

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Diane Schafer Goodstein, Circuit Court Judge

SC Court of Appeals

IN THE MATTER OF THE CARE AND TREATMENT
OF BERNARD GROOMS,

APPELLANT,

APPELLATE CASE NO. 2013-001626

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

COURT OF COMMON PLEAS

IN THE MATTER OF THE CARE)
AND TREATMENT OF BERNARD)
GROOMS

TRANSCRIPT OF RECORD
12-CP-40-5933

July 29, 2013
Columbia, South Carolina

BEFORE :

THE HONORABLE DIANE S. GOODSTEIN, JUDGE;
AND JURY

APPEARANCES:

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Attorney for Plaintiff

NICOLE T. WETHERTON, ESQ.
Assitant Attorney General

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Circuit Court Reporter
Typed for Elizabeth Harris

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EXHIBITS

STATE'S:

No.	Description	ID/EVD
1	Collection of documents	3/86
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1 (State Exhibit Nos. 1 through 3 were marked for
2 identification.)

3 THE COURT: All right, let me tell you
4 what I have. I have the Petitioner's motion in
5 limine. I have the Petitioner's requested voir
6 dire. I have the witness list from the Petitioner.
7 I have a proposed verdict form and the Petitioner's
8 proposed jury charges. And Mr. Belding, you have
9 all that?

10 MR. BELDING: Yes, ma'am.

11 THE COURT: And you would like to add some
12 things to it.

13 MR. BELDING: This is my witness list, but
14 it's not too extensive. I also have — you got a
15 copy there for you, Nicole?

16 MS. WETHERTON: I do.

17 MR. BELDING: I have a short brief motion
18 in limine.

19 THE COURT: Okay.

20 MR. BELDING: I have sent an email to
21 Judge Manning's law clerk and to Ms. Wetherton that
22 I thought the State's proposed voir dire was
23 acceptable as the Respondent, and I don't have any
24 objection to their internet motion and —

25 MS. WETHERTON: I didn't even combine

1 that.

2 MR. BELDING: Oh, you didn't do that at
3 this time, okay.

4 THE COURT: Oh, well.

5 MR. BELDING: If you want to tell them
6 that's fine.

7 THE COURT: All right. So let me first
8 hear from the Petitioner. Let me hear from you
9 regarding your —

10 MS. WETHERTON: Motion in limine.

11 THE COURT: ---motion in limine.

12 MS. WETHERTON: Thank you, Your Honor, may
13 it please the Court, Nicole Wetherton from the South
14 Carolina Office of the Attorney General. We have
15 filed just one motion in limine and we're asking the
16 Court to restrict Respondent for bringing in or
17 asking any questions regarding the treatment that if
18 Mr. Grooms would be committed into the sexually
19 violent predator program we would ask that there be
20 no, any questions brought up as to his extended
21 treatment. For the following reasons is, what is
22 required of being proved beyond a reasonable doubt
23 at this point is that Mr. Grooms is convicted of a
24 sexually violent offense, and he suffers from mental
25 abnormality or personality disorder that makes him

1 likely to engage in acts of sexual violence if not
2 confined to a secure facility group controlled care
3 and treatment. There is no extra requirement for me
4 to prove that the treatment would actually be in
5 fact. In fact is the United States Supreme Court
6 case *Kansas v. Hendricks*, and the citation is 117
7 Supreme Court 2072, that it would say, it would be
8 of little value to require treatment for
9 precondition for civil confinement to a guilty plea
10 of insane when no treatment existed. To conclude
11 otherwise would obligate a pers-- a court to release
12 certain individuals who are both mentally ill and
13 dangerous simply because they could not be treated
14 for their infliction. So therefore, even if actual
15 treatment offered would not be effective if he would
16 be committed into treatment program, it doesn't mean
17 he should not have been committed in the first
18 place.

19 In addition, we also state that it's not
20 relevant for the purposes of what we're doing here
21 today. Again, we're just trying to determine
22 whether someone is a sexually violent predator
23 according to those elements that I've already
24 explained to the Court above. Even if the Court
25 does find it relevant I would say that it would be

1 misleading and confusing to the jury. Again, I
2 would argue that it creates an additional element
3 for the State to prove confinement and indicate the
4 treatment must be ex facto which could potentially
5 confuse and mislead the jurors. And finally, those
6 questions would be brought out by Doctor Marie Gehle
7 deal who is a forensic psychologist at the
8 Department of Mental Health. She is not retained as
9 an expert for that particular reason and any kind of
10 information that she would provide as attributed
11 would be speculative. She actually would not be on
12 his treatment team. She would not set the course of
13 treatment so you would have to see what he would, if
14 he would get admitted into the program what that
15 course of treatment would be specifically for him,
16 and she would not know that. She's not gonna be on
17 his treatment team. And she's been on treatment
18 teams in the past but she's hasn't been since 2009
19 so she's not aware. She does work on annual
20 reviews; but again, she doesn't set the treatment.
21 She kind of looks back as to what that particular
22 person has and the standard's then different of
23 course on annual reviews, the mental abnormality has
24 some change. They're gonna be looking at it a
25 little differently than they would on pre-commitment

1 so I put forth those reasons we'd ask that.

2 THE COURT: Okay.

3 MS. WETHERTON: Thank you.

4 THE COURT: Yes, sir, Mr. Belding.

5 MR. BELDING: Thank you, Judge. David
6 Belding for the Respondent. Your Honor, I'd like to
7 do some legal research on this, and there's not
8 much. The one case I saw was the one from Kansas.
9 Now the Kansas treatment program as I understand is
10 a little better than ours; but be that as it may,
11 here's my concern, and I understand the reasons for
12 their motion. My concern is that every juror I've
13 ever talked to after one of these trials wants to
14 know what the treatment is gonna be. Secondly and
15 more importantly, the statute actually mentions the
16 treatment. I mean, in Section 44, at 48-30 it says
17 that the person is -- suppose someone's convicted of
18 a sexually violent offense and suffers from mental
19 abnormality or personality disorder that makes the
20 person likely to engage in acts of sexual violence
21 if not confined in a secure facility for long term
22 control, care, and treatment. So the word treatment
23 is an issue, you're gonna be charging it, they're
24 gonna be referring to it, and everybody is going to
25 wonder what this treatment is gonna be about.

1 Doctor Gehle, you know, I didn't try to
2 press her in cases past about exactly what the
3 treatment program would be because she's not out
4 there on a day-to-day basis. However, prior to her
5 time becoming licensed in South Carolina as a
6 psychologist, she did work with the sexually violent
7 treatment program, treatment program, out with the
8 Department of Mental Health so I was asking her
9 questions such as, do you know whether this, do you
10 know whether that. I think that aside from that I
11 think it's -- my main argument is if the jury's
12 hearing about it anyway, I think it's unfair to the
13 respondent for him to not be able to question what
14 kind of treatment are we talking about. Otherwise,
15 we essentially have the testimony that if someone's
16 got a broken leg and nobody knows how to fix it. So
17 on behalf of the Respondent I would object to the
18 motion.

19 THE COURT: Okay. Well, we're not gonna
20 get into the treatment. I mean, if you want to ask
21 is there treatment, that's fine. I don't have any
22 problem with you establishing that there is
23 treatment as opposed to not being treatment, but I
24 would expect that you're going to do that but we're
25 not going to get into the modalities because it

1 doesn't have any relevance and hopefully those will
2 change as the research continues and improves.
3 We're not going to get into the particulars of it.
4 It doesn't have any relevance with regards to the
5 definition. But if you simply want to ask, is there
6 in fact care, is there in fact treatment, I have no
7 problem with that insofar as she would know. I
8 think you would get into that as well if there is,
9 in fact care, and there is in fact treatment, but
10 what it is is of no *mountain. It's irrelevant to
11 the issues that this jury must determine. So that
12 will be — all right, any other motions in limine on
13 behalf of the Petitioner?

14 MS. WETHERTON: The only two things that I
15 would like to bring up from the State, this case did
16 end in a mistrial and I'm sure that Mr. Belding
17 understands — I just wanted it all on the record --
18 that there would be no mention of a previous trial
19 if we have to bring something up, which I don't
20 anticipate, from the previous trial or refer to a
21 prior proceeding that the jury didn't know that the
22 case had ended previously.

23 THE COURT: Oh, we just have to do that.

24 MS. WETHERTON: I just wanted to ---

25 THE COURT: Yeah.

1 MR. BELDING: We consent to that.

2 MS. WETHERTON: And the only final thing,
3 I used this in my last trial. Mr. Belding has seen
4 this. I just want to make sure the Court approves.
5 In my opening and my closing I just showed the jury
6 this is the statement of the law of what I'm
7 required to prove, but I can bring it up to you if
8 you want to see it. I copied it from the statute.
9 If that's okay with the Court I would like to use
10 that.

11 MR. BELDING: And we have no objection to
12 that as a visual aid to the jury, Your Honor.

13 MS. WETHERTON: That's all.

14 THE COURT: Very well.

15 MS. WETHERTON: Thank you.

16 THE COURT: All right. And so,
17 Mr. Belding ---

18 MR. BELDING: The control, care and
19 treatment is right there on the board for the jury
20 to see so.

21 THE COURT: Exactly. That's why I'm gonna
22 let you, ask if there's anything.

23 MR. BELDING: Okay. Just a couple of
24 house keeping matters and one quick motion. One is,
25 we would like to keep the fact that Respondent is in

1 shackles hidden as much as possible from the jury so
2 when it's time for him to go up, we might be able to
3 do that after a short break where he can take the
4 stand without them seeing him go up in shackles if
5 the Court will ---

6 THE COURT: Absolutely.

7 MR. BELDING: ---help with us that.

8 THE COURT: Absolutely.

9 MR. BELDING: Also, I also filed a motion
10 in limine. Mine was a couple of things. One, the
11 State -- this is an area that's in some dispute and
12 on appellate review.

13 THE COURT: Before -- I got to ask -- I
14 hate to interrupt. I know I'm interrupting your
15 train of thought. Help me because if I missed the
16 order of battle is what my husband calls it, but if
17 I miss that you're about to call him as a witness
18 and I say call your next witness, just let me know
19 and say, may we approach. Will you do that for me?

20 MR. BELDING: Or ask for a recess?

21 THE COURT: Sure, whatever, just don't
22 think that I have changed my mind. Just help me.

23 MR. BELDING: I understand, appreciate it,
24 Your Honor.

25 THE COURT: Very good.

1 MR. BELDING: I filed a motion in limine.
2 One is back to back that there was a request for a
3 second opinion in this case that the Court granted,
4 and we had a forensic psychologist talk to Mr.
5 Grooms and for reasons that are not privy to us, we
6 decided not to call him as a witness.

7 THE COURT: Okay.

8 MR. BELDING: In civil commitment trials
9 in the past the State has been nice enough to not
10 mention that to the jury; however, they wanted me to
11 make that motion because, you know, they cannot
12 consent to that. I think it would be improper in
13 the same way that it would be improper for me to
14 say, hey guys, the last jury it was 11 to 1, they
15 let him go. That they should be able to say, you
16 know, where is his doctor, you know, how come he's
17 not here. And I discussed that very seriously with
18 Doctor Thomas Martin and for our own reasons at his
19 suggestion he thought he would not be a good enough
20 witness to help, and we just think that should not
21 be held against us that we sought a second opinion
22 in this case because we think that would be an
23 improper inference for the jury to draw that, well,
24 okay. Now there's two doctors out there that didn't
25 want him.

1 THE COURT: I understand.

2 MR. BELDING: That's my first motion.

3 THE COURT: I understand.

4 MS. WETHERTON: Our response to that, Your
5 Honor, is we have a case in -- and you know, I
6 handed over our disclosure to the Court. It's an
7 unpublished opinion. It's in the Court of Appeals.
8 It's a similar situation such as in that it was
9 actually Mr. Belding's case that he brought up. To
10 the person that was testifying that, you know,
11 Doctor Martin, you, which resolved this, for
12 purposes of precommitment proceedings, yes. You
13 then, you know, then there's a couple of questions
14 that were followup but then it pretty much ends
15 there. Then he made arguments to the jury about
16 making imprints. He then went in -- this case went
17 up on appeal, the court said it was fine to ask
18 those questions of the defendant, or excuse me, of
19 the respondent; however, it was not appropriate to
20 make a negative inference regarding, you know, to
21 the jury and as well as the arguments. So that's
22 what I would do in this case. I do understand that
23 it's not precedent and it's presently on appeal by
24 the State Supreme Court; but nevertheless the Court
25 of Appeals did make a decision as to this issue.

1 And I have a copy of the case if you would like to
2 see it as well.

3 MR. BELDING: I was wondering how I was
4 supposed to do that too, Judge, because at the top
5 in big bold letters it says not to be cited, not to
6 be precedent. She brought it up it is unpublished
7 and we all know what that means, but it's — there's
8 a petitioner for —

9 THE COURT: It's published but not.
10 That's what that means.

11 MR. BELDING: Yeah, exactly but not
12 really.

13 THE COURT: Yeah, sort of indic— sort of.
14 Like double dipping probation sort of, kind of,
15 exactly.

16 MR. BELDING: Exactly.

17 THE COURT: You know, I would not receive
18 them because then I'd feel like I'm treating it as
19 in giving it precedential value which they keep
20 telling me I'm not supposed to do. But this is what
21 I was looking at, if we were in a typical, this is
22 what, this is just the part of this troubling for
23 me. If we were in a normal, if you will, and
24 typical civil action you can have experts. You
25 wouldn't need the State to pay for them. You

1 wouldn't it — it wouldn't have been a hearing where
2 you asked for a second opinion. You would have just
3 gone out and you would have had obtained that expert
4 opinion. And if you chose not to use it nobody
5 would know about it, wouldn't be discoverable,
6 nobody would know about it. And because this is a
7 different sort of proceeding, it's sort of out there
8 because number one, you gotta ask for the money.
9 Number two, you gotta ask for it to happen because
10 you have to get access and those sorts of things.
11 So until the Supreme Court speaks to it, I'm
12 inclined to treat your expert as I would any another
13 civil matter. In other words, you had an expert and
14 you're choosing not to use the expert so you didn't
15 disclose the expert, if you will, although it's a
16 bit of a fiction because you had to. Am I making
17 sense to what I'm saying?

18 MR. BELDING: Absolutely. I agree with
19 that.

20 THE COURT: Now let me say this, having
21 said that, I need a caveat because obviously if your
22 client was to testify I have never been treated, I
23 never saw anybody except somebody for the State, you
24 do understand that (makes sound of door opening).
25 You know, I mean, like on Halloween, that door

1 can -- I don't know what you're going to do about
2 that Ms. ---

3 MS. WEATHERTON: A broom.

4 THE COURT: You can handle it.

5 MR. BELDING: Sound effects.

6 THE COURT: Sound effects. Door opening.
7 Sound effects with a door opening because you can't
8 open the door. And that concerns me and so I always
9 want to warn people that you can open the door; and
10 if you open the door, they got a big old private
11 truck they be like driving through. There's only --
12 that gives you only protection as long as you
13 respect it I guess is what -- does that make sense?

14 MR. BELDING: It does.

15 THE COURT: Do you understand that?

16 MR. BELDING: We talked about the opening
17 the door downstairs.

18 THE COURT: Okay, so you knew that was a
19 concern. So what I would say is I'm going to treat
20 it that way unless the door gets opened, and then I
21 don't know where we're going. It depends on how it
22 gets open, etc., etc. Yes?

23 MS. WETHERTON: Yes, that's fine. Thank
24 you, Your Honor.

25 THE COURT: Very good. Now your next one.

1 MR. BELDING: I know. Oh, it is -- I
2 know; I give you my copy.

3 THE COURT: Well, you can have it back.

4 MR. BELDING: It's --

5 THE COURT: Would you like my to read it
6 to you.

7 MR. BELDING: Is it something about the
8 assistant solicitor?

9 THE COURT: You know what it is. You want
10 to tell me?

11 MS. WETHERTON: Yeah.

12 MR. BELDING: Well, when I got Ms.
13 Wetherton's witness list last week it added Margaret
14 Bodman as a potential witness. She was not at the
15 first trial. She can bring anybody she wants, but
16 Margaret, Ms. Bodman, is the assistant solicitor who
17 prosecuted the last criminal case that Mr. Grooms
18 was involved with that did not result in a
19 conviction of the sexually violent offense. I
20 thought that that would be inappropriate for her to
21 get up and talk about the facts of this case when it
22 was not a sexually violent offense and because
23 Doctor Gehle, who is their expert, never talked to
24 Ms. Bodman prior to making her conclusions in this
25 case. Once again, I mentioned to Mr. Grooms that if

1 we open the door to a lot of talk about what
2 happened in that case, then it might be appropriate
3 for the State to come in and say, well, that's not
4 the way we viewed it, but if we leave that alone
5 then there wouldn't be any reason for Ms. Bodman to
6 be a witness at all. And I think Ms. Wetherton and
7 I talked about that and her response was —

8 MS. WETHERTON: Yes. My response is, I'm
9 not bringing her in my case in chief. She would be
10 a reply witness to Mr. Grooms testifying. What had
11 happened in the last trial is all of a sudden — it
12 did not result in a sexually violent conviction as
13 seen under the statute; however, it resulted in
14 assault and battery first degree within those sexual
15 component to assault and battery first degree. And
16 what happened is when he got up to testify, testify,
17 there was an Alford plea, there was indication that
18 the case wasn't as good as and that's why it was
19 pled down to a CSC first, you know. And then in his
20 closing Mr. Belding got up and said why didn't the
21 State protect us. If it really was a rape, if it
22 really was this, why didn't — well, I called the
23 assistant solicitor and I know why it was pled down,
24 there's a very good reason for it. And I'd have to
25 present her as rebuttal to up him if he gets up and

1 starts saying, you know, they said they didn't have
2 a case, they said this. And I objected at one time
3 on hearsay grounds. But I think at one point if
4 that is brought in because before that his last
5 sexually violent conviction was 20 years and they're
6 saying his last sexually violent conviction was 20
7 years, he's not likely to reoffend. And my position
8 is, is he's committed a sexual assault on a woman
9 and that's why he's incarcerated right now, two
10 years ago. And so, if they start bringing up it was
11 just assault and battery, that's not what applies
12 and that's not why it was pled that way either so
13 that's why I would bring her. It would be based on
14 how he testifies. It's reply witness. It's not --
15 again, if the door is opened.

16 THE COURT: I got it, okay.

17 MS. WETHERTON: That's what I have to do
18 with it.

19 MR. BELDING: And I think I'm all right
20 with that. I think maybe just for clarity and try
21 to --

22 THE COURT: Here's what we'll do. This
23 will be our plan. In the event that the Attorney
24 General believes that the door has been opened, what
25 I will do is we will take Ms. Bodman's testimony

1 outside the presence of the jury just to be sure
2 that it doesn't go beyond the param-- the doorjamb
3 so to speak. Does that make sense? In other words,
4 we will have -- I will have an opportunity to hear
5 it so that it doesn't go any further than the door
6 that was opened.

7 MR. BELDING: Okay.

8 THE COURT: Okay.

9 MR. BELDING: I consent to that.

10 THE COURT: We'll preview it, if you will.
11 Okay?

12 MR. BELDING: Yeah.

13 THE COURT: Cool.

14 MR. BELDING: Your Honor, I forgot, I
15 think that was all I can remember.

16 THE COURT: I think it is too but let me
17 take a look. Let's see, number one, yes. Yes.
18 Yes. I think that's it. That's all. Number two,
19 one and two, yeah.

20 MR. BELDING: All right. Thank you very
21 much, Your Honor.

22 THE COURT: Why don't you take a look at
23 it just out of abundance of precaution so that if
24 there's something else in there that --

25 MR. BELDING: No, that's it.

1 THE COURT: Listen, you keep it.

2 MR. BELDING: You don't need it?

3 THE COURT: I'm done with that, great.

4 Now -- are you sure? Okay, I've got everybody's
5 witness list.

6 MR. BELDING: Your Honor, we are working
7 insidiously on Your Honor's juror strike list.
8 There was some confusion this morning. I didn't get
9 a jury list until the end so I just need just a
10 couple of minutes, but I always thought we do it in
11 order. Are we going from the first 20 and everybody
12 striking four and the usual? Okay, I appreciate it.

13 THE COURT: Yeah. And we're gonna --
14 we'll have one alternate. That will be sufficient?
15 One alternate?

16 MS. WETHERTON: That will be fine.

17 THE COURT: It's not Orangeburg. We have
18 -- I had three alternates and lost all three of them
19 at lunch. It was a special case. One of them went
20 to hospital.

21 MS. WETHERTON: And Your Honor, we're
22 gonna be using the same exhibits that we used in
23 previous trial so they're already marked and...

