened him with a lie-detective test. But they never followed through although he was willing to do it.

Gilbert had, from early on in the session with her, the feeling that she didn't believe him. If you don't feel like you are being believed, ladies and gentlemen, I submit that it's very difficult to have a good type of conversation with a therapist. Especially when she tells him right up front,

everything you say I'm going to be able to testify against you, use against you.

You know, on the other hand, we do have evidence of other folks, other professionals who evaluated Gilbert over the years. No, they did not evaluate him under this sexually violent predator act. But they evaluated him in the course and scope of their jobs, and in the course and scope of their professional degrees and learning as psychiatrists and psychologists.

What I am showing you here right now, ladies and gentlemen, is Exhibit 6. This is Dr. Dunlap, he is a psychiatrist. Dr. Dunlap found, Gilbert is not mentally ill, Axis II, he made no further diagnosis of any other mental illness. And the third axis is evaluating his health, hypothyroidism. No pedophilia. No antisocial personality disorder.

Now that's the only other psychiatrist we have a record of evaluating Gilbert except for Dr. Crawford. But there were also psychologists. And you might note in Dr. Crawford's testimony she's very careful to distinguish the people, the folks who evaluated Gilbert who were not psychiatrists like her, pointed out that the other folks who evaluated Gilbert were psychologists. That seemed to make an

important difference to Dr. Crawford.

But I'm going to ask you, I'm going to show you Exhibit 8. This is Dr. Schlamer. Now he is a Ph.D. He is a licensed clinical phycologist. He evaluated Gilbert and Gilbert said he remembers that evaluation and he felt very comfortable with Dr. Schlamer and was able to talk to Dr. Schlamer.

And Dr. Schlamer did not shut him down when he tried to talk about his religious ideology and how that fits into the picture of how he sees himself and how he copes with what he does in day-to-day life, and how he copes with his behavior.

Dr. Schlamer, he talks about the insight in his past sex crimes being unusually good, his judgment is excellent, and his behavior is quite stable. I would anticipate he would not again become involved in this sort of crime as long as he has moderate success at readjustment in the community.

Ladies and gentlemen, it may not have been something that this evaluation was geared to because Gilbert wasn't on his way out of prison, he was on his way to another level of incarceration and therefore it wasn't something that Dr. Schlamer was doing in terms of trying to evaluate him under the statute of violent predator act. But what Dr.

Schlamer did, who is a psychologist, he still evaluated, interestingly enough, the same elements that come under the sexually violent offender act, as to whether he would be successful in coming out or engaging in this crime if he was released in the community.

And I ask you to review the entire report from Dr. Schlamer. He talks about, again if you look in the remarks and recommendations, he talks about his C-Star process with Gilbert. And this man has better insight into his own needs than people I have evaluated who were graduated of C-Star. This man has also made remarkable use of his religious ideas and virtues in the last two or three years to his own great advantage.

In addition, I would like you to take a look and pay attention to the memo or letter written by Muriel Bellow, who was Gilbert's mental health counselor, who he established a good relationship with. Ladies and gentlemen, he sought her out as he testified. And what did he seek her out for? He sought her out for help in addressing his problems that brought him to jail in the first place.

Dr. Crawford said she does not know why Bellow saw him for, and therefore he couldn't give any

credence to this. But Gilbert openly told us this is what he sought her out for.

And, ladies and gentlemen, I paid close attention to it. No, she wasn't evaluating him for under the sexually violent predator act, but again she addresses all of the issues that the State needs to prove. He has set future realistic goals and expressed the determination to return to an appropriate future lifestyle.

He is sincerely remorseful and contrite. He has used his time to develop insightful skills to aid him in self-recognition. Ladies and gentlemen, if he can't communicate that in a way that Dr. Crawford wanted him to, there is still evidence in the record that he was able to communicate that to other people, to other psychologist, to other psychiatrists, to other trained mental health professionals who were sympathetic and willing to listen to him.

Also looking at Dr. Crawford's testimony, very significant in her analysis and her assertion was that Gilbert had not been around young children while in prison. Ladies and gentlemen, we know that's not true. He testified to it. Ms. Donahue testified to it. He was exposed during the visitation periods for years. Parents actually brought their children up

the meet him. But more than that, as Pam explained, there were times when there were children around, he played appropriately with them, played games, he didn't attempt to sneak off with them.

Even though he testified and she testified that during some of those visitation times even adults are doing inappropriate things and are able to do inappropriate things during those visitation times, the point is there is a guard there, but the guard can't watch everybody at once.

The other important thing that Dr. Crawford pointed out is that when Gilbert was in the mental state that he was committing the crimes, the lewd act against young children, he didn't have the control to hide it. Ladies and gentlemen, he approached one girl in a parking lot and another girl at her home with other workers around.

And Dr. Crawford found that very, very important in her analysis. But, ladies and gentlemen, that's also important in the analysis of the fact that he was around young children in this visitation center and was able to control himself and was able to act appropriately around the children.

If he was the man he was in 1985 and 1986 when he committed those crimes, what would stop him?

Being in a K-Mart parking lot? A prison setting with one guard? What would stop him, ladies and gentlemen? What stops him, ladies and gentlemen, is that Gilbert has learned to control that behavior. He has put that behavior away from him.

You can call it an urge, you can call it a demon, you can call it a spell, you can call it a disorder. Gilbert, being the religious man that he is, takes what has happened to him and puts it into a religious context. He can't help himself really, ladies and gentlemen. You saw him on the stand. If a question is asked he almost inevitably will talk about how religion, or his religious beliefs, impact his view or what he is going to say.

It's how he views the world now, ladies and gentlemen. And that is key to your understanding, and what we would have hoped Dr. Crawford could have understood with Gilbert, is that he looks at being possessed, as he testified, possessed by a demon of sexual perversion, that's how he expresses himself.

I submit to you that's not inappropriate. It may not be how psychologists or psychiatrists use the terminology, but the key is that what he has done is he has faced the behavior that possessed him and he, through time and hard work and therapy, has learned

and has armed himself so that he will not participate in that behavior again.

Counsel for the State brought up independent evaluation by Dr. Martin and said that you can infer by the fact that Dr. Martin isn't here that what he would say would be negative. Ladies and gentlemen, the burden of proof, as the Judge will tell you, the burden of proof is on the State. My client does not have to prove anything. It's State who has to prove that he meets the elements of this act. It's the State that has to prove its case.

And, ladies and gentlemen, if Dr. Martin's testimony would have been helpful to the State with all the resources State has available to it, they could have brought him here. And if Mr. Martin's testimony would have helped the State, don't you think they would have brought him? Likewise, they didn't bring Dr. Chezno, Ms. Bellow, Dr. Dunlap, Dr. Schlamer. They didn't bring them. They have the resources.

Now let's talk a little bit about what would happen if you find that the State has proved its burden, has reached its burden, has proved its case. They will tell you it's not punishment, that he is going to long-term care and commitment. But, ladies

and gentlemen --

MR. BOGLE: Your Honor, may we approach?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: You may proceed.

MS. VARNADO: Thank you, Your Honor.

Dr. Crawford testified that there are two places that Gilbert could go. He can go to one place that is on the grounds of the department of corrections, surrounded by the department of corrections guards, department of mental health folks are on the inside but people are still under guard.

There is also a new facility, although Dr. Crawford testified she doesn't know what the criteria is for somebody to get into the new facility, it's just been open a couple of months. But even if he goes to that facility, he is still under guard and he is not free. He is not out. He is not in a position to have a relationship with Pam, to go to the church of his choice, he remains in a confined setting.

And, ladies and gentlemen, the doctor testified he will be there until he goes through another procedure like this and another jury is convinced that he can come out. So it's not even

just a therapeutic decision from his counselors in there, he still has to go through a procedure to get out.

Now counsel for the Attorney General's Office was very straightforward with you in explaining that what the Judge will tell you, that Dr. Crawford issued opinions as an expert, but you do not have afford her testimony any more weight than Gilbert, any more weight than Pam's, any more weight than what is in these other reports.

And, ladies and gentlemen, I submit to you, that you should take into account Dr. Crawford's attitude toward Gilbert, attitude towards his religious beliefs, her motivation as she is an employee of the State. She testified she had a great deal of power when she was working in the sexually violent predator portion of her job. She decided who went to trial or not.

She said, if I said they did not go to trial they didn't go. That's a great deal of power for one person. And that is the lens through which I'd like you to take a look at Dr. Crawford's testimony.

In affording weight to the reports we have here, to Ms. Donahue's testimony, to Gilbert's testimony, I submit to you, ladies and gentlemen,

that the State simply has not proven beyond a reasonable doubt that Gilbert is likely to re-offend, that Gilbert suffers from an abnormality or condition that if released he is likely to offend.

Just doesn't meet that definition of a sexually violent predator of that type that the State designed this statute to keep in custody. The evidence does not support that he would go out and harm children.

He has learned to control his behavior, ladies and gentlemen. And I submit to you that the evidence will demonstrate he has learned to control his behavior, he has demonstrated for more than 10 years that he has learned to control his behavior.

I submit, ladies and gentlemen, if you have heard anything that gives you a doubt, gives you pause, then you must find that the Attorney General hasn't met its burden. And if you are not firmly convinced you must give Gilbert the benefit of the doubt and return a verdict saying that Gilbert is not a sexually violent predator. And that is what we ask you to do. Thank you, ladies and gentlemen.

THE COURT: Mr. Bogle.

MR. BOGLE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. BOGLE: She is right. If you have a reasonable doubt that Gilbert Gonzalez will not re-offend sexually, you should -- and I think the Judge will tell you this -- you should give him the benefit of that doubt. But do you have that doubt based upon what you've heard?

There's all this talk about Pam Crawford spending 30 minutes with the guy. Use your common sense. You heard her testify, she has been doing this for 10 years on sexually violent predator cases. She has done lots of other evaluations, things like competency to stand trial.

Do you really believe, using your common sense, as a professional she would walk in and sit down with who at that point was a total stranger with that big stack of documents she's reviewed and things she had to go over with him and get it all done in 30 minutes? No. This is hardly -- that defies common sense.

Now she does not keep time records, it's not necessary. She does keep time records when a person refuses to be interviewed. If they don't cooperate she knows that time, that's important. It's not that important here because she knows what she is doing,

and she does take the time to administer the test, to evaluate the guy, to interview him, to go through all the documents that she has.

Three convictions, not just the indictments, but she has got the incident reports, she has got copies of the victims' statement, she has the SLED lab reports, a lot of stuff to go over. Do you really think that all happened in 30 minutes? I would suggest not.

Now let me tell you something about subpoenaed witnesses. Subpoenas work both ways. Who introduced into evidence the reports of Dr. Schlamer, Dr. Chezno and that piece of paper undated by Muriel Bellow? The defense did. I would submit to you if it was that bad for them to be here, the defendant would have subpoenaed them and they would be here to talk about what they wrote, but they're not.

Just like Tom Martin. Tom Martin is not here. subpoenas work both ways. Both sides can use them. If he was that important, he would be here, he is not. I suggest that infers to you what he would say.

Now, again this is a problem, these happened a long time ago. But where has he been? All of the exhibits you have to show that he has been a good prisoner. He was a good prisoner when he met with

Dr. Schlamer and Dr. Chezno. He got elevated in the custody status. He appeared as a good prison when he met with Muriel Bellow.

Dr. Dunlap, Dr. Dunlap only saw him to see if he was competent to stand trial, didn't get into anything to do with the issues involving the sexually violent predator. It's an apples and oranges type of thing. They're apples, Dr. Crawford is an orange. She is a specialist in this area and that's what she was recognized to be.

Again we come back to risk. We come back to lack of control. The Judge will tell you, I believe, one of the things you've got to decide is whether or not he lacks sufficient control so that he is a risk to sexually re-offend in a sexually violent manner. And I would submit to you that it's there.

Pedophilia, attracted to juveniles. At no point has he ever had an opportunity to be alone with a small girl. Okay. He saw these young girls at prison visitation, but no truck to put them into, no garage to put them into. Didn't have that opportunity, could not be alone with them so we don't know.

We can only rely upon the person that does know and that's Dr. Crawford. She found this

illness, the illness is there, something that doesn't go away. Pedophilia doesn't go away, it's permanent. But he can be treated. And that's what we are talking about. There is a place for him to be treated.

Let's talk about him not being able to get out before we have another jury trial. I defer to the testimony, but my recollection is Dr. Crawford testified there are two ways you can get out. One, you complete the treatment, you admit you've got a problem, complete the treatment and you are not. Or if you differ and mental health says you shouldn't get out, you think you should, you can get an independent evaluation. If that doctor disagrees with that mental health, he will be come back before a jury. That's the way the law is written.

So that's not your concern. Your concern is has the State met its burden. Has he committed the crimes? Yeah, they're right there. Are these sexually violent crimes? Yes, they are. Does he suffer from a mental abnormality? Yes, he does, pedophilia. Can it be treated? Yes, it is. Will it go away? No, it won't. Is he likely to re-offend because of that? Yes he is. Do we have any proof that he can't? No, we don't. Never been alone with

small children.

Ladies and gentlemen, it's time to come to a verdict, try to put this case to rest. I would ask you to go back there and I think you will find that we have met our burden of proof.

Thank you, Your Honor.

THE COURT: Thank you. Ladies and gentlemen, why don't you stand up and stretch a little bit, get your blood moving a little, circulation moving. You all have been sitting close to an hour.

Madam Forelady, and members of the jury, you have heard the evidence and the arguments of both parties. I will now explain to you the law which applies to this action.

Also, I would remind you that during this trial, ladies and gentlemen, you and I have certain duties to perform. As the trial Judge it is my responsibility to rule upon or pass upon the admissability of evidence offered during the course of this trial.

You are to consider only the competent evidence that is before you. And you are to consider only the testimony which has been presented from the witness stand, along with any exhibits which have been made a part of the record by counsel.

I have the additional duty to charge -- or what we commonly refer to as charge, but probably a lay person would think of it more in terms of instructing you on the law applicable to this case. It is your duty as jurors to accept and apply the law precisely as I now state it to you.

If you have a preconceived idea as to what you think the law is or what the law ought to be in a case and it should not agree with what I now tell you the law is, you are required by your oath to abandon this preconception on your part and apply the law exactly as I now state it to you.

In every cases tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. You are the sole and exclusive judges of the facts in this case.

A trial judge is prohibited by our constitution from having any opinion about the facts in a jury trial. And you should not infer anything from what I have said during the progress of this trial in ruling upon the admissability of evidence, or anything that I say now to you during the course of this instruction, that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts.

Under our constitution and code of laws only you the jury can make the findings of fact. And throughout this trial it has been my intention to be fair and impartial toward each of the parties involved, as well as their attorneys.

To determine the facts in this case you must determine the credibility of witnesses who have testified. Credibility simply means believability. It becomes your duty then as jurors to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one witness over several witnesses, or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety, or reject the testimony of a witness in its entirety.

You may consider whether the witness has an interest in the result of the trial. Whether the witness is prejudiced toward either the State or the respondent. The opportunity for the witness to have seen the matters and things about which the witness may testify. And the way the witness acts on the

witness stand, something we commonly refer to as demeanor. You may ask yourself, what was the manner and appearance of the witness who testified; was he or she straightforward or hesitant in answering; was the testimony of a witness consistent or inconsistent; how did the witness come to know the facts that he or she testified to; or what was his or her ability to know these facts; is there some reason a witness would want to give testimony which would help or hurt one side of the other, in other words was the witness bias or prejudice; and was the testimony of a witness strengthened or weakened by other testimony and evidence.

As I have already instructed, you can believe as much or as little of each witness's testimony as you think proper. You may believe the testimony of a single witness, as I have instructed, against that of many others, or just the opposite. Of course, ladies and gentlemen, you do not determine the truth merely by counting the number of witnesses. You have but one objective, to seek the truth regardless of its source.

I instruct you that the rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule

exists for witnesses we call expert witnesses. A witness who by education, training or experience has become an expert in some art, calling or profession, as well as -- let me restate that. A witness who by education, training and experience has become an expert in some art, science or profession, may give an opinion as to the subject the witness claims to be an expert, and may also give the reasons for that opinion.

You should consider any expert opinion given by a witness like any other evidence. Give it the weight you think it deserves. If you decide that an expert witness's opinion is not based on sufficient education and experience, or if you decide that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. And you do not have to accept an expert's opinion even though it may be uncontradicted.

The State has brought this action, or this case, under the sexually violent predator law of South Carolina. The State seeks the involuntary

civil commitment of the respondent for long-term control, care and treatment in a secure facility. It is not criminal proceeding seeking incarceration, but rather is a proceeding seeking civil commitment.

The State of South Carolina alleges or claims that respondent, Gilbert Gonzalez, is a sexually violent predator under the law. The respondent denies that he's a sexually violent predator. And the burden of proof is therefore on the State to prove by evidence sufficient to satisfy each of you beyond a reasonable doubt that the respondent is a sexually violent predator.

If the State is unable to meet that burden of proof as to one or more of the elements of this claim, the respondent is entitled to a finding that the respondent is not a sexually violent predator. In most civil cases tried in the Court of Common Pleas, the State only has the burden of proving its claim by the greater weight or the preponderance of the evidence, what we refer to as the more likely than not standard.

However, in this case, type of case under this particular statute the State's burden must be much greater than that. Here it must be beyond a reasonable doubt. Proof beyond a reasonable doubt is

proof that leaves you firmly convinced. There are very few things in this life that we know with absolute certainty, and the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence you are firmly convinced that the respondent is a sexually violent predator, then you must return a verdict in favor of the State. If, on the other hand, you think there is a real possibility that the respondent is not a sexually violent predator, you must give the respondent the benefit of that doubt and return a verdict for the respondent.

Before the State is entitled to a verdict, each and every one of you must be convinced beyond a reasonable doubt that the State has proven each of the elements of its claim beyond a reasonable doubt as I have just instructed and defined that term for you.

The elements which the State must prove in this case beyond a reasonable doubt are that the respondent has been convicted of a sexually violent offense. I instruct you that lewd act upon a minor and criminal sexual conduct with a minor in the first degree are sexually violent offenses as defined by South Carolina law.

The State must also prove that the respondent suffers from a mental abnormality or personality disorder that makes the respondent likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. Inherent in these two elements, the State must prove the requirement that the respondent's mental abnormality or personality disorder causes him serious difficulty in controlling his behavior.

In order for you to better understand the two elements of the State's cause of action, I am going to define for you some of the terms which I have just used. Mental abnormality means a mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sexually violent offenses. This mental abnormality or personality disorder must cause the respondent serious difficulty in controlling his behavior.

Likely to engage in acts of sexual violence means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others so that he is dangerous to others.

Again, ladies and gentlemen, I remind you that the burden of proof is upon the State to prove to

your satisfaction beyond a reasonable doubt that the respondent in this case has been convicted of a sexually violent offense as I have instructed you, and also suffers from a mental abnormality or personality disorder that makes the defendant likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment.

If the State carries its burden of proof and convinces you beyond a reasonable doubt as to each of these two elements of its cause of action, the State is entitled to a finding that the respondent is a sexually violent predator. If the State does not meet that burden of proof as to one or both of these elements, the respondent is entitled to a finding by you that he is not a sexually violent predator.

Whatever your decision, ladies and gentlemen, your verdict must be a unanimous one, which means that all 12 of you must agree.

Ladies and gentlemen, you have been selected as fair and impartial jurors, sworn to impartially try the facts of this case. And when you do so, you would have complied with your oath and no one will have the right to criticize your verdict, and you will have fully discharged your duty as jurors.

You should not be influenced by opinions or expressions of opinions, if any, which you may have heard outside of the evidence of this case, but you are to decide this case according to the testimony you've heard from the lips of the sworn witnesses and any other evidence that has been introduced in the record.

There are two possible verdicts in this case. There is no significance whatsoever to the order in which I list them, simply that one has to be listed first. This will go into the jury room with you so you don't have to try to write it down.

It reads as follows: Has the State of South Carolina proven beyond a reasonable doubt that Gilbert Gonzalez is a sexually violent predator under the South Carolina sexually violent predator act? We the jury unanimously answer the question as follows: Your first option is yes, Gilbert Gonzalez is a sexually violent predator. Your other option is no, Gilbert Gonzalez is not a sexually violent predator.

Again there is absolutely not significance to the order in which these verdicts are listed. As I have instructed all 12 of you must agree in order to reach a verdict. Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other

consideration that is not found in the evidence of this case.

Madam Forelady, when the jury reaches a verdict, it will be your responsibility to fill out the verdict form, to sign and date it, and to knock on the door and advise the bailiffs that you all have reached your verdict.

It will also be your responsibility that if the jury has any questions during deliberations to write out those questions, and to again knock on the door and advise the bailiffs that the jury has a question and to give the note to them.

Ladies and gentlemen, if you have a question during deliberations, please know that there will be a delay in our response. And that is because we have a procedure that we must use in answering your question. So if you have a question and there is a delay, know that we are simply adhering to that procedure and that we are not ignoring you.

I'm going to ask that you return to the jury room. But please do not yet begin your deliberations. I have some matters of law that I need to take up with the attorneys that may require further instruction or clarification of an instruction.

However, if there is no further instruction we will send in the evidence, the verdict form and your notepads and at that time we will excuse the alternate. Hopefully your lunch will be here shortly. We appreciate your patience, if you would go with the bailiffs, leave your notepads in your seats and do not yet begin your deliberations.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Are there any exceptions to the Court's charge from the State?

MR. BOGLE: There are none, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: Just renew again my previous --

THE COURT: Those are noted for the record. Any additional exceptions?

MS. VARNADO: No additional, Your Honor.

THE COURT: Please bring in the alternate and don't collect the alternate's notes but collect all the other notes for me. Get those together first and the evidence for me.

MR. BOGLE: All the exhibits are in order, Your Honor.

THE COURT: If you would take in the evidence and the verdict form and the notepads and bring out the alternate for me, please.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Madam Forelady, is it correct that the jury has reached a verdict?

A JUROR: Yes, Your Honor.

THE COURT: If you would give the verdict form to the bailiff for me, please.

If you would publish the verdict, Madam Clerk.

THE CLERK: State of South Carolina, County of Charleston, in the matter of the care and treatment of Gilbert Gonzalez respondent, Court of Common Pleas, case number 06-CP-10-783.

Has the State of South Carolina proven beyond a reasonable doubt that Gilbert Gonzalez is a sexually violent predator under the South Carolina sexually violent predator act? We the jury unanimously answer the question as follows: Yes, Gilbert Gonzalez is a sexually violent predator. Signed Ms. Washington, Foreperson, February 12, 2009.

Madam Forelady and ladies and gentlemen of the jury, if this is your verdict please raise your right hand.

(Whereupon, all jurors so indicate.)

THE CLERK: Thank you.

THE COURT: Are there any requests to poll the jury from the State?

pleased to tell you that I can excuse you for the remainder of the week. If any of you need work excuses we will provide those for you, you just need to go to the first floor to the clerk's office and they will have them for you. Otherwise they will be mailed to you tomorrow along with your checks.

You are welcome to discuss this case if you would like. By the same token you are welcome not to discuss the case. If someone should persist in trying to talk to you, please notify us so that we can take whatever action is necessary to protect your privacy.

You are excused with the Court's thanks. Have a wonderful weekend.

I'll hear post-trial motions shortly.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Are there any post-trial motions from the State?

MR. BOGLE: No, Your Honor.

THE COURT: From the respondent?

MS. VARNADO: Yes, Your Honor. First the respondent moves for a JNOV pursuant to Rule 50, move to have the verdict set aside and judgment entered in accordance with our direct verdict motions, and our assertions that the State did not meet its burden

beyond a reasonable doubt of the elements of the crimes alleged -- of the statute to satisfy the statutory requirements.

THE COURT: Is there anything from the State?

MR. BOGLE: State would response asking the motion be denied. I think it would be, given the facts of this case, it would not be appropriate for the Court to substitute its judgment as the fact finder. The jury evaluated all the evidence, we submit the evidence was sufficient to establish both elements of the statute beyond a reasonable doubt.

THE COURT: When considering a motion for judgment notwithstanding the verdict, the Court is required to look at the sufficiency of the evidence to support the jury's finding. I would find for the record that there is more than ample evidence to support the jury's finding. This was a credibility case, it came down to who the jury believed. And that is solely within their fact finding province.

It is not for the Court to substitute its judgment for that of the jury. And in this instance nor would I. I believe there is evidence established by the State by its standard, which is clear and convincing evidence, that the respondent in this matter was convicted of a sexually violent offense

and that he possesses -- that he suffers from a mental abnormality or personality disorder that makes the respondent likely to engage in acts of sexual violence if not confined in a secure facility for long-term care, control and treatment.

And that the State has proven beyond a reasonable doubt that his mental abnormality or personality disorder causes him serious difficulty in controlling his behavior pursuant to Kansas versus crane.

MR. BOGLE: Your Honor, if I may.

THE COURT: One second, let me finish then I will let you do that.

The Court is required to consider the evidence in the light most favorable -- and actually strike that, I did not mean to say that.

The case law is very clear that the factual finding of the jury should not be disturbed unless a review of the record discloses no evidence which reasonably supports its findings, and the respondent cannot meet that burden. Therefore the motion for judgment notwithstanding the verdict is denied.

Yes, sir, Mr. Bogle.

MR. BOGLE: I apologize, your Honor, maybe I'm wrong but in the first part where you talk about the

State meeting its burden you used the word preponderance of the evidence. I think you meant to say beyond a reasonable doubt.

THE COURT: I thought I said beyond a reasonable doubt. Did I say preponderance?

MR. BOGLE: Clear and convincing I think it was.

THE COURT: I'm sorry, I meant to say beyond a reasonable doubt. I apologize.

MR. BOGLE: You said beyond the second time.

THE COURT: I intended to, I am sorry if I didn't. That was my intention.

MR. BOGLE: Thank you, Your Honor.

THE COURT: You're welcome.

Is there anything further from the respondent?

MS. VARNADO: Yes, Your Honor.

In addition we make motion under Rule 59 for a new trial based on your failure to charge the evidence of good character should be considered by the jury as set forth in my request to charge number 12, and also in allowing the attorney general to make reference to and tell the jury they could draw a negative inference from the respondent not bringing Dr. Martin to testify.

In addition, based on the grounds of your

failure to charge our requests number 5 and 6 which while not statutory law, I believe to be a correct statement of the case law going to the State's burden and to aid the jury in understanding the statute which they were considering.

And I submit, Your Honor, that both individually and as a whole these errors constitute harm and prejudice to my client such that he is entitled to a new trial.

THE COURT: Mr. Bogle, would you like to respond?

MR. BOGLE: Yes, Your Honor. With regard to the issue of the two jury charges, five and six, we would submit that those jury charges were proposed dicta not law, and the Court correctly charged the applicable law, especially in the Kansas versus Crane standard.

Regarding the charge having to do with the issue of credibility, I think the Court was correct in distinguishing the Lee Grigg case from the situation at hand in that Lee Grigg was a case involving a criminal case whether or not a person was found guilty of that offense.

Regarding the issue of commenting on Dr. Martin's failure to be here, might have been adverse

-- his testimony might have been adverse to the respondent, I would submit the Court's evaluation of this being a civil case, the cases allowing the comment on failure of retain experts to testify in civil cases is consistent with the Court's ruling. And I would request that the motion be denied, request for new trial be denied.

THE COURT: Motion for new trial is denied. There is no basis in the record for granting a new trial. Taking the arguments in their -- I will take them in the order that they were argued.

As regards to respondent's request to charge five and six, they were comprised wholly of dicta. They were not holdings of the case. The Court charged the applicable law.

As regards to number 12, the facts of that case were inapposite to the facts of this case, it's not factually applicable. It would not have been appropriate to charge. In a criminal case I might have been inclined, it's actually similar to chart that language. But in this case it is not factually appropriate to charge, not supported by the facts presented in this case, nor was it supported in case law.

The case cited in request to charge number 12

is a criminal case where the Court instructed that such evidence was admissable. The Court of course allowed that evidence in this case, it did not disallow it. However, the Court was very limited in its finding. It found that it was appropriate to determine the guilt or innocence of the defendant and that is not what we were determining in this case.