24 MR. BELDING: And we've seen them and
25 they'll go in without objection.

1 THE COURT: Okay.

2 MS. WETHERTON: Okay.

3 THE COURT: So, but the jury -- the voir
4 dire of the jury hasn't happened, right?

5 MS. WEATHERTON: That's correct.

6 (Whereupon, the jury panel is brought in.)

7 THE COURT: Now, ladies and gentlemen, in
8 just a moment I'm going to do what is known as a
9 short non-argumentative statement of the facts. The
10 reason that I'm going to be doing that is to find
11 out whether or not any of you know or think you may
12 know, or have you heard or think you may have heard
13 anything to through today about these allegations.
14 Then I'm gonna have the opportunity to introduce you
15 to some folks, then I have a few additional
16 questions to ask of you and then we're going to
17 select our jury and get right into the trial of this
18 case. Ladies and gentlemen, as part of our jury
19 qualification process I know that you were sworn in
20 this morning, but I'm going to ask you to just
21 please stand and raise your right hand to give you
22 the opportunity to...

23 (WHEREUPON, the jury was sworn by the
24 Court.)

25 THE COURT: If you accepted the oath

1 please indicate by saying I do and indicate by
2 having a seat at this time. If there's anyone who
3 doesn't take the oath?

4 (No response.)

5 THE COURT: No one is standing. Now
6 ladies and gentlemen, in a moment I'm going to be
7 reading you a short non-argumentative statement of
8 the facts and then I'm gonna ask you if you know
9 some folks. I want to define a term for you that
10 I'm going to be using because I intend it a very,
11 very general definition. And because the definition
12 that I attach is a particular phrase is so general
13 it's only fair that I define it for you. You're
14 going to hear the fact, are you related by blood or
15 marriage or acquainted with so and so. Because I
16 intend such a general definition of the phrase
17 "acquainted with," I want to define that phrase for
18 you. I'm trying to find out if you have any
19 connection with these folks that I'm going to be
20 asking you about. So because of that, I use that
21 term, I want to give you a couple of examples. It
22 may be that you went to school with somebody that
23 I'll ask you about 20 years ago. You haven't seen
24 this person. You have not even thought about this
25 person in 20 years but you know that you went to

1 school with this person. Well, believe it or not
2 that relationship as old and moldy as it is would
3 encompass within my definition to be acquainted
4 with. Yeah, I went school with that person 20 years
5 ago. We were in kindergarten together; I remember
6 that. It may be that you simply work at the same
7 place with someone who I'll mention, and maybe
8 avoided each other across the parking lot and that
9 is the extent of the relationship. Believe it or
10 not, that relationship as limited as it is would be
11 encompassed within my definition of acquainted with
12 and simply let me know that. Ladies and gentlemen,
13 again, I'm just trying to find out if you have any
14 connection with the folks that I will be asking you
15 about.

16 Now ladies and gentlemen, I'm going to
17 read to you a short non-argumentative statement of
18 the facts and at the other side of this question I'm
19 going to ask do any of you know or think you may
20 know or have you heard, think you may have heard,
21 anything about this matter, these allegations. Now
22 ladies and gentlemen, this case is brought under a
23 statute which is called the sexually violent
24 predator statute. And in that, the bringing of the
25 action, the State is contending, alleging, that the

1 respondent in this matter who is Mr. Bernard Grooms,
2 the State is alleging that Mr. Grooms is a sexually
3 violent predator and I will tell you that
4 Mr. Grooms, the respondent, denies this. Ladies and
5 gentlemen, of course the burden will be on the State
6 to prove the allegations that it makes, and the
7 burden of proof is beyond a reasonable doubt, and
8 we'll talk about that quite a bit more.

9 Now ladies and gentlemen, the issue today
10 in this case is whether or not the State has
11 sustained its burden of proof and whether Mr. Grooms
12 should be committed to the Department of Mental
13 Health for long term control, care, and treatment.
14 Ladies and gentlemen, I ask, do any of you know or
15 think you may know or have you heard or think you
16 may have heard anything about these allegations
17 including today, if so, please stand at this time.

18 (There was no response.)

19 THE COURT: And I find no one standing.
20 Now ladies and gentlemen, at this time please allow
21 me to introduce you to Ms. Nicole Wetherton. And
22 this is Ms. Wetherton and Mr. Bogle, and they are
23 both from the Office of the Attorney General. And I
24 hate for you to give all of the names of the folks
25 in the Attorney General's Office.

1 MS. WETHERTON: There's about 75
2 attorneys.

3 THE COURT: Oh, and then we would be here
4 ---

5 MS. WEATHERTON: A little longer tonight.

6 THE COURT: Right. I will tell you that
7 the elected attorney general name is Alan Wilson.
8 You might have forgotten that, but perhaps not.
9 Ladies and gentlemen, my question is, are you
10 related by blood or marriage or acquainted with
11 Ms. Wetherton ton or Mr. Bogle or Mr. Alan Wilson or
12 any of the attorneys or employees that you are aware
13 work at the South Carolina Attorney General's
14 Office, if so, please stand at this time.

15 (There was no response.)

16 THE COURT: And I find no one standing.
17 Now if you can just turn around that will just be
18 sufficient I think for Mr. Grooms. Ladies and
19 gentlemen, I would ask, are you related by blood or
20 marriage or acquainted with Mr. Grooms?

21 If you turn around that will be great, Mr.
22 Grooms. Thank you so much. You may be seated.

23 Are you related by blood or marriage or
24 acquainted with Mr. Bernard Grooms, if so, please
25 stand at this time?

1 (There was no response.)

2 THE COURT: And I find no one standing.

3 And Mr. Grooms is represented David E. Belding.

4 This is Mr. Belding. Ladies and gentlemen, I ask,

5 are you related by blood or marriage or acquainted

6 with or have you or any member of your immediate

7 family to your knowledge ever been represented by

8 Mr. Belding, if so, please stand at this time.

9 (There was no response.)

10 THE COURT: And I find no one standing.

11 Thank you so much, Mr. Belding.

12 MR. BELDING: Appreciate it, Your Honor.

13 THE COURT: Now ladies and gentlemen, in a

14 moment I'm going to be reading to you a list of

15 potential witnesses. My question as to each of

16 these folks is, are you related to by blood or

17 marriage or acquainted with and I've already

18 introduced you to Mr. Grooms and Assistant Solicitor

19 Margaret Bodman or acquainted with Margaret Bodman,

20 if so, please stand.

21 (There was no response.)

22 THE COURT: And I find no one standing.

23 Now ladies and gentlemen, my next question is, are

24 you related by blood or marriage or acquainted with

25 or have you or any member of your immediate family

1 to your knowledge ever been treated by Doctor Marie
2 E. Gehle who is a PH.d. She's a psychologist, isn't
3 that correct, psychologist. If so, please stand at
4 this time.

5 (There was no response.)

6 THE COURT: And that Gehle is spelled
7 G-E-H-L-E. And I find no one standing.

8 Now I have a few additional questions to
9 ask of you. Ladies and gentlemen, I'm gonna just
10 ask, if you know at all about Mr. Grooms -- I'll
11 just read this direct. Does any member of the jury
12 panel know anything about the sexual offense that
13 Mr. Grooms was convicted of, if so, please stand.

14 (There was no response.)

15 THE COURT: I'm going to ask you four
16 questions together. I don't want you to respond to
17 any of them until I've asked these four together.
18 The first question is, would the fact that Bernard
19 Grooms has been convicted of a sexual offense and
20 has completed his criminal sentence related to that
21 conviction, in any way prevent you from being able
22 to be a fair and impartial juror in the trial of
23 this case? That's the first question. Don't
24 anybody respond yet if you need to. Second
25 question, has any member of our jury panel or member

1 of your immediate family to your knowledge or close
2 personal friend -- let me tell you this question, is
3 that personal friend so close to you that you like
4 them better than you do your brother and sister.
5 That's how close this personal friend is. They're
6 very close. You can't distinguish between this
7 close personal friend and a family member. That's
8 how close this personal friend is. So have you or
9 any member of your immediate family or close
10 personal friend or relative been charged with or
11 convicted of a sexual offense. That's the second.
12 Don't answer either question yet. The third
13 question is, have you or any member of your
14 immediate family, or close personal friend, ever
15 been the victim of a sexual assault? And the last
16 one, does any member of our jury panel have any
17 training or experience in the field of psychology,
18 psychiatry, or the law?

19 Now ladies and gentlemen, if you need to
20 respond to any of these questions that I have asked
21 please stand. And I'm gonna ask you to come -- I'm
22 gonna meet you down there. I'm gonna ask you to come
23 forward one at a time from there.

24 (Potential juror approached for an on-the-record
25 discussion.)

1 THE COURT: Tell me your name.

2 THE POTENTIAL JUROR: I'm Emily Medlin.

3 THE COURT: Now let me tell you, I'm not
4 interested in anybody else hearing your response;
5 but I need enough volume for my court reporter will
6 gather around.

7 THE POTENTIAL JUROR: Okay.

8 THE COURT: Now Ms. Medlin, which one are
9 you answering?

10 THE POTENTIAL JUROR: The last one.

11 THE COURT: Okay.

12 THE POTENTIAL JUROR: Question number --
13 I'm a paralegal for criminal defense.

14 THE COURT: Okay, for what criminal
15 defense?

16 THE POTENTIAL JUROR: Offices of Willie
17 Bradley.

18 THE COURT: Where is Willie Bradley?
19 Where does he practice law?

20 THE POTENTIAL JUROR: Here in Richland
21 County.

22 THE COURT: Oh, he does?

23 THE POTENTIAL JUROR: Yeah.

24 THE COURT: Oh, my goodness.

25 THE POTENTIAL JUROR: Your Honor, Mr.

1 Bradley has come before you.

2 THE COURT: Oh, I should know that. I
3 should know that. As a result of that employment do
4 you believe that that might affect or interfere with
5 your ability to completely fair and impartial to
6 both sides?

7 THE POTENTIAL JUROR: No. If they have a
8 problem with it, then it wouldn't bother me.

9 THE COURT: I understand.

10 THE POTENTIAL JUROR: I mean.

11 THE COURT: I understand.

12 MR. BELDING: I don't think it would.

13 THE COURT: And in other words, can you
14 set the fact that you work for a defense, can you
15 set them aside and make up your mind based solely on
16 what you hear in court while court is in session?

17 THE POTENTIAL JUROR: Yes, ma'am.

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

20 (Potential juror approached for an on-the-record
21 discussion.)

22 THE COURT: Tell me your name.

23 THE POTENTIAL JUROR: Eric Gissendanner.

24 THE COURT: Oh, great, and you're juror
25 number 98.

1 THE POTENTIAL JUROR: 98.

2 THE COURT: Yes, sir, tell me what you're
3 responding to.

4 THE POTENTIAL JUROR: The question about
5 the sexual assault.

6 THE COURT: Okay.

7 THE POTENTIAL JUROR: I have a niece that
8 has just recently reported to her family that she
9 had been a victim of date rape. And can I ask for
10 clarification on the last question about training in
11 the law?

12 THE COURT: In other words, do you have
13 training in the law?

14 THE POTENTIAL JUROR: Me personally?

15 THE COURT: Yeah, yeah.

16 THE POTENTIAL JUROR: No, I have -- my
17 wife's uncle is a judge in Richland County.

18 THE COURT: Who is that?

19 THE POTENTIAL JUROR: Magistrate Michael
20 Davis.

21 THE COURT: Okay. That's wonderful to
22 know, okay, great. Now, as a result of that having
23 happened to your niece and having recently only been
24 reported, do you believe that that might or could
25 interfere with your ability to be completely fair

1 and impartial both to the petitioner as well as to
2 Mr. Grooms?

3 THE POTENTIAL JUROR: No.

4 THE COURT: Do you believe that you can
5 set that experience, that her experience, completely
6 aside, make up your mind based solely on what you
7 hear in court while court is in session?

8 THE POTENTIAL JUROR: Yes.

9 THE COURT: Stay with us please, sir.
10 Thank you so much.

11 (Potential juror approached for an on-the-record
12 discussion.)

13 THE POTENTIAL JUROR: I'm Tony Megna.

14 THE COURT: Tell me your name.

15 THE POTENTIAL JUROR: I'm an attorney,
16 Your Honor anything about.

17 THE COURT: You have training in the law.

18 THE POTENTIAL JUROR: Well, supposedly.
19 Some people say yes, some people say no. I don't
20 know anything about the sexual predator laws.

21 THE COURT: Very well. How long have you
22 practiced?

23 THE POTENTIAL JUROR: Actually I don't
24 practice too much law. I am in health care and
25 running some health care businesses. I do a little

1 bit of litigation.

2 THE COURT: That is the common field.

3 THE POTENTIAL JUROR: I'm trying to get
4 out all the law stuff. It's just enormous, too
5 hard.

6 THE COURT: You may be in the right field
7 I'm telling. It could be more so rather the last.

8 THE POTENTIAL JUROR: You know, I guess
9 they would want ---

10 THE COURT: Well, that's just they want to
11 know, if you had training in the law. Good-bye.

12 (Potential juror approached for an on-the-record
13 discussion.)

14 THE COURT: You are? Juror number?

15 THE POTENTIAL JUROR: 206.

16 THE COURT: 236?

17 THE POTENTIAL JUROR: 206.

18 THE COURT: Okay.

19 THE POTENTIAL JUROR: I am a pharmacist.
20 I was director of pharmacy of Three River
21 Psychiatric Hospital for about 7 years so I had a
22 lot of psychiatric pharmacy training.

23 THE COURT: Yes, you do.

24 THE POTENTIAL JUROR: I'm not currently
25 doing that, however, did that many years.

1 THE COURT: Probably a little bit of law
2 too.

3 THE POTENTIAL JUROR: I do a lot of law in
4 the community so.

5 THE COURT: As a result of that
6 involvement, is that going to impact on your ability
7 to be fair and impartial?

8 THE POTENTIAL JUROR: Other than the fact
9 I've got lot of knowledge of, you know ---

10 THE COURT: Psychiatric illnesses and the
11 like.

12 THE POTENTIAL JUROR: ---and it was
13 anywhere from adolescent on through geriatrics, we
14 dealt with everything and everybody.

15 THE COURT: Well, let me ask this question
16 of you. Do you believe that you can make up your
17 mind based on what you hear in court while court is
18 in session being completely fair and impartial both
19 to the petitioner as well as to Mr. Grooms?

20 THE POTENTIAL JUROR: Yes.

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

23 (Potential juror approached for an on-the-record
24 discussion.)

25 THE COURT: Hi, how are you. And you are

1 juror number 187?

2 THE POTENTIAL JUROR: Yes. Both my
3 brother and I were victims of sexual assault and
4 rape as children so...

5 THE COURT: All right. And as result of
6 that experience do you believe that that could or
7 might impact on your ability ---

8 THE POTENTIAL JUROR: Definitely.

9 THE COURT: Well, you know what, set this
10 one out. I'm gonna ask you not to discuss ---

11 THE POTENTIAL JUROR: I know.

12 THE COURT: I'm doing this in abundance of
13 caution, not to discuss your particular certain
14 offense with your fellow jurors. But hang with me
15 so I can give you some further instruction.

16 THE POTENTIAL JUROR: Okay.

17 THE COURT: Thank you so much.

18 She's out. Everybody get that? Jackie,
19 out.

20 (Potential juror approached for an on-the-record
21 discussion.)

22 THE POTENTIAL JUROR: Hello, judge.

23 THE COURT: Hi, how are you doing?

24 THE POTENTIAL JUROR: Good. I'm Don
25 Everette (ph). I'm an attorney here so I ---

1 THE COURT: Yes. That's what we wanted to
2 know. Thank you so much. Good bye.

3 (Potential juror approached for an on-the-record
4 discussion.)

5 THE COURT: How are you? And you are
6 juror number 21.

7 THE POTENTIAL JUROR: Yes, ma'am.

8 THE COURT: All right.

9 THE POTENTIAL JUROR: I, just working at
10 the Department of Corrections (inaudible) training.
11 I'm not a correctional officer. I'm an
12 administrative specialist in the wardens offices.

13 THE COURT: I got it.

14 THE POTENTIAL JUROR: Yes, ma'am, I just
15 wanted to let you know.

16 THE COURT: I think that is so
17 appropriate. It's trying to remember the law.

18 THE POTENTIAL JUROR: Yes, it is.

19 THE COURT: And do you believe that that,
20 where you work as well as your training, can keep
21 you from being fair and impartial or impact in any
22 regard on your ability to be fair and impartial both
23 to the Petitioner as well as Mr. Grooms?

24 THE POTENTIAL JUROR: No, ma'am.

25 THE COURT: It would not?

1 THE POTENTIAL JUROR: No.

2 THE COURT: Very well.

3 MR. BELDING: Could we ask for the
4 institution?

5 THE COURT: Yeah, where are you?

6 THE POTENTIAL JUROR: Lee.

7 THE COURT: Oh, you're at Lee? Very well.
8 Thank you so much. And thank you for being here.

9 (Potential juror approached for an on-the-record
10 discussion.)

11 THE COURT: Hi, and you are juror number
12 4?

13 THE POTENTIAL JUROR: 24.

14 THE COURT: Come on right there. Tell me,
15 what are you responding to?

16 THE POTENTIAL JUROR: I was a victim of
17 sexual assault.

18 THE COURT: Okay. How long ago are we
19 talking about?

20 THE POTENTIAL JUROR: Years ago. There
21 was a trial. The trial was four years ago.

22 THE COURT: Four years ago? All right.
23 And as a result of that experience might that, could
24 that impact on your ability to be completely fair
25 and impartial both to the Petitioner as well as to

1 Mr. Grooms?

2 THE POTENTIAL JUROR: Well, you know, I
3 would think so.

4 THE COURT: Well, I would, can certainly
5 understand that; I would think so as well. I
6 appreciate that completely. I'm gonna ask you to
7 sit this one out, but stay with us so I can give you
8 some instructions.

9 THE POTENTIAL JUROR: Okay.

10 THE COURT: Thank you, sir.

11 He's out.

12 (Potential juror approached for an on-the-record
13 discussion.)

14 THE COURT: And you're juror number ---

15 THE POTENTIAL JUROR: Juror 107.

16 THE COURT: 107. Yes, ma'am, come on.
17 Tell me what you're responding to.

18 THE POTENTIAL JUROR: I think that
19 probably I should seek an exemption due to the fact
20 my child was molested, and I was raped, and right
21 now my back is in excruciating pain. I'm in pain
22 now. It's like -- I'm hurting right now, so I'm
23 having trouble right now."

24 THE COURT: Okay, yes, ma'am. All right.
25 And as a result of all of those things together, do

1 you think it might impact on your ability to be fair
2 and impartial both to the Petitioner as well as to
3 Mr. Grooms, the Respondent?

4 THE POTENTIAL JUROR: Well, to me it's no
5 test.

6 THE COURT: I think that will be a yes.
7 I'm gonna ask you to please sit this one out, but
8 I'm gonna go ahead and release you.

9 (Potential juror approached for an on-the-record
10 discussion.)

11 THE COURT: Dnd your number is?

12 THE POTENTIAL JUROR: 153.

13 THE COURT: 153. Sir, come on.

14 THE POTENTIAL JUROR: It's very kind of
15 personal, but I was involved in a sexual harassment
16 at work. It was never reported or anything because
17 it was ---

18 THE COURT: How long ago?

19 THE POTENTIAL JUROR: Three years ago.

20 THE COURT: Okay. And as a result of that
21 experience might that or could that interfere with
22 your ability to be completely fair and impartial
23 both to the Petitioner as well as to Mr. Grooms, the
24 Respondent?

25 THE POTENTIAL JUROR: I don't think it

1 will. I just —

2 THE COURT: You did right. You did right
3 you. If you're bubbling around in your mind it's
4 always better just to disclose, you know what I'm
5 saying. I guess my question is, can you set that
6 experience aside and make up your mind on what you
7 hear in court while court is in session?

8 THE POTENTIAL JUROR: I think so. I
9 basically didn't pursue it because it was, there
10 were no witnesses to —

11 THE COURT: I understand.

12 MR. BELDING: —what happened.

13 THE COURT: I do understand, okay. And so
14 as you sit on this jury is there any question in
15 your mind but that that, very troubling experience
16 no doubt, can be set aside and that you can make up
17 your mind based only on what you hear here while
18 court is in session?

19 THE POTENTIAL JUROR: I believe so. I
20 think I can be impartial.

21 THE COURT: Okay, well that's it.

22 THE POTENTIAL JUROR: Okay.

23 THE COURT: Be fair and impartial to both
24 sides?

25 THE POTENTIAL JUROR: Right, yes, ma'am.

1 Yes, ma'am.

2 MR. BELDING: Judge, I didn't hear the
3 word he used. Was he ---

4 THE COURT: He's very embarrassed. He was
5 the subject of sexual harassment.

6 MR. BELDING: Okay, that's all.

7 (WHEREUPON, counsel approached the Bench
8 for an off-the-record discussion.)

9 THE COURT: Now all of the people that
10 I've already spoken with regarding this issue on --
11 you can come forward. We've already talked about
12 you've been very clear about that. I think it will
13 make more sense when I ask the question. Has any
14 member of our jury panel currently or formerly
15 worked in the field of psychiatry, psychology or the
16 law. Now if you've already told me you don't need
17 to re-tell me. But anybody that speaks to that
18 didn't speak to them earlier, please stand and come
19 forward.

20 (There was no response.)

21 THE COURT: I find no one standing. Has
22 any member of our jury panel been involved in a
23 prison ministry, prison outreach program, or any
24 other program involving contact with incarcerated
25 person, if so, please stand.

1 (There was no response.)

2 THE COURT: All right. Very well. We're
3 gonna start over here. This is — here's where
4 we're done asking your jury number and then the
5 question is this, would that experience in any
6 regard, in any regard, have an impact on your
7 ability to be fair and impartial both to the
8 petitioner as well as to the Respondent Mr. Grooms.
9 In other words, number, and would that involvement
10 impact on your ability to be completely fair and
11 impartial both to the Petitioner, the State, as well
12 as the Respondent Mr. Grooms. Everybody got that?
13 I'm gonna start with you, yes, sir, your number is?

14 THE POTENTIAL JUROR: 48, no, ma'am.

15 THE COURT: Thank you, sir.

16 THE POTENTIAL JUROR: Number 128, no,
17 ma'am.

18 THE POTENTIAL JUROR: 221, no, ma'am.

19 THE POTENTIAL JUROR: 348, yes.

20 THE COURT: All right, 44, what I'm gonna
21 ask you to do is sit this one out. Don't leave me.
22 You may be seated.

23 THE POTENTIAL JUROR: 42, no, ma'am.

24 THE COURT: Okay.

25 THE POTENTIAL JUROR: 208, no, ma'am.

1 THE COURT: You have a wonderful voice.

2 THE POTENTIAL JUROR: That's what they
3 keep telling me.

4 THE COURT: Oh, you do. You need to say,
5 this is CNN.

6 THE POTENTIAL JUROR: All right.

7 THE COURT: I'm gonna ask two questions
8 together. Again, don't answer the first one until
9 you've heard the second please. Has any member of
10 our jury panel or members of your immediate family,
11 close personal friends we talk about earlier, or
12 relatives, ever been the subject of a civil
13 commitment proceeding, or have you or they, been
14 voluntarily or involuntarily civilly committed?
15 That's the first question. The second question is
16 this, do you know any reason why you ought not,
17 should not, could not be a juror in this case being
18 ready, willing, and able to listen to the evidence
19 and make up your mind based solely on what you hear
20 in court while court is in session? Being ready,
21 willing, and able to become completely fair and
22 impartial folks to the Petitioner the State, as well
23 as the Respondent Mr. Grooms And that's a very
24 general question and I mean it to be very general.
25 You know of any reason why you ought not, should not

1 be a juror in this case being ready, willing, and
2 able to be fair and impartial to both sides? And it
3 could be anything, it could be anything, ladies and
4 gentlemen. It could be that you have a particular
5 concern about this particular issue. It could be
6 during the lunch break you got a phone call and
7 they're waiting at your house with balloons and a
8 big old pie ranger and one of them checks for the
9 light bill, or it could be (inaudible). We have
10 reached this point in the trial, this point in the
11 trial, this precious darling little man stood up and
12 said, judge, my wife is in labor at the hospital,
13 should I go be with her while our first child is
14 born. And I'm like, this precious man has been
15 there this period of time, I think he's probably
16 going to be in trouble when he got down to the
17 hospital. Is anybody in labor? Does anybody have a
18 loved one in labor?

19 (There was no response.)

20 THE COURT: Okay, wonderful. If you need
21 to respond to either of those two questions please
22 come forward and let's talk about it.

23 (There was no response.)

24 THE COURT: Very well, I find that our
25 jury is now qualified. Y'all know four strikes

1 each. We're gonna one each on the alternate, one
2 alternate. Ladies and gentlemen, let me tell you
3 what happens next. These lawyers need just a few
4 more minutes to go through the information; and in
5 just a little bit, just a few moments, you're going
6 to hear some numbers. And y'all know your juror
7 numbers. Well, the numbers that you're gonna hear
8 are not your juror numbers because we take your
9 juror numbers and we process them for this part of
10 the process so that the numbers that you're gonna
11 hear are not your juror numbers. It's like turkey
12 on the bone like at Thanksgiving versus what comes
13 in a little package, doesn't look a thing alike. So
14 the numbers that you will hear are not your juror
15 numbers. And once that has occurred on, then we
16 will seat our jury. So without further adieu, 1
17 through 20 will be for the 12. And then 21, 22, and
18 23. Am I doing that right? I'm not doing that
19 right.

20 THE CLERK OF COURT: 1 through 21 because
21 you excused ---

22 THE COURT: I got you. 1 through 21 will
23 be for the 12.

24 MR. BOGLE: 20 more, Judge ---

25 THE COURT: Did I mess up 1 through 22?

1 MR. BOGLE: I think two have been ---

2 THE COURT: I'm just not good in math.

3 That is not my strong suit.

4 MR. BELDING: There are two from the
5 original two. You're right, Your Honor.

6 THE COURT: You agree with that, Mr.
7 Belding?

8 MR. BELDING: I'm not positive. Can I
9 take one second, Your Honor?

10 THE COURT: Sure.

11 MR. BELDING: There are two from the
12 original 20. You're right, Your Honor.

13 THE COURT: Okay, we'll go 1 through 22
14 then for the 12. Yeah?

15 MR. BELDING: Correct.

16 THE COURT: And then 23 -- okay, then what
17 do we do with all the numbers?

18 MR. BELDING: I know the answer.

19 THE COURT: You do?

20 MR. BELDING: I do.

21 THE COURT: Wonderful.

22 MR. BELDING: We each get one strike with
23 the next three on the list. Will be 23, 24, 25.

24 THE COURT: Wonderful, okay. Y'all just
25 take a couple of minutes.

1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 THE CLERK OF COURT: Counsel, please call
4 your strikes using the numbers on the left.

5 MS. WETHERTON: State strikes 9.

6 THE CLERK OF COURT: State strikes number
7 9.

8 MR. BELDING: Respondent strikes number
9 13.

10 THE CLERK OF COURT: Respondent strikes
11 number 13.

12 MS. WETHERTON: State strikes 16.

13 THE CLERK OF COURT: State strikes number
14 16.

15 MR. BELDING: Respondent strikes number
16 17.

17 THE CLERK OF COURT: Respondent strikes
18 number 17.

19 MS. WETHERTON: State strikes 12.

20 THE CLERK OF COURT: State strikes number
21 12.

22 MR. BELDING: State — excuse me,
23 Respondent strikes number 2.

24 THE CLERK OF COURT: Respondent strikes
25 number 2.

1 MS. WEATHERTON: State strikes 11.

2 THE CLERK OF COURT: State strikes number
3 11.

4 MR. BELDING: Can I ask you to read my
5 strikes? I got my sheet on this. Real quick, I
6 only have —

7 THE CLERK OF COURT: 13, 17, and 2.

8 MR. BELDING: Correct. Respondent strikes
9 number 20.

10 THE CLERK OF COURT: Respondent strikes
11 number 20. Please strike an alternate using numbers
12 23 through 25.

13 MS. WETHERTON: State strikes 25.

14 THE CLERK OF COURT: State strikes 25.

15 MR. BELDING: Respondent strikes 23.

16 THE CLERK OF COURT: Respondent strikes
17 number 23. Please allow me to review your strikes.
18 For the State, numbers 9, 16, 12, and 11 and
19 alternate number 25. Is this correct?

20 MS. WEATHERTON: Yes, it is.

21 THE CLERK OF COURT: For the Respondent,
22 numbers 13, 17, 2, and 20, and alternate number 23.
23 Is this correct?

24 MR. BELDING: Correct.

25 THE COURT: Now are there any matters

1 regarding qualification or selection of this jury
2 from the Petitioner?

3 MS. WETHERTON: No, Your Honor.

4 THE COURT: From the Respondent?

5 MR. BELDING: No, Your Honor. Thank you.

6 THE COURT: If we can have our jury.

7 THE CLERK OF COURT: Juror number 131
8 Cynthia Humphreys (white female); juror number 45,
9 Michael Chavis (black male); juror number 267, Donna
10 Szoke (white female); juror number 143, Asa Jeffrey
11 (black male); juror number 147, Jennifer Jones
12 (black female); juror number 44, Herbert Chandler
13 (black male). I apologize, juror number 147,
14 Jennifer Jones (black female); juror number 101,
15 Tony Goad (white male); juror number 48, Louis Clamp
16 (white male); juror number 192, James Nichols (white
17 male), juror number 137, Karen Jackson (black
18 female); juror number 153, John Killman (white
19 male); juror number 242, Mark Sharpe (white male);
20 juror number 8, Leslie Anderson (black female); and
21 the alternate is juror number 258, Carlton Spratley
22 (black male).

23 THE COURT: All right. Ladies and
24 gentlemen, I don't want you to be shy now. Like,
25 does anybody need to take a little — like we say in

1 Beaufort County, a short comfort break, a little
2 short comfort break? Let's have a little short
3 comfort break. Ladies and gentlemen, we will try to
4 be as short as we can, keep it to ten minutes. If
5 you will go with your bailiff who will take you to
6 your jury room. And be mindful, we talked a little
7 bit about this. You've got a tiny bit of
8 information. Do not discuss this matter, allow
9 anyone to discuss it with you, ladies and gentlemen.
10 Anybody have a cell phone, pager, or computer, or
11 any other kind of communication device, please let
12 your bailiff know. You cannot serve on jury with a
13 cell phone, computer, or communication device. We
14 will take good care of it, put that up this
15 afternoon. We will take about ten minutes. Thank
16 you so much. If you will go with the bailiff.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 2:55 p.m., and the following
19 proceedings commenced in open court.)

20 THE BAILIFF: Your Honor, the jury is
21 present.

22 THE COURT: Thank you so much. All right,
23 ladies and gentlemen, the case that we're about to
24 try is a case entitled or captioned In The Matter of
25 the Care and Treatment of Mr. Bernard Grooms.

1 Ladies and gentlemen, at this time I'm going to call
2 on you to be sworn as the jury in case.

3 THE CLERK OF COURT: Ladies and gentlemen
4 of the jury, please stand and raise your right hand
5 to be sworn. At the end of the statement I'm about
6 to give you, please respond by saying I do.

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK OF COURT: You may be seated.

9 THE COURT: Is there anyone who failed to
10 take the oath, if so, please stand?

11 (There was no response.)

12 THE COURT: And I find no someone
13 standing. Ladies and gentlemen, here's what I would
14 like to do. First of all, I want to go over the
15 seating assignment. Basically there's really sort
16 of not, except for two exceptions. And I'm looking
17 for Carlton Spratley. Hi, Mr. Spratley, you are our
18 alternate. What I'm gonna ask you to do for me
19 please, Mr. Spratley, is just keep one of those
20 seats on the back row. Now if you like that one,
21 keep it. If you reject it, then that's fine, just
22 keep one of those on the back, that way I can keep
23 up with you as our alternate. And I would
24 appreciated that some and ladies and gentlemen, with
25 regards to the rest of you here's what I need you to

1 do for me. I need you during one of our breaks to
2 select your presiding juror, to select your
3 presiding juror. And your -- the presiding juror
4 has three additional tasks as a juror. The
5 presiding juror will take possession of the verdict
6 form at the conclusion of the case. And once the
7 jury's deliberations are finished, the presiding
8 juror will simply write the verdict of the jury on
9 the verdict form. The presiding juror will also
10 preside in the jury room just to be sure that
11 everybody has a chance to talk. And finally, the
12 presiding juror is the jury spokesperson here in
13 court. And what I mean by that is, if the jury
14 needs to communicate with me for whatever reason, I
15 don't know, it's too hot, it's too cold, gee whiz,
16 sure wish we had some chocolate cake, I don't know,
17 for any reason. The presiding juror will take that
18 down in writing and possibly give it to one of our
19 bailiffs who will then give that to me.

20 Now when you have selected your presiding
21 juror, that presiding juror will take this seat
22 closest to the door. No, I got that wrong, I messed
23 up. Right here. The presiding juror will take this
24 seat on the front row. In Dorchester County it's
25 over here. In Richland County it's over here. And

1 keep that seat throughout the balance of the trial.
2 If you all will elect your presiding juror. Now I
3 need to know who the presiding juror is at some
4 point before you begin your deliberations, and I can
5 find out by one of three ways. You can walk in and
6 you can say I've been selected as the presiding
7 juror of this county, or you can write it down on a
8 piece of paper, sign it, give that to me or give it
9 to one of our bailiffs and they will give that to
10 me. Or you can just keep the seat and just see if
11 I'm smart enough to figure it out. Any one of those
12 three is perfectly fine, perfectly fine. Now ladies
13 and gentlemen, that's the only seating I'm
14 interested in. If you like your seat that you have,
15 get here early. If you don't, get here early, get
16 somebody else's seat so there isn't any other
17 assigned seating.

18 Now ladies and gentlemen, before we begin
19 this trial I do want to tell you that this trial
20 probably will be different from what you might
21 expect. Many people, most people, do not have a
22 chance to attend actual court sessions as you're
23 doing and may think watching television,
24 particularly CNN, Court TV, or watching movies,
25 reading books, that trials are always full of high

1 drama, intense action, and rivetting circumstances
2 and then there's a break for like a commercial.
3 While all of these things, ladies and gentlemen, are
4 true at times, I want you to know that this trial of
5 course is not for entertainment. Ladies and
6 gentlemen, there are those that a fundamental heart
7 of our democracy. I think it is the final part of
8 our democracy, a search for the truth in an effort
9 to make sure that justice is done between the
10 parties among the court. Searching for the truth
11 and making sure that justice is done is often slow,
12 deliberate, and repetitive, the opposite of what you
13 may have seen on television or in movies or read in
14 books.

15 Ladies and gentlemen, this courtroom is a
16 place of honor dedicated to the protection and the
17 preservation of citizens rights through what many
18 have called, and I submit to you, the greatest
19 system of justice people have ever created. Ladies
20 and gentlemen, the attorneys appearing before you
21 are advocates both for the parties they represent;
22 but before they became advocates for the parties
23 that they represent, they were sworn to uphold the
24 integrity and the fairness of our judicial system.
25 Ladies and gentlemen, they are sworn and they are

1 officers of the court, and they are sworn to uphold
2 the integrity of our judicial system and they are to
3 help you in the search for the truth. You should
4 expect them to be professional, competent, and
5 ethical in the representation of their client. And
6 remember that you have taken an oath to try this
7 case and reach a fair and just verdict and, of
8 course, you are expected to be professional and
9 reasonable and ethical. I want to thank you for
10 accepting this most important responsibility jury
11 service and of your contribution to our judicial
12 system.

13 Now ladies and gentlemen, before this case
14 begins I want to tell you a little bit about how we
15 will be proceeding. Ladies and gentlemen, the
16 parties in this case — we have a Petitioner who is
17 the State represented by the Attorney General's
18 Office. And then we have the Respondent who is
19 Mr. Grooms; and Mr. Grooms, of course, is
20 represented by Mr. Belding. Ladies and gentlemen,
21 each — ladies and gentlemen, each of these sides
22 will have an opportunity to make what is called an
23 opening statement to you. Ladies and gentlemen, an
24 opening statement allows each side simply to outline
25 for you what they believe the issues are in this

1 case. Those statements are not true arguments;
2 those arguments will come at the conclusion of the
3 case.

4 Now ladies and gentlemen, once the opening
5 statements are concluded then each side will have an
6 opportunity to present evidence to you, but the
7 Petitioner will be going first. Evidence may take
8 many forms. It may be testimony, documents, and the
9 like. It is so important that you pay close
10 attention to all of the evidence which is presented
11 in this case. Ladies and gentlemen, because you are
12 now the jury in this case you are the sole and the
13 only finders or judges of the facts in this case,
14 and no one else will be permitted to weigh the
15 evidence and render a verdict based upon the
16 evidence produced.

17 Now ladies and gentlemen, after all the
18 evidence has been presented the attorneys will make
19 their closing arguments. Unlike the opening
20 statements the final remarks will be true arguments,
21 and it is, and each side will emphasize the
22 importance of the evidence and try to persuade you
23 to agree with their version of the facts. Keep in
24 mind, ladies and gentlemen, that the opening
25 statements and the closing arguments of the

1 attorneys, while they are important, I urge you to
2 please give them your undivided attention but do
3 keep in mind that what the attorneys say is not
4 evidence. The evidence will come from the sworn
5 witnesses in this case and in the exhibits which are
6 admitted into evidence. Now after the arguments are
7 finished I will explain to you the law that applies
8 to this case and you will then retire to your jury
9 room and you will consider the facts and the law.
10 And once you've done so you will return your
11 verdict.

12 Now ladies and gentlemen, during the
13 course of this trial the Petitioner has the burden
14 of proving the claims brought by the Petitioner, and
15 the Petitioner must meet this burden of proof beyond
16 a reasonable doubt. We will talk about more about
17 that when we give the concluding instructions. Now
18 ladies and gentlemen, there are just a couple of
19 other matters that I wanted to mention to you. I
20 want to explain to you what our roles are. As I
21 mentioned to you earlier, you are the judges of the
22 facts; you are the finders of the facts. And ladies
23 and gentlemen, if I should say or do anything with
24 regards to the facts, if you think I make a comment
25 or make an expression and you think it has some

1 intended comment or intimation regarding the facts,
2 I as you in advance please disregard that 'cause I
3 don't have any opinion regard to the facts. I know
4 that is a matter solely for you to determine. I
5 don't have an opinion regarding the facts so if I do
6 or say something that you think has something to do
7 with the facts, please disregard that because I can
8 assure you that I have no opinion regarding the
9 facts. That is a matter solely for you to
10 determine.

11 Our law, ladies and gentlemen, that makes
12 you the finders of the fact make me the judge of the
13 law. The law as given to you by the Court is the
14 only law that you may consider. Ladies and
15 gentlemen, if I should instruct you regarding the
16 law and you happen to disagree with it, you have to
17 state your preconceived idea or your disagreement
18 aside because you are now by your oath sworn to
19 accept and to apply the law exactly as I state it to
20 you. Now ladies and gentlemen, I want to mention
21 another area to you 'cause I want you to understand
22 what is happening. No doubt from time to time in
23 this case you're going to hear one of these
24 attorneys say something like, objection, or Your
25 Honor, may we approach, or Your Honor, I have a

1 matter of law to discuss with the Court. Ladies and
2 gentlemen, when that occurs -- let me explain to you
3 what is happening. You are learning that a trial is
4 a structured activity, and the way which evidence is
5 presented to a jury is structured. And the way that
6 evidence is presented through attorneys is gone
7 through from what we call a map of this, the Rules
8 of Evidence. The purpose of the Rules of Evidence
9 is to insure that the information you receive is
10 most trustworthy and reliable information that is
11 available; but under those Rules of Evidence it is
12 incumbent upon these lawyers to call possible
13 violation of the rules to my attention. And the way
14 that our law allows them to do that is by one of the
15 means I just mentioned to you by either saying
16 objection, or by saying Your Honor, may we approach,
17 or we have a matter of law. Ladies and gentlemen,
18 because that is the only way that they have, you
19 can't push a buzzer and end up getting it over
20 because that is a means in which they have to raise
21 an objection. And you must not hold the attorneys
22 objection against her or him or against a client
23 because that is the way in which our law allows us
24 to do that.

25 Now I will rule on matters raised,

1 objections raised, under the rules of evidence, and
2 I will make the determination whether or not
3 evidence is admissible at all or not. Ladies and
4 gentlemen, the weight to give to it, whether you
5 believe it or any inferences you choose to draw from
6 it doesn't matter, it's solely for you to determine.
7 The admissibility is a matter for the Court to
8 determine. Now if I ask the lawyers to approach, in
9 all rare instances I may need to ask you to step to
10 your jury room, I want you to know what's going on.
11 Sometimes I need to hear a word or two or a little
12 bit more from the attorneys to help me rule on the
13 admissibility of the evidence. And the reason that
14 I will ask them to approach, rarely, but may need to
15 ask you to step to the jury room is so that I can
16 have that discussion the attorneys. The reason that
17 I'm doing that is that I wouldn't want any of you to
18 think what I might say in ruling on admissibility of
19 evidence to be seen by you to comment on the facts
20 so that's the reason that I'll ask them to approach
21 or in the rare occasion need to ask you to step to
22 your jury room.