This case determined whether the defendant was a sexually violent predator, and whether he should be civilly committed. And I'll stand by the Court's earlier ruling which was a little more detailed. In the interest of time, I'll make the findings as I have stated for the purposes of this motion, however I will incorporate my previous ruling on the matter of respondent's request to charge number 12 as being factually not supported by the facts in this case to charge that language.

The Court's charge encompassed the applicable and prevailing law as regards to this type of case, as well as how jurors are to judge witness's credibility and believability. The charge as a whole is -- was appropriate and the Court finds that forms no basis for a motion for a new trial.

Now as regards to the State being able to argue regarding the absence of evidence, in any

context, be it civil or criminal, the parties can always argue the absence of a witness, there is always an inference that that witness may have had something to say that it was not beneficial.

The State and respondent availed themselves both of such argument, and in both their closing, in both of them, their closing arguments, they both argued regarding the absence of witnesses and the absence of evidence. And the Court does not see any error in either of it being argued. In addition to that, while there was not a motion made regarding the relevance of the testimony, it has been couched in that language, the Court would find specifically for this record that the testimony was not outweighed by any possible prejudice, that it was more probative than prejudicial. Otherwise the jury would have been left with the impression that the respondent was only evaluate once, and that was the only evidence that was out there regarding his evaluation and that would be misled them because it was not true.

And the State appropriately asked him about it, and they were entitled to argue regarding the absence of that witness. In addition to likewise the respondent being able to argue that the State did not call any of the respondent's witnesses who had

evaluated him, and likewise the jury could infer that these witnesses would not have had anything beneficial to say as regards to the State's theory.

The Court would find the verdict of the jury is fully and wholly supported by the evidence, and that there is no basis for the Court to grant a new trial and therefore the motion is denied.

Are there any further motions from the State?

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

THE COURT: From the respondent?

MS. VARNADO: No, Your Honor.

THE COURT: Okay. We will do a form 4 indicating that the jury found unanimously that the respondent is a sexually violent predator. I will also do an order committing him to the department of mental health for long-term care, control and treatment.

If you all would wait a few minutes my clerk will get you conformed copies of those orders.

It will also be noted that post-trial motions were heard and denied. It will take less than five minutes.

It was a pleasure. You all have a wonderful day.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 06-CP-10- 783
)	(NON-JURY)
IN THE MATTER OF THE CARE)	
AND TREATMENT OF)	PETITION PURSUANT TO THE
GILBERT GONZALEZ,)	SEXUALLY VIOLENT PREDATOR ACT
RESPONDENT.)	
)	

FILED
2006 FEB 14 PM 2:28
JULIE ARMSTRONG
CLERK OF COURT
BY

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. § 44-48-10 et seq. (Supp. 1998).

2. Respondent, Gilbert Gonzalez, was confined in the South Carolina Department of Corrections on or after November 5, 1986, pursuant to a conviction for an offense set forth in S.C. Code § 44-48-30(2) (Supp.1998).

3. The South Carolina Department of Corrections, having determined that Respondent had been convicted of a Sexually Violent Offense, referred Respondent to the "Multi-Disciplinary Team" for assessment pursuant to S.C. Code Ann. § 44-48-40 (Supp. 1998). Respondent's max-out date is January 8, 2007, but he is pending supervised furlough release July 12, 2006.

4. The Multi-Disciplinary Team on January 19, 2006 determined after assessment that Respondent satisfied the definition of "Sexually Violent Predator" as set forth in S.C. Code Ann. § 44-48-30 (Supp. 1998), and referred Respondent to the "Prosecutor's Review Committee" for a determination pursuant to S.C. Code Ann. § 44-48-60 (Supp. 1998) as to whether probable cause exists to believe Respondent is a Sexually Violent Predator (see attached Petitioner's Exhibit #1). The assessment of the Multi-Disciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.

5. The Prosecutor's Review Committee on February 17, 2006 determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute (see attached Petitioner's Exhibit #2). The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multi-Disciplinary Team including any information provided by the agency that prosecuted the qualifying offense.

6. The Petitioner now alleges that Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. § 44-48-30(1) (Supp. 1998), to wit:

(a) On or about November 5, 1986, Respondent pled guilty in the Court of General Sessions for Charleston County to Criminal Sexual Conduct with a Minor in the 1st Degree and Lewd Act upon a Minor under the age of Sixteen in violation of South Carolina Code of Laws Sections 16-3-655(1) and 16-15-140, which are statutorily delineated sexually violent offenses, and was sentenced to thirty (30) years incarceration for Criminal Sexual Conduct with a Minor in the 1st Degree and ten (10) years incarceration for Lewd Act upon a Minor under the age of Sixteen with a consecutive sentence structure.

(b) Sufficient evidence exists or will exist to determine that Respondent suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, and that the Respondent has serious difficulty in controlling his behavior, or sexual desire impulses.

(c) In support of the State's allegations that the Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following:

i. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." Kansas v. Hendricks, 521 U.S. 346, 358, 117 S. Ct. 2072, 2080 (1997).

ii. The Respondent's instances of violent and non-violent behavior are:

A. The basis of the aforementioned 1986 conviction for Criminal Sexual Conduct with a Minor in the 1st Degree was the sexual assault of a six year-old girl (see attached Petitioner's Exhibit #3). Respondent was working at the Victim's residence installing carpet. The Victim was playing in the yard of her residence when Respondent called her into the garage and told her to lie down. Respondent performed cunnilingus on the Victim. Victim then returned to playing in the yard. Respondent again called the Victim into the garage, told her to lie down, and then told her to "open her legs." Respondent performed cunnilingus on the Victim a second time and also rubbed her vaginal area with his penis until he ejaculated.

Respondent told the victim not to tell anyone about the assault. Respondent was originally charged with two (2) counts of Criminal Sexual Conduct with a Minor, Assault with Intent to Commit Criminal Sexual Conduct with a Minor in the 1st Degree, and Lewd Act upon a Minor under the age of Sixteen. Respondent pled guilty to one (1) count of Criminal Sexual Conduct with a Minor in the 1st Degree and was sentenced to thirty (30) years incarceration.

B. The basis of the aforementioned 1986 conviction for Lewd Act upon a Minor under the age of Sixteen was the sexual assault of a five year-old girl (see attached Petitioner's Exhibit #4). Victim was visiting at her grandmother's residence. Respondent was working at a residence across the street from the victim's grandmother's residence installing flooring. Respondent told the Victim to get in a truck. Respondent asked the Victim if she was sunburned. The Victim replied no and pulled her blouse up to expose her stomach. Respondent then pulled the Victim's pants and underwear outward. Respondent reached into the Victim's pants and underwear and touched her vaginal area with his fingers. A witness saw the Victim in the Respondent's truck and unaware of the assault called for the Victim to leave the truck. Respondent was sentenced to ten (10) years incarceration for this offense. This offense occurred while Respondent was on bond for the offense discussed in C, infra, and one day prior to Respondent being sentenced for the offense discussed in C, infra.

C. On June 4, 1985, Respondent pled guilty to Lewd Act upon a Minor under the age of Sixteen for the sexual assaults of a four year-old girl and an eight year-old girl (see attached Petitioner's Exhibit #5). Respondent approached the Victims in a K-Mart and asked to see their underwear. The Victims refused. Respondent then pulled up the skirt of the four year-old girl, put his hand inside her underwear and fondled her vaginal area. The eight year-old victim witnessed this sexual assault on the four year-old victim. The Respondent was sentenced to nine (9) months incarceration for this offense.

D. On February 11, 1986, Respondent was convicted of Driving under the Influence and was fined $216. The facts of this conviction are not known.

E. On February 27, 1979, Respondent was convicted of Robbery

and was sentenced to five (5) years incarceration. The facts of this conviction are not known.

F. On April 13, 1982, Respondent was arrested and later convicted of Robbery and was sentenced to five (5) years incarceration. The facts of this conviction are not known.

iii. The facts of the Respondent's offenses indicate the existence of a mental abnormality in that they involve recurrent sexual behaviors involving a prepubescent child or children recurring over a period of at least six months.

iv. Respondent did complete Phase I and Phase II of the Sex Offender Treatment program while incarcerated in the South Carolina Department of Corrections. However, the Respondent did not complete Phase III of the Sex Offender Treatment program due to a staff departure and has participated in the Intensive Residential Treatment Unit (see attached Petitioner's Exhibit #6).

v. A psychological evaluation dated November 6, 1992 stated, "[Respondent] minimizes problems, difficulties, and resentments. In doing so, he fails to address these matters in ways which might allow additional self-improvement. He appears to be investing a good deal of energy into establishing a lofty self-image which may exceed his actual conduct, progress, and effectiveness." This evaluation also indicated that Respondent was sexually abused as a child and that Respondent abused alcohol in the past. (see attached Petitioner's Exhibit #7).

vi. Respondent has committed four disciplinary infractions during his incarceration in the South Carolina Department of Corrections (see attached Petitioner's Exhibit #8).

vii. An Office Memorandum dated November 6, 1986 states, "The sentencing judge, Judge Paul Moore, told [Respondent] that he was only sorry that he could not impose the death penalty for his crimes" referring to Respondent's sentences for his 1986 qualifying convictions in ii.A. and ii.B., supra. (see attached Petitioner's Exhibit #9).

viii. Notes dated April 1, 1992 indicate Respondent stated his offenses were "not something I enjoyed, just couldn't help myself." (see attached Petitioner's Exhibit #10).

ix. Known risk factors increasing the Respondent's likelihood to re-offend include: 1) Never legally married; 2) Not related to victims; 3) Stranger to victims; 4) Prior non-sexual convictions; 5) Four (4) or more prior sentencing dates; 6) Prior sexual offenses; 7) Length of sexual offending history one (1) to six (6) years; 8) Offense committed in a public place; 9) Multiple acts on a single victim within a single contact event; 10) Pattern of substantial substance abuse; 11) Four (4) major discipline reports while incarcerated; 12) Multiple victims; 13) Victims age eleven (11) or younger; and 14) Offender history of child abuse.

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent is a Sexually Violent Predator and Order:

1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined;
2. the Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;
3. a hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, if he is not already in custody;
4. counsel be appointed for Respondent if necessary;
5. if probable cause is found at that hearing, that Respondent remain in custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;
6. the Court approve a qualified expert for such an evaluation if probable cause is found;
7. if probable cause is found, a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator, that he be committed to the custody of the South Carolina Department of Mental Health for control, care, and treatment until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. § 44-48-10 et seq. (Supp. 1998)., and,
8. for such other and further relief as the Court deems just and proper.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

BRANDY A. DUNCAN
Assistant Attorney General

By: Brandy A. Duncan
Attorneys For Petitioner
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3301

February 22, 2006
Columbia, South Carolina

Exhibit 1

238

SEXUAL PREDATOR REFERRAL FORM

Offender Name: GILBERT GONZALEZ	Offender Number: 137398	Jurisdictional Agency: SCDC
Age: 47	County: CHARLESTON	Qualifying Offense(s): Guilty Plea:____ Trial:____
Gender: Male	No. of Incarcerations: 4	Criminal Sexual Conduct 1st, Lewd Act on Child Under 14

Adult Sentence: 40 years / Consecutive Structure	Parole Eligibility Date:	Max-Out Date: 01/08/2007
Juvenile Guidelines:	Parole Release Date:	SFII Date: 07/12/2006

Pending Supervised Furlough release. Initial indictment was for CSC w/ Minor, 1st (2 counts), Asslt. w/ Int. to Commit CSC w/ a Minor, 1st, & Lewd Act on a Minor (2 counts). Pled to 1 count each CSC, 1st & Lewd Act Upon a Child.

The review of this case is based on the offender's records which include, but are not limited to, the following information: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors. Findings are strictly based on the legal criteria set forth in Section 44-48-30 of the Sexually Violent Predator Act, and are not to be interpreted as a clinical assessment.

		REFER TO PRC? YES	NO	ABSTAIN
_____	SCDC CHAIRPERSON	✓	___	___
_____	SCDPPPS	___	___	___
_____	DMH	___	✓	___
_____	JDG	✓	___	___
_____	ATTORNEY	✓	___	___

MULTIDISCIPLINARY TEAM

The offender's records were assessed by the Multidisciplinary Team on January 19, 2006, and based upon that assessment, we find that:

✓ The offender satisfies the definition of a sexually violent predator and a review by the Prosecutor Review Committee is warranted.

____ The offender does not satisfy the definition of a sexually violent predator and a review by the Prosecutor Review Committee is not warranted.

RECEIVED
JAN 2 6 2006
ATTORNEY GENERALS OFFICE

Exhibit 2

PROSECUTOR'S REVIEW COMMITTEE
PROBABLE CAUSE DETERMINATION

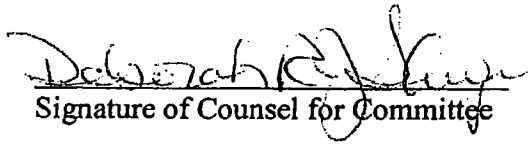
INMATE NAME:	INMATE NUMBER:	PRC REVIEW DATE:
GONZALEZ, Gilbert	137398	February 17, 2006 MEMBERS PRESENT: John McIntosh for Henry Dargan McMaster BeeBe James Jerry W. Peace

DATE RECEIVED FROM MULTIDISCIPLINARY TEAM: January 23, 2006

The Multi-Disciplinary Team referred this case to the Prosecutor's Review Committee pursuant to S.C. Code Ann. § 44-48-50, for review to determine whether probable cause exists to believe this person is a sexually violent predator. S.C. Code Ann. § 44-48-60. The Prosecutors Review Committee reviewed all information received from the Multi-Disciplinary Team, including without limitation: documentation of the qualifying offense as well as other sexual assault(s) or criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors.

PROBABLE CAUSE DETERMINATION:

By a vote of 3-0, the Prosecutor's Review Committee found probable cause to believe that this individual has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.



Signature of Counsel for Committee

Exhibit 3

SENTENCE

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

CASE NO. 86-GS-10-1538

THE DEFENDANT Hilberto Zubia AKA Gilbert IS COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS/COUNTY FOR A TERM OF 30 ~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF $_____; PROVIDED UPON THE SERVICE OF _____ MONTHS/YEARS AND/OR PAYMENT OF $_____, PLUS PAY/WAIVE COST AND ASSESSMENTS AS APPLICABLE*, THE BALANCE SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS. I recommend treatment Presiding evaluation White incarcerated.

RESTITUTION

YES/NO

FOR PHYSICAL INJURY$ _____

TO BE PAID _____ PROPERTY DAMAGE$ _____

TO CLERK FOR _____

OTHER CONDITIONS _____

DATE Nov 5, 1986

Paul M. Moore
PRESIDING JUDGE

*COST AND ASSESSMENTS
NON-WAIVABLE $ 0
NOT WAIVED $ 0
TOTAL $ 0

[signature]
DEPUTY CLERK OF COURT

** PAY TO VICTIM'S COMPENSATION FUND IF SUBROGATED
SCCA form 217 (3/86)

RECEIVED
NOV 12 1986
LR & EC

ATTEST A TRUE COPY
HOWARD A. TAYLOR (SEAL)
CLERK, C.F. & L.S.
By [signature]
DEPUTY CLERK

FORM 5

The State of South Carolina

County of CHARLESTON

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree
AND
CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree

At a Court of General Sessions, convened on the 4th day of August,

19 86, the Grand Jurors of CHARLESTON County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree
COUNT ONE

That GILBERT GONZALEZ, AKA HILBERTO ZUBIA AND GILBERT ZUBIA

did in CHARLESTON County on or about the 28th day of APRIL,

19 86, engage in sexual battery to wit: cunnilingus upon [redacted] date of birth, June 2, 1979, said being in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended.

CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree
COUNT TWO

That GILBERT GONZALEZ, AKA HILBERTO ZUBIA, AND GILBERT ZUBIA

did in CHARLESTON County or about the 28th day of APRIL,

19 86, engage in sexual battery to wit: penile penetration of vagina of [redacted] date of birth, June 2, 1979, said being in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

/Carl

ASSISTANT Solicitor

244

The State of South Carolina

County of CHARLESTON

INDICTMENT FOR

CT 3 ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree AND

CT 4 LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on the 4th day of AUGUST, 19 86, the Grand Jurors of CHARLESTON County present upon their oath:

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree

COUNT THREE

That GILBERT GONZALEZ, AKA HILBERTO ZUBIA, GILBERT ZUBIA

did in CHARLESTON County on or about the 28th day of APRIL, 19 86, did assault with intent to commit criminal sexual conduct with a minor, first degree by attempting to commit sexual battery, to wit: attempted to have sexual intercourse with [redacted] date of birth, June 2, 1979, in violation of Section 16-3-655 of the South Carolina Code of Laws (1976) as amended and in violation of Section 16-3-656 of the South Carolina Code of Laws (1976) as amended.

LEWD ACT UPON A MINOR

COUNT FOUR

That GILBERT GONZALEZ, AKA HILBERTO ZUBIA, GILBERT ZUBIA

did in CHARLESTON County or about the 28th day of APRIL, 19 86, wilfully and lewdly committed or attempted to commit a lewd and lascivious act upon or with the body, or a part or member thereof of [redacted] date of birth, June 2, 1979, with the intent of arousing, appealing to or gratifying lust or passions or sexual desires of defendant or such child, in violation of the South Carolina Code of Laws Section 16-15-140 as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

ASSISTANT Solicitor

~~86-06-KO-1448~~

86-GS-10-1538

Witnesses

COURTENAY MCDOWELL

KRYGIER MPPD

Verdict

Foreman

The State of South Carolina

County of CHARLESTON

COURT OF GENERAL SESSIONS

AUGUST Term, 19 86

THE STATE

VS.

GILBERT GONZALEZ AKA

HILBERTO ZUBIA AND GILBERT ZUBIA

DOA: APRIL 29, 1986

AW#: B 314561 and B 314562

COMMITTED TO JAIL 04-28-86

INDICTMENT FOR

CT 1 CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree

CT 2 CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree and

CT 3 ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT WITH A MINOR 1st degree and

CT 4 LEWD ACT UPON A MINOR

True Bill

Foreman of Grand Jury

Henry Smyrski

McCAW PRINTERS, COLUMBIA, S. C. 29205.

Name GILBERT ZUBIA

ADDRESS

Race HIS. Sex M

Date of Birth Age 28

SSN

Attorney

I/WE APPEAR IN PERSON AND PLEAD GUILTY TO THE WITHIN INDICTMENT.

COUNT ONE

x Gilbert Zubia

Deputy Clerk

WITNESS DATE 11-5-86

WRCI 127634

Nol Pros.

246 STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

B314562
AFFIDAVIT

Personally appeared before me, a magistrate of this County, one Inv. J. Krygier who, first being duly sworn, deposes and says that (name of defendant)

Hilberto Zubia aka Gilbert Gonzalez

did within this County and State on the 28 day of April, 1986 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE 16-3-655

The affiant states that there is probable cause to believe that the defendant named above did committ the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about 4-28-86 at approximately 6:30 p.m. at the residence of 1121 Inlet Cove Town of Mount Pleasant, County and State aforesaid the defendant one Hilberto Zubia aka Gilbert gonzalez did commit the offense of CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE violation section 16-3-655 of the State of South Carolina Code of Laws of 1976 as amended, by putting his tongue on the vagina area of the victim one [redacted] a 6 years of age white female child and by rubbing the victim's, one [redacted] vagina area with his penis.

1. That on 4-28-86 one Officer M. Davis was dispatched to 1121 Inlet Cove in reference to a criminal sexual conduct case and upon arrival met with the victim and the victims parents.

2. That the victim stated to Officer Davis that the defendant touched his tongue to her vagina area and put his penis on her vagina area.

3. That the victim did make an on the scene positive identification of the defendant

4. That the victim was transported to M.U.S.C. for examination and evidence of a sexual assault was found by Dr. Goldberg.

Sworn to and Subscribed before me

this 29 day of April, 19 86.

Signature of Judge (L.S.)

Affiant
Inv. J. Krygier
Address P.O. Box 296
Mt. Pleasant, S.C. 29464
Phone 884-4176

following defendant:

B314562

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT 247

Personally appeared before me, a magistrate of this County, one Inv. J.Krygier who, first being duly sworn, deposes and says that (name of defendant)

HILBERTO ZUBIA AKA GILBERT GONZALEZ

did within this County and State on the 28 day of April, 19 86 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

CRIMINAL SEXUAL CODUCT WITH A MINOR FIRST DEGREE 16-3-655

The affiant states that there is probable cause to believe that the defendant named above did committ the crime(s) set forth, and that such probable cause is based on the following facts:

Investigator J. Krygier, Officer M. Davis, [redacted] Doctor Goldberg are witness to prove the same this being against the statute made and provided for and against the peace and dignity of the state.

Sworn to and Subscribed before me

this 29 day of April, 19 86.

Signature of Judge (L.S.)

Affiant
Inv. J. Krygier
Address P.O. Box 296
Mt. Pleasant, S.C. 29464
Phone 884-4176

13

A copy of this Arrest Warrant was delivered to the following defendant:

Hilberto Zubia

on the 29 day of April 19 86

Reading Warrant

Signature of Constable or Law Enforcement Officer

Doris Owens

This warrant is certified for service in

_____ County / Municipality (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____ 19 _____

with _____ Attorney for Defendant

Decision: _____

BAIL

Date Set 29 April 19 86

Judge Doc Smith

Amount 50,000

Surety Bond

RETURN WARRANT TO:

No. B 314562

STATE OF SOUTH CAROLINA

Mt. Pleasant County (Municipality) (Circle one)

THE STATE

against

Hilberto Zubia aka Gilbert Gonzalez

Address: _____

Phone _____ SSN _____

Sex M Race Hisp Height _____ Weight _____

DOB _____ DL _____

Offense Criminal Sexual Conduct with a minor 1st Degree

Code (Ordinance) § 16-3-655

Date of Offense 4/28/86

Officer J. Krygier

Agency MMPD

JUDGE J. MULLEN HARPER

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

SOLICITOR 9TH CIRCUIT MAY 05 1986 RECEIVED

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

248

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

249

Personally appeared before me, a magistrate of this County, one Inv. J. Krygier who, first being duly sworn, deposes and says that (name of defendant)

Hilberto Zubia aka Gilbert Gonzalez

did within this County and State on the 28 day of April, 19 86 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

LEWD ACT ON A MINOR VIOLATION SECTION 16-15-140

The affiant states that there is probable cause to believe that the defendant named above did committ the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about 4-28-86 at approximately 6:30 p.m. at the residence of 1121 Inlet Cove Town of Mount Pleasant, County and State aforesaid, the defendant one Hilberto Zubia aka Gilbert Gonzalez did commit the offense of LEWD ACT ON A MINOR Violation of section 16-15-140 of the State of South Carolina Code of Laws of 1976, as amended, in that he did wilfully, and unlawfully touch the victim's, one [redacted] a 6 year old white female child, vagina area with his tongue and did rub her vagina area with his penis.

1. That on 4-28-86 one Officer M. Davis was dispatched to 1121 Inlet Cove in reference to a criminal sexual conduct case and upon arrival met with the victim and the victims parenets.

2. That the victim stated to Officer Davis that the defendant touched his tongue to her vagina area and put his penis on her vagina area.

3. That the victim did make an on the scene positive identification of the defendant.

4. That the victim was transported to M.U.S.C. for examination and evidence of a sexual assault was found by Dr. Goldberg.

Sworn to and Subscribed before me

this 29 day of April, 19 86.

Signature of Judge (L.S.)

Affiant
Inv. J. Krygier
Address P.O. Box 296
Mt. Pleasant, S.C. 29464
Phone 884-4176

103

250 STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

B314561

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one Inv. J. Krygier who, first being duly sworn, deposes and says tha
(name of defendant)

HILBERTO ZUBIA AKA GILBERT GONZALEZ

did within this County and State on the 28 day of April, 1986 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

LEWD ACT ON A MINOR VIOLATION SECTION 16-15-140

The affiant states that there is probable cause to believe that the d fendant named above did committ the crime(s) set forth, and that such prob able cause is based on the following facts:

Investigator J. Krygier, Officer M. Davis, [redacted] Doctor Goldberg are witness to prove the same, this being agaist the statute made and provided for and against the peace and dignity of the state.

Sworn to and Subscribed before me

this 29 day of April, 1986.

Signature of Judge (L.S.)

Affiant

Inv. J. Krygier

Address P.O. Box 296
Mt. Pleasant, S.C.
29464

Phone 884-4176

102

following defendant:

Pleading Waived

on the 29 day of April, 19 86

David D. Jones

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

_____ County / Municipality (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

PRELIMINARY HEARING held by

Judge _____

on _____ 19 _____

with _____

Attorney for Defendant

Decision: _____

RECEIVED MAY 05 1986 SOLICITOR 9TH CIRCUIT

BAIL

Date Set 29 April, 19 86

Judge McIntosh

Amount $25,000

Surety Bond

RETURN WARRANT TO:

No. B 314561

STATE OF SOUTH CAROLINA

Mt. Pleasant County / Municipality (Circle one)

THE STATE

against

Hilberto Zubia aka Gilbert Gonzalez

Address: _____

Phone _____ SSN _____

Sex M Race W Height _____ Weight _____

DOB _____ DL _____

Offense Lewd Act on a Minor

Code (or Ordinance) § 16-15-140

Date of Offense 4/28/86

Officer Inv. J. Krygier

Agency MPPD

JUDGE J. MULLEN HARPER

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

NOTICE

THE JU[illegible] ATE

FOR THE [illegible] IN

THIS CASE [illegible]

JUDGE [illegible]

251

252

C0100300

INCIDENT REPORT

[illegible]

EVENT

INCIDENT TYPE: Criminal Sexual Conduct with a Minor (16-3-655)

INCIDENT CODE:

PREMISE TYPE: 1 HIGHWAY 2 COMMERCIAL 3 SVC STATION 4 CHAIN STORE 5 RESIDENCE 6 BANK 7

INCIDENT LOCATION: [redacted]

SUBDIVISION OR AREA NAME: [redacted]

INCIDENT DATE: 042286 TIME: 1230 AM PM TO DATE: TIME: AM PM

1 RELATIVES 2 ACQUAINTANCES 3 STRANGERS 4 UNKNOWN

[redacted] N/A

COMPLAINANT: [redacted] ADDRESS: [redacted] PHONE NUMBER: [redacted]

VICTIM

VICTIMS NAME: Juvenile See Attached Sheet RACE: W SEX: F AGE: 6 RESIDENCE PHONE: BUSINESS PHONE:

ADDRESS: CENSUS TRACT: EMPLOYER OR OCCUPATION:

SUBJECT

SUSPECT: NAME: Zubia, Hilberto (AKA) Gilbert Gonzalez RACE: W SEX: M DATE OF BIRTH: AGE: 27

WANTED: ADDRESS: St. Goosecreek, SC CENSUS TRACT: HEIGHT: 6'1 WEIGHT: 200 HAIR: BLK EYES: BRN

ARREST

WARRANT: CHARGES: A Criminal Sexual Conduct with a Minor B Lewd Act on a Minor (16-15-140) C

ARREST: X

OFFENSE CODE: OFFENSE/ARREST: 1 1 JURIS: 1 CITY 2 COUNTY 3 STATE 4 OUT OF STATE

TOTAL NUMBER ARRESTED: 1 ARREST AT OR NEAR OFFENSE SCENE: YES ☑ NO ☐ DATE OF OFFENSE: 042286

VEHICLE

STOLEN / RECOVD / SUSPECTS: TAG NUMBER: N/A STATE: YEAR: V.I.N.: VALUE: PLATE ONLY

YEAR: MAKE: MODEL: STYLE: COLOR:

WITNESS

NAMES: ADDRESS: PHONE NUMBER:

NARRATIVE

At approximately 1[illegible] hours the officer was dispatched to the above address in reference to Criminal Sexual Conduct with a minor which had just occurred. Upon arrival spoke with victim and her parents. At this time victim stated that suspect Hilberto Zubia (AKA: Gilbert Gonzalez) was in the garage and she was playing in the front yard. Victim advised that suspect called her into the garage and told her to lay down. At this time victim stated that suspect "put his tongue on her tinkler". Victim advises that suspect let her get up and she returned out

U.C.R.