23 Now ladies and gentlemen of the jury, I
24 want to address very quickly the taking of notes,
25 that that oftentimes comes up, and there is in

1 ongoing debate about the taking of notes. The
2 concern about taking of notes is that a juror can
3 miss something as it's coming from the witness, and
4 while they are taking the note, that's a real
5 concern judges have. And there's another concern
6 that judges have, and that is, during deliberations
7 if one juror has a note and another juror doesn't
8 have a note, that there can be an undue amount of
9 influence placed on the note. Well, the argument
10 for the taking of notes is just that folks are note
11 takers. They need to take notes, they like to take
12 notes, or notes help those folks refresh their
13 recollection to assist them in their deliberations.
14 Well, I think both arguments are pretty good so this
15 is where I have arrived after a very long time
16 considering the matter. When trials are expected to
17 be a relatively short duration, I ask jurors to
18 listen very carefully and not take notes. When
19 trials are expected to be of longer duration, we
20 provide pen and paper for jurors to take. This
21 trial I am informed is anticipated to be relatively
22 short duration so I ask you to listen, pay
23 attention, and not take notes. Now I have commented
24 on the anticipated duration of this trial, and I
25 want you to know that I am in no way demeaning the

1 importance of this matter. I want you to know this
2 matter is of the utmost, the utmost importance to
3 the respondent. I simply do not want to be worried
4 about my instruction not to take notes. I wanted
5 you to understand why I give you that instruction.

6 Now ladies and gentlemen, finally, I do
7 ask that you pay close attention to the evidence
8 presented to you. Ladies and gentlemen, please do
9 not let your thoughts wander, but give the strictest
10 attention to these matters so that at the end of all
11 the evidence, the arguments of counsel, and the
12 charge on the law I will give, you will find
13 yourself in a position to determine what the true
14 facts are and to apply the law to those facts and,
15 thus, render a true and just verdict under the oath
16 that you just took. Ladies and gentlemen, in order
17 that everyone's rights be protected I will now turn
18 to counsel and ask if there are any exceptions to my
19 comments to you up to this point.

20 MS. WETHERTON: No, Your Honor.

21 THE COURT: From Respondent?

22 MR. BELDING: Nothing from Respondent.

23 Thank you, Your Honor.

24 THE COURT: Ladies and gentlemen, I ask
25 that you please draw close as we listen to the

1 opening statements and arguments.

2 MS. WETHERTON: Thank you, Your Honor.
3 May it please the Court, Judge Goodstein,
4 Mr. Belding, Mr. Grooms, and ladies and gentlemen of
5 the jury, good afternoon. My name is Nicole
6 Wetherton, and I'm one of the new attorneys with the
7 attorney general, South Carolina Office of the
8 Attorney General. And seated with me at counsel
9 table is Senior Assistant Attorney General Jim
10 Bogle. Mr. Bogle is not a new attorney and if you
11 ask him — these are his words, not mine — he has
12 been with the attorney general since Genesis is what
13 he'll tell you. But one of the advantage we have
14 working for our office since I am a new attorney I
15 can bring a more experienced lawyer with me in
16 court, and that's why Mr. Bogle is here today. He's
17 here helping me on this case.

18 Now this case today is about the
19 protection of the citizens of Richland County and
20 the State of South Carolina. So why are we here?
21 Well, it's arguably that that man sitting at that
22 table over there, Mr. Bernard Grooms, is a sexually
23 violent predator. So what is a sexually violent
24 predator. Well, about 14 years ago our
25 representatives here in Columbia passed a law which

1 with two things in mind. There are certain
2 individuals in our state that suffer from mental
3 abnormalities and/or a personality disorder that
4 make them likely to commit acts of sexual violence
5 and the individuals need treatments and in a secure
6 setting, protect the public during their treatment
7 process because they are truly dangerous
8 individuals. The State contends that Mr. Grooms is
9 one of those individuals that our representatives
10 had in mind when they passed the sexually violent
11 predator act. So having you notice, ladies and
12 gentlemen, I'm gonna show you a board and this is
13 the requirements of what I have to prove at trial.
14 If there's anything that you hear during my opening
15 statements that this and this only is what I'm
16 required to prove. As you see according to the
17 statutes, I have to prove that Mr. Grooms has been
18 convicted of a sexually violent offense and he
19 suffers from mental abnormality and/or personality
20 disorder that makes a person likely to engage in
21 acts of sexual violence, if not confined in a secure
22 facility for long term control, care, and treatment.
23 So the first thing I have to prove in this case is I
24 have to prove Mr. Grooms has been convicted of a
25 sexually violent offense.

1 Mr. Grooms has been convicted of a
2 sexually violent offense. In fact, he's been
3 convicted of two sexually violent offenses. You
4 will learn about each of the convicted offenses and
5 his victims, and you're gonna learn about how he
6 sexually assaulted them. And you're also gonna hear
7 facts surrounding his most recent incarceration
8 where Mr. Grooms kidnapped a woman and sexually
9 assaulted her. The SVP act also requires a person
10 to suffer from a mental abnormality or personality
11 disorder that make them likely to commit each act of
12 sexual violence if not confined to long term
13 control, care, and treatment.

14 In this case Mr. Grooms has both a mental
15 abnormality and a personality disorder. You're
16 gonna hear testimony from a psychologist from the
17 Department of Mental Health, Doctor Marie Gehle, who
18 evaluated Mr. Grooms, and has rendered a
19 professional opinion that he suffers what is
20 referred to as paraphilia and you'll learn what that
21 is that is later, and he also has a personality
22 disorder. And you will hear testimony from which
23 you can decide whether Mr. Groans lacks control over
24 his mental abnormality and personality disorder and
25 whether he is likely to commit future acts of sexual

1 violence. You will hear testimony that it's
2 necessary for Doctor Gehle to review Mr. Grooms'
3 criminal history which spans over half of his life,
4 over 34 years, and he has been convicted of a total
5 of 26 offenses of both sexual and nonsexual. And
6 Doctor Gehle will explain why that explains a lack
7 of control when he's out in society.

8 And you'll also here Mr. Grooms has
9 significant factor for reoffending and how he
10 appears to lack incite or accountability as to
11 sexual offense history despite previously completing
12 sex offender treatment while in the Department of
13 Corrections. This is an indication of treatment
14 failure. In the case, despite the fact that they
15 are civil in nature, the State is required to prove
16 their case beyond a reasonable doubt, the criminal
17 case. In this case I embrace that burden. I
18 believe I will be able to prove beyond a reasonable
19 doubt that Mr. Grooms is a sexually violent
20 predator.

21 Now in these cases by their very nature,
22 tend to contain disturbing facts and this case is no
23 different in that record; but I ask you to do one
24 thing in this case, listen to all of the evidence
25 and not just the State's evidence but also the

1 evidence that Mr. Grooms brings forth. And as you
2 listen to the evidence in this case, I believe the
3 verdict you must render will become clear, that
4 Bernard Grooms is a sexually violent predator that
5 must be confined to the Department of Mental Health
6 to get the treatment he so desperately needs, get
7 treatment in a secure facility to protect the
8 citizens of Richland County and this State from him.

9 THE COURT: Thank you.

10 Mr. Belding.

11 MR. BELDING: Thank you, Your Honor. May
12 it please the Court, Ms. Wetherton. Good afternoon,
13 my name is Dave Belding. Again, I met you earlier.
14 I represent Bernard Grooms who is sitting over there
15 at table with me. Mr. Grooms you may note is not
16 dressed as we are. Mr. Grooms is wearing a Richland
17 County jail jumpsuit and some handcuffs and leg
18 shackles, and that's because he's been in jail since
19 March 1st of this year waiting to get before this
20 jury. Now Ms. Wetherton pointed out Mr. Grooms has
21 a criminal record; we're gonna stipulate to that.
22 It's written down. The point is this: I have that
23 board up here that she showed you. There's a couple
24 of things she has to prove to you in this trial.
25 One of the things that she didn't mention was how

1 long ago these offenses took place, and you're also
2 gonna hear from the psychologist that's gonna tell
3 you that the best predictor of future behavior is
4 past behavior, and we're gonna go through that
5 testimony pretty carefully. And at the end of it, I
6 think you're gonna find one thing, the reason the
7 State has to prove this beyond a reasonable doubt is
8 'cause we're talking about Mr. Grooms' liberty here.
9 The constitution requires the government can't take
10 away your life and your liberty or your property
11 without due process of law; and because his liberty
12 is affected by this, it's civil, it's not a criminal
13 case, but they have to prove it beyond a reasonable
14 doubt. The same standard as in a criminal case
15 'cause they're talking about putting him in a secure
16 facility for treatment indefinitely. For those
17 reasons the State has to prove all of their
18 allegations to your satisfaction beyond a reasonable
19 doubt.

20 Yes, please listen to the evidence.
21 Please listen to everything that's said because when
22 we get done I'm gonna come back and ask you to let
23 Mr. Grooms go home. He has served his sentence. He
24 has paid his debt to society. He's been sitting in
25 the Richland County jail since March 1st waiting for

PW - M. GEHLE - DIRECT

1 this day. It probably won't get over till tomorrow
2 by noon I would think, but I'm gonna ask you to let
3 him go get some regular clothes because he is no
4 longer an inmate of the State and I don't think he
5 needs to have treatment. And I think by the time we
6 get done with this you'll understand why. I
7 appreciate your attention. I hope you enjoy it and
8 thank you for being here. Thank you, Your Honor.

9 THE COURT: Thank you very much. Yes,
10 sir.

11 Call your first witness please.

12 MS. WETHERTON: Yes, Your Honor. Thank
13 you. The State would like to call Doctor Marie R.
14 Gehle to the stand.

15 WHEREUPON,

16 **MARIE R. GEHLE,**
17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE CLERK OF COURT: Please have a seat.
20 State your full name.

21 THE WITNESS: My name is Marie R. Gehle.
22 It's G-E-H-L-E.

23 **DIRECT EXAMINATION**

24 BY MS. WETHERTON:

25 Q And Doctor Gehle, where are you currently

PW - M. GEHLE - DIRECT

1 employed?

2 A With the South Carolina Department of Mental
3 Health.

4 Q And what is your position at the Department of
5 Mental Health?

6 A I'm a chief psychologist in the forensic
7 evaluation service.

8 Q And for the record, do you and I work for the
9 same place?

10 A No.

11 Q How long have you been employed with the
12 Department of Mental Health?

13 A About three-and-a-half years.

14 Q Are you responsible for evaluating sexually
15 violent predator cases at the Department of Mental
16 Health?

17 A Yes, I am.

18 Q Now what advance degrees do you possess?

19 A I have a bachelor degree in psychology, a masters
20 degree in clinical psychology, and a doctorate in
21 clinical psychology.

22 Q In what states are you licensed?

23 A I'm licensed in Georgia and South Carolina.

24 Q Do you have any professorships?

25 A Yes, I'm assistant professor in the department of

PW - M. GEHLE - DIRECT

1 neuropsychiatry and behavioral science at the
2 University of South Carolina School of Medicine.

3 Q Can you briefly talk about any relative
4 experience prior to working at the Department of
5 Mental Health.

6 A Yes. I've been working with sex offenders since
7 my first job in college. Well, probably the primary
8 experience that I have that's most relevant to these
9 cases is, as part of my predoctoral internship I did
10 that at Western State Hospital in Washington State
11 and that is the place that has the first SVP program
12 or sexually violent predator program in the country
13 and I worked out there for four months and learned
14 about how they do the treatment and how they do
15 their evaluations of residents in that program. I
16 also did other kinds of forensic evaluations to
17 determine whether people were competent to stand
18 trial or whether they were insane when they
19 committed the criminal offense. And I did a post
20 doctoral fellowship in Georgia doing evaluation and
21 treatment of people who have been referred by the
22 Court.

23 Q Now what is the study of psychology?

24 A Psychology is the study of the mind and behavior.

25 Q Now what is the study of forensic psychology?

PW - M. GEHLE - DIRECT

1 A Forensic psychology involves the application of
2 the science of psychology to issues relating to the
3 law.

4 Q Have you previously been recognized and testified
5 as an expert witness in forensic psychology in the
6 course of law in the State of South Carolina?

7 A Yes, I have.

8 Q And approximately how many times have you been so
9 recognized?

10 A More than fifty times.

11 MS. WEATHERTON: At this time, Your Honor,
12 I move for Doctor Gehle to be recognized as an
13 expert in forensic psychology.

14 MR. BELDING: Without objection, Your
15 Honor.

16 THE COURT: Very well, you're so
17 qualified.

18 Ladies and gentlemen, let me explain to
19 you what just happened. Normally under our rules of
20 evidence individuals are not allowed to testify
21 regarding their opinion or reasons for those
22 opinions. And there is an exception when by virtue
23 of someone's knowledge, experience, training
24 education, profession, they have become an expert in
25 some field and they're allowed to give their

PW - M. GEHLE - DIRECT

1 opinions and the reasons for those opinions would
2 have been in that field. Ladies and gentlemen, I
3 will give you more instructions regarding expert
4 opinion testimony when I give you the concluding
5 instruction; but I will say this at this point,
6 expert opinion testimony is given for helping you
7 understand the evidence. That's not for the purpose
8 of controlling your judgment.

9 You may proceed.

10 MS. WETHERTON: Thank you, Your Honor.

11 BY MS. WEATHERTON:

12 Q Approximately how many individuals have you
13 evaluated under the South Carolina sexually violent
14 predator act.

15 A I would estimate about 150 people.

16 Q How many precommitment evaluations have you
17 conducted in these matters?

18 A Approximately fifty precommitment evaluations?

19 Q And out of those evaluations, how many have you
20 recommended that certain individuals not be
21 committed into the sexually violent predator
22 treatment program?

23 A Of those fifty I've recommended commitment in
24 about a third of the cases or about 16 people
25 roughly.

PW - M. GEHLE - DIRECT

1 Q So you've actually testified for the Defense in
2 these types of cases?

3 A Yes.

4 Q And about how many times have you testified for
5 Defense in these type proceedings?

6 A I don't know that right offhand. I have
7 testified in at least one trial for the Defense; but
8 oftentimes my opinion, you know, two thirds of the
9 case that I've done my opinion has benefited the
10 defense and I've testified in the majority of those
11 so maybe 30 times.

12 Q Now Doctor, how did you become involved with this
13 case?

14 A I received a court order appointing me as the
15 evaluator in this case.

16 Q And as a court appointed evaluator were you paid
17 to conduct your evaluation in this case?

18 A With my primary job responsibility at the
19 Department of Mental Health so I'm paid a salary to
20 do these evaluations.

21 Q And as a result of your opinion did you receive
22 any additional compensation?

23 A No.

24 Q Now Doctor, as part of your evaluation did you
25 meet with and interview Bernard Grooms?

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1 A I did.

2 Q And is the man you met appear in the courtroom
3 today?

4 A Yes, he is.

5 Q Can you please point him out to the jury.

6 A He's sitting next to his attorney (indicating).

7 MS. WEATHERTON: Your Honor, may the
8 record reflect that Doctor Gehle identified the
9 Respondent Mr. Bernard Grooms.

10 THE COURT: Very well.

11 MS. WETHERTON: Thank you.

12 BY MS. WEATHERTON:

13 Q Now Doctor, when you are appointed by courts to
14 conduct an evaluation what are you ordered to do?

15 A I'm ordered to determine whether a person has a
16 mental abnormality or personality disorder that
17 makes them likely to commit acts of sexual violence.
18 So essentially, the Court wants to know does this
19 person have a mental illness or a personality
20 problem that makes him likely to go out and commit
21 sex offenses.

22 Q Now to that end, Doctor, can you describe for the
23 jury your protocol in conducting evaluations when
24 you've been ordered to do so?

25 A Yes, the first thing I do is read all the legal

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1 records that I'm given and I look for patterns and
2 things like that in the offenses. I look at what
3 kind of mental abnormalities could be consistent
4 with the types of offense details that I come
5 across. I will devise specific set of questions
6 that I have in addition to the regular questions
7 that I ask. I will begin to score an actuarial risk
8 assessment prior to meeting with them, and then I'll
9 interview the person for typically several hours,
10 and then later, you know, I might request other
11 information that's not included or I'll get all the
12 records that I can and I'll sit down and look at
13 everything and write a report.

14 Q Now after you've conducted your evaluation and
15 have consulted all the information you have obtained
16 how, do you reach a professional opinion in this
17 matter?

18 A Well, it's a long process. I look at whether the
19 person meets objective criteria for a mental
20 abnormality or personality disorder, or both, in
21 some cases. I look at what their actuarial risk is
22 and whether that risk is, makes them likely to
23 commit acts of sexual violence.

24 Q And how long does it take from beginning to end
25 to reach your opinion?

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1 A It can take a while. It usually takes several
2 months to get the whole thing done. But just
3 sitting at a computer and just doing this
4 evaluation, just doing this report, that typically
5 takes a week or more.

6 Q Now you mentioned to the jury you received a lot
7 of information through reaching your opinion, what
8 type of information did you receive to aid you in
9 conducting your evaluation in this case?

10 A I received a petition that was filed indicating
11 that Mr. Grooms was a sexually violent predator.
12 That included things from the multidisciplinary team
13 which reviews the case prior to the person being
14 released from prison. I looked at records from the
15 Department of Corrections, criminal history report,
16 legal records pertaining to his sexual offenses. I
17 looked at, I think, a history from his
18 incarcerations in the Richland County Detention
19 Center. Basically, it's that kind of information is
20 what I looked at and then I also interviewed him?

21 Q How did you obtain that information?

22 A That information typically comes from the Office
23 of Attorney General as part of a petition. It also
24 comes in duplicate. Typically it's often the same
25 materials that come from the multidisciplinary team

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1 so I receive them through a paralegal in my office.
2 If I need other information I just ask her and she
3 will, you know, try to get that for me.

4 Q Now is this the type of information that is
5 typically and reasonably relied on by other experts
6 in your field?

7 A Yes, it is.

8 Q Okay. And at the time you conducted your
9 interview and evaluation of Mr. Grooms was there any
10 information you requested that you could not obtain?

11 A Not that I recall.

12 Q Now Doctor, we're going to change gears for a
13 second. Can you explain to the jury what are risk
14 factors?

15 A Risk factors are anything that relate or relates
16 to sexual recidivism or re-offense so anything that
17 makes it more likely that somebody will commit a sex
18 offense so that's what a risk factor is put simply.

19 Q Thank you. Are risk factors significant in
20 regards to your opinion?

21 A Yes.

22 Q And why is it significant?

23 A Well, there are things that I need to figure out
24 as to whether this person has a risk to re-offend.
25 I can't just go with a gut reaction and think, you

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1 now, this guy seems like somebody that's going to
2 out and do it again. I have to look at what
3 research says and risk factors are defined in
4 research, and those are the things that I look at,
5 things that are supported.

6 Q So were these risk factors part of the basis of
7 your opinion?

8 A Yes.

9 Q Now with regards to that risk factors was there
10 any steps you performed in getting Mr. Grooms likely
11 to re-offend?

12 A Yes.

13 Q Can you explain what the assessment is and how it
14 works for the jury?

15 A Yes. Currently the best way to figure out if
16 somebody is going to re-offend or what their
17 likelihood that they're going to re-offend is, is to
18 use an actuarial risk assessment. An actuarial is
19 just a mechanical, numerical risk assessment. It
20 has rules that you have to follow that everybody
21 follows. And they've looked at risk factors that
22 relate to somebody's likelihood to reoffend. You'll
23 look at those risk factors and add them all up and
24 then compare that to the large sample so you get a
25 total score and I compare that to tables that are

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1 provided and I can get percentage likelihood of
2 re-offending. It can also tell me where this person
3 relates to sex offenders in the same boat.

4 Q Now what assess -- what information did it reveal
5 specifically about Mr. Grooms?

6 A Well, Mr. Grooms -- and let me find my report
7 here. Mr. Grooms' risk to re-offend was considered
8 high. He -- essentially people with a score the
9 same as him, they had a high risk to re-offend and
10 about 30 percent of that sample with the same score
11 went on to re-offend in five years and about
12 39.7 percent went on to re-offend in ten years. He
13 also -- if I compare how his score looked in the
14 sample, if you took about a hundred people only two
15 or three people would be worse than him on this
16 actuarial measure so he was essentially in the
17 98 percentile at or above that or at or below that.

18 Q Now is that significant with regards to your
19 opinion?

20 A Yes. Part of what the statute says that the
21 person has to be likely to re-offend because of a
22 mental abnormality. The statute also talks about
23 identifying the extremely dangerous group of
24 offenders. It can't simply commit everybody who's a
25 sex offender. This would be thousands and thousands

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1 of people. So we're looking at who are the most
2 dangerous offenders that would be likely to go out
3 and do this again if they're not put into the
4 program. So that's what I did. And when I look at
5 the actuarial measurement, it's my opinion that he
6 is one of the extremely dangerous offenders.

7 Q Now what are dynamic risk factors?

8 A Dynamic risk factors are things that are
9 considered more changeable or changing through
10 treatment or that change on their own.