	VEHICLES	CURRENCY	JEWELRY	FURS
STOLEN				
RECOVERED				

	CLOTHING	OFFICE EQUIP	TV RADIO, ETC	FURNITURE
STOLEN				
RECOVERED				

	FIREARMS	CONSUMER GOODS	OTHER	TOTAL
STOLEN				
RECOVERED				

THEFT/RECOVERY: JURIS: 1 CITY 2 COUNTY 3 STATE 4 OUT OF STATE

DATE OF THEFT:

REPORT DATE:

ADM

CASE STATUS: ☐ ACTIVE ☑ CLEARED BY ARREST EX CLEARED ☐ OVER 18 ☐ UNDER 18 ☐ UNFOUNDED

REPORTING OFFICER: Davis, Martha B. NUMBER: 2[illegible] APPROVING OFFICER: DUDLEY-P.A. Sgt NUMBER: 750[illegible]

PROCESSED ☐ NOT PROCESSED ☐

SUPPLEMENT
INCIDENT REPORT

MT. PLEASANT POLICE DEPARTMENT

AGENCY I.D.	CASE NUMBER
SCO100300	26004018

INCIDENT TYPE Criminal Sexual Conduct with a Minor

REPORT DATE 04 [illegible]

front to play. Victim advises that approximately 5 minutes later suspect called her back into the garage and told her to lay down behind the boat that was parked in the garage. Victim states at this time suspect told her to "open her legs" and that he "put his tongue on her tinkler and placed his penis there too." Later this occurred. Victim states that suspect told her not to tell anyone. Victim also states that at this time a car pulled up out front and that she returned inside the residence to her mother. At approximately 1 1/2 hours victim advises parents as they are enroute out to eat. Parents then return to neighbors residence and call police. Also, on the scene were Sgt. Dudley and Det. Brown. Victim was escorted back to residence and made positive identification of suspect. Suspect was placed under arrest and transported to the county jail.

Victim was escorted to the Medical University of South Carolina by this officer and Det. Krygier for a medical examination.

ADM	REPORTING OFFICER	NUMBER	APPROVING OFFICER	NUMBER
	Davis, Martha B	2603	DUDLEY - P.A. Sgt	7503

254

SUPPLEMENT
INCIDENT REPORT

PAGE

AGENCY I.D. SC0100300 | MT. PLEASANT POLICE DEPARTMENT | CASE NUMBER 86-004098

INCIDENT TYPE CRIMINAL SEXUAL CONDUCT

REPORT DATE April 28,1986

On April 28, 1986 at approximately 19:15 hours, while on routine patrol, this Investigator (Shivers) received a call from Mount Pleasant Police Dispatcher to come to Police Headquarters in reference to a Crimina Sexual Conduct. On arrival at Headquarters, this Investigator observed a spanish male in handcuffs being escorted into Police Headquarters by Sgt. Paul Dudley. Sgt. Dudley informed this Investigator that the male had committed a criminal sexual conduct act on a minor., in [redacted] subdivision and that Investigator Jan Krygier and Officer Martha Davis was at the scene with juvenile female. On contacting Investigator Jan Krygier, this Investigator was informed to take the clothing of the suspect (Gilbert Gonzalez). On learning the name of the above mentioned male, this Investigator obtained a ten month old warrant which was drawn up on June 3, 1985, for Lewd act on a minor which took place at [redacted] (85-005952), Warrant # B264779 was served on Gilbert Gonzalez by Sgt. Dudley. The above suspect as read his Miranda rights and refused to sign the form. Gilbert Gonzalez was transported to Charleston County Jail were he was booked, lodged for Lewd act on a minor, other charges and warrants will be served on Gilbert Gozalez by Investigator Jan Krygier on the morning of April 29,1986. at the bond hearing.The clothing of Gilbert Gozalez was taken by this Investigator and put into evidence.

ADM	REPORTING OFFICER	NUMBER	APPROVING OFFICER	NUMBER
	Inv. Shivers, Leroy	7802		

MT PLEASANT POLICE DEPARTMENT

OCA # 86004098 DATE 04 29 86

STATEMENT OF Martha B. Davis
ADDRESS PHONE#
EMPLOYMENT: Mt. Pleasant Police Dept. PHONE#
RACE: W SEX: F DATE OF BIRTH:

Upon further conversation with [redacted] victim of Criminal Sexual Conduct, she stated that the suspect unzipped his pants he also took off his shirt and wiped off his fingers. She also stated that she felt something "gooey" like "barbeque sauce" and that "he hurt her finger." Victim also stated that he kept asking her "if that felt good".

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Martha B. Davis

WITNESSES:

I HAVE RECEIVED A C F THE ABOVE STATEMENT

I would like to present the following feelings and perceptions to the Court prior to the sentencing of the man who sexually assaulted my daughter, [redacted] on April 28, 1986.

These past five months have been emotionally painful and filled with anxieties our family has never before known. [redacted] was six years old at the time of the assault. She had been well versed in the reality that "people sometimes do bad things to children." Between school and family she had been told that there are those who choose to kidnap children to sell them, to abuse them or more often to simply remove them from a custodial parent. She has been conditioned not to leave our home, her yard with anyone for any reason, not to enter into a conversation with a stranger, or accept a gift. She has not been permitted to visit with classmates or neighborhood children unless we know the parents and grant permission for such a visit.

At the same time she has been exposed to many people whom she did not know well who were guests in our home. We have insisted on courtesy, gracious politeness and friendliness toward those whom we have had in our home.

She was assaulted at home. The man was there to install carpet. She was outside in the yard jumping rope and was coaxed into joining him in the garage. [redacted] did not sense any evil intent. She was at home, we were inside the house. All should have been safe and secure.

We thank God she is an open, honest and trusting child. Within a very few minutes, after the assault [redacted] left the house with us for the family to go have dinner as the workers finished the carpet installation. [redacted] as soon as she was physically away from the house

told us what had happened. Immediately as she told us what had happened she cried, both in fear and anxiety. [redacted] had lied to the man. She had been compelled to promise him she would not tell. She was afraid to tell and apprehensive about lying. This may sound like a very small thing, but to this six year old all was black or white, wrong or right. A lie was wrong.

Credibility has been given strong emphasis in our family. [redacted] has never lied, and the fact that she did this one time, still pains her. It is very difficult to help a child understand the grey areas.

[redacted] life will never be quite the same again. Because she was sexually assaulted she is changed. Five months later the sense of security that should be felt in her home has not returned. She cannot go to sleep at night without being assured the doors are locked. Sometimes it is not enough to tell her, frequently after we have said our prayers and she has been tucked in, she will get up and check for herself for the assurance the house in secure.

Initially after the assault [redacted] opted to share her experience with classmates, and others close to her, some adults. We did not discourage this, in that we hoped she would come through the ordeal with no feeling of shame or guilt for what had been done to her. We have stressed to [redacted] that she is the victim. We have stressed that the violence displayed against her is another's wrongdoing and in no way her fault.

As she shared her story some listened and believed, others discounted what she had to say because she was a six year old child. [redacted] confronted us about a month after the assault by asking that we not tell anyone about the episode. She stated it was private and she was different. A six year old should not be burdened with being different because she

was violated.

We have taken [redacted] to a psychologist several times in an effort to ward off lingering emotional problems that could surface as a result of the assault. We are encouraged that we are acting in a healthy, loving way, but still little comments crop up that we did not anticipate which leave us fearful and saddened by what we hear.

[redacted] spent several days with her grandparents and a cousin this summer without us. The day I picked [redacted] up it was evident she was very troubled. We had been in the car only minutes when she shared the conversations she and the older cousin had exchanged during the visit. Her little cousin is approaching adolescence. Miranda, prior to the trip to the grandparents, had been told about menstruation by her mother, a science teacher. Miranda was filled with a new knowledge of reproduction and conception. She shared this wealth of information with [redacted], who had recently had her seventh birthday. As the girls exchanged bits of information [redacted] put together that the assault on her was more than what she had labeled it, child abuse, it was of a sexual nature. She realized that this fluid, which the child had learned was called semen, that had been discharged on her in the assault was the same fluid Miranda had talked with her about. This fluid contained sperm which Miranda had explained would cause a girl to become pregnant.

[redacted]s obvious anxiety was explained to me quickly. She asked me tearfully if she were going to be pregnant as soon as she had her first period, because of the man's semen. [redacted]'s innocence had been ravaged. [redacted] became aware that she had been sexually assaulted. How she will be impacted by the events of April 28, 1986, we may never completely understand. I have fears for her as she matures and enters into normal loving relationships which should be positive and beautiful

for her that there will be remnants of the ugliness, pain and violence she saw when she was assaulted.

There are other, more subtle things I perceive as a result of what happened. This year in the classroom, [redacted]'s name was put on the board by her teacher for unacceptable conduct. [redacted] as usual shared the good and the bad of the school day with us as dinner. She had hit a child in the classroom. We quized as to why this happened. [redacted] explained the little student had touched her and she shouldn't have touched her. Reed is not easy to anger. She is a logical, peaceful child. She was angered because she was touched.

We are grateful that we have a child who could tell us quickly that she had been assaulted. [redacted] accepts that we are in a country where laws are made by the people to protect the people, and to punish the people who wrong others. We pray that she will see, that we will see the law at work in this case, to punish the wrong and protect the other children who could be the next victim.

For an individual to hurt a child, to sexually assault a child is an evil beyond our understanding. To understand that the people who do these horrible things repeat the crime, is to understand our laws need to prevent the recurrence of such crimes by removing the offender from society. We beg the Court to issue a maximum sentence. To impose on this criminal the full power of the law as punishment for the crime he has committed may be the only vehicle of protecting the other little children who have a right to grow older in safety, security and innocense.

We believe in the laws of this land, the wisdom of those who enforce those laws and the right of each person to live without fear when he lives within the law. We plead with the Court in this case

to protect other children from this man. Protect the parents and the children. We have no choice but to live with what has happened to Reed. Let our suffering, short and long, be justifiable reason to protect the others who have not been touched.

[redacted]

It is estremely difficult to put into words, especially at a time like this, my outrage at the events that occurred at my home April 28, 1986. I feel that not only was mine and my wife's life affected, my daughter's world was shattered.

Gone is her belief that all people are basically trustworthy. It has been replaced by a belief that people are basically untrustworthy. It has been shattered that home is a place where she can be safe and secure. That has been replaced by the thought that danger may even invade the security of her home. Gone is the child like faith that all children put and should be able to put in adults.

It is an extremely difficult task to try to convince a seven year old that she is safe in her home even when she is tucked in at night. She repeatedly asks if the door is locked and frequently gets up to check for herself.

Luckily for all law abiding people the person who committed this crime has been apprehended. It is now up to the court to decide if he is put out on the street again to molest other innocent children or if he is given long enough of a prison term to put a halt to these despicable acts. I implore the court to give him the maximum sectence. Talk is cheap. He can stand before this or any other court and say he had an unhappy childhood and how he is sorry for his actions. However, the only way our children will be safe is to keep him and others like hom off of our streets. It is for this reason the maximum sentence in this case is warranted.

Xerox Copy

Exhibit 4

CR

Release - 10-1-85

new# per P. Reid

SENTENCE

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

CASE NO. 86-GS-10-1522

THE DEFENDANT Gilbert Gonzalez IS COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS/COUNTY FOR A TERM OF 6 ~~MONTHS~~/YEARS AND/OR TO PAY A FINE OF $_____; PROVIDED UPON THE SERVICE OF _____ MONTHS/YEARS AND/OR PAYMENT OF $_____, PLUS PAY/WAIVE COST AND ASSESSMENTS AS APPLICABLE*, THE BALANCE SUSPENDED WITH PROBATION FOR _____ MONTHS/YEARS. This sentence is to run consecutive with 86-GS-10-1538

RESTITUTION

YES/NO

FOR PHYSICAL INJURY$ _____

TO BE PAID _____ PROPERTY DAMAGE$ _____

TO CLERK FOR _____

OTHER CONDITIONS _____

DATE Nov 5, 1986

Paul M. Morris
PRESIDING JUDGE

*COST AND ASSESSMENTS
NON-WAIVABLE $ 0
NOT WAIVED $ 0
TOTAL $ 0

Ella Mae Gold
DEPUTY CLERK OF COURT

** PAY TO VICTIM'S COMPENSATION FUND IF SUBROGATED
SCCA form 217 (3/86)

RECEIVED
NOV 12 1986
LR & EC
137398

jail time 187 days
sent start date
4-28-86

ATTEST: A TRUE COPY
HOWARD A. TAYLOR (SEAL)
CLERK C.P. & G.S.
DEPUTY CLERK

86-GS-10-1322

264

Witnesses

COURTENAY MCDOWELL

SHIVERS MPPD

Verdict

Foreman

The State of South Carolina

County of CHARLESTON

COURT OF GENERAL SESSIONS

CHARLESTON Term, 19 86

THE STATE

VS.

GILBERT GONZALEZ AKA

HILBERTO ZUBIA

DOA: 4-28-86

AW#: B264779

INDICTMENT FOR

LEWD ACT UPON A MINOR

True Bill

Henry Smyrski

Foreman of Grand Jury

Name GILBERT ZUBIA

ADDRESS [illegible]

[illegible] Zip

Race HIS Sex M

Date of Birth Age 28

SSN

Attorney [illegible]

McCAW PRINTERS, COLUMBIA, S. C. 29205.

SH: L. Louthian

FORM 6

The State of South Carolina

County of CHARLESTON

INDICTMENT FOR

LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on the 4th day of AUGUST, 19 86, the Grand Jurors of CHARLESTON County present upon their oath:

That GILBERT GONZALEZ AKA HILBERTO ZUBIA

did in CHARLESTON County on or about the 3rd day of JUNE, 19 85, wilfully and lewdly committed or attempted to commit a lewd and lascivious act upon or with body, or a part or member thereof of [redacted] Five (5) years of age, with the intent of arousing, appealing to or gratifying lust or passions or sexual desires of defendant or such child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case and made and provided.

ASSISTANT Solicitor

266

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

AFFIDAVIT

Personally appeared before me, judge of the Court, one Det. Leroy Shivers who being duly sworn, deposes and says that Gilbert Gonzalez (name of defendant) did within this Co and State on June 3 19 85, violate the criminal laws of the State of South Carolina [or ordinance of the municip of Mt. Pleasant] in the following particulars:

DESCRIPTION OF OFFENSE

LEWD ACT ON A MINOR
16-15-140

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and such probable cause is based on the following facts:

That on or about 6/3/85 at [redacted] in the County and State aforesaid, One Gilbert Gonzalez did commit the offense of violation Section 16-15-140 of the South Carolina state code of Laws of 1976, as amended, LEWD ACT ON A MINOR, in that he did wilfully and unlawfully with his hand fondle the vagina of [redacted] a femal child, 5 years of age, with intent to arouse/or gratify his own sexual desires, and this being against the statute in such case made and provided and against the peace and dignity of the state.

Sworn to and Subscribed before me,

This 4th day of JUNE, 19 85

Harry O. Shaw (L.S.)
Signature of issuing Judge

Address JUDGE HARRY O. SHAW
1497 Hwy 17 North, Mt. Pleasant

Phone: 881-2312

Det. Leroy Shivers
Signature of Affiant

Address Mt. Pleasant Police Departme
Mt. Pleasant

Phone: 884-4176

STATE OF SOUTH CAROLINA ARREST WARRANT

COUNTY OF Charleston

[or MUNICIPALITY OF Mt. Pleasant]

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUN

It appearing from the above affidavit that there are reasonable grounds to believe that Gilbert Gonzalez (name of defendant) did on June 3 19 85, violate the criminal laws of the State of South Carolina [or ordina of the municipality of Mt. Pleasant] as set forth below:

DESCRIPTION OF OFFENSE

LEWD ACT ON A MINOR
16-15-140

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith t dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as s thereafter as is practicable. FOR ARRAIGNMENT OR PLEA

NOTICE TO DEFENDANT

YOU MUST REPORT HEREIN TO THE COURT OF GENERAL SESSIONS FOR THE COUNTY OF CHARLESTON COUNTY COURTHOUSE AT MEETING AND BROAD STREETS AT 9:30 A.M. ON 6/13-86

IF YOU DO NOT REPORT, AN ARREST WARRANT WILL BE ISSUED FOR YOU.

Done at Mt. Pleasant
on June 4 19 85

Harry O. Shaw (
Signature of Judge

Form Approved by S.C Attorney General May 13, 1983

FORM CONTINUES ON BACK
ORIGINAL

FROM :9th CircuitSolicitor's Office FAX NO. :958 1959 Dec. 14 2005 03:23PM P3

A copy of this Arrest Warrant was delivered to the following defendant:

Gilbert Gonzalez

on the 29 day of April, 19 85

Paul A Dudley

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

_____ County / Municipality (Circle one)

The accused is to be arrested and brought before me or dealt with according to law.

SOLICITOR 9TH CIRCUIT

MAY 0 1985

Signature of Judge _____ (L.S.)

RECEIVED

PRELIMINARY HEARING held by

Judge _____

on _____, 19 _____

with _____
Attorney for Defendant

Decision: _____

BAIL

Date Set 29 April 19 85

Judge mc Intosh

Amount $25,000

Surety Bond

RETURN WARRANT TO:

No. B 264779

STATE OF SOUTH CAROLINA

Mt. Pleasant County / (Municipality) (Circle one)

THE STATE

against 10/32

Gilbert Gonzalez

Address: Beverly Hills Sub

Goose Creek, SC 29445

Phone _____ SSN _____

Sex M Race W Height _____ Weight _____

DOB _____ DL _____

Offense Lewd Act on a Minor

Code (or Ordinance) § 16-15-140

Date of Offense 6/3/85

Officer Det. Leroy Shivers

Agency MPPD

JUDGE HARRY O. SHAW

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

JURORS

NOTICE

THE JURISDICTIONAL MAGISTRATE FOR THE PRELIMINARY HEARING IN THIS CASE IS:

JUDGE D O Neill

268

AGENCY ID. 6C0100300

INCIDENT REPORT

CASE NUMBER 85-005952

EVENT

INCIDENT TYPE: CHILD MOLESTING

INCIDENT CODE

PREMISE TYPE: 1 HIGHWAY | 2 COMMERCIAL | 3 SVC STATION | 4 CHAIN STORE | 5 RESIDENCE | 6 BANK | 7

INCIDENT LOCATION: [redacted]

INCIDENT DATE: 6/2/85 TIME: UNK. AM/PM TO DATE TIME AM/PM

1 RELATIVES 2 ACQUAINTANCES 3 STRANGERS X UNKNOWN

WEAPON TYPE (Pistol, Shotgun, Knife, Hands, Poison): HANDS

CENSUS TRACT: 2-1.

VICTIM

COMPLAINANT: [redacted] (MOTHER) ADDRESS: [redacted] PHONE NUMBER: [redacted]

VICTIMS NAME: [redacted] RACE: W SEX: F AGE: 5 RESIDENCE PHONE: [redacted] BUSINESS PHONE:

ADDRESS: [redacted] CENSUS TRACT: 2-1. EMPLOYER OR OCCUPATION: [redacted]

SUBJECT

SUSPECT NAME: UNKNOWN SUBJECT (MARRATIVE) RACE: SEX: DATE OF BIRTH: AGE:

WANTED ADDRESS: CENSUS TRACT: HEIGHT: WEIGHT: HAIR: EYES:

ARREST

WARRANT CHARGES:

ARREST A B C D: N/A

OFFENSE CODE: OFFENSE-ARREST: 1 JURIS: XX CITY 2 COUNTY 3 STATE 4 OUT OF STATE

TOTAL NUMBER ARRESTED: ARREST AT OR NEAR OFFENSE SCENE: YES NO DATE OF OFFENSE:

VEHICLE

STOLEN RECOVD SUSPECTS: TAG NUMBER: N/A STATE: YEAR: V.I.N.: VALUE: PLATE ONLY

YEAR: MAKE: MODEL: STYLE: COLOR:

WITNESS

NAMES: PRICE, CHARLIE #1 ADDRESS: [redacted] PHONE NUMBER: [redacted]

NARRATIVE

ABOVE COMPLAINTANT STATED THAT ABOVE VICTIM WAS HER DAUGHTER AND THAT DURING EARLY AFTERNOON HOURS VICTIM WAS STAYING AT GRANDPARENTS RESIDENCE LOCATED AT [redacted] COMPLAINTANT FURTHER STATED THAT SHE WAS NOTIFIED BY ABOVE WITNESS T HER DAUGHTER MAY OF BEEN SEXUALLY ASSAULTED BY A WORKER AT HIS RESIDENCE. WITNESS LIVES ACROSS THE STREET FROM VICTIMS GRANDMOTHER. WITNESS HAD THREE (3) WORKERS PU IN FLOORING IN HIS RESIDENCE. THE WORKERS WERE REFERRED BY CARPET WHOLSALERS (MISS YATES) TO INSTALL THE FLOORING AFTER IT WAS PURCHASED FROM THEM. DETECTIVE SHIVERS WAS NOTIFIED AND RESPONDED TO INCIDENT LOCATION. VICTIM WAS ASKED TO EXPLAIN IN H WORDS WHAT HAPPENED AND WHAT WAS SAID BY WORKER. VICTIM STATED THAT THE WORKER TOL

U.C.R.

	VEHICLES	CURRENCY	JEWELRY	FURS
STOLEN	N/A			
RECOVERED				

	CLOTHING	OFFICE EQUIP	TV RADIO, ETC	FURNITURE
STOLEN				
RECOVERED				

	FIREARMS	CONSUMER GOODS	OTHER	TOTAL
STOLEN				
RECOVERED				

THEFT/RECOVERY JURIS: N/A (1 CITY 2 COUNTY 3 STATE 4 OUT OF STATE)

DATE OF THEFT:

ADM.

CASE STATUS: XX ACTIVE CLEARED BY ARREST EX CLEARED OVER 16 UNDER 16 UNFOUNDED

REPORT DATE: 6/3/85

REPORTING OFFICER: LESTER M. GRIFFIN NUMBER: 8402 APPROVING OFFICER: NUMBER:

PROCESSED NOT PROCESSED

AGENCY I.D. SCO100300

MT. PLEASANT POLICE DEPARTMENT

CASE NUMBER 85-005952

INCIDENT TYPE CHILD MOLESTING

REPORT DATE 6/3/85

TO GET IN THE TRUCK, VICTIM COMPLIED. THEN THE WORKER ASKED VICTIM IF SHE WAS SUNBURNED? VICTIM REPLIED NO AND PULLED HER OWN BLOUSE UP TO ONLY EXPOSE HER STOMACH TO LOOK. VICTIM THEN STATED THE WORKER AT THIS TIME REACHED TOWARD HER AND PULLED OUTWARD ON THE TOP OF HER PANTS AND UNDERWEAR AND THEN REACHED WITH THE OTHER HAND AND WAS TOUCHING HER PRIVATES. THIS OFFICER BELIEVES THERE WAS NOT DIRECT PENETRATION BUT THAT THE WORKER DID RUB VICTIMS VAGINA WITH HIS FINGERS. VICTIM DEMONSTRATED ON COMPLAINTANT BUT NOT IN THIS OFFICERS PRESENCE. WITNESS DID OBSERVE VICTIM IN THE WORKERS TRUCK AND DID CALL VICTIM OUT OF THE TRUCK UNAWARE OF THE SITUATION AND ONLY THINKING THAT VICTIM WAS PLAYING AND POSSIBLE BOTHERING WORKERS. THIS INCIDENT IS UNDERGOING INVESTIGATION OF FINDING OUT THE IDENTITY OF THE WORKER IN ORDER TO OBTAIN A WARRANT.

Shivers This will be statement in reference to case #85-005952, today's date 6/4/85. Incident date 6/3/85 at approximately 12:45 p.m. This will be a statement of [redacted] White female, age 5. This statement is being taken at Mount Pleasant Police Department by Detective Leroy Shivers. [redacted] is the mother and the father is [redacted]

O.K. would you please state your name for the record.

[redacted] [redacted]

Shivers Last name.

[redacted] [redacted]

Shivers How old are you?

[redacted] Four.

Shivers O.K. I'm going to ask you something. Tell me what happened yesterday.

[redacted] ------and then this man said get in the truck and I did. Then he said do you have a sunburn? And I said no.

Shivers What did he ask you, do you have a sunburn? What did you say?

[redacted] I said no and then the man said a--

Shivers Just take you time.

[redacted] And then he pulled down my pants.

Shivers And then what did he do?

[redacted] Then he pulled them down there and he touched my private.

Shivers O.K. did he hurt you? What did he say after that happened?

[redacted] Nothing.

Shivers If you see this man again, would you know him if you see him again? Can you pick him out for me? Is there anything else you have to say?

[redacted] That's all.

Shivers O.K. this concludes this statement and for the record this incident happened at [redacted] The victim lives at [redacted] which is located in the city of Mount Pleasant. The victim was staying at her grandmothers which is also on [redacted] This concludes the statement,

A copy of This statement furnish to parents

Det. Leroy Shivers

parent signature of [redacted]

[redacted]

MT PLEASANT POLICE DEPARTMENT

OCA # 85005952 DATE 6-24-86

STATEMENT OF Charles Edward Price
ADDRESS [redacted] PHONE# [redacted]
EMPLOYMENT: Chas Evening Post PHONE# [redacted]
RACE: W SEX: M DATE OF BIRTH: [illegible]

On 6-3-85 three workers from Carpet Wholesalers were working at my residence at [redacted] laying some tile in my kitchen. They were there because they were recommended by Carpet Wholesalers. Richard Gonzalez and another mexican gentleman were working in the kitchen ~~anoth~~ and another mexican gentleman was working in a van that was backed into the driveway. [redacted] was out in the yard. I was working on a garage door & could not see the van. I heard [redacted] voice & went to see where she was at. When I came out of the garage [redacted] and the man that had been working in the van were in the back of the van. I told [redacted] to come out of the van because I thought she was bothering the workers. She came out of the van and I went back to work on the door. [redacted] came up to me and said Mr.

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

X Charles Edward Price

WITNESSES:

Mr. J. Ann Kriggin

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT X Charles Edward Price

MT PLEASANT POLICE DEPARTMENT

OCA # 85005952 DATE 6-24-86

STATEMENT OF Charles Edward Price

ADDRESS PHONE#

EMPLOYMENT: PHONE#

RACE: SEX: DATE OF BIRTH:

Charlie he touched my private parts. I thought maybe she meant he had swatted her on her bottom to get her out of the way. I asked her where & she said her front part & showed me by placing her hand on her clothing. As the workers were getting their things ready to leave I told Richard I wanted to talk with him. I told him what [redacted] had said and that I was going to tell her parents Richard said they had never had any problems like this before. I told [redacted] that when her mother came to pick her up from her grandmothers house to tell her what happened. She did and that's when they asked me what happened & the next day the police came to talk to me about the incident. End of statement

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH HAS BEEN FREELY AND VOLUNTARILY MADE BY ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

X Charles Edward Price

WITNESSES:

Mr. Jon Kryzier

I HAVE RECEIVED A COPY OF THE ABOVE STATEMENT X Charles Edward Price

Exhibit 5

274

-151	[redacted], Gilberto aka Gilbert	CHARGE(S) ATTEMP/LEWD/ACT ON MINOR	DEFENSE COUNSEL	RELEASE STATUS $10,000
ED DATE: (Pencil)			POLICE AGENCY/OFFICER(S) AND INCIDENT NUMBER M. A. ROY - GCPD	
IMENT DATE -16-85	MAGISTRATE G. MILEY	WARRANT FILED DATE 3-15-85	REPORT RECEIVED	WARRANT REC'D 3-18-85
RANT #	DISPOSITION			DOB:
	6-4-85 Plead guilty - 9 mon. concurrent with any sentence that maybe imposed or revocation of parole.			RACE: W
				SEX: M
				SSN #: [redacted]1
			85-220	WARRANT #: B203131

The State of South Carolina

County of BERKELEY

INDICTMENT FOR

[redacted] LEWD ACT ON A MINOR

At a Court of General Sessions, convened on the 16th day of April 19 85, the Grand Jurors of Berkeley County present upon their oath:

That HILBERTO ZUBIA aka GILBERT

did in Berkeley County on or about the 12th day of March 19 85, did wilfully, unlawfully attempted a lewd act on a minor, in that the said HILBERTO ZUBIA ask two juveniles: [redacted] (age 8) and [redacted] (age 4) to see their undergarments and they refused, upon refusal HILBERTO ZUBIA pulled up the skirt of [redacted] and placed his hands inside her underwear and touched her genital area, such act taking place in the K-MART store in the Goose Creek community Berkeley County.