11 Q Now with regard to dynamic risk factors can you
12 describe what risk factors you discovered Mr. Grooms
13 has as you relate to the likelihood to sexually
14 re-offend?

15 A Yes, Mr. Grooms had several. He had his criminal
16 history, suggests he prefers coercive sex over
17 consenting or noncoercive sex. There were some
18 sadistic elements, meaning elements that appear that
19 he would get pleasure out of hurting somebody. So
20 that indicates he -- his -- he has a risk factors
21 called sexualized violence. He also had a history
22 of really impulsive, an impulsive lifestyle. He
23 reported a lot of drug use, being unstable, not
24 having regular employment, using drugs, making
25 irresponsible decisions, things of that nature. He

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1 has a history of resistance to rules, to rules and
2 supervision. He's had a long criminal history. He
3 violated the terms of conditional release, failed to
4 register as a sex offender and things of that
5 nature. He reported a lot of negative social
6 influences. He said he spent a lot of time with
7 prostitutes, pimps, and chronic drug users.

8 The last one was, he appears to have an
9 unstable romantic relationship history. He appears
10 to not have a long period of stable romantic
11 relationships, meaning he has difficulty kind of
12 keeping a relationship for probably personality
13 reasons.

14 Q Now did you base your opinion on either the
15 Static-99 with dynamic risk factors solely?

16 A No.

17 Q Would it be professionally acceptable to do so?

18 A No, that just informs the risk. It doesn't talk
19 about whether he has a mental abnormality or
20 personality disorder.

21 Q Now is it common for experts in your field to
22 rely upon criminal -- on an individual's criminal
23 history to reach an opinion in sexually violent
24 predator cases?

25 A It's an essential part of what needs to be

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1 considered in doing these evaluations.

2 Q Now can you explain to the jury how individual
3 past sexual offense behavior relates to future
4 sexual offense behavior?

5 A Well, typically past behavior is predictive of
6 future behavior so if I have somebody who will do
7 certain things, it's not unlikely that they'll do
8 those certain things in the future. You know,
9 people tend to be pretty consistent in their
10 behavior over time.

11 Q Now based on your interview with Mr. Grooms and
12 your review of the file, at the time of your
13 interview with Mr. Grooms had he been convicted of a
14 sexually violent offense?

15 A Yes, he had.

16 Q What were his convictions?

17 A He was convicted of lewd act upon a minor and he
18 was convicted of criminal sexual conduct in the
19 first degree.

20 MS. WEATHERTON: Your Honor, permission to
21 approach the witness?

22 THE COURT: All right.

23 BY MS. WETHERTON:

24 Q I'm gonna show you what's been marked as State's
25 Exhibit 1. Have you seen these documents before?

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1 A Yes, I have.

2 Q Is there anything on the document that shows
3 their authenticity?

4 A It's stamped certified true copy.

5 Q Now did you review these documents as part of
6 your evaluation?

7 A Yes, I did.

8 Q And what are these documents?

9 A The first one is an indictment for criminal
10 sexual conduct in the first degree. The second, the
11 second page is just typically what you consider the
12 cover page of that indictment. Also I believe the
13 third page — yeah, it's the arrest warrant and the
14 indictment for criminal sexual conduct in the first
15 degree.

16 Q Now are these the type of documents that are s
17 commonly relied on by experts in your field?

18 A Yes.

19 Q And why is it necessary to review the details of
20 the underlying facts of these offenses?

21 A Well, what I'm looking for on these documents is
22 what kind of behaviors. I want to know what kind of
23 victim, what the relationship with the victim was.
24 You know, is he assaulting males, females, and what
25 kind of, kind of method of operation does he have.

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1 Q So Doctor, would you please describe for the jury
2 the detailed underlying these specific facts.

3 A Well, this is back in 1981. Mr. Grooms and a
4 co-defendant grabbed a victim. I believe she was an
5 underage girl although there was no age on the
6 records that I reviewed. They grabbed her, pulled
7 her into the woods, or pulled her off kind of into a
8 more private setting and they both raped her.

9 Q Now what sentence did he receive following his
10 conviction?

11 A So he pled, he pled that offense to lewd act on a
12 minor and — sorry. And he was sentenced to three
13 years of incarceration.

14 MS. WEATHERTON: Your Honor, at this time
15 I'd like to admit what's been marked as State's
16 Exhibit 1.

17 MR. BELDING: Without objection, Your
18 Honor.

19 THE COURT: Very well.

20 MS. WETHERTON: Permission to approach the
21 witness again, Your Honor.

22 THE COURT: All right.

23 (WHEREUPON, State Exhibit No. 1
24 was admitted into evidence.)

25 BY MS. WETHERTON:

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1 Q I'm gonna show you what's been marked as State's
2 Exhibit 2. Have you seen these documents before?

3 A Yes.

4 Q Now is there anything on these documents that
5 show their authenticity?

6 A Yes, they're stamped certified true copy.

7 Q Okay. Now did you review these documents as part
8 of your evaluation?

9 A Yes, I did.

10 Q And what are these documents?

11 A This is an arrest warrant for criminal sexual
12 conduct and a sentencing sheet for criminal sexual
13 conduct.

14 Q Are these the type of documents that are commonly
15 relied on by experts in your field?

16 A Yes.

17 Q Doctor, will you please describe to the jury the
18 details underlying these history of facts?

19 THE COURT: Ms. Wetherton, as I understand
20 it these exhibits, this exhibit ---

21 MR. BELDING: Without objection.

22 THE COURT: Thank you. It's admitted and
23 already identified, okay. My understanding it is.

24 MS. WETHERTON: Okay, thank you.

25 (WHEREUPON, State Exhibit No. 2

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1 was admitted into evidence.)

2 BY MS. WETHERTON:

3 Q Would you please describe to the jury the details
4 underlying these specific facts?

5 A Yes, in 1990 Mr. Grooms, he jumped -- that's
6 what -- that's the terminology used in the police
7 report. He grabbed her, jumped a 17 year old girl,
8 she was walking. And she saw him kneeling by his
9 vehicle, and he jumped her, grabbed her by the
10 throat and he forced her into his vehicle. He held
11 a knife to her throat. He slapped her, and he -- he
12 -- I'm sorry, he proceeded to have sexual
13 intercourse or he raped her. He then drove her to
14 her grandmother's home so he was charged with
15 kidnapping and criminal sexual conduct. The victim
16 went to the hospital; and while she was at the
17 hospital, she saw Mr. Grooms walk by her room at the
18 hospital and that's how he was captured.

19 Q And what sentence did he receive following those
20 convictions?

21 A He received 21 years.

22 Q Now in reviewing the legal documents in this case
23 did you see that Mr. Grooms may have been charged
24 with a sexually violent offense but not convicted?

25 A Yes. He was actually charged with two sexually

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1 violent offenses that he was not convicted of. In
2 2010 he was charged with criminal sexual conduct in
3 the second degree. A woman reported that Mr. Grooms
4 raped her; however, she declined to cooperate with
5 law enforcement and he was released so the charge
6 was dismissed. And in 2011 he was charged with
7 criminal sexual conduct in the first degree,
8 kidnapping, and strong armed robbery, and he pled to
9 assault and battery in that case.

10 Q Would you consider those offenses in your,
11 forming your opinion?

12 A Yes, they're considered in regard to the risk
13 assessment. You calculate how many charges, sexual
14 offense kind of charges somebody has, and things
15 like that.

16 Q Okay. Was Mr. Grooms convicted of any other
17 crimes that were sexual in nature but did not
18 qualify as sexually violent offense?

19 A He was convicted of violating the sex offender
20 registry which you could consider related to
21 sexually offending, but it's not a sexually violent
22 offense obviously.

23 Q Now did you notice any pattern in regard to the
24 sexual assaults?

25 A Yes. They were all what I would consider to be

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1 snatch and grab rapes. He approached the victims,
2 grabbed them. You know, they were unsuspecting of
3 this. They didn't know him. The victims all appear
4 to be strangers; he never met them before. He
5 grabbed them, took them to another more private
6 location, and raped them.

7 Q Now was that information part of the basis of
8 your opinion in this case?

9 A Yes.

10 Q And why is that?

11 A Well, it's important to look at somebody's kind
12 of pattern of behavior to see if that corresponds to
13 a mental abnormality or personality disorder. I
14 also want to know what kind of harm he caused with
15 these acts and things like that.

16 Q Was Mr. Grooms convicted of any nonsexual
17 offenses?

18 A Mr. Grooms was convicted of many nonsexual
19 offenses. I think that he's been in and out of jail
20 his entire life beginning when he was, you know, in
21 his early 20s. And he would have -- I don't know --
22 many, many, many offenses all throughout the years.
23 Pretty consistently he's been in and out of jail. I
24 think he's been convicted of about 26 offenses that
25 I know of. When I reviewed his criminal history

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1 report there were many charges where there was no
2 disposition listed so I'm not sure if he was
3 convicted of more than 26, but I know he was
4 convicted of at least 26 offenses over the years.

5 Q Now was that significant in your opinion?

6 A Yes, sir, it shows just a disregard for rules and
7 for the law and consistent irresponsible kind of
8 behavior. It also shows that he doesn't seem to be
9 deterred to commit crimes despite, you know,
10 consequences like prison or jail.

11 Q Were there any of these convicted offenses
12 significant to your opinion specifically?

13 A Yes, his last conviction in 2011, the assault and
14 battery, that seemed to be very consistent. That
15 was originally charged as criminal sexual conduct,
16 kidnapping, and strong armed robbery. That victim
17 reported that she was just walking down the street
18 and he came from behind, drug her to an abandoned
19 house, beat her up a little bit, bound her like tied
20 her hands up behind her back, and raped her, held
21 her there for the day and over the night till the
22 next morning. And then he unbound her and told her
23 to wait a little bit until he left and then he left.
24 She went to the hospital and when she was at the
25 hospital she saw Mr. Grooms in the hospital and that

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1 was how he got detained. And that was very similar
2 to the second offense of being captured at the
3 hospital again.

4 Q Did he ever commit an offense while on probation
5 or parole?

6 A Yeah, he's committed many, many offenses while on
7 probation or parole. They weren't necessarily
8 sexual in nature. But he's been consistently
9 involved in the legal justice system by just, you
10 know, doing a variety of crimes.

11 Q Now is that significant in your opinion?

12 A Yes, it again shows irresponsible behavior and a
13 real difficulty to follow the laws that we're all
14 expected to follow.

15 Q So should Mr. Grooms not be found to be a
16 sexually violent predator would he be released?

17 A Yes.

18 Q Now are you offering an opinion solely based on
19 Mr. Grooms' criminal history?

20 A No.

21 Q Would it be professionally acceptable to do so?

22 A No.

23 Q Now did you interview Mr. Grooms?

24 A I did.

25 Q How long did you interview him?

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1 A I think the interview lasted about three hours.

2 Q Now when you conduct these types of evaluations,
3 the amount of time you spend with Mr. Grooms common
4 amount of time you spend interviewing an individual?

5 A The times vary just depending on how much there
6 is to talk about and how willing the person is to
7 talk about things. So sometimes they're longer than
8 that; sometimes they're shorter than that. But
9 three hours is probably a good average.

10 Q Now can you describe the interview with Mr.
11 Grooms for the jury, what took place?

12 A Well, when I, when I sat down with him I
13 explained a little bit of how the process of the law
14 works, you know, and how he got into this process
15 and where he was in the process and what could
16 happen as opinions were formed and what could happen
17 after that, things like that. I told him that this
18 information would be confidential, it would go into
19 the report, we'd likely go to court. Just a general
20 disclosure I do with all the individuals that I
21 interview. And then I proceeded to ask him probably
22 a million questions all about his life, where he was
23 born and raised, his background, you know, what he
24 did for work. I asked him about what kind of things
25 he was into sexually. I asked him about his drug

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1 use. I asked him about the offenses and about his
2 plans for the future. Essentially I asked him
3 everything that I could to determine what risk
4 factors he had, if any, and whether he had a mental
5 abnormality or personality disorder, and you know,
6 enough to be able to offer an opinion.

7 Q Was there anything about the interview that was
8 significant to your ultimate opinion?

9 A When I met with him, you know, he was cooperative
10 with the evaluation; he wasn't too difficult. He
11 presented pretty normally meaning he knew where he
12 was, he knew what the date was, things of that
13 nature. He didn't present with any, you know, overt
14 psychosis or like not being based in reality so he
15 was pretty normal in that regard. I did notice a
16 lot of inconsistencies in his account of things
17 compared to what that was in the police reports. He
18 seemed to minimize things like drug use when I
19 compared that to previous evaluations and things of
20 that nature. And he denied committing the offenses.

21 Q Was Mr. Grooms ever involved in a sexual
22 relationship?

23 A Yes, he reported being involved in relationships
24 over the years.

25 Q Was he involved in a consensual sexual

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1 relationship when he committed either of the
2 sexually violent offenses?

3 A Yes, he reported that he was.

4 Q Now why is that relevant, or is that relevant?

5 A It is relevant because it helps me understand
6 whether he had an available partner, you know, did
7 he have somebody who would have sex with him and did
8 he go out and do to these things regardless. That
9 can speak to somebody's preference for sexually
10 violent offenses or sexually assaulting somebody who
11 is not agreeing to the sex, things of that nature.
12 If he had somebody available and went out and did
13 these things, it indicates that he has a preference
14 for that kind of sex.

15 Q Now to your knowledge has Mr. Grooms taken any
16 responsibility for his past sexual offenses here?

17 A When I evaluated him he did not. I know that he
18 pled to some of the charges so you could see that as
19 taking responsibility; but when I interviewed him
20 and asked him about the offenses he denied it. He
21 said he knew these people, they were drug users, and
22 you know, basically you can't trust a crack head and
23 they'll say whatever. That was basically what his
24 account was.

25 Q So he did talk about — did he talk about drug

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1 use?

2 A Yes, he reported a long history of drug use. He
3 said that he started using marijuana and alcohol
4 when he was very young and that in 2000 he started
5 smoking crack consistently and used that every day
6 until he was incarcerated.

7 Q Now in your expert opinion does drug alcohol use
8 in and above itself predispose a person to commit
9 sexual offenses?

10 A That's not something that's typically a
11 predisposing factor. It can give somebody, I guess,
12 the courage to commit offenses or it can sort of
13 suspend their judgment in committing offenses,
14 things of that nature, so it can be related to
15 offending.

16 Q Did he ever complete substance abuse treatment?

17 A According to the records from the Department of
18 Corrections where — that's my only knowledge that
19 he would have had any se— or substance abuse
20 treatment, he did not. He, I think, what had like a
21 two orientations to substance use in prison on a
22 couple of occasions.

23 Q Now based on your interview and the records you
24 received or conducting your evaluation did you
25 discover whether Mr. Grooms had any sex offender

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1 treatment?

2 A Yes. He participated in about six weeks of sex
3 offender treatment at the end of 1992, beginning of
4 1993.

5 Q What did you discover about his sex offender
6 treatment?

7 A Well, he went through about six weeks. That's --
8 that was standard. When I asked him about it he
9 said that they didn't really talk about the crimes
10 that they committed, that he really just went in and
11 talked. He said the class was five or six weeks
12 which was consistent with the records. That was
13 about it.

14 Q Was there anything, a report or any type of
15 evaluation done after the completion of his sex
16 offender treatment?

17 A Yes, he went through an evaluation in 1995 that
18 was while at the Department of Corrections. They
19 periodically do these evaluations to maybe determine
20 what level of security somebody needs to be at. And
21 there was an evaluation in 1995.

22 Q Was there any -- did you find any significance in
23 your opinion?

24 A Well, it was very consistent with what I saw. He
25 said that he didn't have a sexual problem. He said

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1 he was in the wrong place at the wrong time with the
2 wrong people, that kind of thing. They described
3 him as being defensive regarding his sexual
4 offenses; and they said that because of this,
5 because of his denial of the sex offender, sex
6 offenses, they couldn't let him continue in
7 participating with sex offender treatment. That's
8 pretty standard that in order to continue into a
9 more intensive treatment or more long term treatment
10 they want to know that you're not denying the
11 offenses 'cause why would you do it if you didn't
12 do -- if you didn't do the stuff that they're
13 accusing you of, how are you gonna benefit from
14 treatment.

15 Q Was there any other information upon which you
16 relied to rendering your opinion regarding
17 Mr. Grooms not already discussed?

18 A Not necessarily, no.

19 Q Now based on your examination of Mr. Grooms,
20 review of his records and all these factors that
21 we've been discussing, did you render an opinion to
22 a reasonable degree of psychological certainty as to
23 whether Mr. Grooms has a mental abnormality or
24 personality disorder?

25 A Yes, I did.

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1 Q And what was that opinion?

2 A My opinion is that he has a mental abnormality
3 and personality disorder. I diagnosed him with
4 paraphilia, not otherwise specified, and personality
5 disorder not otherwise specified with antisocial
6 traits. In addition, I diagnosed him with cocaine
7 dependence with physiological dependence in a
8 controlled environment.

9 Q Now Doctor, can you explain, what is paraphilia.

10 A Paraphilia is it's recurring intent, sexually
11 arousing fantasies, sexual urging behaviors
12 involving a certain set of behaviors for specific
13 class of victims or sometimes non-human objects that
14 occur over at least six months. So basically it's a
15 pattern of deviant sexual arousal. And by deviant
16 tell it can be illegal or outside of the norm that
17 causes distress or impairment.

18 Q And what does it mean when you say not otherwise
19 specified?

20 A Well, I diagnose that because I think that
21 Mr. Grooms is sexually aroused by having sex with
22 people who don't consent to it so he gets a thrill
23 from that. That's what he finds sexually arousing,
24 people who are fighting or people who don't want to
25 be there, people who don't want to do this sort of

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1 thing. And there is no specific paraphilia to
2 address that kind of behavior so the way that you
3 diagnose it is paraphilia not otherwise specified.

4 Q Now is that a lifelong condition?

5 A Yes.

6 Q Is paraphilia referred to as a relevant
7 abnormality?

8 A It's often considered the most relevant mental
9 abnormality.

10 Q Can this condition be managed?

11 A It can be.

12 Q And what is a personality disorder?

13 A And personality disorder is a characteristic in a
14 pervasive way of responding to others or situation
15 that is maladaptive and causes distress or
16 impairment.

17 Q What does it mean to have antisocial traits?

18 A Well, in order to diagnosis antisocial
19 personality disorder, that's essentially somebody
20 who has very, disregard very little disregard or
21 very little regard for other people or for people's
22 feelings or the way that whether — whether a person
23 means much of anything to him. That's what you
24 would consider sort of antisocial. People who are
25 not able to follow laws, rules, sort of coexist in

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1 mainstream society without problems. In order to
2 make that diagnosis you have to establish whether
3 somebody had problems prior to age 15, and I could
4 not establish that in this case. So I diagnosed
5 paraphilia not otherwise specified with antisocial
6 trait. He has a long history or antisocial
7 behavior, but I can't establish that prior to age 15
8 part so what the diagnosis would be is parafil-- or,
9 sorry, personality disorder not otherwise specified
10 with antisocial traits.

11 Q Now is that a life long condition?

12 A Yes, it is.

13 Q Can his condition be managed?

14 A It's very hard to manage that condition. It can
15 be in some cases.

16 Q Now based on all the information you have just
17 described to the jury, completing the information
18 you learned during your interview with Mr. Grooms at
19 this time, do you have an opinion to reasonable
20 degree of psychological certainty as to Mr.

21 Mr. Grooms' paraphilia affect his emotional or
22 volitional capacity so he's predisposed to commit
23 future sexually violent offenses?

24 A Yes.

25 Q And what is that opinion?

PW - M. GEHLE - DIRECT

1 A My opinion is that it does.

2 Q Can you explain what emotional and volitional
3 capacity is?

4 A It's essentially your ability to make choices or
5 whether you feel compelled to act in a certain way,
6 you know, can you stop yourself from engaging in
7 certain behavior.

8 Q Now based on all the information you have just
9 described for the jury, including the information
10 you have learned during your interview with
11 Mr. Grooms, did you have an opinion as to a
12 reasonable degree of psychological certainty as to
13 whether Mr. Grooms' personality disorder affects his
14 emotional or volitional capacity, that he is
15 predisposed to commit future sexual violent
16 offenses?

17 A Yes.

18 Q And what is that opinion?

19 A I believe that it does.

20 Q Do you have an opinion to a reasonable degree of
21 psychological certainty as to whether Mr. Grooms has
22 the propensity to be dangerous to commit future
23 sexually violent offenses?

24 A Yes.

25 Q What is that opinion?

PW - M. GEHLE - DIRECT

1 A I believe that he does.

2 Q Do you have an opinion to a reasonable degree of
3 psychological certainty as to whether Mr. Grooms'
4 propensity to commit future sexually violent
5 offenses is of such a degree that it poses a menace
6 to the health and safety of others?

7 A Yes.

8 Q And what is that opinion?

9 A My opinion that he is likely, yes.

10 Q Okay. Can you explain to the jury why you
11 believe Mr. Grooms' propensity to commit future
12 sexual violent offenses is such a degree it poses a
13 menace to the health and safety of others?

14 A Well, he has a paraphilia in a personality
15 disorder. The paraphilia talks about his sexual
16 arousal towards having sex with non-consenting
17 people or coercive sexual encounters. His
18 personality disorder gives him little regard for
19 other people so that the conflux of those things in
20 addition to his high likelihood on a static
21 indicates that he's very likely to go out and commit
22 acts of sexual violence if he's not confined.

23 Q Do you have an opinion to a reasonable degree of
24 psychological certainty as to whether Mr. Grooms has
25 serious difficulty in controlling his behavior and

PW - M. GEHLE - DIRECT

1 his propensity to be dangerous?

2 A I believe that he does have serious difficulty in
3 controlling his behavior.

4 Q Now do you have an opinion to a reasonable degree
5 of psychological certainty whether Mr. Grooms'
6 paraphilia makes him likely to engage in acts of
7 sexual violence if he is not confined in a secure
8 facility for long term control, care, and treatment?

9 A Yes.

10 Q And what is that opinion?

11 A I believe it does.

12 Q Now do you have an opinion to a reasonable degree
13 of psychological certainty whether Mr. Grooms'
14 personally disorder makes him likely to engage in
15 acts of sexual violence if he's not confined in a
16 secure facility for long term control, care, and
17 treatment?

18 A Yes.

19 Q And what is that opinion?

20 A I believe it does.

21 Q Now do you have an opinion to a reasonable degree
22 of psychological certainty as to whether Mr. Grooms
23 meets the legal criteria to be found a sexual
24 violent predator?

25 A It's my opinion that he does.

PW - M. GEHLE - DIRECT

1 Q If the jury finds Mr. Grooms to be a sexual
2 violent predator would he be offered treatment for
3 his mental abnormality personality disorder?

4 A Yes.

5 Q Do you know of any program that can guarantee Mr.
6 Grooms receive sex offender treatment other than
7 through this commitment process?

8 A No.

9 Q Okay. Based on your evaluation who would be at
10 risk if Mr. Grooms to be released?

11 A I think women would at risk. It can be anybody
12 kind of within his close proximity but in general
13 women.

14 MS. WEATHERTON: Your Honor, if I can just
15 have one moment.

16 THE COURT: All right.

17 MS. WETHERTON: Thank you.

18 (Pause.)

19 MS. WETHERTON: Your Honor, we like to
20 offer for cross-examination.

21 THE COURT: Very well. We will have that
22 in the morning. All right. Ladies and gentlemen,
23 that will concluded the work we are going to do
24 today. I'm going to give you some instruction on
25 and we're gonna begin in the morning at 9:00, at

1 9:00. And ladies and gentlemen, the first day seems
2 to take a little bit longer because there's just --
3 there's some instructions that I'm gonna give to you
4 and it takes a little bit longer. First of all, do
5 not discuss this matter or allow anyone to discuss
6 it with you. What does that mean? Well, that means
7 when you go home this evening no doubt someone is
8 gonna be curious about what you have been up to
9 today and is properly fine to say that you showed
10 up, that you were arrived for your summon, jury
11 duty. It's perfectly fine to say that it is a civil
12 matter as opposed to a criminal. That seems to be
13 what everyone wants to know. But beyond that, you
14 must not discuss this matter or allow anyone to
15 discuss it with you. I don't want anybody upset
16 with you. Put it on the judge, tell them it's the
17 judge that told you not to discuss this matter with
18 anyone.

19 Now ladies and gentlemen, when you have
20 been discharged from your service on this jury, and
21 I promise you there will be no question in your mind
22 when that time has come, and you will be at liberty
23 to talk about this case if you choose. But at this
24 point you must not discuss on this case with anyone.
25 with your family, with your friends, or with each

1 other, with anyone that has anything to do with this
2 case. Now why in the world would I would give you
3 that instruction? Well, ladies and gentlemen,
4 here's what we know. We know that juries are
5 obviously critical to our judicial system. We know
6 that a juror's ability to listen openmindedly to all
7 the evidence that is presented to them is critical
8 to our system of justice. We also know that
9 apparently the way we all put together, if we begin
10 to talk about something we can't help it, we begin
11 to form opinion about what we are talking about.
12 And that is the reason for the instruction. It is
13 to support your ability to listen openmindedly to
14 all the evidence and not make up your mind about
15 anything until you have heard all of the evidence,
16 of course, and the argument of counsel and my charge
17 on the law. That's the reason for the instruction.

18 Now ladies and gentlemen, when I started
19 this job — I won't tell you how long ago. But when
20 I started, I didn't know about special media. Now
21 we have to talk about blogs and tweets, Facebook,
22 Linked-In, all of that. I heard something, Four
23 Corners, — I never heard of that — last week. And
24 I'm gonna tell you that you must not discuss this
25 matter on social media. Also, no Columbo. Do not

1 do any sort of research. Don't go home and hop on
2 the internet and look up words. Ladies and
3 gentlemen, you must receive all of the information
4 from which you'll make up your mind here in court
5 while court is in session.

6 Now ladies and gentlemen, I have
7 absolutely no way of being able to tell you whether
8 or not there will be any publicity about this
9 particular case. I mean, I have not seen Anderson
10 Cooper in this courtroom today; but beyond that, I
11 have no way of knowing if there is any sort of
12 publicity. But in abundance of precaution, I tell
13 you, you're not to listen to anything, do not read
14 anything about this matter; and that will be radio,
15 television, and of course any newspaper and
16 internet. You must receive all of the information
17 from which you'll make up your mind while court is
18 in session.

19 Now ladies and gentlemen, as you come and
20 go from the courthouse, these folks know that
21 they're not to supposed to interact with you at all.
22 So lawyers always want me to tell folks, if you
23 happen to see them and they shirk away from you,
24 they don't even say hello, they really aren't been
25 rude; they just know that they're supposed to

1 interact with you at all. In fact, should anyone
2 try to interact with you about this case please get
3 their name, if not the name, a description, and
4 report that to me upon your return and I will deal
5 with that individual because that would be highly
6 inappropriate for anyone to try to discuss or
7 interact with you regarding this matter. Now do we
8 have anybody that works at night? Anybody think
9 they are being ignored now? Not so. And the reason
10 for that is, I need you rested. I need you rested
11 so that you can listen as attentively tomorrow as
12 you have today. So sometimes when folks call their
13 employers their employers do not understand your
14 need to rest. I'm excited to talk to your employer
15 in the morning and say, I don't understand. So you
16 just get that person's name number with me and you
17 let one of our bailiffs know I'll be excited to talk
18 to them and explain it, tell them, hold up judge,
19 I'm not coming to work today cause Judge Goodstein
20 will be calling you in the morning, okay. But rest,
21 pay close attention just as you have today. Not
22 fair to ask you to work all night and to give the
23 kind of attention to these matters during a case,
24 but I'm excited to intervene on your behalf. Now no
25 one else has that -- now that doesn't mean you got

1 — you don't have to go clean up the dishes and such
2 like that.

3 Now ladies and gentlemen, I think that
4 concludes — oh, and of course remember, leave your
5 cell phone or other communication device, your
6 computer, your smart phone. I'm thinking -- does
7 anybody have any — nobody carries a beeper anymore.
8 But leave them away from the courthouse tomorrow.
9 However, we all carry these things so we keep
10 forgetting, it's okay. Just let us know. It is
11 insufficient to turn it off and put it in your
12 pocketbook, turn it off and put it in your pocket
13 'cause you know it'll turn itself right back on and
14 it will ring right in the middle of court and it
15 will tell everybody that you've got it, you know how
16 they are. So if you forget it, it's okay, just let
17 one of our bailiffs know and they will take great
18 care of it until after our morning break when you can
19 return it to your car or the lunch break when we
20 start returning back, when you think it's
21 appropriate. But with the final admonition, do not
22 discuss this matter or allow anyone to discuss it
23 with you. Have a wonderful evening and I'll see you
24 in the morning at 9:00. Our bailiff, we'd like a
25 box of crackers, yum. In any event our bailiffs

1 will show you how to go and come to the jury room.
2 Thank you so much. If you will go with the bailiff.

3 (WHEREUPON, the jury was excused
4 from the courtroom at 4:36 p.m.)

5 THE COURT: Thank you so much. And out of
6 abundance of precaution, Doctor Gehle, you know
7 you're not to talk about your testimony with anyone.
8 I tell you out of abundance of precaution; I know
9 you know that admonition. Please do not discuss
10 your testimony with anyone.

11 We'll see everyone tomorrow morning at
12 9:00. All right, anything from the Petitioner
13 before we conclude?

14 MS. WEATHERTON: No, Your Honor.

15 MR. BELDING: Nothing from Respondent,
16 thank you.

17 THE COURT: Very well. We'll see y'all in
18 the morning a little bit before 9. Have a good
19 evening.

20 (Court adjourned and resumed
21 on July 30, 2013 at 9:33 a.m.)

22 THE COURT: Anything from the Petitioner
23 before we bring our jury out?

24 MS. WETHERTON: No, Your Honor.

25 MR. BELDING: Nothing from Respondent.

1 THE COURT: Let us have the jury please.
2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 9:34 a.m., and
4 the following proceedings commenced in
5 open court.)

6 THE BAILLIFF: Your Honor, the jury is
7 present.

8 THE COURT: Wonderful. Good morning,
9 ladies and gentlemen. Would you just have a seat.
10 Are you running for the office of presiding juror?
11 Is that why you're in that seat?

12 THE FOREPERSON: I did not run but I am
13 —

14 THE COURT: You've been appointed. You're
15 so wonderful. Thank you so kindly for serving in
16 that capacity as juror. You are juror number?

17 THE FOREPERSON: 131.

18 THE COURT: 131.

19 THE FOREPERSON: Yes.

20 THE COURT: So now ladies and gentlemen,
21 at this time we will continue with the Petitioner's
22 case and the cross-examination of Doctor Gehle.

23 And are you ready?

24 MR. BELDING: Yes, Your Honor. Thank you
25 very much.

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1 THE COURT: Wonderful.

2 **CROSS-EXAMINATION**

3 BY MR. BELDING:

4 Q Good morning, Doctor Gehle?

5 A Good morning.

6 Q Now I believe you testified yesterday that you
7 have read the South Carolina sexually violent
8 predator act, correct?

9 A I don't know that I testified today that
10 yesterday, but I did, I have.

11 Q You have?

12 A Yes, sir.

13 Q Have you actually looked at any sexually violent
14 predator acts from other states?

15 A Yes, I have.

16 Q Okay. Now isn't it true that in making these
17 predator determinations one of the things that you
18 have to deal with is some ambiguity in state law?

19 A Yes, there's some terms that are not clearly
20 defined or things of that nature.

21 Q As a matter of fact, this is -- do you recall
22 this is the -- Your Honor, this is the display board
23 that we, that Ms. Wetherton put up yesterday. And
24 she's been nice enough -- can you see that?

25 A Yes.

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1 Q Okay.

2 THE COURT: Can we mark that. Just for
3 purposes of the record it really ought to have an
4 identification.

5 MR. BELDING: Court exhibit, Your Honor?

6 THE COURT: Exhibit 1.

7 (Court's Exhibit Number 1 was marked
8 and made a part of the record.)

9 MR. BELDING: Thank you, Your Honor.

10 BY MR. BELDING:

11 Q Now Ms. Gehle, we've — I turned around what has
12 now been marked as Court's Exhibit 1 and you
13 recognize this as part of the sexual predator law in
14 South Carolina?

15 A Yes.

16 Q Now what terms in this law would you consider
17 ambiguous or vague?

18 A The term "likely" is not clearly defined in South
19 Carolina statute. It has been defined in Supreme
20 Court decisions, but still that requires some
21 interpretation.

22 Q Okay. What about the term mental abnormality?

23 A Mental abnormality has been defined to some
24 degree.

25 Q Okay. Are you familiar with the publication

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1 called the DSM?

2 A Yes.

3 Q What is the DSM?

4 A It's the Diagnostic and Statistical Manual for
5 disorders.

6 Q Who created that book?

7 A The American Psychiatric Association.

8 Q Now is the DSM considered to be the most
9 authoritative book for the mental health care
10 community in the United States?

11 A You could call it that, yes.

12 Q And what edition are we working on right now?

13 A The 5, the DSM-5 was just released I think in
14 May.

15 Q Right. Okay. And do you refer to the DSM as
16 part of your practice?

17 A Yes, I do.

18 Q Does that book, that DSM, does that pretty much
19 contain a listing of all of the diagnostic criteria
20 for every psychiatric disorder that we recognize in
21 the United States?

22 A Yes, it -- for those that we recognize, yes.

23 Q Okay. So -- now in the DSM which is the most
24 authoritative book, the terms mental disorder and
25 the terms personality disorder are in that book;

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1 aren't they?

2 A Yes.

3 Q Okay. Is the term mental abnormality in that
4 book?

5 A I don't know if that term specifically is in
6 there. It might be in some context, but the DSM
7 typically refers to mental disorder or mental
8 illnesses.

9 Q Okay. And referring to the term mental disorder
10 and the term personality disorder, these are things
11 that are identified and named and included in the
12 DSM; isn't that correct?

13 A Yes, for the most part. There are narrative
14 descriptions of what personality disorders are, and
15 there are specific disorders, personality disorders
16 that criteria are limited out and then there's also
17 some non-otherwise specified categories. The same
18 applies to mental disorders depending on what you're
19 looking at.

20 Q Okay. And this is done after years of research
21 about these mental conditions, correct?

22 A Yes.

23 Q Okay. Now so the first term that you have to
24 work with is this term that for some reason in State
25 law mental abnormality which does not appear as a

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1 diagnosis in the DSM, DSM-5 actually any of it,
2 correct?

3 A Well, mental abnormality is such a broad term
4 that it, I don't believe that it's considered, you
5 know, diagnosis in and of itself.

6 Q Correct. It doesn't have any diagnostic
7 precision, does it?

8 A I mean, mental abnormality is like saying
9 somebody has a mental illness. You can consider all
10 those listed in the DSM to be mental illnesses, but
11 it doesn't say mental illness, you know, is the
12 diagnosis for depression. It says depression is
13 what that label is.

14 Q Okay. You mentioned first of all the term
15 likely. You have to make a determination as part of
16 your opinion that the person in this case, Mr.
17 Grooms, is likely to engage in acts of sexual
18 violence if he's not confined for treatment,
19 correct?

20 A For control, care, and treatment, yes.

21 Q Okay. What -- how do you define the term
22 "likely?"

23 A Well, the term likely has been defined as the
24 person's propensity to commit acts of sexual
25 violence are of such a degree to pose a menace to

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1 the health and safety to others.

2 Q So you have to establish a degree in order to
3 reach a conclusion; isn't that right?

4 A I guess you could say that, yes.

5 Q Okay, well, would you say that?

6 A I mean, I guess say that whether the person
7 likely or not Your Honor that I always well, yeah, I
8 guess I could say that you have to just establish a
9 degree.

10 Q Okay. So to establish a degree to figure out
11 what likely means, that involves probability;
12 doesn't it?

13 A Yes.

14 Q Okay. Now have you had training in statistical
15 analysis?

16 A Yes.

17 Q Okay. Where was that training done?

18 A Xavier University and graduate school. I also
19 had some training in undergraduate school.

20 Q Okay. Now when you're looking at statistical
21 probability isn't it true that most commonly the
22 term likely means more than 50 percent?

23 A No, that's not how it's been defined in our
24 statute. In some state statutes it's likely means
25 more likely than not and it's explicitly stated in

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1 those statutes. South Carolina has not taken on the
2 definition of likely directly, other states have.

3 And they define it differently in different states.

4 Q So in some states they actually say more probable
5 than not, correct?

6 A Well, in some state law it is the person's
7 they're more likely than not. That is explicitly
8 defined in the statute. Some statutes or case law
9 said probable; they've defined likely as probable.

10 Q Okay. So the first problem you have again, it's
11 not defined as you have to try to interpret it in
12 order to make an opinion, correct?

13 A Well, it's defined as the person's propensity is
14 to such a degree that they're likely to commit acts
15 of sexual violence.

16 Q And now we're back to degree again, correct?

17 A Uh-huh.

18 Q And degree indicates statistical probability,
19 correct?

20 A You can say that, yes.

21 Q Okay. And again, would you say that?

22 A Sure.

23 Q Okay. Now let me we return to my previous
24 question. What I was asking was, I want you to
25 forget about sexual violent predator act stuff, just

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1 general statistics 'cause when you were taking your
2 statistics classes in college they weren't talking
3 about sexual violent predators, were they?

4 A No.

5 Q They were talking about -- I mean, I took classes
6 in statistics. They talk about 52 cards as a
7 beginning of how you understand probability. Did
8 you do any study about cards like how many times
9 queens come up in a deck, things like that?

10 A I don't remember specifically doing card sorting
11 kind of statistics.

12 Q Okay. But do you understand the concept that if
13 I said at what level of statistical probability
14 would you find a queen in a normal deck of cards, do
15 you know what your answer would be?

16 A It would be 4 out of 52.

17 Q Or 1 out of 13, correct?

18 A I'm not gonna do division on the stand here. I'm
19 sure I'd be wrong.

20 Q Okay. That's -- so when we talk about likely in
21 common statistical terms, normally that means at
22 least 50 percent or more, correct?

23 A I don't know that I can say that. I don't know
24 that that's true. It depends on what you're doing
25 and what you're looking at as to how that would be

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1 defined.

2 Q Do you know the difference between the term, from
3 your studies, between the terms likely and
4 likelihood?

5 A Yeah. Likely, likelihood, they're essentially
6 the same.

7 Q Okay. Well, one is a noun and one is an adverb
8 but. Aside from that, what -- how -- you think
9 likely and likelihood refer to the same things?

10 A Oftentimes.

11 Q Okay. What if I said to you what is the
12 likelihood a meteorite hitting this building, would
13 you express that in terms of statistical
14 probability?

15 A If I knew what that was, yes.

16 Q What do you mean if you --

17 A Possibly.

18 Q And again, I'm not trying to trick you but if you
19 knew what that was -- in other words, if you had
20 experience in how often astronomical objects hit
21 earth, correct?

22 A I guess so, yes.

23 Q Okay. So the likelihood of a meteorite hitting
24 this building is expressed as a statistical
25 probability, correct?

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1 A It can be.

2 Q Okay. In that -- and what would you, if I said
3 that the likelihood of a meteorite falling on us
4 today is .001 just for purposes of this
5 illustration, you would understand what I was
6 talking about, right?

7 A Yes.

8 Q Okay. And we could say that the likelihood is
9 .001. Wouldn't you also at the same time say, well,
10 that means it's likely?

11 A No, I would say it's unlikely.

12 Q Exactly. And why would you say it's unlikely?

13 A Because the probability is low.

14 Q Okay. It's not only lowered at 50 percent; it's
15 really low, correct?

16 A Yes.

17 Q All right. So when you try to evaluate whether
18 someone's likely to engage in acts of sexual
19 violence if not confined, you do have to come up
20 with some kind of a statistical probability, the
21 degree that you talked about in the definition,
22 correct?

23 A Yes.

24 Q Now yesterday when you were testifying you were
25 talking about the protocol that you went through in

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1 doing your evaluation, and you said the first thing
2 you did was that you got all these documents and
3 reviewed them in preparation for going and actually
4 interviewing the subject, correct?

5 A Yes.

6 Q And the other thing it sounded like you mentioned
7 was that you conducted a risk assessment?

8 A No, what I said was that I start to score the
9 Static-99R. It's best practice to score as much as
10 you can prior to seeing the person so I do that.

11 Q Okay.

12 A But I can't answer all the questions and a risk
13 assessment is more than that consideration so, you
14 know, I start the process of the risk assessment.

15 Q I ask you, Doctor Gehle, do you recognize this
16 document?

17 A Yes.

18 Q What is this?

19 A This is a Static-99R coding form.

20 MR. BELDING: May I approach the Bench,
21 Your Honor?

22 THE COURT: You may.

23 BY MR. BELDING:

24 Q Where was this Static-99R coding form come from?

25 A It comes from a research group that's largely

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1 based in Canada, but you can get this online at the
2 static99.org website.

3 Q That's where I got mine. That's where you get
4 yours?

5 A That's where I get mine as well.

6 Q Is this the form that, the blank form, is this
7 the form that you used to fill out in Mr. Grooms'
8 case?

9 A Yes.

10 Q Okay.

11 THE DEFENDANT: Your Honor, I'd like to
12 have this introduced as Respondent Exhibit 1. It's
13 been authenticated by Doctor Gehle as the form she
14 used to score Mr. Grooms' Static-99 risk assessment.