Against the peace and dignity of the State, and contrary to the statute in such case and made and provided.

George Bikas, Jr.
Solicitor

85-03-151

85-GS-08-162

Witnesses

MARTY A. ROY, GCPD

Verdict

Foreman

The State of South Carolina

County of BERKELEY

COURT OF GENERAL SESSIONS

APRIL Term, 19 85

THE STATE

vs.

HILBERTO ZUBIA aka GILBERT

85-220

FILED

APR 26 1985

MARY P. BROWN
Clerk of Court
Berkeley County, S. C.

INDICTMENT FOR

~~ATTEMPTED~~ LEWD ACT ON A MINOR

True Bill

Foreman of Grand Jury

McCAW PRINTING COLUMBIA, S. C. 29205

I (We) appear in person and plead guilty to the within indictment.

Date: 6-4-85

Signed: Gilbert Zubia

Witness: Mary P Brown

INFORMATION ON DEFENDANT

Name GILBERT ZUBIA

Address

Phone

Sex M Race H Height 5'1"

Weight 205 Birthdat

Social Security Numbe

State of South Carolina, County of Berkeley

WAIVE ASSESSMENT FEE

The judgment of the court is; That you

be confined at hard labor for a period of 9 mos Concurrent

upon the public works of Berkeley County or for a like period in the State Penitentiary

Date: June 4 1985

Presiding Judge

Arrested 03-12-85
Bond set 05-08-85
Return by G.S.C. 06-04-85

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

Mary P. Brown

DATE 6-5-85 CLERK OF COURT, C.P. & G.S. BERKELEY COUNTY, SC

Personally appeared before me, judge of the Court, one [redacted] who being duly sworn, deposes and says that HILBERTO (NMN) ZUBIA aka GILBERT ZUBIA (name of defendant) did within this and State on MAR 12 19 85, violate the criminal laws of the State of South Carolina [or ordinance of the mun of GOOSE CREEK] in the following particulars:

DESCRIPTION OF OFFENSE

Violation of Section 16-15-140 of the S.C. Code of Laws, 1976, as amended, i.e., Committing or Attempting Lewd Act upon a child under fourteen at K-MART #7539 607 St. James Av. within the city limits of Goose Creek S.C. on 03-12-85 at approxi 6:00 PM

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth ar such probable cause is based on the following facts:

That through information from witnesses and writte statements, the Defendant, Hilberto Zubia, did willfully, unlawfully, and Knowingly confront juveniles; [redacted] age 8yrs, and [redacted] age 4yrs, asking to see their undergarments and upon refusal, did pull up the skirt of [redacted] and pull back her underwear, placing his hand in the childs underwear and touching her genital area. This act was committed in view of [redacted]. Both juveniles immediately notified thier mother, Affiant, of the incident and pointed out the Defendant as the subject who committed the act mentioned. This act was committed on or about Mar.12 1985 at approximately 6:00 Pm, at K-MART#7539, 607 St.James Av. within the city limits of Goose Creek, S.C. All against the statute made and provide for, and all against the peace and dignity of the City and State.

Sworn to and Subscribed before me,

This 12th day of March, 19 85

George F. Miley (L.S.)
Signature of Issuing Judge

Address

Phone:

[redacted]

Address [redacted]

Phone: [redacted]

TATE OF SOUTH CAROLINA

ARREST WARRANT

OUNTY OF BERKELEY

MUNICIPALITY OF GOOSE CREEK]

ANY LAW ENFORCEMENT OFFICER OF THIS STATE, COUNTY OR MUNICIPALITY, OR ANY CONSTABLE OF THIS COUNT

It appearing from the above affidavit that there are reasonable grounds to believe that HILBERTO (NMN) ZUBIA aka GILBERT ZUBIA (name of defendant) did on MAR. 12 19 85 violate the criminal laws of the State of South Carolina [or ordinanc of the municipality of GOOSE CREEK] as set forth below:

DESCRIPTION OF OFFENSE

Violation of section 16-15-140 of the S.C. Code of Laws, 1976, as amended, i.e., Committing or Attempting Lewd Act upon a child under fourteen at K-Mart#7539, 607 St. James Av. within the city limits of Goose Creek, S.C. on 03-12-85 at appx. 6:00 PM

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to b dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soo thereafter as is practicable.

Done at Goose Creek S.C.
on March 12th 19 85

George F. Miley (L.S.)
Signature of Judge

Approved by Attorney General

FORM CONTINUED ON BACK

GOOSE CREEK POLICE DEPARTMENT
INCIDENT REPORT

- Juvenile -

S C 0080300 | ARREST DOCKET PAGE NO 1 | DISPATCH NUMBER 85-85329 | OCA NUMBER 85-85329

INCIDENT TYPE (1): Lewd Act with a Minor

INCIDENT TYPE (2): Arrest

INCIDENT TYPE (3):

INCIDENT LOCATION: Kmart - 601 St. James Av. Goose Creek S.C.

BUSINESS NAME IF APPLICABLE: Kmart #7239

WEAPON TYPE:

BEGINNING OF INCIDENT: DATE 03-12-85 TIME 1800 | END OF INCIDENT: DATE 03-12-85 TIME 1810

☐ RELATIVES ☐ ACQUAINTANCES ☒ STRANGERS ☐ UNKNOWN

CENSUS TRACT

SUBDIVISION OR AREA NAME: K-Mart

COMPLAINTS NAME: [redacted]

RACE: W | SEX: F | DATE OF BIRTH | PHONE: [redacted]

VICTIM NAME: [redacted]

RACE: W | SEX: F | AGE: 4 | DATE OF BIRTH | PHONE (RES): [redacted] | PHONE

VICTIM ADDRESS: [redacted]

OCCUPATION EMPLOYER

SUSPECT ☐ WANTED ☐ WARRANT ☒ ARREST ☒ MISSING PERSON ☐

SUBJECT NAME: ZUBIA - HILBERTO (NMN)

RACE: W | SEX: M | DATE OF BIRTH: 05-24-56

Dr. Goose Creek S.C.

HGT: 601 | WT: 215 | HAIR: BLK

ALIAS OR NICKNAME: ZUBIA - GILBERT

OCCUPATION EMPLOYER: Carpet Installer

STATE: Tx

SOCIAL SECURITY NUMBER

PHONE (RES): 797-5217 | PHONE (BUS)

(1) CHARGE: Committing Lewd Act w/Child under 14

(2) CHARGE

(3) CHARGE

OFFENSE LOCKS | OFFENSE/ARREST: 1 | 1

JURISDICTION: (1) CITY 2. COUNTY 3. STATE 4. OUT OF STATE

TOTAL NUMBER ARRESTED: 1

ARRESTED AT OR NEAR SCENE: ☒

DATE OF OFFENSE

☐ STOLEN ☐ RECOVERED ☐ SUSPECTS | ☐ BREACH OF TRUST ☐ IMPOUNDED ☐ ABANDONED

LICENSE TAG | STATE | YEAR | V.I.N.

YEAR | MAKE | MODEL | STYLE | COLOR | TOWED BY:

PLATE ONLY

WITNESS NAME: [redacted]

ADDRESS: [redacted]

PHONE: [redacted] | RACE: W | SEX: F | AGE: 8

WITNESS NAME | ADDRESS | PHONE | RACE | SEX | AGE

On 3-12-85, I was dispatched to meet with complainant, upon arrival, complainant stated while victim & witness were in the Toy Dept. of Kmart, Subj. Zubia (pointed out by Comp's party) approached the girls and asked to see their underfarments, when the children refused, Subj lifted victim's skirt, pulled back her underwear and placed his hand in her underwear and touching her genital area. This act observed by witness [redacted] I then approached subject and asked him for some identification; subject had none, I then asked him if he would step-out side so I could talk to him about the incident, Subj.

VEHICLES: STOLEN | RECOVERED

CURRENCY | JEWELRY | FURS

CLOTHING: STOLEN | RECOVERED

OFFICE EQUIP | TV RADIO, ETC | FURNITURE

FIREARMS: STOLEN | RECOVERED

CONSUMER GOODS | OTHER | LIVESTOCK | TOTAL

THEFT/RECOVERY JURISDICTION: 1. CITY 2. COUNTY 3. STATE 4. OUT OF STATE

CASE STATUS: ☐ ACTIVE ☒ CLEARED BY ARREST | EXCEPTIONALLY CLEARED ☐ OVER 18 ☐ UNDER 18 | ☐ UNFOUNDED

REPORTING OFFICER | REPORT DATE

AGENCY I.D. SC 0080300 — JUVENILE — SUPPLEMENTAL REPORT CASE NUMBER 279 55-55329

☒ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT PAGE 2 OF 2.

COMPLETED HIS K-MART PURCHASES, AND WAS CONFRONTED ABOUT THE ISSUE AS PART OF AN INVESTIGATIVE STOP. SGT JOHNSON MET WITH ONE OF THE SUBJ, WHILE HE RELIED ID INFO. FROM SUBJECT, I SPOKE WITH COMP. VICT. & WITNESS. INFORMATION CONTAINING TO INCIDENT WAS VERIFIED AND COMPLAINANT STATED SHE WOULD PURSUE CHARGES. BASED UPON THIS INFORMATION, SUBJECT WAS TAKEN INTO CUSTODY, TRANSPORTED BOOKED AND LODGED AT ECCO. UPON ARRIVAL TO ECCO SUBJECT WAS ADVISED OF HIS RIGHTS AND REFUSED TO MAKE A STATEMENT AT THIS TIME. AN NCIC CHECK REVEALED SUBJ. HAS HAD PRIOR CRIMINAL RECORD IN TEXAS SID/TX 02196507 AND IS POSSIBLY IN VIOLATION OF PAROLE. TELETYPES ARE INCONCLUSIVE AT THE TIME - WILL NOTIFY BOARD OF PARDONS & PAROLE FOR VERIFICATION. COMPLAINANT ADVISED TO CONTACT MUSC - CRISIS CENTER FOR MEDICAL EXAMINATION OF VICTIM. COMPLAINANT STATED SHE WOULD DO SO AT TIME OF SIGNING WARRANT. WARRANT #B203131 ISSUED FOR VIOLATION 16-15-140 SC. CODE OF LAWS. HOLD PLACED ON SUBJ. PENDING MUSC EXAM RESULTS AND PAROLE STATUS VERIFICATION. CLEARED BY ARREST POSSIBLE CHARGES PENDING IN REF. TO EXAM & PAROLE STATUS.

CASE STATUS ☐ ACTIVE ☒ CLEARED BY ARREST EX. CLEARED ☐ OVER 18 ☐ UNDER 18 ☐ UNFOUNDED REPORT DATE 03-12-85

REPORTING OFFICER J. Roy MD NUMBER 126 APPROVING OFFICER T. Baker NUMBER 202

280 AGENCY ID I.C 0080300

- JUVENILE

SUPPLEMENTAL REPORT

CASE NUMBER S.C. 65329

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT

ON 3-12-85 AT APPROX 2330 HRS I RECEIVED INFORMATION IN REF. TO THIS CASE, FROM MAJOR CRIMES CENTER. I SPOKE WITH DR. J. LAWSON, SENIOR RADIOLOGIST WITH MMC, AND EXAMINING PHYSICIAN OF VICTIM [redacted]. DR. LAWSON STATED THERE WERE NO SPECIFIC SIGNS OF PENETRATION OR TRAUMA AROUND VICTIM'S GENITAL AREA FROM PHYSICAL EXAMINATION. HOWEVER, FROM THE INTERVIEW WITH THE CHILD, UTILIZING ANATOMICALLY CORRECT DOLLS, THE CHILD EXPLAINED AND DEMONSTRATED WHAT TOOK PLACE, WITH THE DOLLS SHOWING PENETRATION. BASED ON THE CHILD'S DESCRIPTION AND DEMONSTRATION DR. LAWSON INDICATED PENETRATION DID OCCUR. A MEDICAL REPORT WILL BE FORWARDED UPON COMPLETION TO THIS AGENCY STATING DR. LAWSON'S FINDINGS FROM THE PHYSICAL EXAM AND THE INTERVIEW. SUBJ ZUBIA TRANSFERRED TO BERKELEY COUNTY JAIL ON $10,000 BOND. WARRANT SERVED BY C&L EACH - LOGGED & DISPOSED. BOND HEARING WAS CONDUCTED BY JUDGE MILEY

CASE STATUS ☐ ACTIVE ☒ CLEARED BY ARREST ☐ EX. CLEARED ☐ OVER 18 ☐ UNDER 18 ☐ UNFOUNDED

REPORTING OFFICER: Roy MA NUMBER 126

APPROVING OFFICER Lt B. W. [illegible] NUMBER 70

REPORT DATE 03-12-85

Exhibit 6

```
PRGI100D                    SCDC OFFENDER MANAGEMENT SYSTEM                01/03/06
                                 PROGRAM SERVICES                          MICKEBR
SCDC # 137398                       SUMMARY
GONZALEZ,GILBERT -                                        CURR LOC: KERSHAW
OFFENDER TYPE: ADULT-STRAIGHT SENTE

     PROGRAM NAME                ENROLLED  TERM DTE    TERM STATUS
_    AIDS EDUCATION WORKSHOP     03/21/96   03/21/96   SERV RENDERED & COMPLETED
_    PSY EVAL OTHER              06/02/95   06/02/95   SERV RENDERED & COMPLETED
_    BUILDING PERSONAL POWER     04/20/95   06/08/95   COMPLETE-EXC. PARTICIPA.
_    SELF-DEVELOPMENT TRAINING   10/07/94   10/28/94   COMPLETE-EXC. PARTICIPA.
_    SELF-DEVELOPMENT TRAINING   09/09/94   09/30/94   TERMINATE-POOR ATTENDANCE
_    HEALTH EDUCATION            07/12/94   09/01/94   COMPLETE-EXC. PARTICIPA.
_    CASE MANAGEMENT             06/20/94   06/20/94   SERV RENDERED & COMPLETED
_    CASE MANAGEMENT             05/13/94   05/13/94   SERV RENDERED & COMPLETED
_    AIDS EDUCATION WORKSHOP     05/12/94   05/12/94   SERV RENDERED & COMPLETED
_    PAROLE PREPARATION          06/14/93   06/28/93   COMPLETE-EXC. PARTICIPA.
_    CSTAR GROUP - PHASE III     05/26/93   08/05/98   STAFF DEPARTURE
_    REFERRAL TO SW/MH SERVICE   02/04/93   02/04/93   COMPLETE-EXC. PARTICIPA.
_    PSYCH EVAL-CLASSIFICATION   11/06/92   11/06/92   SERV RENDERED & COMPLETED
RESPONSE>                                                      PAGE> 0001
SELECT AN OPTION...
PFKEY      3:ADD      4:MOD      ENTER:INQ

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PRGI100D SCDC OFFENDER MANAGEMENT SYSTEM 01/03/06
PROGRAM SERVICES MICKEBR
SCDC # 137398 SUMMARY
GONZALEZ,GILBERT - CURR LOC: KERSHAW
OFFENDER TYPE: ADULT-STRAIGHT SENTE

	PROGRAM NAME	ENROLLED	TERM DTE	TERM STATUS
_	NO PROGRAM RECOMMENDED	11/05/92	11/05/92	COMPLETE-EXC. PARTICIPA.
_	CASE MANAGEMENT	08/28/92	02/22/93	COMPLETE-EXC. PARTICIPA.
_	SHORT TERM COUNSELING	08/28/92	08/31/92	COMPLETE-EXC. PARTICIPA.
_	CSTAR GROUP - PHASE II	04/21/92	05/15/93	COMPLETE-EXC. PARTICIPA.
_	CSTAR GROUP - PHASE I	09/16/91	10/23/91	COMPLETE-EXC. PARTICIPA.
_	CASE MANAGEMENT	05/03/91	09/08/92	COMPLETE-EXC. PARTICIPA.
_	ORIENTA.-SOCIAL WORK SERV	12/19/90	12/19/90	SERV RENDERED & COMPLETED
_	CSTAR GROUP - PHASE I	10/08/90	12/17/90	COMPLETE-EXC. PARTICIPA.
_	PSYCH EVAL-CLASSIFICATION	06/08/90	06/08/90	SERV RENDERED & COMPLETED
_	INDIVIDUAL THERAPY	01/25/90	04/25/90	SERV RENDERED & COMPLETED
_	TRANSITION CARE UNIT	01/12/90	04/30/92	RELEASED
_	INDIVIDUAL THERAPY	10/05/89	12/01/89	STAFF DEPARTURE
_	ADV INST SUBS ABUSE PROG	06/06/89	07/18/89	COMPLETE-EXC. PARTICIPA.

RESPONSE> PAGE> 0002

PFKEY 3:ADD 4:MOD ENTER:INQ

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PRGI100D SCDC OFFENDER MANAGEMENT SYSTEM 01/03/06
PROGRAM SERVICES MICKEBR
SCDC # 137398 SUMMARY
GONZALEZ,GILBERT - CURR LOC: KERSHAW
OFFENDER TYPE: ADULT-STRAIGHT SENTE

	PROGRAM NAME	ENROLLED	TERM DTE	TERM STATUS
_	LISTENING SKILLS DEVELOPM	04/08/89	04/17/89	SERV RENDERED & COMPLETED
_	INMATES HELPING GRP	03/23/89	05/26/89	COMPLETE-EXC. PARTICIPA.
_	SELF-DEVELOPMENT TRAINING	02/02/89	04/11/89	COMPLETE-EXC. PARTICIPA.
_	TRANSITION CARE UNIT	06/13/88	04/11/89	COMPLETE-EXC. PARTICIPA.
_	LEADERSHIP SKILLS	06/13/88	08/30/88	SUCCESSFUL
_	INDIVIDUAL THERAPY	12/18/87	04/15/88	SERV RENDERED & COMPLETED
_	NARCOTICS ANONYMOUS GROUP	09/29/87	09/29/87	VOLUNTARY
_	ADV INST SUBS ABUSE PROG	08/17/87	09/07/87	SUCCESSFUL
_	DRUG EDUCATION PROG-PH1	07/20/87	08/10/87	SUCCESSFUL

RESPONSE> PAGE> 0003

PFKEY 3:ADD 4:MOD ENTER:INQ

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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
CENTRAL CORRECTIONAL INSTITUTION

Program Evaluation

Inmate Name: Gilbert Gonzalez SCDC#: 137398 Unit Assigned: Unit 3

Title of Workshop, Program, or Group: C-Star, Phase 1

Start Date: Sept. 16, 1991 End Date: Oct. 23, 1991

Termination Status: Completed [✓] Did not complete [ ]

Program Evaluation:

[ ] Poor - Refused recommended program. Terminated from program. Rarely attends. Unexcused absence. Poor participate and unfavorable adjustment.

[ ] Average - Attended, "for classification purposes only". Minimal or marginal participation. No unexcused absences. Passes test.

[ ] Good - Actively participates/demonstrates a desire for self-improvement. Passes test.

[✓] Excellent - Actively participates/positively encourages others within group/demonstrates a desire for self-improvement, passes test/maintains positive adjustment for ongoing programs/other volunteer work assisting others.

Comments: I/M Gonzalez was an active participant in Phase 1 of the C-Star Program. Phase 1 is an educational group. I/M Gonzalez seemed to have a good understanding of the material and concepts presented in the class sessions.

RECOMMENDATIONS (NEXT SIX MONTHS) I/M Gonzalez has expressed the desire to be included in the treatment (therapeutic) phases of C-Star. He will be screened for the next group scheduled to start Feb. '92.

S/ James W. Dodds MSW, LISW
Group Coordinator

cc: Classification Caseworker

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Social Work Services

****

STATEMENT OF PARTICIPATION

****

THIS IS TO ACKNOWLEDGE THAT Gilbert Gonzales SCDC# 137398

HAS PARTICIPATED IN All Sessions

OF C-STAR Phase 1

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT XXXX

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: October 24, 1991

****

_____
SOCIAL WORKER

Central Correctional
INSTITUTION

Exhibit 7

288

CONFIDENTIAL INFORMATION

Not to be filed In Central Records or Warden's File

92 NOV 12 AM 11:24

PSYCHOLOGICAL EVALUATION

NAME: Gilbert Gonzales
IDENTIFICATION: SCDC # 137398-CCI
AGE: 34 **DOB:**
REASON FOR REFERRAL: To assist in assessment of inmate's suitability for advancement in custody status
DATE: November 6, 1992

BACKGROUND INFORMATION: Gilbert Gonzales is a 34 year old single male who was arrested in Charleston County. He is doing a 40 year sentence for committing a lewd act upon a minor under the age of fourteen and for first degree criminal sexual conduct. Mr. Gonzales was reared in Texas. He lived with his natural parents until he was nine years old, but they separated at that time and he remained with his father. He has eight siblings. He acknowledges difficulties in coping with his mother's abandonment as a child and he also reports experiences of being sexually exploited when young. He has completed high school as well as having attained an Associates of Arts degree. He has experienced doing factory and construction work as well as driving a truck. He describes his employment as having been erratic at times.

Mr. Gonzales began getting into trouble as a juvenile and spent time in a detention home. He has also served time previously as an adult in South Carolina as well as in Texas. He readily acknowledges being guilty of the sexual offenses which resulted in his current confinement and he attributes this conduct to personal problems and unresolved conflicts going on in his life at the time. However, he emphasizes that he addressed these issues through his strong religious involvement and commitment.

Mr. Gonzales reports good physical health. He denies having any history of serious psychiatric problems. He does acknowledge alcohol abuse in the past, as well as experimentation with illegal drugs. He emphasizes that he has resolved to refrain from further use of these. He is currently interested in transferring to an open correctional institution and explains that this advancement would give him a sense of making progress within the correctional system.

ADJUSTMENT TO CONFINEMENT: Mr. Gonzales has been incarcerated for over six years. He has advanced to A custody status in the past, but was demoted from it in conjunction with an assault incident. He is currently assigned to Prison Industries as a clerk in the Book Bindery. He has been receiving excellent work evaluations.

Mr. Gonzales has been active in rehabilitation programs including the Sex Offenders' Treatment Program as well as in vocational opportunities. He has also been in anger and stress management classes. He is currently tutoring a Hispanic inmate in reading. He receives visits from friends and stays in touch with family members.

PERSONALITY FUNCTIONING: Mr. Gonzales relates in an open, talkative fashion. He readily describes his views upon life and his religious orientation. He feels that he has made substantial progress in getting his life on track since being confined. He reports satisfactory relationships with other inmates. He has not been involved in any further disciplinary incidents since April, 1991.

Mr. Gonzales reports that he eats and sleeps well and feels that he is free of serious depression. He emphasizes his positive orientation and notes his particular enjoyment in feeling that he is helping others when he engages in tasks such as tutoring and giving witness to his religious convictions. Mr. Gonzales contrasts his current adjustment with times in the past when his lack of confidence and easy frustration interfered with his engaging in respectful relationships with others. He feels that his own experience of sexual abuse as a child prompted many conflicts for him, but he feels that he has gained considerable understanding regarding these matters. He also notes that he has resolved to avoid further alcohol and drug use and feels that this will aid him in avoiding poor judgement. He displays strong efforts at presenting himself in a positive fashion and offering reassurances of improved adjustment.

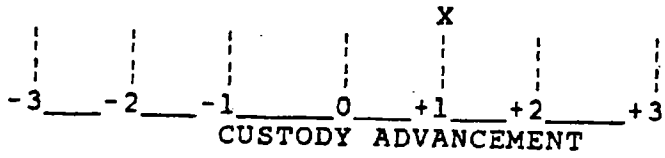
Previously administered testing indicated that Mr. Gonzales was functioning at the top of the Dull-Normal Range of Intelligence. He demonstrated well-developed academic capabilities at that time. During today's evaluation, Mr. Gonzales participated in personality testing including the Draw-A-Person Test and the Incomplete Sentences Blank. His presentation of just the head and face of a human drawing, failing to complete a whole person, may reflect restrictions in his persistence and frustration tolerance. His reliance upon denial as a major defense mechanism is noted in the figure's broad smile and in his description of the individual as "feeling good...happy about how life is going...doing better". Similarly, his responses to topics advanced to him on the Incomplete Sentences Blank were stated in very positive terms. Mr. Gonzales minimizes problems, difficulties, and resentments. In doing so, he fails to address these matters in ways which might allow additional self-improvement. He appears to be investing a good deal of energy into establishing a lofty self-image which may exceed his actual conduct, progress, and effectiveness.

SUMMARY: Gilbert Gonzales is a 34 year old male who is serving a 40 year sentence for rape and victimizing a minor child. Aside from one disciplinary infraction during his confinement, he has not presented serious management problems. He has been active in counseling and educational programs and is receiving excellent performance evaluations in his work. He underscores the religious commitment which he has established since being incarcerated and he shows some tendencies toward relying acceptably upon denial as a defense mechanism, minimizing his problems and limitations. While he might benefit from a more realistic self-assessment, he does appear to be sufficiently cooperative, stable, and well-

motivated at this time to adapt to a higher level of correctional status. He should be encouraged to continue addressing his long standing, significant adjustment problems.

Frank A. Chesno, Ph.D.
Clinical Psychologist

FAC:bg



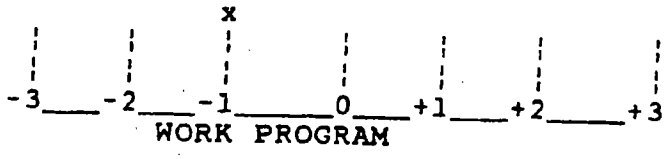


Exhibit 8

DISI100D SCDC OFFENDER MANAGEMENT SYSTEM 01/03/06
DISCIPLINARY SYSTEM MICKEBR
DISPLAY INMATE OFFENSE HISTORY

SCDC ID: 137398 CURR LOC: KERSHAW
GONZALEZ, GILBERT -
OFFENDER TYPE: ADULT-STRAIGHT

	CASE#	OFFENSE DESCRIPTION	TYPE ACTION	OFFENSE DATE	HEARING DATE	NET GT LOST	DHO DECISION
_	00004	FIGHTING WITHOUT A WE	MAJOR DI	03/21/97	04/11/97	00090	CONVICTED
_	00003	POSSESSION OF CONTRAB	MAJOR DI	09/14/96	10/23/96	00030	CONVICTED
_	00002	FIGHTING WITHOUT A WE	MAJOR DI	09/15/94	/ /	00000	CONVICTED
_	00001	STRIKING AN INMATE WI	MAJOR DI	04/14/91	04/18/91	00030	CONVICTED

END OF LIST

PAGE 0001

SELECT A RECORD AND PRESS <ENTER> TO DISPLAY OR <PF04> TO MODIFY
PF4-MODIFY PF6-DISMISSED/NOT GUILTY PF11-QUIT PF10-MAIN MENU

4-© 1 Sess-1 167.7.50.33 TNET1403 3/11

DISI150D SCDC OFFENDER MANAGEMENT SYSTEMS 01/10/06
DISI150M INMATE DISCIPLINARY SYSTEM MICKEBR
DISPLAY OFFENSE CODE TEXT

NARRATIVE...> #1
INMATE HIT INMATE'S KENNETH STRICKLAND, SCDC# 155911, AND INMATE SCOTT GRAS
, SCDC# 172957, WITH A CHAIR.

CREATED BY.....: 04/15/91 (END)
LAST UPDATED BY: FOX, CLONTA 04/23/97

DISCIPLINARY TEXT DISPLAYED
PF4=MODIFY NARRATIVE PF7=PREV PG F8=NEXT PG

4-© 1 Sess-1 167.7.50.33 TNET1828 6/2

Exhibit 9

Office Memorandum

CHARLES MOLONY CONDON 295
Solicitor, Ninth Judicial Circuit

TO: Katherine Reed

DATE: 11.6.86

FROM: Julie Johnson

SUBJECT: D. Gilbert Gonzalez

The sentencing judge, Judge Paul Moore, told this D that he was only sorry that he could not impose the death penalty for his crimes. More Impact Statements to follow.

Thanks -

Exhibit 10

4/1/92

Gilbert Gonzalez - 40 yrs
- child 7 yr old ♀ - admits

"Not something I enjoyed - just couldn't help myself" Said found Christianity
started time in 86
Was at Watery - problems with staff
hurt my back - was accused of having "hard on" sitting around
Also problems w/ roommate
- punched some inmates

Carl R Smith

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2006-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF GILBERT)	
GONZALEZ)	**ORDER PURSUANT TO S.C. CODE**
)	**§44-48-90 ASSISTING RESPONDENT**
RESPONDENT.)	**IN OBTAINING INDEPENDENT**
)	**PSYCHIATRIC EXAMINATION**

FILED
2006 OCT -3 PM 12:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

It appears that the Respondent, Gilbert Gonzalez, by and through counsel, has requested that this Court issue an Order pursuant to §44-48-90 of the South Carolina Code of Laws assisting Respondent in obtaining and paying for the services of a competent psychiatrist of his own choosing to perform an independent examination of Respondent and to participate in the trial on Respondent's behalf.

I find that Respondent, who has been in the custody of the South Carolina Department of Corrections since 1986, is indigent and cannot afford to pay for an expert.

I further find that in light of the psychiatric evaluation report issued by Pamela M. Crawford, M.D., the court-approved psychiatrist, in which she diagnosed him with pedophilia and in which she opined that he is at high risk of sexually assaulting children in the future, the services of an independent expert to assess and evaluate Respondent are necessary. Further, I find that it is necessary that Respondent's counsel have access to expert advice in preparing for trial. I also find that to enable Respondent to receive a fair trial in this matter, it is necessary that he have the opportunity to present expert testimony to challenge the opinions rendered by the Attorney General's expert witness.

I further find that Respondent has submitted the name of Thomas V. Martin, M.D., a board certified psychiatrist whom Respondent seeks the Court's assistance in retaining as his examining

expert witness in this matter. Upon review of Dr. Martin's curriculum vitae, I find that he has experience in the assessment, diagnosis and treatment of sex offenders and has served as the Senior Psychiatrist for the S.C. Department of Mental Health's Sexually Violent Predator treatment program from 1999 through 2001. Accordingly, I find that Dr. Martin is an appropriate professional to provide assessment, evaluation, and testimony in this case.

I further find that Dr. Martin's hourly rate of $275 and his estimated charges of between ~~$3500~~ $5000 ALJ and ~~$5500~~ ~~$7000~~ for his services (which includes a full evaluation, consultation with collateral parties and counsel, report preparation, and court appearance) are reasonable. Dr. Martin will maintain an itemized tabulation identifying all services rendered.

THEREFORE, IT IS HEREBY ORDERED:

That Respondent's counsel is authorized to retain Thomas V. Martin, M.D. to provide a full evaluation of Respondent, consultation with collateral parties and counsel, report preparation, and court appearance(s), as necessary, pursuant to §44-48-90 of the South Carolina Code of Laws; and

That the Court will approve payment for said services of Thomas V. Martin, M.D. at the hourly rate of $275 up to a maximum of ~~$7000~~ $500 ALJ *, upon submission of a certified claim for compensation as set forth in §44-48-90 of the South Carolina Code of Laws.

IT IS SO ORDERED:

A.L. Jefferson

The Honorable Deadra L. Jefferson

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

9/29, 2006

Charleston, South Carolina

ALJ * pursuant to S.C. Code §17-3-50(B). upon submission of a certified claim for compensation the Court may order additional compensation pursuant to SC Code Ann. §17-3-50(C). The Court will then be in a position to make the required findings of [illegible] of the final claim submission.

FILED
2006 DEC -8 PM 1:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2006-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF GILBERT)	MOTION FOR ASSISTANCE IN
GONZALEZ)	OBTAINING SECOND EXPERT ON
)	BEHALF OF RESPONDENT
RESPONDENT.)	
)	

Respondent named herein Gilbert Gonzalez, by his undersigned attorney, respectfully moves before the Presiding Judge of the Ninth Judicial Circuit requesting the issuance of an Order pursuant to §44-48-90 of the South Carolina Code of Laws assisting Respondent in obtaining and paying for the services of an additional professional to perform an independent examination of Respondent and to participate in the trial on Respondent's behalf.

By Order of this Court dated October 3, 2006, Respondent retained Thomas V. Martin, M.D., a board certified psychiatrist, who performed an independent psychiatric examination of Respondent on October 19, 2006. Thereafter, Dr. Martin informed Respondent's counsel that he will not be able to testify on Respondent's behalf.

In light of the psychiatric evaluation report issued by Pamela M. Crawford, M.D., the court-approved psychiatrist, in which she diagnosed Respondent with pedophilia and in which she opined that he is at high risk of sexually assaulting children in the future, the services of an independent expert who will be able to assess and evaluate Respondent and appear on his behalf at trial are necessary to Respondent's defense. In addition, Respondent's counsel must have access to expert advice in preparing for trial. To enable Respondent to receive a fair trial in this matter, it is necessary that he have the opportunity to present expert testimony to challenge the opinions rendered by the Attorney General's expert witness.

In that regard, Respondent submits the curriculum vitae of Diane Follingstad, Ph.D., a licensed clinical psychologist whom Respondent seeks the Court's assistance in retaining as his examining expert witness in this matter. Dr. Follingstad has experience in the assessment, diagnosis and treatment of sex offenders and is an appropriate professional to provide assessment, evaluation, and testimony in this case. Dr. Follingstad's reasonable hourly rate for assessments and trial assistance is $250 per hour and her charges for court testimony are $1500 for 1/2 day.

Accordingly, Respondent respectfully requests that the Court provide financial assistance to him to allow him to retain the services of Dr. Follingstad, as outlined in the attached Proposed Order.

Respectfully submitted by,

KERNODLE, TAYLOR & ROOT

By: Christine C. Varnado

Christine Companion Varnado
914 Folly Road, Suite 2
Post Office Box 13897
Charleston, SC 29422-3897
(843) 795-7800
cvarnado@kernodlelaw.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina

December 5, 2006

CERTIFICATE OF SERVICE

The undersigned, Attorney for Respondent, Gilbert Gonzalez, hereby certifies that on December 5, 2006, a copy of the attached Motion for Assistance in Obtaining Second Expert on Behalf of Respondent was placed in an envelope, with first-class postage pre-paid, and mailed to:

Brandy A. Duncan, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

ASSISTANT ATTORNEY GENERAL

Christine C. Varnado
Christine Companion Varnado

FILED
2006 DEC -8 PM 1:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO. 06-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF)	STATE'S REPLY TO RESPONDENT'S
GILBERT GONZALEZ,)	MOTION FOR ASSISTANCE IN OBTAINING
RESPONDENT.)	SECOND EXPERT ON BEHALF OF
)	RESPONDENT

To: Christine Companion Varnado, Attorney for Respondent

COMES NOW the State, by and through the undersigned counsel, and replies to Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent as follows:

BACKGROUND

On February 24, 2006 the State filed its Petition Pursuant to the Sexually Violent Predator Act alleging Respondent is a sexually violent predator under South Carolina Code §44-48-10 et al. On March 6, 2006, the Honorable Deadra L. Jefferson issued a Probable Cause Order based on the State's petition. The following day Respondent's Counsel was appointed. On March 27, 2006, the Court issued a Consent Order of Continuance continuing the probable cause hearing to accommodate Respondent's Counsel's schedule. The probable cause hearing was held on May 4, 2006 before the Honorable R. Knox McMahon and the matter was taken under advisement. On May 5, 2006, Judge McMahon issued an Order for Evaluation Pursuant to the Sexually Violent Predator Act. On May 17, 2006, the State filed its Request for Jury Trial. On July 3, 2006, the Court issued a Consent Order of Continuance past the sixty-day deadline for trial to allow Dr. Pamela Crawford time to complete her evaluation and to accommodate scheduling this case for trial. On July 10, 2006, Dr. Crawford issued her report of evaluation diagnosing Respondent with "Pedophilia, Sexually

Attracted to Females, Nonexclusive" and stating, "It is the opinion of this examiner that Mr. Gonzalez has both a mental abnormality and a personality disorder that make likely [sic] to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment."

On August 11, 2006, Respondent filed a Motion for Assistance in Obtaining Expert on Behalf of Respondent. On October 3, 2006, the Honorable Deadra L. Jefferson issued an Order Pursuant to S.C. Code §44-48-90 Assisting Respondent in Obtaining Independent Psychiatric Examination, which authorized $500, pursuant to S.C. Code §17-3-50(B), for an independent evaluation by Thomas V. Martin, M.D. On November 22, 2006, the Honorable Deadra L. Jefferson issued an Order Pursuant to S.C. Code §44-48-90 and §17-3-50 Assisting Respondent in Paying for Independent Psychiatric Examination, which further authorized an additional $1500 to pay Dr. Thomas V. Martin, M.D. for an independent evaluation of Respondent. On December 7, 2006, the State received Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent.

ARGUMENT

Respondent has already had the benefit of an independent examination and aid in preparing to participate in the trial by Thomas V. Martin, M.D. and the Court has already authorized $2000 worth of funds to pay for these services. In the current motion Respondent simply states, "Dr. Martin informed Respondent's counsel that he will not be able to testify on Respondent's behalf." The Court authorized $2000 to pay for Dr. Martin's services, including a "Psychiatric Examination," however, the State has never received a written report of such an examination, although discovery covering such a report was served on Respondent. The State can only assume no report has been provided because Dr. Martin did not issue a written report, will not testify, and does not have any

information that will be favorable to the Respondent's case. If this is not the case, the State submits further explanation is warranted regarding Dr. Martin's inability to testify on Respondent's behalf, since Dr. Martin received $2000 for an evaluation. If Dr. Martin did not produce a written report and will not testify because his testimony would not be favorable to the Respondent's case, then Respondent's request for a second evaluation constitutes blatant doctor shopping.

"If a person is subjected to an examination under this chapter, the person may retain **a** qualified **expert** of his own choosing to perform the examination." (S.C. Code §44-48-90 (Supp. 2005), Emphasis added). This section further states: "In the case of an indigent person who would like **an expert** of his own choosing, the court must determine whether the services are necessary." (Id., Emphasis added). "If the court determines that the services are necessary and **the expert's** requested compensation for the services is reasonable, the court must assist the person in obtaining **the expert** to perform an examination or participate in the trial on the person's behalf." (Id., Emphasis added). Thus, at all relevant points, the statute refers to only one expert, clearly indicating the legislature never intended to afford any Respondent an opportunity to doctor shop if the first independent evaluation was unfavorable.

Should the Court grant Respondent's request, the State respectfully requests Thomas V. Martin, M.D. and Diane Follingstad, Ph.D. be ordered to produce written reports of evaluation for Gilbert Gonzalez to the Court and to the State.

WHEREFORE, the State prays as follows:

1. For an Order denying Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent in full;

2. In the alternative, should the Court grant Respondent's request, for an Order

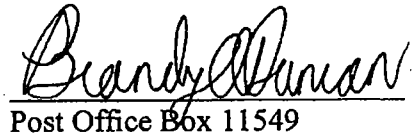
requiring Thomas V. Martin, M.D. and Diane Follingstad, Ph.D. to produce written reports of evaluation for Gilbert Gonzales to the Court and to the State.

Respectfully Submitted,

HENRY MCMASTER
Attorney General

JOHN MCINTOSH
Chief Deputy Attorney General

BRANDY A. DUNCAN
Assistant Attorney General



Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3301

December 8, 2006
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NUMBER: 06-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF)	CERTIFICATE OF SERVICE
GILBERT GONZALEZ,)	
RESPONDENT.)	
)	

The undersigned certifies that a true copy of the foregoing:

1. State's Reply to Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent

was this 8th day of December, 2006, mailed, postage prepaid to:

Christine C. Varnado, Esquire
Kernodle, Taylor, & Root
Post Office Box 13897
Charleston, South Carolina 29422

and was faxed, confirmed this 8th day of December, 2006 to:

Christine C. Varnado, Esquire
(843) 795-3032

By: Brandy A. Duncan

Brandy A. Duncan
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-3301

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)
)
In the Matter of the Care and)
Treatment of Gilbert Gonzalez)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2006-CP-10-0783

ORDER

FILED
2006 DEC 18 PM 2:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the court on December 14, 2006, pursuant to the respondent's motion for assistance in obtaining a second expert under S.C. Code § 44-48-90. The respondent's request is hereby denied with leave to renew the request if there is some compelling reason why the expert originally approved by the court will not participate in the respondent's trial.

IT IS SO ORDERED.

Danny Pieper, Resident Judge
Ninth Judicial Circuit

Charleston, South Carolina
December 15, 2006

Attorney for the State: Brandy Duncan, Assistant Attorney General
Attorney for the Respondent: Christine Companion Varnado, Esquire

Court Reporter: Gayle Burns

06-CP-10-0783-JEA

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2006-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF GILBERT)	MOTION TO RECONSIDER RESPONDENT'S
GONZALEZ)	REQUEST FOR ASSISTANCE IN OBTAINING
)	AN ADDITIONAL EXPERT WITNESS
RESPONDENT.)	
)	

FILED
2006 DEC 29 AM 9:24
JULIE J. KUNG
CLERK OF COURT
BY

Respondent named herein Gilbert Gonzalez, by his undersigned attorney, respectfully moves before the Honorable Daniel F. Pieper requesting reconsideration of his denial of Respondent's request for the issuance of an Order pursuant to §44-48-90 of the South Carolina Code of Laws assisting Respondent in obtaining and paying for the services of an additional professional to perform an independent examination of Respondent and to participate in the trial on Respondent's behalf.

Because Respondent is indigent and incarcerated, he was forced to make a formal request to the Court for assistance in paying for expert witness evaluation. By Order of this Court dated October 3, 2006, Respondent retained Thomas V. Martin, M.D., a board certified psychiatrist, who performed an independent psychiatric examination of Respondent on October 19, 2006. Despite counsel's belief and understanding that Dr. Martin would be the best-available professional to serve as an expert, Dr. Martin informed Respondent's counsel that he will not be able to testify on Respondent's behalf.

In light of the psychiatric evaluation report issued by Pamela M. Crawford, M.D., the court-approved psychiatrist, in which she diagnosed Respondent with pedophilia and in which she opined that he is at high risk of sexually assaulting children in the future, the services of an independent expert who will be able to assess and evaluate Respondent and appear on his behalf at trial are

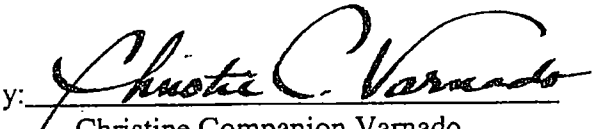
necessary to Respondent's defense.

At the very least, Respondent's counsel must have access to expert advice and consultation in preparing for trial. To enable Respondent to receive a fair trial in this matter, it is necessary that he have the opportunity to present expert testimony to challenge the opinions rendered by the Attorney General's expert witness, even if the expert does not perform an evaluation of Respondent. The retainer of this second expert will not increase Court costs and will not in any way materially alter or prejudice the preparation process for the Attorney General in addressing the methodology and testing conducted by its expert.

Accordingly, Respondent respectfully requests that the Court provide financial assistance to him to allow him to retain the services of Dr. Follingstad, as outlined in his Proposed Order, or, in the alternative, to allow Respondent to retain the expert witness of his choosing solely to provide advice in preparation for trial and to testify concerning the methodology and testing conducted by the State's expert.

Respectfully submitted by,

KERNODLE, TAYLOR & ROOT

By: 

Christine Companion Varnado
914 Folly Road, Suite 2
Post Office Box 13897
Charleston, SC 29422-3897
(843) 795-7800
cvarnado@kernodlelaw.com

ATTORNEYS FOR RESPONDENT

Charleston, South Carolina

December 21, 2006

CERTIFICATE OF SERVICE

The undersigned, Attorney for Respondent, Gilbert Gonzalez, hereby certifies that on December 21, 2006, a copy of the attached Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert was placed in an envelope, with first-class postage pre-paid, and mailed to:

Brandy A. Duncan, Esquire
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

ASSISTANT ATTORNEY GENERAL

FILED
2006 DEC 29 AM 9:26
JULIE ARMSTRONG
CLERK OF COURT
BY _____

Christine C. Varnado
Christine Companion Varnado

312

14-077

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)
)
In the Matter of the Care and)
Treatment of Gilbert Gonzalez)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2006-CP-10-0783

ORDER

FILED
2006 DEC 29 PM 3:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter is before the court pursuant to the respondent's motion to reconsider the court's denial of his motion for assistance in obtaining a second expert at a hearing on December 14, 2006. The undersigned received a copy of the respondent's motion to reconsider on December 28, 2006. As a basis for his motion to reconsider, the respondent argues, as he argued at the hearing, that he should be allowed financial assistance from the state to obtain a second expert of his choosing since the first expert has informed counsel that he will not be able to testify on the respondent's behalf. The court's original order granted the respondent the right to renew the request if some compelling reason were presented as to why the original expert retained will not participate. The respondent has not asserted anything further than what originally was argued before the court. Accordingly, the court's original order remains in effect.