15 MS. WETHERTON: We have no objection, Your
16 Honor.

17 THE COURT: All right, very well.
18 Respondent's Exhibit 1 in evidence without
19 objection.

20 (WHEREUPON, Respondent Exhibit No. 1 was
21 marked for identification and received
22 into evidence.)

23 BY MR. BELDING:

24 Q Referring again to what's now been introduced as
25 Respondent's Exhibit 1, what are the -- it looks

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1 like there's ten questions that you have to go
2 through and fill out, correct?

3 A Yes.

4 Q Okay, you mind just briefly running through those
5 questions?

6 A Yes. Number one is agent relief. Number two is
7 ever lived with. Number three is index nonsexual
8 violence, any convictions. Number four is prior
9 nonsexual violence, any convictions. Number five is
10 prior sex offenses. Number six is prior sentencing
11 dates excluding index. Number seven is any
12 convictions for noncontact sex offenses. Number 8
13 is any unrelated victims. Number nine is any
14 stranger victims. Number ten is any male victims.

15 Q Okay. Do you have to participate in any training
16 to perform this risk assessment?

17 A I have not gone through the formal training;
18 however, my supervisor's gone through that formal
19 training and I've been trained by him and we've done
20 some practice cases and things of that nature.

21 Q Well, I don't mean to diminish this, but most of
22 these questions aren't real hard to answer, are
23 they?

24 A The are surprisingly more difficult to answer
25 than they look at times. There are decisions that

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1 need to be made and there's actually people that you
2 can contact if you have questions about things,
3 people who are certified to answer those questions
4 through the website. But on the face of it they are
5 not too difficult.

6 Q Okay. Well, that's what I'm looking at is on the
7 face of it. For example, let me just ask you and
8 I'm not gonna hold you to this if you remember
9 exactly 'cause you do a lot of these. You've got
10 basically ten questions. How many of these
11 questions do you think you might have been able to
12 answer simply by the documents that were provided to
13 you by the State?

14 A I can typically answer their agent release. I
15 often cannot answer whether they've ever lived with.
16 I can typically answer number 3, 4 and 5. Number 6
17 I can answer. Number 7 I can answer. And number 8
18 I can typically answer. Number 9, sometimes I can
19 answer depending on how thorough the police report
20 was or if it was mentioned explicitly. Number 10 I
21 can typically answer.

22 Q So about eight out of ten of these you have
23 scored so to speak before you ever meet the subject?

24 A Yes.

25 Q Okay. Now who developed this Static-99?

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1 A It's a research group through public safety
2 Canada.

3 Q Okay. Do you know the names of the primary
4 creators?

5 A Carl Hanson is considered the primary creator. I
6 mean, his name is the most recognized in conjunction
7 with the Static-99.

8 Q All right. And someone named David Thornton's
9 name comes up sometimes too; doesn't it?

10 A Yes.

11 Q And these are part of the group, and Hanson was
12 pretty much the head guy?

13 A Yeah, I believe they both work for public safety
14 Canada if I'm not quite mistaken.

15 Q And just so the Court will have some
16 understanding, what exactly did Hanson and Thornton
17 in this group from public safety can to do to create
18 the Static-99, what is it?

19 A Well, essentially the way that you do the way
20 that you develop an actuarial measure is you look at
21 a group of interest. In this case they looked at
22 sex offenders so they actually pulled many studies
23 from all over the country, from the United States
24 through Canada including other countries. They
25 pulled many studies and they looked at those to see

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1 if they had good statistics, if they were soundly
2 produced, things like. So they took the ones that
3 they deemed to be good studies and they looked at a
4 number of factors so things that they thought
5 through those metanalyses to be related to
6 recidivism. They wanted to find out what could
7 differentiate offenders versus non-offenders so they
8 take all those people, those factors, and they do
9 statistics and see which factors differentiate the
10 non-offenders from the offenders. Then they will go
11 through and do -- they'll combine the risk factors
12 and come up with scores and tables.

13 Q Okay. Now is that how they initially created it
14 by pulling from other sources?

15 A I believe so, but I'm, you know, I wasn't part of
16 this research group. I'm not sure.

17 Q Okay.

18 A I know that some of their very original studies
19 were metanalyses which is pulling many studies
20 together and analyzing the results.

21 Q Do you know if they ultimately started tracking
22 individuals to put into this data base?

23 A I don't know.

24 Q Okay. And I want to make sure you understand my
25 question. Maybe you probably did but, as I

PW - M. GEHLE - CROSS

1 understand what you're saying, there are times that
2 come up with some objective basis for figuring out
3 who might re-offend and who might not. Is that an
4 unreasonable statement?

5 A They were looking for factors or a way to
6 differentiate offenders versus or they're all sex
7 offenders in the sample.

8 Q Right.

9 A They wanted to know who went on to re-offend, who
10 did not go to re-offend.

11 Q Okay. Is this the best, most objective tool used
12 in making these SCE if I can call them that,
13 evaluations?

14 A It's the most widely accepted and wide used
15 assessment so I would believe that it's the best
16 right now. Things are changing all the time in risk
17 assessment as more factors and, you know, as we know
18 more.

19 Q In fact, this is a expanding field in the fields
20 of psychology and psychiatry; isn't it?

21 A Risk assessment?

22 Q Especially sexually violent predator risk
23 assessment?

24 A It's a rather new part of psychology and
25 psychiatry. Sexually violent predator statutes

PW - M. GEHLE - CROSS

1 began in, as they are currently, began in 1990 or so
2 so it's, you know, been around for that long at
3 least.

4 Q Then in the written report that you did in this
5 case you stated that Static-99R is an instrument
6 designed to assist in the estimation of sexual and
7 violent recidivism for sexual offenders.

8 A Correct.

9 Q Now something closer to English that we might be
10 able to understand. Are you saying that this
11 instrument tries to estimate a percentage, you know,
12 the chances that someone would sexually re-offend?

13 A Well, what it does is it combines the risk
14 factors that have been associated with sexual
15 recidivism, and it allows you to compare the person
16 that you're evaluating to the group that they've
17 studied. And they can tell you that a person with
18 the score the same as the person that you're looking
19 at, how often they went on to re-offend in the
20 future. So they looked at five year and ten year
21 periods, and they looked at what the recidivism
22 rates for the various scores were.

23 Q And you wrote in your report that it Mr. Grooms'
24 case after you had scored this form and compared it
25 to people with the same score, that according to the

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1 data base they had created thus far, 30.9 percent,
2 30 percent, almost 31 percent of the people that
3 scored like Mr. Grooms sexually re-offend within
4 five years?

5 A 30.6 percent, yes.

6 Q Oh, it's not 30.9. 30.6. And what about within
7 ten years?

8 A 39.7.

9 Q Okay. You stated a minute ago too that it was an
10 actuarial risk assessment. What does an actuarial
11 mean?

12 A Actuarial is a mechanical, numerical risk
13 assessment much, you know, I described the process
14 of how it comes out or how they develop it, has
15 explicit rules which helps people score the same.
16 You know, it's reliable and it's non-subjective,
17 more mechanical and numerical.

18 Q Is that what an actuary is?

19 A But -- yes, I believe so, I mean, I -- yes.

20 Q What if I told you that an actuary was a person
21 that worked for an insurance company and tried to
22 determine how all people's lives when they're
23 licensed?

24 A Okay, you could say that, yes, actuary.

25 Q I, mean that's where it starts. That's what an

PW - M. GEHLE - CROSS

1 actuary does, it does it for insurance purposes,
2 correct?

3 A Yes, these started in for insurance purposes from
4 my understanding.

5 Q Okay. So is this right, then, that this
6 Static-99 is trying to get a handle on, predict,
7 relative risk?

8 A It is offering an estimate of risk based on risk
9 factors.

10 Q All right. You know what I mean by relative
11 risk?

12 A Please, define what you mean.

13 Q Well, I just thought, well, I read that article
14 too. And it's my understanding is that relative
15 risk means that you relate different groups of
16 people. So in other words, the group that scored
17 three re-offend at a rate relative to the group that
18 scored eight. So the relative risk is
19 theoretically, as you get up the scale and start
20 scoring higher, you should re-offend at a higher
21 rate. Is that your understanding how it works?

22 A Yes.

23 Q Okay. So theoretically, a person who scored a
24 seven, and isn't that -- is that what you said
25 Mr. Grooms scored, a seven?

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1 A Yes.

2 Q Out of a possible ten?

3 A Yeah -- no, no, not out of a possible ten, no.

4 Q So what is it? How high can it go?

5 A Twelve.

6 Q Okay/

7 A It can go from negative 3 to 12.

8 Q A range of 15, is that possible? Is that the
9 range, 15?

10 A Yes.

11 Q Okay. So a person who scores a seven on this
12 risk assessment, would it makes sense that person
13 would tend to re-offend more than someone who scored
14 a three?

15 A Yes.

16 Q You talked a minute ago about Hanson and
17 Thornton. Are you aware that these two people,
18 Mr. Hanson and Mr. Thornton, authored an article
19 last year -- it came out last September 2012 -- an
20 article published in a publication called Criminal
21 Justice and Behavior in which they conceded that
22 this instrument, the Static-99R, is not accurate in
23 providing a numerical estimate of risk for sexual
24 recidivism for any specific offender?
25 A And what was the name of the article?

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1 MR. BELDING: Excuse me, Your Honor, a
2 second.

3 THE COURT: All right.

4 MR. BELDING: I'll give you a copy of
5 this.

6 MS. WETHERTON: I have it already.

7 BY MR. BELDING:

8 Q It's called -- you ready? Absolute Recidivism
9 Rates Predicted by Static-99R and Static-2002R Sex
10 Offender Risk Assessment Tools Vary Cross samples of
11 Analysis and Metanalysis--

12 THE COURT: Whoa, whoa..

13 MR. BELDING: Let me do that again,
14 Elizabeth. I'll go slow.

15 BY MR. BELDING:

16 Q The title of the article is Absolute Recidivism
17 Rates predicted by Static-99R and Static-2002R Sex
18 Offender Risk Assessment Tools Vary Across Samples:
19 And Metanalysis.

20 A Yes, I'm aware of that article.

21 Q You know, sometimes I feel like Einstein's wife
22 when they asked, do you understand what he's talking
23 and she says, I understand the words but not the
24 sentences. I don't get a lot out of that title.
25 Can you explain what that means?

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1 A Yes. They're looking at absolute recidivism
2 rates so they want to look at what are the rates
3 that recidivism actually took place of predicted by
4 the Static-99R and the Static-2002R which is a
5 previous version. And it's -- the Static-99R and
6 Static 2002 are sex offender risk assessment tools
7 that's just describing those are sex offender risk
8 assessment tools, and they want to look at how they
9 vary across samples so samples of offenders and a
10 metanalysis is combining many studies together and
11 doing statistical analysis on it.

12 Q Okay.

13 A I'm not sure if that cleared up anything but...

14 Q It sounded good though. And in this article
15 though, from the authors Hanson and Thornton and a
16 couple of others, concede that these statistics
17 cannot be used to predict for any individual person?

18 A Um...

19 Q It's got to be groups, correct?

20 A Yes, I mean, we don't have crystal balls. We
21 can't necessarily predict anything and nobody really
22 can. You can look at risk factors and estimate what
23 the probability is, but I can't -- I can't predict
24 specifically.

25 Q Okay, fair enough. But going back to the

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1 beginning, you went through the ten risk factors on
2 Static-99, put in the answers, got a number, and
3 from that you were able to go to their chart that
4 says 30.6 of these guys scored seven re-offended the
5 next five years, correct?

6 A Well, actually, what this article really talks
7 about is the importance of choosing a group so they
8 offer four groups that you can compare the static
9 score to. The first group is called the routine
10 group and that includes every sex offender that was
11 in the studies. That can be somebody who urinated
12 in public, if they call that a sex offense in that
13 jurisdiction. It could be somebody who, you know,
14 sexually molested kids for 20 years. It can be
15 someone who sexually molested a kid one time. It
16 could be somebody who committed rape. It could be
17 someone who committed one rape. It could be
18 somebody that committed statutory rape. It could be
19 somebody that exposed themselves. So that routine
20 group includes everybody. Then they had a
21 non-routine group, and that group was somebody,
22 included offenders who were selected in some way so
23 it could be differing ways. They might have been
24 selected for need for treatment. They might have
25 been selected as a high risk offender. They were

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1 preselected in some way. That non-routine group was
2 split into two groups. One was preselected for
3 treatment and one was high risk high needs. So when
4 you get your static score you have to choose which
5 table you're going to use. And given that the
6 people that I'm evaluating have been preselected,
7 they have been through the multidisciplinary team
8 prior to their release from prison, five people
9 review their case, and took a vote on whether they
10 thought that they were sexually violent predator,
11 voted yes in this case, they referred the case on.
12 The prosecutor review committee met, reviewed the
13 case, thought that there was probable, they voted
14 yes, moved the case on. A petition was filed. That
15 petition went before a judge. A judge found
16 probable cause. So the people that I'm looking at
17 were preselected in some way. So I compare the
18 individual against the non-routine group.

19 Q Okay. Now the preselected people, you know what
20 the multidisciplinary team consist of?

21 A In what regard?

22 Q Well, who's on the multidisciplinary team that
23 reviews these case?

24 A Yes, I know who's on the multi.

25 Q What kind of people are on there?

PW - M. GEHLE - CROSS

1 A There are five people. It's defined by statute
2 by the sexual violent predator statute. It is
3 somebody from the Department of Corrections,
4 somebody from the Department of Mental Health,
5 somebody from the Department of Probation Pardon and
6 Parole. There is a retired judge who is still
7 eligible to sit on the Bench who is appointed by the
8 chief justice of the Supreme Court. That's my
9 understanding. And there is also, I think, the
10 chief justice or administrative judge appoints a
11 criminal defense attorney to kind of represent those
12 interests so those are the five people that get
13 together.

14 Q Okay. And they're the ones that make the initial
15 determination that we should take a look at this;
16 and like I said, they pass it along, they send it to
17 the prosecutor, correct?

18 A Yes.

19 Q And yesterday you testified that in something
20 like two thirds of the evaluations you conducted you
21 determined and offered a professional opinion that
22 the person wasn't a sexually violent predator?

23 A That's correct.

24 Q So they're casting that pretty wide; don't they?

25 A Well, they look at things that are different.

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1 They look at somebody just on paper and they come
2 from their various perspectives. And I think that
3 there's also -- you know, they, I guess, you know,
4 they have a -- they review 30, 40 cases a month and
5 they take a simple vote. I spend, you know, weeks
6 on these cases so ---

7 Q Okay.

8 A Yes, we get a certain amount of information.

9 Q Do you know whether it has to be a majority that
10 moves it along?

11 A It has to be a majority and a quorum. They have
12 to have a quorum for the votes to count.

13 Q And at their monthly meeting, like you said,
14 they're probably looking at 40 cases?

15 A Yeah, I believe that's an average.

16 Q At that time Mr. Grooms got caught up in this,
17 isn't it? The multidisciplinary team initially
18 referred it on for prosecution, right?

19 A Well, I mean, he got caught up in it because he
20 committed a sexually violent offense defined by the
21 statute that put a tag on his case and so prior to
22 release, yes, he was reviewed by the M.D.T board or
23 the multidisciplinary team, then the prosecutor's
24 committee, then they found probable cause, then it
25 came to me.

PW - M. GEHLE - CROSS

1 Q Hold that thought, I want to come back to that.

2 A I'll try.

3 Q I want to finish the Static-99R first. So M.D.T,
4 this multidisciplinary team, they put a lot people
5 into this system, this program, for review, correct?
6 And you will just — I'm just talking about you, not
7 other people that do evaluations, but you find about
8 to two thirds of them don't meet criteria, correct?

9 A I don't know that they put a lot. I don't know
10 what your definition of a lot is. It varies on how
11 many people they refer every month. I know that
12 last month they referred four people so four of the
13 30 something that they might have reviewed. It
14 might be a little less than that; it might be a
15 little more than that each month. So, you know, I
16 don't know if that satisfies your definition of a
17 lot. But yes, the cases that were referred to me
18 for evaluation, I found that two-thirds of them did
19 not meet the statutory definition in my opinion.

20 Q Okay. And as it relates to this Static-99R the
21 subjective tool that you use to assess the risk, in
22 fact, in your report in discussing the Static-99R
23 didn't you state that, quote, the recidivism
24 estimates were derived from new charges and
25 reconvictions of groups of individuals, as such

PW - M. GEHLE - CROSS

1 these estimates do not directly correspond to the
2 recidivism rate of the individual offender?

3 A Yes.

4 Q And so doesn't that mean that 30.6 percent is
5 what the group does but how that relates to what
6 Mr. Grooms, well, he very well could be in the
7 almost 70 percent that don't re-offend; isn't that
8 true?

9 A That's possible, yes.

10 Q Because of what you said, we don't have a crystal
11 ball and we can't tell the future?

12 A Correct.

13 Q Okay. Now one of the things that you talked
14 about with Ms. Wetherton yesterday was the clinical
15 condition. You came to the diagnoses, two of them,
16 two diagnoses. One was for paraphilia NOS and the
17 other was personality disorder. Was personality
18 order NOS as well?

19 A Yes, it was.

20 Q And again, what is NOS, is that —

21 A It's not otherwise specified.

22 Q Doesn't that mean that, this is something that
23 because it's kind of new we're still studying about
24 it, we don't know much about it, we can't give an
25 exact definition to say so it's kind of put into a

PW - M. GEHLE - CROSS

1 general group of not otherwise specified and DSM?

2 A I don't know that I would call it, say it exactly
3 like that. That certainly could be true in some
4 cases, but there are many named conditions that are
5 considered in the not otherwise specified category
6 because they're more rare. You know, for, I guess
7 for various reasons things fall in the non-otherwise
8 specified category.

9 Q Okay. Is this -- is this a fair statement, that
10 the classification of NOS is reserved in the DSM-5
11 or diagnoses to rarity or empirical validation is
12 insufficient to be codified?

13 A To be honest with you, I have seen the DSM-5 one
14 time. We have not been provided those at the
15 Department of Mental Health yet. They have only
16 been out for, you know, a month or two. I think
17 they released in May. And so I don't know exactly
18 what the DSM-5 says. I've looked at it once.

19 Q Okay. You don't think I made that sentence up,
20 do you?

21 A I don't know what you do, Mr. Belding.

22 Q All right. I mean, I don't know how I can make
23 that sentence up. Does that sound like somebody
24 that would have been in the DSM-4.

25 A Can you repeat it?

PW - M. GEHLE - CROSS

1 Q Okay. That the classification NOS is reserved in
2 the DSM for diagnoses whose rarity or empirical
3 validation is insufficient to be codified. I might
4 have to break that down.

5 A The rarity and what was the other word?

6 Q Rarity or empirical validation is insufficient to
7 be codified?

8 A You know, I'd certainly want to see it and what
9 context, what, you know, the surrounding sentences
10 around that but; you know, it sounds like the kind
11 of language that you might find in the DSM, you
12 know, but I'm not sure.

13 Q Okay. And what does it mean when they say
14 codify, what is that?

15 A I would say that they mean to give it a specific
16 diagnostic code.

17 Q So, for example, in other parts of the DSM-5 or
18 4, whichever one you've seen most recent, there are
19 some mental disorders that we've known about so long
20 they get an exact name, correct, like kleptomania.
21 That's a mental disorder, correct?

22 A I believe so. I'm ---

23 Q Okay. And it's, you know, so we got a box here,
24 we can put in this box what is involved and what is
25 termed kleptomania, what it is, how you find it,

PW - M. GEHLE - CROSS

1 what's the criterias for it?

2 A Well, all ---

3 Q It -- 'cause we've had it around and we know
4 about it, correct?

5 A All the diagnoses are under certain categories so
6 like, I believe now that post-traumatic stress
7 disorder is under anxiety disorder. You can have
8 panic disorder is under anxiety disorder. So the
9 anxiety disorders all share common features. And
10 then you go into the specifics, the ones that have
11 been well defined or that are very similar across P,
12 similar across presentations.

13 Q Right. If I understand what you're saying, a
14 hundred years ago nobody ever heard of
15 post-traumatic stress disorder, correct?

16 A I believe that there were calling it shell
17 shocked, things like that, yeah.

18 Q Right. And now they've studied it, named it, we
19 know what it is, it goes in the DSM?

20 A Yes.

21 Q Okay. But this area, paraphilia for example, NOS
22 this is stuff hat's still being researched, it's
23 still fairly knew that's one of the reason we don't
24 give it an exact name, correct?