This court finds that a hearing on this motion is unnecessary to reach an appropriate disposition of this matter. Having fully considered the motion and the record, the defendant's motion is hereby denied.

IT IS SO ORDERED.

Danny Pieper, Resident Judge
Ninth Judicial Circuit

Charleston, South Carolina
December 29, 2006

Attorney for the State: Brandy Duncan, Assistant Attorney General
Attorney for the Respondent: Christine Companion Varnado, Esquire
Court Reporter: Gayle Burns

06-CP-10-0783-JEA

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By _____ DEPUTY CLERK

STATE OF SOUTH CAROLINA)) COUNTY OF CHARLESTON)) IN THE MATTER OF THE CARE) AND TREATMENT OF) GILBERT GONZALEZ,) RESPONDENT.)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 06-CP-10-783 STATE'S REPLY TO RESPONDENT'S MOTION TO RECONSIDER RESPONDENT'S REQUEST FOR ASSISTANCE IN OBTAINING AN ADDITIONAL EXPERT WITNESS

To: Christine Companion Varnado, Attorney for Respondent

COMES NOW the State, by and through the undersigned counsel, and replies to Respondent's Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert Witness as follows:

BACKGROUND

On February 24, 2006 the State filed its Petition Pursuant to the Sexually Violent Predator Act alleging Respondent is a sexually violent predator under South Carolina Code §44-48-10 et al. On March 6, 2006, the Honorable Deadra L. Jefferson issued a Probable Cause Order based on the State's petition. The following day Respondent's Counsel was appointed. On March 27, 2006, the Court issued a Consent Order of Continuance continuing the probable cause hearing to accommodate Respondent's Counsel's schedule. The probable cause hearing was held on May 4, 2006 before the Honorable R. Knox McMahon and the matter was taken under advisement. On May 5, 2006, Judge McMahon issued an Order for Evaluation Pursuant to the Sexually Violent Predator Act. On May 17, 2006, the State filed its Request for Jury Trial. On July 3, 2006, the Court issued a Consent Order of Continuance past the sixty-day deadline for trial to allow Dr. Pamela Crawford time to complete her evaluation and to accommodate scheduling this case for trial. On July 10, 2006, Dr. Crawford issued her report of evaluation diagnosing Respondent with "Pedophilia, Sexually

Attracted to Females, Nonexclusive" and stating, "It is the opinion of this examiner that Mr. Gonzalez has both a mental abnormality and a personality disorder that make likely [sic] to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment."

On August 11, 2006, Respondent filed a Motion for Assistance in Obtaining Expert on Behalf of Respondent. On October 3, 2006, the Honorable Deadra L. Jefferson issued an Order Pursuant to S.C. Code §44-48-90 Assisting Respondent in Obtaining Independent Psychiatric Examination, which authorized $500, pursuant to S.C. Code §17-3-50(B), for an independent evaluation by Thomas V. Martin, M.D. On November 22, 2006, the Honorable Deadra L. Jefferson issued an Order Pursuant to S.C. Code §44-48-90 and §17-3-50 Assisting Respondent in Paying for Independent Psychiatric Examination, which further authorized an additional $1500 to pay Dr. Thomas V. Martin, M.D. for an independent evaluation of Respondent.

On December 7, 2006, the State received Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent. This matter was heard by the Honorable Daniel Pieper on December 14, 2006 at which time the Court ordered the request was denied with leave to renew if "there is some compelling reason why the expert originally approved by the court will not participate in the respondent's trial." The State received Respondent's Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert Witness on December 27, 2006. This case is scheduled for trial date certain on January 16, 2007.

ARGUMENT

The State specifically reasserts all factual and legal arguments made in State's Reply to Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent and made during the December 14, 2006 hearing before the Honorable Daniel Pieper. The Court denied

Respondent's request with leave to renew if "there is some compelling reason why the expert originally approved by the court will not participate in the respondent's trial." Respondent's Motion to Reconsider has stated no reason why the expert originally approved by the Court will not participate in Respondent's trial.

Respondent's Motion to Reconsider essentially argues that Respondent should be allowed to retain Dr. Diane Follingstad to "challenge the opinions rendered" by Dr. Pamela Crawford. Respondent fails to address why Dr. Thomas Martin, the expert originally approved by the Court, cannot provide such testimony. The State submits it simply appears Respondent is trying to mitigate the damage Dr. Martin's testimony may have on Respondent's case during cross examination by the State. This assumption is supported by the fact that during a telephone conversation with Respondent's Counsel subsequent to the December 14, 2006 hearing, Counsel requested that the State consent to Dr. Martin testifying only to criticize Dr. Crawford's methodology and testing and limiting its cross examination to only that testimony. The implication of such a request is that Dr. Martin is available to testify, but has nothing positive to offer to Respondent's case other than a criticism of Dr. Crawford's methodology and testing.

Additionally, Respondent asserts that retaining a second expert will not increase Court costs. This argument is disingenuous at best. The glaring fallacy in Respondent's argument is that Dr. Martin has already been paid $2000 to perform an evaluation of Respondent and "to aid Respondent's counsel in preparing to participate in the trial on Respondent's behalf." In the November 15, 2006 Order, Judge Jefferson specifically noted the $2000 included "consultation with counsel for Respondent following the review and evaluation." The State is aware of other cases in which Dr. Martin did not have a favorable opinion to offer after conducting an independent

evaluation under the Sexually Violent Predator Act, but he did assist respondents' counsel regarding cross-examination of Dr. Crawford at trial.

In Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent, Respondent requested that Dr. Follingstad be approved for payment at an "hourly rate of $250 up to a maximum of $500 pursuant to S.C. Code §17-3-50(B)" and upon submission of a certified claim for compensation the Court could order additional compensation pursuant to S.C. Code §17-3-50(C). A review of Dr. Follingstad's "Charges for Forensic Evaluations" states that court testimony is charged at $1500 for "up to ½ day," $3000 for "up to a full day," and most other costs are charged at $250 per hour.

Thus, if the Court grants Respondent's request and Dr. Follingstad evaluates Respondent, it can be assumed, based on Dr. Martin's charges, that at least an additional $2000 would be incurred. If Dr. Follingstad testified, regarding either an evaluation or methodology and testing, or both, that testimony would cost an additional $1500 to $3000. So, the additional cost of this case, if Respondent's request is granted, will be potentially as much as $5000 or more. As discussed above, Dr. Martin has already been paid to perform the requested services, and the cost of this case will increase if Respondent's request is granted.

Respondent has given no reason why Dr. Martin cannot testify at the trial of this case and actually indicated to the State that Dr. Martin may be available if the State agreed to a limited cross-examination. To allow another evaluation and/or another expert to testify, even if limited to only Dr. Crawford's methodology and testing, allows the Respondent to doctor shop until he gets an expert who will disagree with Dr. Crawford's conclusions. Respondent had an evaluation performed by an expert Respondent's counsel admits she believed and understood "would be the best-available

professional to serve as an expert." The State submits the only logical conclusion for not calling such an expert and requesting funds for an additional expert is to seek a favorable opinion from the additional expert or, at the very least, to limit a damaging cross-examination by the State.

WHEREFORE, the State prays as follows:

1. For an Order denying Respondent's Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert Witness in full.

Respectfully Submitted,

HENRY MCMASTER
Attorney General

JOHN MCINTOSH
Chief Deputy Attorney General

BRANDY A. DUNCAN
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3301

January 2, 2007
Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CASE NO. 06-CP-10-0783
)	
IN THE MATTER OF THE CARE)	
AND TREATMENT OF)	ORDER OF COMMITMENT
GILBERT GONZALEZ,)	
RESPONDENT.)	
)	

FILED
2009 FEB 12 PM 2:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The trial of this case was held in the County of Charleston in the Court of Common Pleas the week of February 9, 2009. A jury of citizens from Charleston County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney General James G. Bogle, Jr. represented the State. Christine Varnado, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Section(s) 44-48-90 and 44-48-100:

The State has proven beyond a reasonable doubt that Respondent, Gilbert Gonzalez, is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to be detained in the Charleston County Detention Center and transported, as soon as possible, by the Sheriff of Charleston County to a secure facility of the Department of Mental Health.

AND IT IS SO ORDERED.

A. L. Jefferson
Judge for the Ninth Judicial Circuit
Court of Common Pleas

Feb. 12, 2009
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Becky Grannes
DEPUTY CLERK

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2006-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF GILBERT)	
GONZALEZ)	**RESPONDENTS' REQUEST**
)	**TO CHARGE NO.: 5**
RESPONDENT.)	
)	

I CHARGE YOU THAT:

The Sexually Violent Predator Act's involuntary commitment procedures are "only used to control a 'limited subclass of dangerous persons' and not to broadly subject any dangerous person to what may be indefinite terms [of confinement]."

In re Treatment and Care of Luckabaugh, 351 S.C. 122, 144, 568 S.E.2d 338 (2002).

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO.: 2006-CP-10-783
IN THE MATTER OF THE CARE)	
AND TREATMENT OF GILBERT)	
GONZALEZ)	**RESPONDENTS' REQUEST**
)	**TO CHARGE NO.: 12**
RESPONDENT.)	
)	

I CHARGE YOU THAT:

The good character of a party, when it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact.

State v. Lee-Grigg, 374 S.C. 388, 410, 649 S.E.2d 41 (Ct. App. 2007).

PRGI100D SCDC OFFENDER MANAGEMENT SYSTEM 01/03/06
PROGRAM SERVICES MICKEBR
SUMMARY

SCDC # 137398 CURR LOC: KERSHAW
GONZALEZ,GILBERT -
OFFENDER TYPE: ADULT-STRAIGHT SENTE

	PROGRAM NAME	ENROLLED	TERM DTE	TERM STATUS
	AIDS EDUCATION WORKSHOP	03/21/96	03/21/96	SERV RENDERED & COMPLETED
_	PSY EVAL OTHER	06/02/95	06/02/95	SERV RENDERED & COMPLETED
_	BUILDING PERSONAL POWER	04/20/95	06/08/95	COMPLETE-EXC. PARTICIPA.
_	SELF-DEVELOPMENT TRAINING	10/07/94	10/28/94	COMPLETE-EXC. PARTICIPA.
_	SELF-DEVELOPMENT TRAINING	09/09/94	09/30/94	TERMINATE-POOR ATTENDANCE
_	HEALTH EDUCATION	07/12/94	09/01/94	COMPLETE-EXC. PARTICIPA.
_	CASE MANAGEMENT	06/20/94	06/20/94	SERV RENDERED & COMPLETED
_	CASE MANAGEMENT	05/13/94	05/13/94	SERV RENDERED & COMPLETED
_	AIDS EDUCATION WORKSHOP	05/12/94	05/12/94	SERV RENDERED & COMPLETED
_	PAROLE PREPARATION	06/14/93	06/28/93	COMPLETE-EXC. PARTICIPA.
_	CSTAR GROUP - PHASE III	05/26/93	08/05/98	STAFF DEPARTURE
_	REFERRAL TO SW/MH SERVICE	02/04/93	02/04/93	COMPLETE-EXC. PARTICIPA.
_	PSYCH EVAL-CLASSIFICATION	11/06/92	11/06/92	SERV RENDERED & COMPLETED

PAGE> 0001

RESPONSE>
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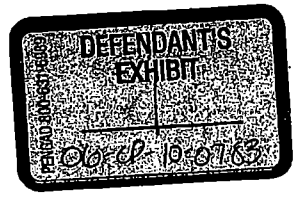

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PRGI100D                  SCDC OFFENDER MANAGEMENT SYSTEM              01/03/06
                               PROGRAM SERVICES                        MICKEBR
SCDC # 137398                     SUMMARY
GONZALEZ,GILBERT -                                   CURR LOC: KERSHAW
OFFENDER TYPE: ADULT-STRAIGHT SENTE

     PROGRAM NAME                ENROLLED  TERM DTE     TERM STATUS
_    NO PROGRAM RECOMMENDED      11/05/92   11/05/92   COMPLETE-EXC. PARTICIPA.
_    CASE MANAGEMENT             08/28/92   02/22/93   COMPLETE-EXC. PARTICIPA.
_    SHORT TERM COUNSELING       08/28/92   08/31/92   COMPLETE-EXC. PARTICIPA.
_    CSTAR GROUP - PHASE II      04/21/92   05/15/93   COMPLETE-EXC. PARTICIPA.
_    CSTAR GROUP - PHASE I       09/16/91   10/23/91   COMPLETE-EXC. PARTICIPA.
_    CASE MANAGEMENT             05/03/91   09/08/92   COMPLETE-EXC. PARTICIPA.
_    ORIENTA.-SOCIAL WORK SERV   12/19/90   12/19/90   SERV RENDERED & COMPLETED
_    CSTAR GROUP - PHASE I       10/08/90   12/17/90   COMPLETE-EXC. PARTICIPA.
_    PSYCH EVAL-CLASSIFICATION   06/08/90   06/08/90   SERV RENDERED & COMPLETED
_    INDIVIDUAL THERAPY          01/25/90   04/25/90   SERV RENDERED & COMPLETED
_    TRANSITION CARE UNIT        01/12/90   04/30/92   RELEASED
_    INDIVIDUAL THERAPY          10/05/89   12/01/89   STAFF DEPARTURE
_    ADV INST SUBS ABUSE PROG    06/06/89   07/18/89   COMPLETE-EXC. PARTICIPA.
RESPONSE>                                                      PAGE> 0002

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PRGI100D SCDC OFFENDER MANAGEMENT SYSTEM 01/03/06
PROGRAM SERVICES MICKEBR
SUMMARY

SCDC # 137398 CURR LOC: KERSHAW
GONZALEZ,GILBERT -
OFFENDER TYPE: ADULT-STRAIGHT SENTE

	PROGRAM NAME	ENROLLED	TERM DTE	TERM STATUS
	LISTENING SKILLS DEVELOPM	04/08/89	04/17/89	SERV RENDERED & COMPLETED
_	INMATES HELPING GRP	03/23/89	05/26/89	COMPLETE-EXC. PARTICIPA.
_	SELF-DEVELOPMENT TRAINING	02/02/89	04/11/89	COMPLETE-EXC. PARTICIPA.
_	TRANSITION CARE UNIT	06/13/88	04/11/89	COMPLETE-EXC. PARTICIPA.
_	LEADERSHIP SKILLS	06/13/88	08/30/88	SUCCESSFUL
_	INDIVIDUAL THERAPY	12/18/87	04/15/88	SERV RENDERED & COMPLETED
_	NARCOTICS ANONYMOUS GROUP	09/29/87	09/29/87	VOLUNTARY
_	ADV INST SUBS ABUSE PROG	08/17/87	09/07/87	SUCCESSFUL
_	DRUG EDUCATION PROG-PH1	07/20/87	08/10/87	SUCCESSFUL
_				

PAGE> 0003

RESPONSE>

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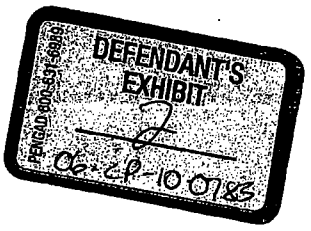
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
CENTRAL CORRECTIONAL INSTITUTION



Program Evaluation

Inmate Name: Gilbert Gonzales SCDC#: 137398 Unit Assigned: Unit 3

Title of Workshop, Program, or Group: C-Star, Phase 1

Start Date: Sept. 16, 1991 End Date: Oct. 23, 1991

Termination Status: Completed [✓] Did not complete [ ]

Program Evaluation:

[ ] Poor - Refused recommended program. Terminated from program. Rarely attends. Unexcused absence. Poor participate and unfavorable adjustment.

[ ] Average - Attended, "for classification purposes only". Minimal or marginal participation. No unexcused absences. Passes test.

[ ] Good - Actively participates/demonstrates a desire for self-improvement. Passes test.

[✓] Excellent - Actively participates/positively encourages others within group/demonstrates a desire for self-improvement/ passes test/maintains positive adjustment for ongoing programs/other volunteer work assisting others.

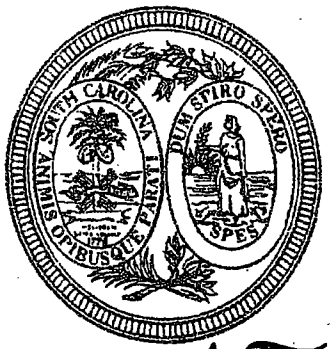
Comments: I/M Gonzales was an active participant in Phase I of the C-Star Program. Phase I is an educational group. I/M Gonzales seemed to have a good understanding of the material and concepts presented in the class sessions.

RECOMMENDATIONS (NEXT SIX MONTHS) I/M Gonzales has expressed the desire to be included in the treatment (therapeutic) phases of C-Star. He will be screened for the next group scheduled to start Feb. '92.

S/ James W. Dodds MSW, LISW
Group Coordinator

cc: Classification Caseworker

South Carolina Department of Corrections



Certificate of Training

Presented to

Gilbert Gonzales

In Recognition of Successfully Completing

C-Star Phase I

Lieber Correctional Institution

On this 17th *Day of* December *In the Year of* 1990 *A.D.*

Joseph B Daniel
DEPUTY WARDEN/UNIT MANAGER

Georgia Hearwood, ACSW
SOCIAL WORKER/TRAINER

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Social Work Services

****

STATEMENT OF PARTICIPATION

****

THIS IS TO ACKNOWLEDGE THAT Gilbert Gonzales SCDC# 137398

HAS PARTICIPATED IN All Sessions

OF C-STAR Phase 1

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT XXXX

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: October 24, 1991

****

James W. DeDoes MSW, LISW

SOCIAL WORKER

Central Correctional

INSTITUTION

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Social Work Services

****

STATEMENT OF PARTICIPATION

****

THIS IS TO ACKNOWLEDGE THAT GILBERT GONZALEZ # 137398

HAS PARTICIPATED IN TEN (10) MONTHS (100) HOURS

OF INTENSIVE C-STAR PHASE II

LEVEL OF PARTICIPATION

POOR _____ AVERAGE _____ GOOD _____ EXCELLENT XXXXXXXX

THIS IS NOT TO BE INTERPRETED AS A STATEMENT OF PROGRESS. PROGRESS REPORTS ARE AVAILABLE UPON REQUEST BY APPROPRIATE OFFICIALS.

DATE: 5-18-93

****

Barbara Craig

SOCIAL WORKER

C.C.I.

INSTITUTION

DEFENDANT'S EXHIBIT 6 06-CP-10-0283

SCDC 26-1 (Rev. 9/88)

IDENTIFICATION AND SUMMARY SHEET

Last Name: Gonzalez	First Name: Gilbert	Middle Initial	Race: U	Sex: M F	Marital Status: S M D W P	Date Admitted: 8-27-86	Time: 9:30
Birthdate: 08-24-58	Age: 31	Religious preference	Education: 12th	Facility: SCSH		Type Case/Hospital No.: Court Case 860 1057	
Residence Address: "ST"				Phone No. Home:	Work:	County of Residence: Charleston	
Usual Occupation	Place of Employment and Address					Veteran, Branch and Serial: N/A	
Medicare: No.	Medicaid: No.	Other Insurance (Name and Policy No.)				Social Security No.: 462 06 3791	
Next of Kin (Name and Relationship): Richard Gonzalez/Brother		Address: Unknown by Patient				Phone: H 7975217 W	
Name of Interested Person / Relationship		Address				Phone: H W	
Prev. Adm. this Facility: X No ___ Yes # ___	Total SCSH Adm. 0 1	Screened through Community Mental Health Center/Clinic: ___ Yes X No	Referred by: General Session			Phone	
Date and Change of Admission Status		Date and Change of Admission Status	Assigned Physician: Dr. Dunlap			Assigned Social Worker	
Maiden Name/Alias Name: ZUBIA AKA Gilbert Gonzalez						Completed by (Signature) Date: Sonja Childress 9-25-86	

Discharge Diagnosis: Items below to be completed by physician on discharge.

AXIS I V71.09 Not mentally ill.
AXIS II V71.09 No diagnosis
AXIS III 244.9 Hypothyroidism.

Condition on Discharge:

Competent to stand trial.

Prescriptions on Discharge:

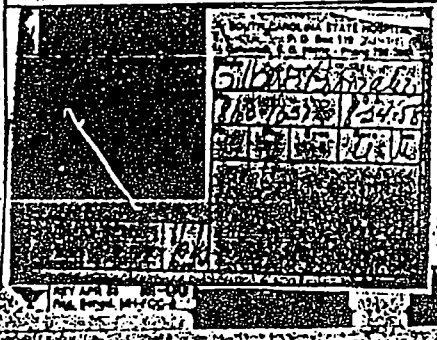
None.

Disposition:

Return to jurisdiction of court.

Discharge Date: 9-25-86

Physician's Signature: J.C. Dunlap M.D.



Flags/I.D.

COURT CASE

DEFENDANT'S EXHIBIT 6 6-CR-10-0785

Admissions and Interward Transfers — Reverse Side

330

CONFIDENTIAL INFORMATION
Not to be filed In Central
Records or Warden's File

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MEDICAL RECORDS

DEFENDANT'S EXHIBIT
7
2:96-CP-10-0783

HUMAN SERVICES
92 NOV 12 AM 11:24

PSYCHOLOGICAL EVALUATION

NAME: Gilbert Gonzales
IDENTIFICATION: SCDC # 137398-CCI
AGE: 34 DOB:
REASON FOR REFERRAL: To assist in assessment of inmate's suitability for advancement in custody status
DATE: November 6, 1992

BACKGROUND INFORMATION: Gilbert Gonzales is a 34 year old single male who was arrested in Charleston County. He is doing a 40 year sentence for committing a lewd act upon a minor under the age of fourteen and for first degree criminal sexual conduct. Mr. Gonzales was reared in Texas. He lived with his natural parents until he was nine years old, but they separated at that time and he remained with his father. He has eight siblings. He acknowledges difficulties in coping with his mother's abandonment as a child and he also reports experiences of being sexually exploited when young. He has completed high school as well as having attained an Associates of Arts degree. He has experienced doing factory and construction work as well as driving a truck. He describes his employment as having been erratic at times.

Mr. Gonzales began getting into trouble as a juvenile and spent time in a detention home. He has also served time previously as an adult in South Carolina as well as in Texas. He readily acknowledges being guilty of the sexual offenses which resulted in his current confinement and he attributes this conduct to personal problems and unresolved conflicts going on in his life at the time. However, he emphasizes that he addressed these issues through his strong religious involvement and commitment.

Mr. Gonzales reports good physical health. He denies having any history of serious psychiatric problems. He does acknowledge alcohol abuse in the past, as well as experimentation with illegal drugs. He emphasizes that he has resolved to refrain from further use of these. He is currently interested in transferring to an open correctional institution and explains that this advancement would give him a sense of making progress within the correctional system.

ADJUSTMENT TO CONFINEMENT: Mr. Gonzales has been incarcerated for over six years. He has advanced to A custody status in the past, but was demoted from it in conjunction with an assault incident. He is currently assigned to Prison Industries as a clerk in the Book Bindery. He has been receiving excellent work evaluations.

Mr. Gonzales has been active in rehabilitation programs including the Sex Offenders' Treatment Program as well as in vocational opportunities. He has also been in anger and stress management classes. He is currently tutoring a Hispanic inmate in reading. He receives visits from friends and stays in touch with family members.

PERSONALITY FUNCTIONING: Mr. Gonzales relates in an open, talkative fashion. He readily describes his views upon life and his religious orientation. He feels that he has made substantial progress in getting his life on track since being confined. He reports satisfactory relationships with other inmates. He has not been involved in any further disciplinary incidents since April, 1991.

Mr. Gonzales reports that he eats and sleeps well and feels that he is free of serious depression. He emphasizes his positive orientation and notes his particular enjoyment in feeling that he is helping others when he engages in tasks such as tutoring and giving witness to his religious convictions. Mr. Gonzales contrasts his current adjustment with times in the past when his lack of confidence and easy frustration interfered with his engaging in respectful relationships with others. He feels that his own experience of sexual abuse as a child prompted many conflicts for him, but he feels that he has gained considerable understanding regarding these matters. He also notes that he has resolved to avoid further alcohol and drug use and feels that this will aid him in avoiding poor judgement. He displays strong efforts at presenting himself in a positive fashion and offering reassurances of improved adjustment.

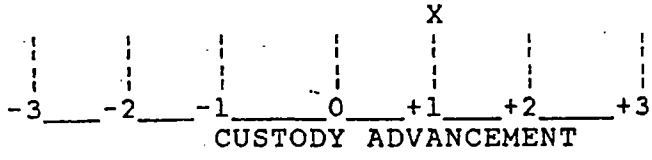
Previously administered testing indicated that Mr. Gonzales was functioning at the top of the Dull-Normal Range of Intelligence. He demonstrated well-developed academic capabilities at that time. During today's evaluation, Mr. Gonzales participated in personality testing including the Draw-A-Person Test and the Incomplete Sentences Blank. His presentation of just the head and face of a human drawing, failing to complete a whole person, may reflect restrictions in his persistence and frustration tolerance. His reliance upon denial as a major defense mechanism is noted in the figure's broad smile and in his description of the individual as "feeling good...happy about how life is going...doing better". Similarly, his responses to topics advanced to him on the Incomplete Sentences Blank were stated in very positive terms. Mr. Gonzales minimizes problems, difficulties, and resentments. In doing so, he fails to address these matters in ways which might allow additional self-improvement. He appears to be investing a good deal of energy into establishing a lofty self-image which may exceed his actual conduct, progress, and effectiveness.

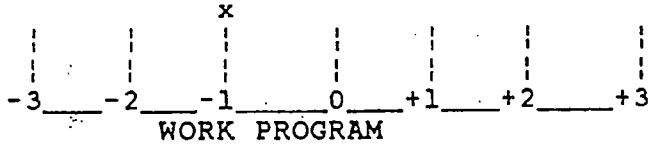
SUMMARY: Gilbert Gonzales is a 34 year old male who is serving a 40 year sentence for rape and victimizing a minor child. Aside from one disciplinary infraction during his confinement, he has not presented serious management problems. He has been active in counseling and educational programs and is receiving excellent performance evaluations in his work. He underscores the religious commitment which he has established since being incarcerated and he shows some tendencies toward relying acceptably upon denial as a defense mechanism, minimizing his problems and limitations. While he might benefit from a more realistic self-assessment, he does appear to be sufficiently cooperative, stable, and well-

motivated at this time to adapt to a higher level of correctional status. He should be encouraged to continue addressing his long standing, significant adjustment problems.

Frank A. Chesno, Ph.D.
Clinical Psychologist

FAC:bg





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MEDICAL RECORDS

E.G. Schleimer, PhD
Corporate Square II, Suite 208
4925 Lacross Rd.
North Charleston, South Carolina 29418
(803) 554-9735

CONFIDENTIAL INFORMATION
Not to be filed in Central Records or Warden's File

CONFIDENTIAL

PSYCHOLOGICAL EVALUATION

DEFENDANT'S EXHIBIT
96-CP-10-0783

Name: Gilbert (Hilberto) Zubia Gonzales 137398
Age: 31
Date of Birth:
Date of Examination: 6/8/90
Place of Exam: Lieber Correctional Instit., Ridgeville, S.C.
Services: Clinical Interview; Review of I/M File; Bender- Gestalt Visual-Motor Test
Referred By: Frank I. Dougherty, Ph.D.
Reason for Referral: PsychEval for Custody Advancement to A-Custody

History: I/M is an El Paso, Texas native who moved to Goose Creek, S.C. in 1985. There were convictions of lewd act on a child under 14 (3/85) and criminal sexual conduct with child, 7, 11/86, for which he was sentenced to 40-years. Prior arrests were several; probation for marijuana possession 4/76; aggrevated robbery, 2/78; marijuana possession, 5/80; robbery, 4/82, served 2 years; and DUI, 2/86, fined.
I/M reports varied but regular employ during all his adult life. He has done construction labor, county road work (drove roller, longest employ), and truck driver (has commercial license). He states thatvhe completed high school; played no sports due to working part time. He is single with no marriages but has two children, a daughter 11, somewhere in El Paso (no contact), and a son, 9, from another woman, this latter one visiting with I/M's father such that some contact is maintained. He recently told his son the truth abput his whereabouts, and fears that the mother will no longer allow the indirect contact that had continued. In the family of origin, he is the 6th of 7, plus 2 half-sisters and a half-brother, younger, from his father. Parents separated when he was 9, with mother leaving. One brother is incarcerated in Texas dus to trouble with drugs and alcohol. Both parents' health is good, with father being a retired concrete finisher. He is aware of no history of nervous/mental disorder in the family; has one family member alcoholic, this being the jailed brother.
There are no current medical complaints. He reports hospitalization and 2-3 week coma from auto wreck in early 70s in which one brother suffered permanent brain damage. This event seemed to be what precipitated the alcohol problem in the other brother (driver). I/M has right eye scar from another auto wreck in 1976. He has used "uppers, downers and hallucinogens" at periods in his youth. Alcohol use has also been substantial with episodic abuse, though there has been tolerance increase reported and blackouts for a time. It is likely that he is addicted.
He aspires to get more schooling; perhaps enter the c ounseling field, as he has been an I/M counselor in TCU for many months. Truck driving skill could be used as back-up.

RECEIVED JUL 19 1990

Testing: Prior evaluation within SCDC (R&E) shows a Revised Beta Examination score of 89, with a Gates Reading grade level of 11.3, and WRAT Spelling and Arithmetic grade levels of 12.9 and 12.9. These scores would indicate that he is within the top 10-percent intellectually in the institution. His work with the Bender Gestalt designs is quite good, showing conformity, good organization and well-planned approach. There are no peculiarities of approach that would signal deviant thinking. There are no judgment errors shown that would indicate organic brain disorder. Mental status exam reveals healthy-appearing 31-y-o of 6' and 250# who is of hispanic heritage. He is well-oriented and in good reality contact, showing no disorder of thinking or mood. His affect is appropriate. Anxiety is absent. Insight into his past sex crimes seems unusually good. Judgment is excellent, and his behavior is quite stable over the period of incarceration. I would anticipate that he would not again become involved in this sort of crime as long as he has moderate success with readjustment in the community.

Remarks/Recommendations: I/M has completed an unusual number of self-help and educational groups in a short time; 7 of these, with 5 of them showing excellent ratings. These included A&D treatment and A&D education. Additional completions were in periods of work as I/M counselor at the TCU facility. These assignments were listed as for 10 and 5 months each. He has been enrolled in the C-STAR at one point, bur reports that he was too uncomfort-able to deal eith it then. he is reentering this program in 9/90. In my opinion, he has better insight into his own needs than any people I have evaluated who were graduates of the C-STAR series. This man has also made remarkable use also of religious ideas and virtues in the last 2-3 years, to his own great advantage.
I would give a strong recommendation in favor of A-Custody at this time.

E. G. Schleimer, Ph.D.
Licensed Clinical Psychologist

services
CORRECTIONAL MEDICAL SYSTEMS, Inc.
LIEBER CORRECTIONAL INSTITUTION/ BOX 205/RIDGEVILLE, S.C. 29472/803-875-3332

Re: Gilbert Gonzalez
SCDC #137398

To Whom It May Concern:

Gilbert Gonzalez has steadily attended individual counseling sessions and utilized his time to develop insightful skills to aid him in self-recognition. He realistically accepts responsibility for his behavior-is sincerely remorseful and contrite.

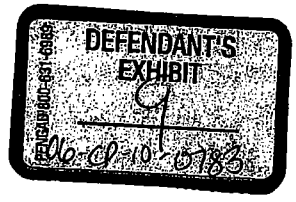
Mr. Gonzalez is both patient and cooperative in sharing his limitations and self-doubts-no matter how painful this process has been.

He has set realistic goals, and expresses determination to return to an appropriate future lifestyle.

Sincerely,

Muriel Bellow

Muriel Bellow, M.A.
Mental Health Counselor



Baptist College at Charleston

Charleston, South Carolina

Be it known that

Gilbert Zubia

having successfully completed the Course of Study as prescribed by the Faculty and Board of Trustees, and having complied with all other requirements of the College is hereby awarded the degree of

Associate of Arts

with all the honors and privileges thereto appertaining. In Witness Whereof, we have hereunto affixed our signatures and the Seal of the College,

this sixteenth day of August, 1990.

Jairy C Hunter Jr
President

Hewlett K. Sullivan Jr.
Chairman of the Board

A. Kennerley Bonnette
Vice-President for Academic Affairs

DEFENDANT'S EXHIBIT
10
06-CP-10-0783

337

South Carolina Department of Corrections

Certificate of Training

Presented to

Gilbert Gonzales

In Recognition of Successfully Completing

Substance Abuse Level I

Lieber Correctional Institution

On this 10 *Day of* August *In the Year of* 1987 *A.D.*

WARDEN/UNIT MANAGER

SOCIAL WORKER/TRAINER

DEFENDANT'S EXHIBIT

00-CP-16-0183

South Carolina Department of Corrections

Certificate of Training

Presented to

Gilbert Zubia

In Recognition of Successfully Completing

Substance Abuse Level II

Lieber Correctional Institution

On this 8th *Day of* September *In the Year of* 1987 *A.D.*

DEPUTY WARDEN/UNIT MANAGER

SOCIAL WORKER/TRAINER

338

339

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

Gilbert Gonzales

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE Transitional Care Unit (Counselor Training) PROGRAM

CONSISTING OF 30 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Lieber Correctional Institution, *this* 30th *day of* August, *A. D.*, 19 88

Willie Weldon, Deputy Warden

Gerald Drose, Director, TCU

Suzette C. Wilson, Social Worker

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

Gilbert Gonzales

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE Inmate Assistant Training PROGRAM

CONSISTING OF 250 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Lieber Correctional Institution, *this* 6th *day of* February, *A. D.*, 19 89

Willie Weldon, Deputy Warden

Suzette C. Wilson, Social Worker IV

Rebecca A. Geiger, Social Worker III

340

341

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

Gilbert Gonzales

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE Self-Development Training PROGRAM

CONSISTING OF 18 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at Lieber Correctional Institution *this* 17th *day of* April, *A. D.*, 19 89

Dr. E. Schliemer, Psychr. Consultant

Rebecca A. Geiger, Social Worker III

Suzette C. Wilson, Social Worker IV

South Carolina Department of Corrections

Certificate of Training

Presented to

Gilbert Gonzales, SCDC# 137398

In Recognition of Successfully Completing

SUBSTANCE ABUSE III

Lieber Correctional Institution

On this 18th *Day of* JULY *In the Year of* 1989 *A.D.*

Willie Weldon
DEPUTY WARDEN/UNIT MANAGER

Margaret Brown, LMSW
Margaret Brown
SOCIAL WORKER/TRAINER

342

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

GILBERT ZUBIA

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE SELF-ESTEEM PROGRAM

CONSISTING OF 5 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at LCI, this 26th day of November, A. D., 1990

Willie L. Weldon, Deputy Warden Lynne B. Keller, TCU Coordinator Kimberly Anthony, Social Worker

Reading for Today
Instructor Certificate

This is to certify that

GILBERT GONZALEZ #137398

has successfully completed Steck-Vaughn's Reading for Today Instructor Training Program.

STECK-VAUGHN COMPANY
A Subsidiary of National Education Corporation
The Leader in Adult Education

Will McCoy
Trainer

T.C.I. LITERACY COUNCIL
Organization or Program

President of Steck-Vaughn Company

TURBEVILLE, SC SEPTEMBER 27, 1995
City and State *Date*

345

Gonzales

Dorchester County Adult/Community Education Program

Certificate of Achievement

This certifies that

GILBERT ZUBIA

has completed in a satisfactory manner the prescribed course of study

in BUSINESS COMPUTER SYSTEMS I

September 18, 1989
DATE

SOUTH CAROLINA

Robert L. Baker MBA PhD
INSTRUCTOR

DIRECTOR

Certificate of Award

This Certifies that

GILBERT ZUBIA

of

THE LIEBER CHRISTIANS IN ACTION

has been awarded this certificate for

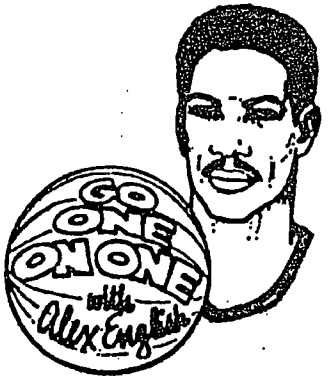
MEMBER OF THE MONTH OF OCTOBER

Date November 4, 1988

CIA President

Chaplain

South Carolina Department of Corrections



Alex English Reading Improvement Program

Outstanding Achievement Award

Presented to

GILBERT GONZALES

SEPT. 23, 1993

Parker Evatt, Commissioner

Milton Kimpson, Deputy Commissioner Program Services

Waray

South Carolina Department of Corrections

Manning Correctional Institution

Certificate of Appreciation

Awarded to

Gonzalez Gilbert 137398

In recognition of

Blood Pressure Inservice

Dated this 27th day of April 19 95

Presented by: Mrs. Gibbes

137398

LAUBACH LITERACY ACTION

VOLUNTEER TUTOR WORKSHOP
CERTIFICATE OF COMPLETION

This is to recognize that Gilbert Zubia

has satisfactorily completed a 6 *hour workshop with emphasis on tutoring* Literacy (Literacy/ESL) *sponsored by a Laubach Literacy Action member program, and/or conducted by an LLA certified trainer.*

LAUBACH LITERACY ACTION
U.S. PROGRAM OF
LAUBACH LITERACY INTERNATIONAL

Marlboro Literacy Council
Program

Dianne Lewis
Trainer

Peter A. Waite
Executive Director, Laubach Literacy Action

Bob Cowell
President/CEO, Laubach Literacy International

3-10-98 MAR 1 0 1998
Date

LLA 6

Certificate of Participation

GILBERT GONZALEZ

has participated with distinction in

TUTORING IN ADULT LITERACY

In recognition of your contributions

this award is presented

this 1st day of JULY 19 97.

Patsy Haithcock
Instructor

Horace Mays
Principal

350

LLA APPROVED
SPECIAL TRAINING CERTIFICATE

This is to certify that

Gilbert ~~Bubta~~ Gonzales

has satisfactorily completed

a 5 hours training program, seminar or workshop

in Using The Bible in Literacy
content or subject area

given by Trident Literacy Organization
organization or institution

Date completed May 29, 1990

Place Francis Lieber Educational Department

Instructor's name Virgies D. Garrison

Instructor's title or certification:

Supervising Tutor Trainer - Literacy

Peter A. Waite
LLA Executive Director

Laubach Literacy Action
U.S. Program of Laubach Literacy International
1320 Jamesville Ave., Box 131
Syracuse, New York 13210

EACH ONE TEACH ONE

PRISON FELLOWSHIP

know all men by these presents that

GILBERT ZUBIA

has fulfilled the prescribed course for the satisfaction of a

Discipleship Seminar

and is therefore awarded this

Certificate of Achievement

and is accorded all of the honors and distinctions pertaining thereto

Three Day Seminar	March 7, 8, 9, 1988	Charles W. Colson
Course of Study	**Date**	

352

"Fight the worthwhile battle of the faith, keep your grip on that life eternal to which you have been called, and to which you boldly professed your loyalty before many witnesses." (I Timothy 6:12)

PRISON FELLOWSHIP MINISTRIES

In recognition of participation in a
Prison Fellowship seminar

GILBERT ZUBIA

is hereby awarded this
Certificate of Participation

Study to show thyself approved unto God, a workman that needeth not to be ashamed, rightly dividing the word of truth.

2 Timothy 2:15

INSTRUCTOR

CHARLES W. COLSON

AREA DIRECTOR

March 1st 1989

DATE

INBTC

Certificate of Recognition

This Certifies That

GILBERT ZUBIA

Has attained special honor for excellence in

PROJECT MANAGER & MEMBERSHIP

And is hereby awarded this certificate by

LEIBER CHRISTIANS IN ACTION

Organization

RIDGEVILLE, SOUTH CAROLINA

City and State

on this 12 *day of* August 19 89

George White, President

Robert O. Shaver, Chaplain

PRISON FELLOWSHIP MINISTRIES

In recognition of participation in a
Prison Fellowship seminar

GILBERT ZUBIA

is hereby awarded this

Certificate of Participation

THE MANUFACTURE'S HANDBOOK

Do the best you can to be the kind of person that God will accept, and give yourself to him. Be a worker who is not ashamed of his work—a worker who uses the true teaching in the right way.

2 Timothy 2:15, The Everyday Bible

INSTRUCTOR

CHARLES W. COLSON

DIRECTOR

5-31-90

DATE

INBTO

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

GILBERT ZUBIA

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE SELF-ESTEEM PROGRAM

CONSISTING OF 5 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at LCI, this 23rd day of August, A. D., 1990

Willie L. Weldon, Deputy Warden

Lynne B. Keller, TCU Coordinator

Kimberly Anthony, Social Worker

357

CERTIFICATE
of
TRAINING

THIS CERTIFICATE IS AWARDED TO

GILBERT ZUBIA

AS A TESTIMONIAL OF SUCCESSFUL COMPLETION

OF THE SELF-ESTEEM PROGRAM

CONSISTING OF 5 HOURS OF TRAINING

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

Given at LCI, *this* 2nd *day of* October, *A. D.*, 19 90

Willie L. Weldon, Deputy Warden Lynne B. Keller, TCU Coordinator Kimberly Anthony, Social Worker

XXL

CERTIFICATE OF ACHIEVEMENT

This Certifies That

Gilbert Gonzalez # 137398

is awarded this Certificate for

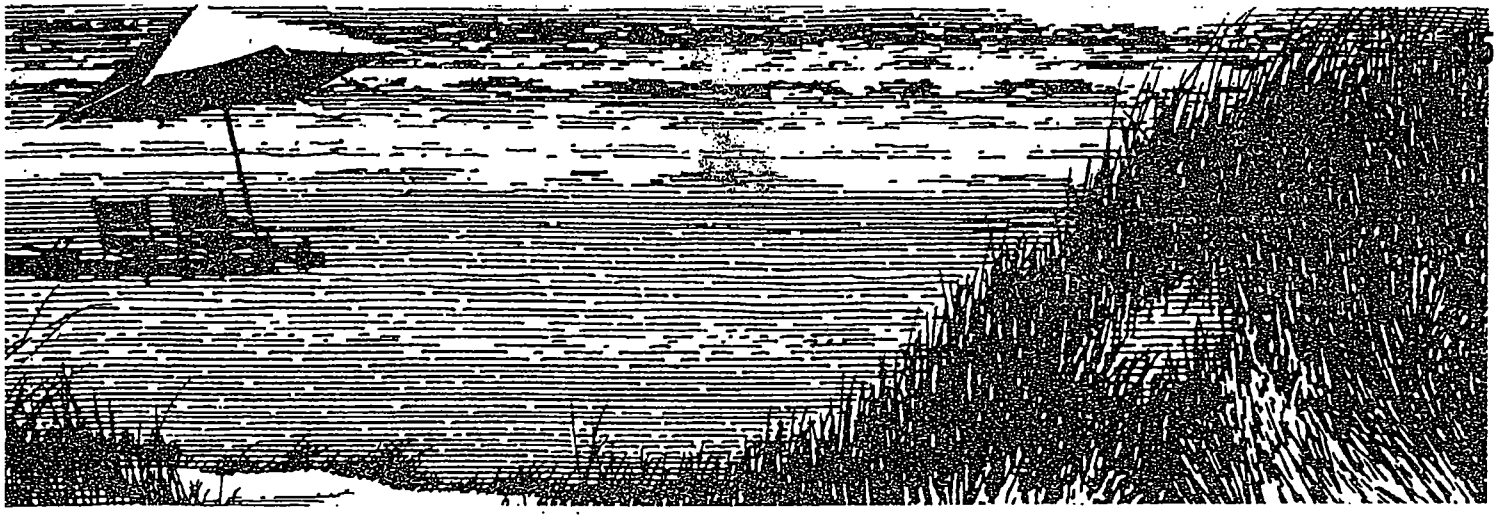
Completion of World of Winners Program

Given at Columbia, S C, this 4th day of May, A. D., 19 93

John Lowe

Barbara Craig, WSW

358



PRISON FELLOWSHIP®

In recognition of participation in the seminar,

"YOU ARE SOMEBODY",

G I L B E R T G O N Z A L E Z,

a child of God, is hereby awarded this

Certificate of Participation

"Be strong in the Lord and in his great power. Wear the full armor of God. Wear God's armor so that you can fight against the devil's evil tricks."
Ephesians 6:10–11 *New Century Version*

Charles W. Colson

Instructor

Ralph E. Medlock
Chaplain

Februay 15, 16, 17, 1994
Date

INBTO

Certificate of Participation

Gilbert Gonzalez

for outstanding performance in the

Self Esteem & Employability Skills Seminar

3/12/96
Date

Sister Mary Powell
Presenter

360

Certificate of Achievement

Awarded for Completion of the

Anger Management Workshop

to

Gilbert Zubia

at Evans Correctional Institution, Bennettsville, S.C.

This 2nd day of April, 1999

Lynette Ware

Ms. Ware, Workshop Coordinator

South Carolina Department of Corrections

Certificate of Participation

Presented to

Gilbert Gonzalez

In Recognition of Your Performance

in

The Impact of Crime Class

Presented this 21st Day of July, 2000

James Hendley
Teacher

Principal

Warden

Certificate of Appreciation

to

MR. GILBERT GONZALEZ

In recognition of your unselfish and dedicated service to the needs of Literacy in South Carolina. Congratulations on your accomplishment:

MASTER TUTOR

This Day Friday/September 21 of 2001

PALMETTO LITERACY COUNCIL

Patsy Haithcock

President

Palmetto Unified School District No. 1

Certificate of Achievement

This Certifies That

Gilbert Gonzalez

is Awarded this Certificate for

Job Skills

Given at Bennettsville, S.C., this 20th day of August, A.D., 20 02

Cecil Gomez

Horace M Bass

Certificate of Appreciation

Be it known that

Gilbert Gonzalez

Has served with distinction as a participant

in

Kershaw Christian Ushers

Presented this

[illegible]

Ralph E. Medlock

[illegible] Regular Chaplain

"...The Lord is with thee, thou Mighty Man of Valour." — Judges 6:12

This is to certify that

Gilbert Gonzalez

Has successfully completed the leadership course

"21 Irrefutable Laws of Leadership" by John C. Maxwell

At Kershaw Correctional Institution on August 16, 2003

Chaplain Harry Davis

Ralph E. Medlock

Senior Chaplain Ralph E. Medlock

Certificate of Award

This Certifies That

Gilbert Gonzalez

In Recognition of Distinguished Achievement in

Art Behind Bars

and by Recommendation of the Committee on Awards
has been Granted this Certificate.

Given at Kershaw C.I. *this* 8th *day of* May 2004

Executive Director

Seminole Form 3016

Certificate of Award

This Certifies That

Gilbert Gonzalez

In Recognition of Distinguished Achievement in

Art Behind Bars

and by Recommendation of the Committee on Awards
has been Granted this Certificate.

Given at Kershaw C.I. *this* 17th *day of* June 2004

Executive Director

Certificate of Completion

This certificate recognizes

Gilbert Gonzalez

for outstanding participation as a Mentor in Alpha

Thursday, July 28, 2005

Alpha Course Leader | Alpha Course Leader | Alpha Course Leader | Alpha Course Leader

"I am the Alpha and the Omega, the Beginning and the End. I will give of the Fountain of the water of life freely to him who thirsts." (Rev. 21:6)

In Loving Memory of Pastor Tony Atkins

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

LIEBER CORRECTIONAL INSTITUTION

MEMORANDUM

TO: Mr. Gilbert Zubia, SCDC #137398
Edisto Unit

FROM: Benjamin Montgomery, Senior Deputy Warden

SUBJECT: CONGRATULATIONS

DATE: November 14, 1988

Congratulations for being selected Inmate of the Month for October by the Christians in Action (CIA). Not only were you chosen by your fellow inmates at Lieber Correctional Institution (LCI), but you were chosen because of the many qualities you possess and your contribution to the CIA organization. You should be extremely proud to be the recipient of such an honor.

It is indeed a privilege to recognize inmates who are pursuing self improvement and have continued to show progress. I encourage you to continue in your endeavors and may this be one of many positive achievements you obtain while at LCI.

Keep up the good work!

Benjamin Montgomery

naw

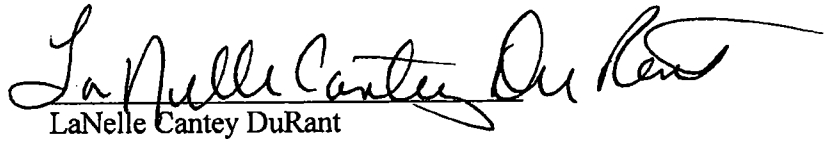
cc: P. Douglas Taylor, Warden
Willie Weldon, Deputy Warden
Robert Shaver, Chaplain
Warden's Jacket

DEFENDANT'S EXHIBIT 13
2:06-CV-10-0785

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 26, 2010.



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX i

TRIAL TRANSCRIPT 32 1

TRIAL TRANSCRIPT 33 2

TRIAL TRANSCRIPT 34 3

CERTIFICATE OF COUNSEL 4

judicial circuit.

Now this is a case brought, as the Judge said, under the Sexually Violent Predator Law. It's a case about risk. And about whether or not the respondent, based on all of his history, is a risk to re-offend in a sexually violent nature. That's what the case is.

The law calls people like this sexually violent predators. We have to prove certain things to you to meet that burden. Now the Judge will explain to you about the burden of proof. And I will tell you right now, we have to prove our case to you beyond a reasonable doubt.

Right now your in civil court, the Court of Common Pleas. This is normally where you might be trying a case involving, say, an automobile accident, or a medical malpractice case or maybe a contract dispute. In those types of cases, the burden of proof is what they call a preponderance or greater weight of the evidence.

Think of the Lady Justice holding the scales, and the scales tip one way, that's the burden of proof. This is different. When the general assembly passed this law they realize that the bottom line might be affecting the liberty of a person on trial,

so they placed higher a burden on the State. The burden is beyond a reasonable doubt. That is how much we have to prove this case to you.

The Judge will explain the law to you when all the testimony is done. And I will defer to her explanation as to what beyond a reasonable doubt is. I won't try to go there, the Judge has a good definition of it and she'll present that to you.

Now as jurors your job is to do two things; one is to consider all of the evidence that you hear from this chair, the witnesses' testimony, and also any documents that are put into evidence.

Here is what you are going to find. I would submit to you that we will have -- let me backup, here is what we have to show, two things we have to prove to you. Number one, has Mr. Gonzalez been convicted of a sexually violent crime as that term is defined in the statute.

Don't be misled by the term violent. There are violent crimes in South Carolina where someone has to be stabbed or shot or cut or something like that, that's not required here. These are a special list of violent crimes called sexually violent crimes. Sometimes they don't include that level of physical harm, but they do include physical harm as

the general assembly deemed appropriate for that definition.

In this particular case we are going to show you that the respondent was convicted three different times for lewd act on a minor child; one involving a four-year-old girl, the other a five-year-old, and a six-year-old. Three different occasions.

Another thing we have to prove to you is does he suffer from a mental abnormality or a personality disorder which makes it likely he will re-offend again in the same sexually violent manner unless he gets treatment at a secure mental health facility. If we meet that burden, and you find both those issues, that's where he will go. That's what the law requires the judge to do, to send him to that type of place.

Now we also have to show you that he has a lack of control. I will tell you right now these crimes happened back in the mid-1980's so it has been a long time. He has been in prison a long time. The question is, looking at all facts, even despite that passage of time, is there a lack of control involving Mr. Gonzalez.

And I would submit to you, you'll hear certain things about how he was out on bail on one of the

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 15, 2010.

LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 16

CERTIFICATE OF COUNSEL 17

TABLE OF AUTHORITIES

Cases

Chaffee v. State, 294 S.C. 88, 362 S. E. 2d 875 (1987) 14

Cole v. Raut, 378 S.C. 398, 663 S.E.ed 30 (2008) 8, 9

Douglas v. State, 332 S.C.67, 504 S.E.2d 307 (1998) 14

Fairchild v. South Carolina Department of Transportation, 683 S.E.2d 818 (Ct. App. 2009) 8

Fernaders v. Marks Construction of S.C., Inc, 330 S.C. 470, 499 S.E.2d 509 (Ct. App. 1998) 8

In re Care and Treatment of Harvey , 355 S.C. 53, 584 S.E.2d 893 (2003) 9

In re McCoy , 360 S.C. 425, 602 S.E.2d 58 (2004) 13

In Re Treatment and care of Luckabaugh, 351 S.C. 122, 144, 158 S.E.2d 338 (2002) 7

State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007) 8

Statutes

S.C. Code § 44-48-70 (1998) 13

S.C. Code 44-48-100(A) (1998) 13

S.C. Code 44-48-90 (1998) 13

S.C. Code Sec. 44-48-30(1) (1998) 13

S.C. Code Section 44-48-20 9

Rules

Rule 403, SCRE 14

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying respondent's request to charge the jury on two charges when there was evidence to support the charges of: (1) the Sexually Violent Predator Act's involuntary commitment procedures are only used to control a "limited subclass of dangerous persons" and not to broadly subject any dangerous person to what may be indefinite terms of confinement; (2) the good character of a party, when it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact?

2. Did the trial court err in allowing the state to argue in his closing that the jury could draw a negative inference from the fact that respondent's expert did not testify and that the expert's testimony would be adverse to respondent's case?

STATEMENT OF THE CASE

Gilbert Gonzalez was convicted of three crimes considered to be sexually violent crimes under the Sexually Violent Predator Act. (SVP Act). In June 1985, Gonzalez entered a guilty plea to committing a lewd act on a minor under the age of sixteen. He was sentenced to nine months incarceration. In November 1986, Gonzalez entered a guilty plea to criminal sexual conduct with a minor first degree (CSC) an to committing a lewd act upon a minor. He was sentenced to thirty years on the CSC first degree and ten years on the lewd act charge to run consecutively.

In 2006, prior to his max-out date of January 2007, the Multi-Disciplinary Team and the Prosecutor's Review Committee determined there was probable cause that Gonzalez was a sexually violent predator. Probable cause and was found and he was ordered to under go a psychiatric evaluation by Dr. Pamela Crawford. Dr. Crawford determined that Gonzalez had a mental abnormality and that he met the criteria under S.C. Code Section 44-48-30. Gonzalez proceeded to trial on February 9, 10, and 11, 2009 before the Honorable Deadra L. Jefferson and a jury. The jury found that Gonzalez was a sexually violent predator. Judge Jefferson issued an order committing Gonzalez to the Department of Mental Health for long-term control, care and treatment. Gonzalez' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in denying respondent's request to charge the jury on three charges when there was evidence to support the charges of: (1) the Sexually Violent Predator Act's involuntary commitment procedures are only used to control a "limited subclass of dangerous persons" and not to broadly subject any dangerous person to what may be indefinite terms of confinement; (2) the good character of a party, when it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact.

Gilbert Gonzalez was convicted in 1985 for approaching a four year old girl and an eight year old girl in K-Mart. He pled guilty to pulling up the skirt of the four year old and touching her genitals. ROA. 9, ll. 7 – 25; ROA. 10, ll. 1 – 25; ROA. 22, ll.11 – 25; ROA. 23, ll. 1 – 25; ROA. 24, ll. 1 – 20. Although he pled guilty, Gonzalez denied touching the girl's genitals. ROA. 71, ll. 1 – 15.

In 1986, he pled guilty to two crimes. One was committing a lewd act on a minor where he allegedly had a five year old girl get into his truck at a location where he was working and installing flooring in a house. He pled guilty to putting his hand in her pants and underwear and rubbing her vaginal area. When this incident occurred, he was on bond for the first incident and was scheduled to go to court the next day. ROA. 27, ll. 19 – 25; ROA. 28, ll. 1 – 24. He denied touching the girl's vagina. ROA. 71, ll. 16 – 19.

The second crime he pled guilty to at the same time in 1986 was CSC with a minor first degree where he admitted that he took a six year old girl into the garage of the house where he was working and performed oral sex on her. She left and he called her into the

garage a second time where performed oral sex again and rubbed her vagina with his penis until he ejaculated. His semen was found in the child's vagina and vulva. ROA. 29, ll. 21 – 25; ROA. 30, ll. 1 – 25; ROA. 31, ll. 1 – 23. He admitted to this incident and expressed remorse about it. ROA. 71, ll. 20 – 25; ROA. 72, ll. 1 – 25; ROA. 73, ll. 1 – 9.

Dr. Crawford's testimony was that Gonzalez had a mental abnormality of pedophilia attracted to females. She also diagnosed him as having an antisocial personality disorder. ROA. 46, ll. 10 – 25; ROA. 47, ll. 1 – 25; ROA. 48, ll. 1 – 25. Her opinion was that Gonzalez met the criteria under the statute to be a sexually violent predator. ROA. 39, ll. 7 – 12. She testified that he had difficulty controlling his sexual behavior and would be at high risk of sexually re-offending against young children. ROA. 50, ll. 2 – 19.

Gonzalez testified that he had been incarcerated twenty years and that he had changed. ROA. 66 – 108. He explained that he had been saved while in jail in 1986 and had repented. ROA. 72, ll. 1 – 25. He said that the spirit of sexual perversion had overtaken him when he committed the crimes, but he had assumed responsibility for them. He said he has learned to control his behavior. ROA. 73, ll. 18 – 24.; ROA. 74, ll. 1 – 25; ROA. 75, ll. 1 – 25; ROA. 76, ll. 1 – 9.

He then gave testimony about the activities he participated in while in prison which included sex offender treatment. ROA. 76, ll. 10 – 25; ROA. 77, ll. 1 – 25; ROA. 78, ll. 1 – 21. He presented thirteen exhibits which included thirty-five certificates of programs he had completed while incarcerated. ROA. 57, ll. 11 – 15 Respondent's Exhibit 10. Among these was an Associate of Arts Degree from the Baptist College of Charleston (Charleston Southern University); a letter of congratulations from the senior Deputy warden for being

selected inmate of the month by the Christians in Action . He was bilingual and helped other inmates with learning English and Spanish. ROA. 87, ll. 18 – 25.

His girlfriend of eleven years, Pam Donahue, testified on Gonzalez' behalf. ROA. 137,ll. 15 – 25. Her testimony was that they met when her son was incarcerated under the Youthful Offender Act (YOA). She explained that Gonzalez was working at that prison and that Gonzalez helped her son turn his life around. She said she thought her son was into drugs but that he had stayed out of trouble and was working successfully. ROA. 138, ll. 1 – 25; ROA. 139, ll. 1 – 25; ROA. 140, ll. 1 – 25. She and Gonzalez had continued their relationship since then and had talked of getting married. ROA. 141, ll. 1 – 25.

At the close of the respondent's case, the judge asked for jury charges. ROA. 165, ll. 3 – 25. After the judge told what she planned to charge, respondent's counsel asked the judge to charge three of the jury charges she had submitted. There were Number Five, Number Six, and Number Twelve. The judge denied all three of these charges. However, she agreed to make the three charges one court exhibit. ROA. 167, ll. 14 – 25; ROA. 168, ll. 1 – 25; ROA. 169, ll. 1 – 25; ROA. 169, ll. 1 – 25.

Respondent's Request to Charge No. Five was:

> The Sexually Violent Predator Act's involuntary commitment procedures are "only used to control a 'limited subclass of dangerous persons' and not to broadly subject any dangerous person to what may be indefinite terms of confinement". In Re Treatment and care of Luckabaugh, 351 S.C. 122, 144, 158 S.E.2d 338 (2002).

Court Exhibit One.

In denying the request to charge Number Five, the judge stated:

> And I will not charge number five. I don't think it's factually appropriate, nor is it within what the accurate statement of the law is.

ROA. 168, ll. 1 – 8.

Respondent's Request to Charge No. Twelve stated:

> The good character of a party, when it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact.
> State v. Lee-Grigg, 374 S.C. 388, 410, 649 S.E.2d 41 (Ct. App. 2007).

Court Exhibit One.

In denying this charge, the judge ruled that number Twelve drew more attention to one thing than another. She said that she gave a very general charge as to how to judge witness credibility and believability which was balanced. She said that she did not like "charges that were too fact specific". ROA. 168, ll. 21 – 25; ROA. 169, ll. 1 – 25; ROA. 170, ll. 1 – 25; ROA. 171, ll. 1 – 25; ROA. 172, ll. 1 – 4.

An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion. Cole v. Raut, 378 S.C. 398, 404, 663 S.E.ed 30, 33 (2008). In Fairchild v. South Carolina Department of Transportation, 683 S.E.2d 818 (Ct. App. 2009), the Court of Appeals held that a trial court must charge the current and correct law. The Court cited Fernaders v. Marks Construction of S.C., Inc, 330 S.C. 470, 473, 499 S.E.2d 509, 510 (Ct. App. 1998) which held that a trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence.

If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Id. To warrant reversal, the party seeking the requested charge must demonstrate error and prejudice. Cole v. Raut, *supra.*

The judge made an error of law in refusing to charge Number Five on the basis that it was not the "accurate statement of the law". The Sexually Violent predator Act at S.C. Code Section 44-48-20 provides:

> The General Assembly finds that a mentally abnormal and extremely dangerous group of sexually violent predator predators exists who require involuntary civil commitment in a secure facility for long term control, care and treatment.

The South Carolina Supreme Court held in In re Care and Treatment of Harvey , 355 S.C. 53, 584 S.E.2d 893 (2003), that the purpose of the requirements of the SVP Act is to ensure that involuntary commitment procedures under the Act are only used to control a limited subclass of dangerous persons and not to broadly subject any dangerous person to what may be indefinite terms.

The judge made an error of law in not charging Number Twelve as their was ample evidence presented of Gonzalez' good character. He presented thirty-five certificates of the good work he was doing at the Department of Corrections (DOC). In addition, his girlfriend served as a witness to his good character in that he helped her son.

Based on her ruling, the judge misinterpreted the meaning of the charge. The judge appeared to understand that the charge referred to the credibility and believability of witnesses instead of to respondent's good character.

This was prejudicial to Gonzalez because the jury needed to understand that they could consider his good character evidence. The jury also needed to understand that the SVP Act was meant for a limited subgroup of dangerous people. If the judge had instructed the jury on these charges, this would have made it clearer to the jury instead of confusing them, contrary to the judge's observations.

ARGUMENT

II.

The trial court erred in allowing the state to argue in his closing that the jury could draw a negative inference from the fact that respondent's expert did not testify and that the expert's testimony would be adverse to respondent's case.

At the beginning of the trial in a pretrial motion, respondent's counsel renewed her previous motion for assistance in obtaining another expert. [1] The told the court that she had made a motion before a circuit court judge in writing but it was denied. Judge Jefferson denied her request but told her the issue was preserved for appeal. ROA. 5, ll. 1 – 25; ROA. 6, ll. 1 – 25; ROA. 7, ll. 1 – 25; ROA. 8, ll. 1 – 18.

Counsel then asked the judge regarding respondent's failure to call an expert witness but the judge told her she would take argument on it "contemporaneously". ROA7. 19, ll. 18 – 25. During the trial, counsel brought up the issue of the state being allowed to draw a negative inference from respondent not having an expert to testify. The judge ruled that the state could ask Gonzalez if he had been evaluated but said the "rest of it goes to how he argues it to the jury." She said that "you could always draw a negative inference from a witness not being called." The judge went on to say that the state could "certainly argue lack of a witness." ROA. 59, ll. 19 – 25; ROA. 60, ll. 1 – 22.

Counsel argued that this was different from a consulting witness. The judge said the expert was retained so it did not come within the discovery rules because the discovery rules

[1] In the first trial, January 16-17, 2007, which ended in a mistrial, counsel filed a Motion for Assistance in Obtaining Second Expert on Behalf of Respondent filed December 8, 2006 wherein she stated that a second

apply to an expert who is consulted. Counsel argued that it was prejudicial to her client and outweighed the value of such procedure. Counsel argued that a person could bring up the fact that a witness was not called if the witness is equally available to both parties or is unavailable. Counsel said Dr. Martin was not available to her client. ROA. 60, ll. 23 – 25; ROA. 61, ll. 1 – 25; ROA. 62, ll. 1 – 25; ROA. 63, ll.1 – 25.

The judge said that the state would be very limited in what they could ask Gonzalez which would be limited to asking if he were evaluated. However, she said the state could argue that since the expert was not at trial, the jury "should assume he did not have something favorable to say." She said this was a civil case. ROA. 64, ll. 1 – 22.

During the state's cross examination of Gonzalez, respondent's counsel objected when the state began to question Gonzalez about a second evaluation. The judge did not allow speaking objections but had counsel approach the bench. She then overruled counsel's objection. The state asked Gonzalez if he been evaluated by. Dr. Tom Martin which Gonzalez said yes. ROA. 115, ll. 18 – 25; ROA. 116, ll. 1 – 13.

During his closing argument, the state's attorney told the jury that it was clear from the evidence that respondent was allowed to get an independent evaluation by a psychiatrist of his choice, Dr. Tom Martin. Respondent's counsel objected which was overruled after a discussion at the bench. ROA. 185, ll. 1 – 19.

The state's attorney then argued to the jury:

> As I was saying, the respondent, after getting the evaluation done by Dr. Crawford, was entitled to get an independent evaluation and he got one by Dr. Tom Martin. Dr. Martin is not here. I would submit to you that you can draw an

---

independent psychiatric examination was needed because the first expert, Dr. Tom Martin, would not testify on Respondent's behalf.

> inference from his not being here that if he was here his testimony would be adverse to the respondent's case.

ROA. 185, ll. 20 – 25; ROA. 186, ll. 1.

The Sexually Violent Predator Act involves involuntary civil commitments to the Department of Mental Health. S.C. Code Sec. 44-48-20 (1998). However, the Act includes significant components of the criminal law. These include a probable cause determination and hearing. S.C. Code § 44-48-70 (1998). A person subject to the Act is entitled to the assistance of legal counsel at all stages, and the person is entitled to a jury trial. S.C. Code 44-48-90 (1998). Although this right to counsel is not constitutional, it is statutory. In re McCoy , 360 S.C. 425, 602 S.E.2d 58 (2004). The burden for a finding by the jury that the person is a sexually violent predator is 'beyond a reasonable doubt". S.C. Code 44-48-100(A) (1998).

The Act involves criminal convictions in that the Act defines a sexually violent predator as a person who has been convicted of a sexually violent offense as listed in the Act and suffers from a mental abnormality or a personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care and treatment. S.C. Code Sec. 44-48-30(1) (1998). The Act itself involves the taking of personal freedom through the involuntary commitment.

Because of these components of criminal law, the Act is a hybrid of civil and criminal law. The evidence and testimony at a trial under the SVP Act is concerned primarily with criminal acts the defendant or respondent has committed and future criminal acts he may commit. If found to be a sexually violent predator by a jury, the person's

personal freedom is taken, maybe for his life time. This is the same result as a criminal conviction.

Because the same burden applies to these SVP trial as the burden in a criminal trial, and because of the other similarities to the criminal law, the same constitutional rights and rules of evidence should apply as well. The state told the jury in his opening statement that the state had the burden of proof which was beyond a reasonable doubt. SUPP. ROA. 1, ll. 2 – 25; SUPP. ROA. 2, ll. 1 – 3; SUPP. ROA. 3, ll. 1 – 23. Although the judge said the state could argue a negative inference because Dr. Martin was not present since this was a civil trial, she committed reversible error in allowing the state to shift the burden of proof to the respondent.

In Douglas v. State, 332 S.C.67, 504 S.E.2d 307 (1998), the Supreme Court wrote that the jury should ordinarily be instructed not to draw inferences from the neglect of a defendant to call witnesses.

Rule 403, SCRE, provides that any relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. The judge's rulings regarding the expert witness were prejudicial. The judge denied funding for a second expert because the first expert refused to testify. Then the judge allowed the state to tell the jury they could draw a negative inference because Gonzalez' expert did not testify. This placed Gonzalez in a catch 22 situation where he could not win. This was prejudicial to Gonzalez.

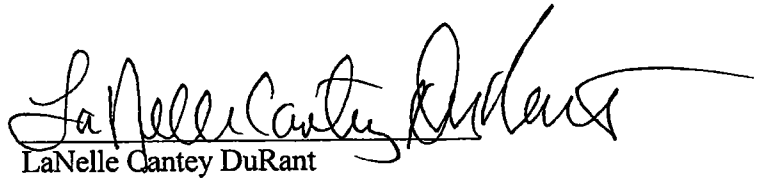
In Chaffee v. State, 294 S.C. 88, 362 S. E. 2d 875 (1987) the Supreme Court ruled that the denial of right to present evidence of adaptability to prison life in capital murder case was unconstitutional. . This same principle should apply to Gonzalez where the judge

refused to allow him to obtain a second opinion and then in effect allowed that fact to be used against him.

CONCLUSION

Based on the above, the order of the trial court committing respondent to the SVP Program should be reversed.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT.

This 15th day of April, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF GILBERT GONZALEZ,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Designation of Matter in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 15th day of April, 2010.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 15th day of April, 2010.

(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017 .

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April 15, 2010

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Re: In the Matter of the Care and Treatment of Gilbert Gonzalez

Dear Ms. Shupe:

Enclosed are two copies of the Final Brief of Appellant and Designation of Matter in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/pds

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable Deadra E. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT
OF GILBERT GONZALEZ,

Appellant,

FINAL BRIEF OF RESPONDENT

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT OF GILBERT GONZALEZ,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

ARGUMENT 9

I. The circuit court's jury charges adequately set forth the applicable law. 9

II. The circuit court properly allowed the State to argue the jury could draw a negative inference from Appellant's failure to present testimony from his independent expert. 14

CONCLUSION 19

TABLE OF AUTHORITIES

Cases:

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) 15

Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000) 9

Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30 (2008) 9

Duckworth v. First National Bank, 254 S.C. 563, 176 S.E.2d 297 (1970) 16

Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 [2000] 16

Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 262 S.E.2d 875 (1980) 16

In Re: Care and Treatment of Brown v. State, 372 S.C. 611, 643 S.E.2d 118 (Ct. App.2007) 15

In Re: Care and Treatment of Canupp 380 S.C. 611, 671 S.E.2d 614 (Ct. App. 2008) 15, 16

In Re: Care and Treatment of Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003) 9, 10

In Re: Matthews, 345 S.C. 638, 550 S.E.2d 311 (2001) 15

In Re: Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002) ... 9, 10

Kansas v. Crane, 534 U.S. 407 (2002) 10

McGee v. Bruce Hospital System, 321 S.C. 340, 468 S.E.2d 633 (1996) 17

Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002) 16

State v. Green, 278 S.C. 239, 294 S.E.2d 335 (1982) 12

State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) 16

State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009) 9

State v. Jones, 383 S.C. 535, 681 S.E.2d 580 (2009) 17

State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *cert. granted* September 18, 2008 11-13

State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999) 15

State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991) 9

State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) 15

Other Authorities:

Rule 26(b)(4)(B), SCRCP 14

Rule 404(a), SCRE 11, 12

Rule 404(a)(1), SCRE 11

Rule 404(a)(2), SCRE 11

Rule 404(a)(3), SCRE 11

S.C. Code §44-48-90 (Supp. 2008) 14

STATEMENT OF ISSUES ON APPEAL

I.

The circuit court's jury charges adequately set forth the applicable law.

II.

The circuit court properly allowed the State to argue the jury could draw a negative inference from Appellant's failure to present testimony from his independent expert.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

In 1985, Appellant Gilbert Gonzalez ("Gonzalez") (aka Gilbert Zubia), pled guilty to committing a lewd act on a minor arising from an incident involving a four year old girl and an eight year old girl. He approached the girls in a store parking lot and asked to see their underwear. When the girls refused, Gonzalez pulled up the four year old girl's skirt, put his hand inside her underwear and fondled her vaginal area. (Petition filed February 24, 2006 [Petition], p. 3; Record on Appeal [R.], p. 233).

In 1986, Gonzalez pled guilty to one count of first degree criminal sexual conduct with a minor, and one count of lewd act on a minor, and was sentenced to consecutive incarceration terms of thirty years and ten years, respectively. The criminal sexual conduct charge arose from the sexual assault of a six year old girl. Gonzalez was working at the girl's home when he lured her into the garage and performed oral sex on her. He also rubbed his penis on her vaginal area until he ejaculated. (Petition, pp. 2-3; R., pp. 232-233).

The lewd act charge arose from the sexual assault of a five year old girl. Gonzalez lured her into a truck and fondled her vaginal area. This offense occurred while Gonzalez was out on bond on the 1985 lewd act charge, and one day before he was scheduled to appear in court for sentencing on that charge. (Petition, p. 3; R., p. 233).

Pursuant to the South Carolina Sexually Violent Predator Act ("SVP Act"), the Multi-Disciplinary Team ("MDT") reviewed Gonzalez's case prior to his release from incarceration, found probable cause to believe he met the criteria for civil commitment and referred the case to the Prosecutor's Review Committee ("PRC") for further review. The PRC also found probable cause to believe Gonzalez met the criteria for commitment, and

referred the case for civil commitment proceedings. (Petition, p. 1; R., p. 231).

On February 24, 2006, Respondent State of South Carolina (the "State") commenced a civil commitment proceeding in the Charleston County Court of Common Pleas. The circuit court found probable cause to believe Gonzalez is a sexually violent predator, and appointed Pamela Crawford, M.D. ("Dr. Crawford") to perform a mental evaluation.

Dr. Crawford concluded Gonzalez suffers from the mental abnormality of pedophila, and meets the criteria for civil commitment under the SVP Act. On October 3, 2006, the circuit court granted Gonzalez's request for an independent evaluation by Thomas Martin, M.D., and ordered compensation up to $5000 for the evaluation and trial assistance. (Order filed October 3, 2006; R., pp. 298).

On or about December 5, 2006, Gonzalez moved for financial assistance to hire a second expert to perform another independent evaluation and participate at trial. Gonzalez indicated Dr. Martin performed the previously ordered evaluation on October 19, 2006, and then simply stated "Dr. Martin informed [Gonzalez's] counsel that he will not be able to testify on [Gonzalez's] behalf." (Motion for Assistance in Obtaining Second Expert on Behalf of Respondent, dated December 5, 2006; R., pp. 300). The State objected to the request for a second evaluation, arguing it was an attempt to "doctor shop" because Dr. Martin's evaluation was not favorable to Gonzalez. (State's Reply to Respondent's Motion for Assistance in Obtaining Second Expert on Behalf of Respondent, filed December 13, 2006; R., pp.303) After a hearing, the circuit court denied the motion "with leave to renew the request if there is some compelling reason why the expert originally approved by the court will not participate in the respondent's trial." (Order, filed December 18, 2006; R., p.

308).

Gonzalez moved for reconsideration of the circuit court's order, arguing his counsel needed access to expert advice and consultation in preparing for trial and challenging Dr. Crawford's opinion. (Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert Witness, dated December 21, 2007; R., pp.309). The State again opposed the requested relief, noting Gonzalez's counsel had indicated Dr. Martin might be available for trial if the State agreed to limit his cross-examination to only Dr. Crawford's methodology and testing, and therefore, Gonzalez failed to present any "compelling reason" Dr. Martin was unavailable for trial. (State's Reply to Respondent's Motion to Reconsider, filed January 8, 2007; R., pp, 314), The circuit court denied the motion, finding Gonzalez's motion did not assert anything more than what was argued on the original motion. (Order, filed December 29, 2006; R., pp. 312).[1]

The matter was called for a jury trial on February 9, 2009, before the Honorable Deadra L. Jefferson, Circuit Court Judge.[2] Prior to trial, the circuit court denied Gonzalez' renewed motion for assistance in obtaining a second expert, finding the SVP Act plainly provided for funding one expert, and the court did not have authority to overrule the previous court order on the issue. (Trial Transcript [TT], pp. 19-20; R. pp. 7-8).

Dr. Crawford testified regarding the information she considered during the course of evaluating Gonzalez, including two interviews with Gonzalez and the facts of his offenses.

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[1]The State submitted its Reply before receiving the Order denying the motion.

[2]Two earlier trials ended in mistrials when the juries were unable to reach unanimous verdicts.

She stated Gonzalez only admitted committing one of his three known offenses, and he indicated he believed it happened because his girlfriend put "a spell" on him. (TT, pp. 48-64; R., pp. 16-32).

Dr. Crawford concluded Gonzalez suffers from the mental abnormality of pedophilia, sexually attracted to females, nonexclusive, and antisocial personality disorder. She testified Gonzalez's pedophilia and antisocial personality disorder made him a high risk to sexually re-offend against very young children, and he needed to be confined for long term control, care and treatment. She stated outpatient treatment would not be appropriate because Gonzalez did not believe he needed any treatment. (TT, pp. 71-88; R., pp. 39-56).

At the conclusion of the State's case, Gonzalez's counsel inquired about the State's intention to argue a negative inference from his failure to call an expert witness. When the State indicated it did intend to make such an inference, the circuit court ruled the State could ask Gonzalez if he had been evaluated by another expert, and then argue to the jury regarding a negative inference from Gonzalez's failure to call the expert as a witness at trial.

Gonzalez testified he had a religious experience while incarcerated, and he repented of his prior conduct. He stated his religious experience made him sorry for his conduct against children, and he would not harm another child. He presented numerous certificates he earned while incarcerated, and testified he took courses and obtained a college degree. (TT, pp. 134-171; R., pp. 70-107).

On cross-examination, Gonzalez stated he did not commit two of the crimes to which he pled guilty, and reiterated his belief whatever crimes he committed were due to a "spirit overtaking" him. Over counsel's objection, he also testified Dr. Martin evaluated him in

October 2006 after Dr. Crawford issued her report recommending civil commitment. (TT, pp. 173-196; R., pp. 109-132).

Gonzalez's girlfriend testified she met him while he was incarcerated, and they got involved after Gonzalez helped her son. She stated he is a very trustworthy person, and within the context of her visiting him in prison, she believed he was a very truthful person. (TT, pp. 204-207, 210, 215; R., pp. 138-141, 144, 149). On cross-examination, she admitted she had never observed Gonzalez in the community, but only in prison visiting rooms guarded by correctional officers. (TT, pp. 219-222; R., pp. 153-156).

At the close of the evidence, the circuit court conducted a jury charge conference, during which Gonzalez requested a charge stating the SVP Act was used only to control a limited subclass of dangerous persons. (Court's Exhibit 1 - Respondent's Request to Charge No. 5; R. p. 320). He also requested a charge regarding consideration of character evidence. (Court's Exhibit 1 - Respondent's Request to Charge No. 12; R., p. 321). The circuit court denied the requests, finding Request No. 5 was not factually appropriate or an accurate statement of the law, and Request No. 12 was an inappropriate charge on the facts and drew more attention to one thing than another. The court also found the court's charge on witness credibility and believability was balanced, and appropriately addressed the issue, so Request No. 12 was cumulative in some respects. (TT, pp. 232-241; R., pp. 165-174).

During closing arguments, over Gonzalez's objection, the State referenced the testimony regarding Dr. Martin's independent evaluation of Gonzalez, and argued the jury could infer Dr. Martin's testimony would be adverse to Gonzalez because Dr. Martin did not testify during the trial. (TT, pp. 253-254; R., pp. 185-186). Gonzalez's counsel then argued

the State had the burden of proof, and could have called Dr. Martin to testify if his testimony would have benefitted the State's case. (TT, p. 269; R., p.201).

The circuit court charged the jury to consider only competent evidence presented, and gave extensive charges regarding the jury's determination of witness credibility and the State's burden of proof. (TT, pp. 277-288; R., pp. 209-220). Gonzalez did not object to the court's charges as given, but simply renewed his previous objections. (TT, p. 288; R., p.220).

The jury found Gonzalez is a sexually violent predator as defined by the SVP Act. (TT, p. 292; R., p. 221). The circuit court denied Gonzalez's motion for judgment notwithstanding the verdict, and ordered Gonzalez be committed to the Department of Mental Health for long term control, care and treatment. (TT, pp. 297-305, Order of Commitment filed February 12, 2009; R., pp. 222-230, 319). This appeal followed.

ARGUMENT

I. The circuit court's jury charges adequately set forth the applicable law.

Gonzalez contends the circuit court erred in denying his Request to Charge No. 5 because the language he requested was the holding in a South Carolina Supreme Court case. He also contends the court erred in denying his Request to Charge No. 12 because he presented evidence of good character, and the circuit court misinterpreted the meaning of the proposed charge.

"The trial judge must charge the jury with the 'current and correct law' of the State." State v. Robinson, 306 S.C. 399, 412 S.E.2d 411, 413 (1991). An appellate court will not reverse the trial court's decision regarding jury instructions absent an abuse of discretion. Cole v. Raut, 378 S.C. 398, 663 S.E.2d 30, 33 (2008) (*citing* Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 [2000]); State v. Holland, 385 S.C. 159, 682 S.E.2d 898, 901 (Ct. App. 2009).

A. Request to Charge No. 5

Gonzalez's Request to Charge No. 5 stated "[t]he Sexually Violent Predator Act's involuntary commitment procedures are 'only used to control a 'limited subclass of dangerous persons' (sic) and not to broadly subject any dangerous person to what may be indefinite terms [of confinement],'" and cited In Re: Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (2002), as authority. (Court's Exhibit 1 - Respondent's Request to Charge No. 5; R., p. 320). In his Brief, Gonzalez relies on In Re: Care and Treatment of Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003), as authority for the charge. A cursory review of both cases reveals the quoted language was merely dicta rather than part of the Supreme

Court's holdings.

In Luckabaugh, the Supreme Court considered whether the SVP Act complied with due process requirements the United States Supreme Court established in Kansas v. Crane, 534 U.S. 407 (2002). In analyzing the due process issue, the Court noted the purpose of each requirement "is to ensure involuntary commitment procedures are only used to control a 'limited subclass of dangerous persons' and not to broadly subject any dangerous person to what may be indefinite terms." 568 S.E.2d at 349. The Court then held the SVP Act complied with the Crane requirements. *Id.*

The issue before the Supreme Court in Harvey was whether the State sufficiently proved Harvey was a pedophile, or that his pedophilia made him likely to commit future acts of sexual violence if not confined for treatment. The Court held the State provided sufficient evidence of pedophilia as well as the likelihood of re-offending without confinement and treatment, and in a **footnote**, cited the language from Luckabaugh quoted above merely to reiterate the purpose of the SVP Act's requirements. 584 S.E.2d at 898-897. Thus, as in Luckabaugh, the language was dicta rather than part of the Court's holding, and it was not part of the law of the case.

In denying Gonzalez's Request to Charge No. 5, the circuit court stated the requested language was dicta and not an accurate statement of applicable law, but Gonzalez could argue it to the jury. (TT, pp. 235-236; R., pp. 168-169). The court properly analyzed the charge request, and did not abuse its discretion in refusing to give the charge.

B. Request to Charge No. 12

Gonzalez's Request to Charge No. 12 stated "[the] good character of a party, when

it is established to the satisfaction of the jury, should be considered by the jury just as they would consider evidence of any other fact," and cited State v. Lee-Grigg, 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007), *cert. granted* September 18, 2008, as authority. In denying the requested charge, the circuit court stated it constituted an inappropriate comment as to Gonzalez's character, the requested language drew more attention to one type of evidence over another, and Lee-Grigg was distinguishable because it was a criminal case involving the defendant's guilt or innocence as to a specific charge rather than a civil sexual predator commitment case. (TT, pp. 235-241; R., pp. 168-174).

Rule 404(a), SCRE, provides character evidence is not admissible for the purpose of proving someone acted in conformity therewith on a particular occasion. There are three exceptions to the general rule: 1) evidence of a pertinent character trait offered "by an accused, or by the prosecution to rebut the same" [Rule 404(a)(1) (emphasis added)]; 2) evidence of a pertinent character trait of a crime victim, offered by the accused or by the prosecution in rebuttal [Rule 404(a)(2)]; and 3) evidence of a witness' character pursuant to Rules 607, 608 and 609 [Rule 404(a)(3) (impeachment evidence)]. On their face, Rule 404(a)(1) and (2) relate only to criminal prosecutions, while subsection (3) applies only to impeachment of witnesses.

In criminal prosecutions, the defendant's good reputation, "if proved, may be taken into consideration by the jury in determining whether or not he or she committed the crime charged." Lee-Grigg, 649 S.E.2d at 52. Where there is such evidence and a jury charge is requested, the defendant is entitled to an instruction that evidence of good character and good reputation may create a doubt as to the defendant's guilt, and the jury should consider it with

all other evidence in determining guilt or innocence. *Id.* at 53 (*citing* State v. Green, 278 S.C. 239, 294 S.E.2d 335 [1982]).

As the circuit court found, the instant case is a civil commitment case rather than a criminal case involving Gonzalez's guilt or innocence of a particular crime. Further, there was no allegation he acted in conformity with a particular character trait on a particular occasion, and no issue regarding impeachment of a witness. Therefore, Rule 404(a) and Lee-Grigg do not apply in this case, and the circuit court's instructions regarding the jury's determination of witness credibility were accurate and sufficient statements of applicable law.

Even if the law regarding character evidence jury charges applied to civil commitment cases, the evidence in this case did not warrant such a charge. In Lee-Grigg, the "character" evidence included testimony from multiple witnesses who dealt with the defendant in the general community for a long time and knew her reputation in the community. Gonzalez's "character" evidence in this case consisted of his own self-serving testimony regarding his conduct while incarcerated, and his girlfriend's testimony. On cross-examination, his girlfriend admitted she had no knowledge of Gonzalez's character outside of a prison setting, but based her beliefs regarding his character on what Gonzalez told her and his conduct in the prison visitation room.

The statements and conduct of a person with a sexual mental abnormality involving young children, who is incarcerated and does not have unsupervised access to children, will not adequately reflect the person's "character" in the public community, particularly as it relates to his sexual mental abnormality. Further, statements by someone romantically

involved with that person, whose extremely limited contact with the person occurred only in a restricted setting, is vastly different from the type of "character" evidence presented in Lee-Grigg. The evidence presented in this case simply did not warrant a character evidence jury charge.

The circuit court did not abuse its discretion in denying Gonzalez's request for jury instructions regarding the purpose of the SVP Act and "good character." Gonzalez was allowed to present character evidence, and then argue to the jury both the purpose of the Act and his character. Therefore, the circuit court's rulings should be affirmed.

II. The circuit court properly allowed the State to argue the jury could draw a negative inference from Appellant's failure to present testimony from his independent expert.

Gonzalez also contends the circuit court erred in allowing the State to ask him about Dr. Martin's independent evaluation, and then argue the jury could draw a negative inference from his failure to present Dr. Martin's testimony at trial. On appeal, he submits this impermissibly shifted the burden of proof to him. As a threshold matter, the issue raised on appeal is not preserved for appellate review. Further, Gonzalez again attempts to impose criminal law principles on a civil commitment proceeding under the SVP Act.

Gonzalez asserted in the circuit court that the State asking him about Dr. Martin and commenting on his failure to call Dr. Martin as a witness violated the discovery rules regarding "consulting" experts, and the prejudice to Gonzalez outweighed the probative value. The circuit court found the discovery rules did not apply because Dr. Martin was a "retained" expert under the express provisions of the SVP Act,[3] and ruled the State could comment on Gonzalez's failure to present Dr. Martin at trial because the case was no different from any other civil case in which a party can argue a negative inference from another party's failure to call a witness. (TT, pp. 123-129; R., pp. 59-65).

Gonzalez never argued to the circuit court that allowing the evidence and argument

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[3]Rule 26(b)(4)(B), SCRCP, provides "[a] party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial." A party is not required to disclose or produce an expert only "consulted informally, or consulted and not retained or specially employed." *Id.* (emphasis added). The SVP Act provides that a person subject to a court ordered evaluation "may retain a qualified expert of his own choosing" to conduct an examination. S.C. Code §44-48-90 (Supp. 2008) (emphasis added).

shifted the State's burden of proof to him. Therefore, the issue is not preserved for review by this Court. *See* State v. Tucker, 319 S.C. 425, 462 S.E.2d 263 (1995) (a party may not argue one ground below and then argue different ground on appeal); State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) (issue not preserved for appeal where one ground is raised below and another ground is raised on appeal); *see also* State v. Perez, 334 S.C. 563, 514 S.E.2d 754 (1999) (issue may not be raised for first time on appeal, but must have been raised to and ruled on by trial judge to be preserved for appellate review).

Even if the issue is preserved for review, however, the State submits Gonzalez's assertion is meritless. Gonzalez makes nothing more than a conclusory statement that allowing the State to argue the negative inference from the absence of Dr. Martin's testimony shifted the burden of proof from the State to him.[4] Notwithstanding Gonzalez's effort to again impose inapplicable criminal law principles on SVP Act proceedings, the State was simply allowed to solicit evidence and argue inferences like any party in a **civil** case.

The SVP Act does bestow some of the rights normally associated with criminal prosecutions, but it is not intended to be punitive in nature and merely sets forth a civil process for the commitment and treatment of sexually violent predators. *See* In Re: Matthews, 345 S.C. 638, 550 S.E.2d 311, 316 (2001) (the SVP Act is a civil, non-punitive scheme); In Re: Care and Treatment of Canupp 380 S.C. 611, 671 S.E.2d 614, 617 (Ct. App. 2008); In Re: Care and Treatment of Brown v. State, 372 S.C. 611, 643 S.E.2d 118, 121 (Ct. App.2007). As recognized repeatedly by South Carolina's appellate courts, inclusion in the

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[4]The circuit court accurately charged the jury regarding the State's burden of proof beyond a reasonable doubt. (TT, pp. 282-285; R., pp. 214-216).

SVP Act of certain specific rights normally associated with criminal cases does not make proceedings thereunder criminal in nature, or entitle the person to other rights not delineated therein. *See* Canupp, 671 S.E.2d at 617 (unlike criminal cases, there is no constitutional right to decline to testify in civil commitment proceedings). As a matter of statutory construction, the fact the Legislature included specific aspects of criminal law in the SVP Act indicates it did not intend for other aspects to apply in proceedings under the Act. *See* Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651, 655 (2002) ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'") (*quoting* Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578, 582 [2000]).

If a party fails to present an available witness on a material issue, and the witness is within his control, the jury may infer the witness' testimony would not have been favorable to the party. Duckworth v. First National Bank, 254 S.C. 563, 176 S.E.2d 297, 304 (1970). In this context, "control" means the witness is in such relationship to the party it is likely his presence could be procured. *Id.* It is always proper for an attorney in argument to the jury to point out the failure of a party to call a witness. Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 262 S.E.2d 875, 879 (1980); State v. Hammond, 270 S.C. 347, 242 S.E.2d 411, 416 (1978) (failure to call a witness is proper argument).

By court order, the circuit court authorized Gonzalez to retain Dr. Martin to perform an independent mental evaluation, and Dr. Martin in fact performed the evaluation pursuant to the court order. As evidenced by documents filed in the circuit court when Gonzalez sought a second expert, Dr. Martin was available to testify and assist counsel in trial

preparation, but simply would not testify favorably for Gonzalez, and the State refused to voluntarily limit Dr. Martin's cross-examination if Gonzalez called him as a witness. (Motion for Assistance in Obtaining Second Expert on Behalf of Respondent, State's Reply to Motion for Assistance, Motion to Reconsider Respondent's Request for Assistance in Obtaining an Additional Expert Witness, State's Reply to Respondent's Motion to Reconsider; R., pp. 300, 303, 309, 314).[5] As the circuit court noted, a witness is not unavailable simply because his testimony would not be beneficial to the party.

Given the fact Dr. Martin was retained as an expert for Gonzalez and paid for his services pursuant to a court order, he was within Gonzalez's control for purposes of testifying at trial.[6] Gonzalez did not even attempt to present Dr. Martin as a witness, and the State was entitled to argue the jury could infer Dr. Martin's testimony would be adverse to Gonzalez.[7]

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[5]It is abundantly clear from the record Gonzalez sought to "expert shop" after Dr. Martin advised counsel his opinion was not favorable to Gonzalez, and the circuit court declined to assist Gonzalez in that effort. While Gonzalez was entitled to an independent evaluation under the SVP Act, he was not guaranteed a favorable expert opinion, or entitled to keep retaining experts at public expense until he got one.

[6]Dr. Crawford's testimony established all material issues necessary to the State's case-in-chief. Thus, the State could not show a "substantial need" to call Dr. Martin as a witness, or that an inability to compel his testimony would present "undue hardship" to the State. *See* State v. Jones, 383 S.C. 535, 681 S.E.2d 580, 586 (2009) (State must show "substantial need" and "undue hardship" in order to compel a defendant's non-testifying consultative expert as a witness); McGee v. Bruce Hospital System, 321 S.C. 340, 468 S.E.2d 633, 638 (1996) (fairness is an important consideration in determining whether a party can compel the testimony of an expert employed by the opposing party, and the traditional limitations excluding prejudicial, misleading or cumulative evidence apply). Further, assuming Dr. Martin essentially agreed with Dr. Crawford's conclusions, his testimony would be cumulative and the State would no doubt be accused of unfairness and attempting to "guild the lily" if it called Dr. Martin as a witness for the State.

[7]In addition to the existing court order, as the circuit court pointed out at trial, Gonzalez could have compelled Dr. Martin's testimony by subpoena.

CONCLUSION

Based on the foregoing, Respondent respectfully submits Appellant's civil commitment under the SVP Act should be affirmed.

Respectfully submitted,

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April 5, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Charleston County

The Honorable Deadra L. Jefferson, Circuit Court Judge

IN THE MATTER OF THE CARE AND TREATMENT
OF GILBERT GONZALEZ,

Appellant,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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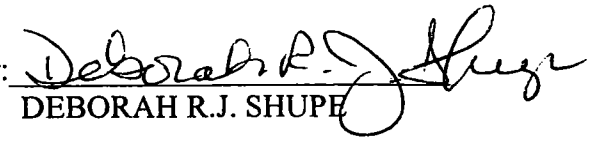
By: 
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