25 A Well, I don't know if that's the only reason. I

PW - M. GEHLE - CROSS

1 mean, there are — I have a list on my desk of all
2 the paraphilias. There are literally, you know,
3 probably five pages of lists of paraphilias. We can
4 have a DSM just for paraphilias but we don't. So
5 there are many paraphilias that fall into that not
6 otherwise specified or not specifically named
7 category; but there are tons and tons and tons of
8 paraphilias that qualify under that category.

9 Q But isn't it also true that in the DSM-5, or in
10 the DSM-4 if you're more familiar with that, that
11 paraphilias are not ipso facto mental disorders? I
12 mean, doesn't it state that?

13 A Well, I would call it paraphilia, a mental
14 illness or a mental disorder. You know, I use those
15 terms interchangeably, and it is a psychiatric
16 illness so I would say it's a mental disorder or
17 mental illness.

18 Q You know what ipso facto means by the way?

19 A Please define if you'd like to.

20 Q Well, I would but it's on my laptop computer.
21 I'd have to look it up. It means by the fact
22 itself, because of the fact. So in other words, in
23 the DSM-5, just because you have a certain
24 paraphilia that does not necessarily mean that you
25 have a mental disorder. There's some paraphilias

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1 that are not mental disorders, correct?

2 A I believe that you're talking about language that
3 has been used in the DSM-5. They made a little bit
4 of a paradigm shift. They used to call everything a
5 paraphilia. Now they want to have a little bit
6 extra to call it a paraphilic disorder. For
7 example, some people are into tieing each other up,
8 and you know, playing sex slave games and they would
9 call that sadism and masochism. If that's what with
10 consenting partner and it doesn't cause them any
11 distress or impairment, that would be called — you
12 could call it a paraphilia, a paraphilia of sadism
13 or a paraphilia of masochism. In the DSM-5 they
14 changed that a little bit and you would call it a
15 paraphilic disorder if you were distressed by this
16 behavior or by these desires or if you were doing it
17 with a non-consenting person, if you're sadistic
18 arousal resulted and you raping people or torturing
19 people or killing people. But if you're doing it at
20 home in the comfort of your home and nobody is
21 getting hurt and this is not causing you any
22 personal distress, you could call it paraphilia but
23 you wouldn't call it a paraphilic disorder.

24 Q Okay. And again, the paradigm shift that you
25 referred to is indicative of the fact that this deal

PW - M. GEHLE - CROSS

1 that psychiatry and psychology is evolving, we get
2 to know more about it as we go along?

3 A Yeah, I believe that's true. Many paradigm
4 shifts happen in the new DSM-5 so things changed a
5 little bit.

6 Q And I don't want to — I don't want anyone to
7 think that I'm holding you to what's in the DSM-5.
8 That came out after you performed your evaluation;
9 didn't it?

10 A That's correct.

11 Q But the fact is, the fields of psychology and
12 psychiatry are moving along and we may have
13 different ideas about things ten years from now?

14 A That's very well true.

15 Q Okay. Do you know whether or not DSM-5 states
16 specifically that paraphilia itself does not
17 automatically justify or require clinical
18 intervention?

19 A Well, that's exactly the point that I just made,
20 that if you're doing sadistic things in the comfort
21 of your home, you're not hurting anyone, it's not
22 causing you any distress or pain, it can be
23 considered a paraphilia but not a paraphilic
24 disorder; and so, it might not require intervention
25 if it's a paraphilia —

PW - M. GEHLE - CROSS

1 Q Okay.

2 A ---and not a paraphilic disorder.

3 Q Earlier you said that PTSD is what they used to
4 call shell shock is what we're calling paraphilia
5 now stuck or at least referred to as kinky?

6 A I don't know how you refer to it, Mr. Belding.
7 You know, those are certainly terms that not are not
8 necessarily in there. I know that people have
9 engaged in these behaviors for, you know, centuries.
10 Or I believe that they have anyways -- I guess I
11 don't know that first hand. But when they cause
12 impairment, distress, cause harm to other people
13 they can consider those disorders.

14 Q Okay.

15 A If it is a behavior that you would consider
16 kinky -- your word -- and it's not causing
17 impairment or not causing distress, it could still
18 be called a paraphilia, but not, you know, a
19 paraphilic disorder.

20 Q Okay. I mean, the fact is, isn't it Doctor
21 Gehle, that all of us are a little odd in their own
22 ways; aren't we?

23 A I thought everybody was perfectly normal.

24 Q Okay.

25 A Of course. We're all, you know, everybody is

PW - M. GEHLE - CROSS

1 unique.

2 Q Okay.

3 A The DSM essentially wanted to make sure that we
4 weren't pathologizing kind of normal, sexual
5 behaviors and there are a wide variety of normal,
6 odd, you know, different, kinky, all things like
7 that. There are a norm -- a wide variety of the
8 sexual behaviors.

9 Q And what is the -- what is the real analysis that
10 you have to do to decide whether or not something
11 really becomes a psychiatric or psychological
12 disorder? In other words, if it was between
13 consenting adults, no matter how weird it might be,
14 you might say, well that person has a paraphilia but
15 it's not a mental disorder because everybody was all
16 on it, they consented to it, correct?

17 A That might not be true.

18 Q Okay.

19 A Because you just said it's with a consenting
20 person. The -- kind of the line in the sand is
21 whether it can cause, causes distress or impairment.
22 So if you go and participate in some very kinky
23 sexual behavior and everybody was consenting and
24 everybody was involved but you felt horrible
25 afterwards, it caused you a lot of problems that

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1 might be a paraphilic disorder. It probably would
2 never come to the attention of a punishment; but if it
3 did and it was distressing to you and you were
4 really bothered by these things, then it could be a
5 paraphilic disorder. So it's not just
6 non-consenting or consenting, it's the stress or
7 impairment.

8 Q But that's the fact whether it's consensual or
9 not?

10 A That certainly can be, yes.

11 Q Okay. So now I'm just a little confused. That's
12 more important in a situation like that, what the
13 actor feels later or what the recipient feels later?
14 You want me to say that again?

15 A No. No, I ---

16 Q You know, 'cause earlier you were talking about
17 the harm ends up being done to the victim. But now
18 you're talking about, well, you can do these things,
19 you can feel bad later on, it might a paraphilic
20 disorder for you?

21 A Well, if you -- it depends really what paraphilic
22 disorder you're looking at or what paraphilic you're
23 looking at. If you were tying people up in the
24 comfort of your own home and everybody is
25 consenting, you know, that would most likely -- it

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1 would depend on how you felt later. As to whether
2 you had a sadistic paraphilic disorder or whether,
3 you know, just, it was a paraphilia and it, you
4 know, it's just what you're into. When you're
5 talking about any act against a non-consenting
6 person, that causes the actor impairment if they get
7 caught and end up in prison; that's impairment.
8 That would be considered impairment.

9 Q Okay.

10 A There's some conditions. It certainly would
11 matter if the person perceived, you know, this act
12 is non-consensual as to whether they want to report
13 it to police or whether it would be brought out the
14 bedroom or the house or whatever. So that makes the
15 difference. Now if you look at a case like
16 pedophilia, pedophilia is a paraphilic disorder
17 where people are sexually aroused by prepubescent
18 children or children who have not sexually developed
19 yet, so girls without breasts or pubic hair
20 essentially, somebody with pedophilia might feel
21 great about their actions.

22 Q But they're — I don't mean to cut you off —
23 with a special place in our intention for pedophilia
24 because by and large these little kids aren't
25 consenting, are they?

PW - M. GEHLE - CROSS

1 A Well, I think the law says that they can't
2 consent. Some kids might cooperate, they might not
3 say no per se, they might not fight. They're often
4 groomed into the behaviors. Some of them might
5 respond sexually as hard as that is to believe.
6 Some of them might cooperate, participate. But by
7 the nature of them being under age, it's considered
8 abnormal.

9 Q We've deemed that to be wrong, having sexual
10 relations with people under the age of consent as
11 deemed to be wrong; isn't that correct?

12 A Yeah.

13 Q Okay.

14 A And it's deemed to be a mental abnormality if
15 it's typically under the age of 12 for female
16 victims and under the age of 13 for male victims.

17 Q Exactly. So psychologists and psychiatrists, we
18 have this, if you want to look at it like a
19 spectrum. We have the entire range of human
20 behavior and all the stuff that's kind of generally
21 in the middle is kind of normal even if it's a
22 little kinky; but we have things out here on the
23 extremes that we all tend to say that's not too far,
24 that's a mental disorder by definition, it's too out
25 there. And pedophilia is an example of that; isn't

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1 it? In other words, you know, is it pedophilia two
2 five year olds have sex?

3 A No, not by the definition of the DSM.

4 Q Right.

5 A It ---

6 Q And so the analysis is if someone overage is
7 attracted to and one wants to have sex with someone
8 underage that's wrong, that's a mental disorder,
9 that's pedophilia?

10 A Sometimes, I mean, there are specific criteria.
11 It has to be a pattern of behavior seen over at
12 least six months. If it's -- if you're talking the
13 example of two minors, the older one has to be at
14 least 16, so essentially they didn't have to be 16
15 in six months for the pattern to be there enough to
16 diagnose it. And there has to -- they have to be a
17 certain number of years older than the victim.

18 Q Okay.

19 A That would be the criteria listed in the DSM so
20 that you don't look at somebody who's 16 having sex
21 with their 15 year old girlfriend or boyfriend and
22 saying that's a mental disorder called pedophilia so
23 there are explicit rules to follow in making those
24 diagnoses.

25 Q I understand. All right, so let me get back to

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- 1 where you were a minute ago. I just want to make
2 sure we understand. When you're looking at
3 paraphilias you have to look at the situation
4 because, for example, two consenting adults, both,
5 you know, like a little S and M, a little say
6 sadomasochism, they like being tied up, you know,
7 have someone be the dominant person. And in that
8 situation where no one is hurt and no one goes away
9 feeling bad you would say that's not a paraphilic
10 disorder, correct?
- 11 A If they're both consenting and —
- 12 Q Nobody feels bad and —
- 13 A Right, it causes no impairment.
- 14 Q Right. Okay.
- 15 A Yes, most likely that would just be — you could
16 call it a paraphilia if it ever came to your
17 attention which it most likely wouldn't, and you
18 know, and if it — there's no harm you wouldn't call
19 it a disorder.
- 20 Q Okay. That's — would it matter in that
21 situation if one person got a little overzealous and
22 hurt the other?
- 23 A It might.
- 24 Q Okay. So you can start out by consenting, we
25 know what we're gonna do, do a little bondage and

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1 whatever here, and it goes to far, the victim
2 becomes hurt, that may cross the line into
3 paraphilic disorder?

4 A Well, you're saying -- you're giving an example
5 of where it's a one time thing. A one time thing
6 would not qualify for a disorder.

7 Q Okay.

8 A It has to be a pattern.

9 Q All right. And the one time thing doesn't have
10 to be with the same person. I'm sorry, let me
11 rephrase that. In other words, it -- for it to --
12 it can't be just one time, but if it's multiple
13 times it can be with different people?

14 A Sure.

15 Q Okay.

16 A It's a pattern of behavior so.

17 Q All right. So if someone gets into an initially
18 consenting situation for S and M with three
19 different people and goes too far with each one of
20 them, with each one of the victims it's their first
21 time together, that could be considered paraphilic
22 disorder because it happened more than one?

23 A It has to be expressed over six month period so
24 if those happened in the same week under the rules
25 of the DSM you wouldn't call it a paraphilic

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1 disorder.

2 Q What's magic about six months?

3 A That's an establishment of a pattern for the DSM.

4 Q Okay.

5 A That's what their criteria.

6 Q So if I go five-and-a-half months I'm in the
7 clear, correct?

8 A Correct, that's how I view it. Now there are
9 some people might diagnose it at five-and-a-half
10 months. Some people might, you know, look at a
11 shorter pattern of behavior. I like to see six
12 months; that's what the diagnostic criteria states.
13 But some people see that more as guidance, not as a
14 definitive rule.

15 Q Okay. The facts of what happened, though, are
16 important in making a diagnosis, correct?

17 A Typically, yes. Yes.

18 Q Okay. Finally and I -- I don't know about
19 personality disorder, the NOS part. I mean, in the
20 old days much like the shell shock situation,
21 personality disorders were a nice name. I mean, one
22 example of that is that someone is jerk. He could
23 have a personality disorder. It could be, well, let
24 me stick with jerk 'cause everything else we can't
25 say in court. But that's just a minor example of a

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1 personality disorder, someone who just is a jerk,
2 inconsiderate, uncompassionate to other people,
3 that's personality disorder. Those are personality
4 disorder traits; aren't they?

5 A Well, it would -- it would depend how they're
6 jerkiness, I guess, manifested. When you say a jerk
7 that's more of a label that you're, you know, that
8 you're giving somebody when you say things like
9 they're uncooperative or they don't care about
10 others. Those are more things that are -- that I
11 can apply to the symptomology of personality
12 disorders in the DSM.

13 Q Okay. But personally disorders don't necessarily
14 lead to sexual crimes, do they?

15 A Sometimes they do.

16 Q But not necessarily?

17 A It depends. Antisocial behaviors, antisocial
18 traits are greatly related to sexual offending. It
19 really gives -- most people, most people comply with
20 laws, try to cooperate with others, get along with
21 others, try to be nice to people because we don't
22 want to be mean to people; we feel bad about it. We
23 don't want to hurt people's feelings; we want people
24 to like us. Antisocial traits are kind of the
25 opposite; they really don't care. They don't care

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1 if they hurt your feelings as long as they're
2 getting their needs met; they just don't really
3 care. So that kind of not caring, that callousness,
4 that not feeling guilty about their behavior, that
5 not understanding how other people feel, oftentimes
6 is related to sexual offending.

7 Q And oftentimes not?

8 A There are -- there are plenty of people with anti
9 social personality disorder or antisocial traits who
10 do not commit sexual offenses.

11 Q Correct. Do drugs and alcohol have an affect in
12 your experience on human behavior?

13 A Yes.

14 Q Okay. Do you tend to be more or less social or
15 antisocial when you're on drugs or alcohol?

16 A I think it really depends on what kind of drugs
17 or things that you're doing. You know, it would
18 really depend on the person and what kind of stuff
19 they're doing.

20 Q Okay. Well, could you give us an example what
21 kind of drug or alcohol could cause somebody to be
22 antisocial?

23 A Something like heroine would or acid tends to
24 make people kind of withdraw into their cell. You
25 know, they might have hallucinations. They might be

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1 on a trip kind of thing which would be more of a
2 solitary experience.

3 Q Okay.

4 A Or as we generally think of alcohol as a social
5 lubricant, you know, things that help people
6 socialize and loosen up and relate to other people.

7 Q Are there any drugs or alcohol in your experience
8 that tends to lead to sexual aggressiveness?

9 A Alcohol can certainly be related to that. And
10 there are other drugs. It really depends on how the
11 drugs impair the person's abilities, how much
12 they're doing, and what context they're doing them,
13 things like in.

14 Q They don't -- drugs and alcohol don't necessarily
15 lead to sex crimes but they might contribute to it?

16 A Yes.

17 Q Okay. Did you discuss with Mr. Grooms whether or
18 not he had any drug or alcohol problems?

19 A Yes.

20 Q Okay. Did he?

21 A Yes.

22 Q What kind of drug or alcohol problems did he
23 have?

24 A Well, he told me that he had been using drugs for
25 many years. I'll go to the specific. He described

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1 as most problematic use related to crack cocaine.
2 He said he began using that in 2000 and used it all
3 the way up until he was arrested. He also said that
4 he began using marijuana when he was 18 or 19, but
5 he said that wasn't a problem for him. However,
6 he -- in evaluation conducted at the Department of
7 Corrections in 1993 he said that messing around with
8 drug drugs was part of the reason that he was in
9 there. So he was a little inconsistent with his
10 descriptions, but from what he told me he had been
11 using marijuana from age 18 or 19 for many years and
12 crack cocaine beginning in 2000 and used that, you
13 know, for a period of many years.

14 Q Okay. Did you have any reason not to believe him
15 when he described his drug alcohol use?

16 A Yes, he gave an inconsistent account inconsistent
17 with prior records so it was questionable.

18 Q What did you conclude? Did he have a drug
19 problem or not?

20 A Well, based on his self-report I diagnosed him
21 with a problem related to using crack cocaine.

22 Q Well then you must have believed him. That was
23 my question. You believed when he self-reported
24 that he used crack cocaine?

25 A Well, if somebody is reporting that they're using

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1 drugs you typically think that's not gonna benefit
2 them. People tend to minimize those accounts so I
3 believed him. So based on his self-report he
4 described fizz lodge cool impairment, cravings,
5 disregarding other activities, in other words, to
6 use drugs, things like that, so I made that
7 diagnosis.

8 Q You had to pick and choose what things he said to
9 believe; didn't you?

10 A Well, I could probably make a case that he had
11 impairment of marijuana but he didn't report that.
12 He used for many years. In some accounts he said
13 like in relation to his criminal history, he had
14 reported to officers, legal reports, things like
15 that, not, not what he told me in the interview that
16 I conducted, but he reported that that was related
17 to his sexual offending, you know, being high. He
18 reported that he used marijuana with the victim.
19 They were driving around smoking weed, things like
20 that. I gave him the benefit of the doubt and based
21 on his self-report in our interview I diagnosed the
22 crack cocaine substance based disorder. I did not
23 diagnose him with problems related to marijuana
24 'cause he denied those; and I certainly, you know,
25 haven't spent years with him to see how much he's

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1 actually using. But I think that there was some
2 evidence that he minimized his use of marijuana and
3 alcohol.

4 Q Okay. And in your experience for with any
5 studies you've done personally, does the use of
6 marijuana tend to cause people to commit sex crimes?

7 A It can be related to sex crimes.

8 Q Because marijuana makes you so aggressive or
9 what?

10 A It can make people have bad judgment; but I mean,
11 typically you would think alcohol would be more
12 related to a sexual offending.

13 Q In your experience people that smoke marijuana
14 like to eat Doritos and fall asleep watching TV,
15 right?

16 A I've never smoked marijuana so I don't know if
17 they ate Doritos or anything like that.

18 Q Yeah, I'm not ---

19 A But I certainly have heard, you know, people say
20 those things, that they get very hungry and get very
21 lazy.

22 Q Now another thing that you testified about
23 yesterday was volitional impairment, correct?

24 A Yes.

25 Q Okay. And you said that this was directly

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1 derived from the clinical condition, correct?

2 A I don't know if I said that or not.

3 Q Would you say that?

4 A Volitional impairment as I described it yesterday
5 was, it's an inability to make choices which is
6 related to the condition so the mental abnormality
7 or personality disorder limits the choices that the
8 person can make.

9 Q Doesn't the State have to show that the mental
10 condition, the mental disorder or mental abnormality
11 causes that volitional impairment, that inability to
12 control himself?

13 A Yes. They're all intertwined, yes.

14 Q So if you didn't testify to it will you testify
15 now that his inability to control himself in your
16 estimation is directly related to these one or two
17 diagnoses that you came up with?

18 A Yes.

19 Q All right. But tell us how pervasive this
20 volitional impairment is. In other words, is there
21 a regular pattern, regular pattern of Mr. Grooms
22 attacking women?

23 A I don't know what your definition of regular is,
24 but I would say that there is a pattern of that. It
25 began when he was young and it continued until just

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1 a couple of years ago and he's been incarcerated off
2 and on during those times so I think that is a
3 regular pattern.

4 Q And you talked earlier about things having gone
5 on more than six months. We'll concede whatever
6 criminal history Mr. Grooms has, has gone on for
7 more than six months, correct?

8 A His first known offense was in 1981 and the last
9 one is 2011.

10 Q Okay. 1981 he was convicted of a sex crime,
11 right?

12 A Correct.

13 Q Okay. As a matter of fact, when I asked you to
14 hold that thought I'll get back to it, I'm there.

15 A I already forgot.

16 Q You ---

17 A I forgot what thought you said I was supposed to
18 be holding but.

19 Q Well, you said he got into this because he had
20 committed sex crimes, he had sexual offenses, and I
21 said hold that, we'll get back to it so here we are.

22 A Thank you.

23 Q His first sex offense under the law he was
24 convicted of in what year?

25 A 1981, lewd act upon a minor. He was originally

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1 charged with criminal sexual conduct.

2 Q Okay. And you reviewed records about that
3 conviction, correct?

4 A Yes.

5 Q And the records you got were provided to you by
6 the State, correct?

7 A Yes.

8 Q Okay. And you have no reason to disbelieve
9 anything the Attorney General's Office gives you, do
10 you?

11 A Not in general.

12 Q Okay.

13 A It would depend on, you know, what it is; but
14 this was, you know, documentation.

15 Q Okay. And so you reviewed what they gave you,
16 correct?

17 A Yes, I reviewed what was provided.

18 Q Okay. Did you ask for anymore information?

19 A I'm not sure. You know, if I don't see all the
20 documentation that's typical, I will ask for more.
21 I'm not — I don't recall doing that in this case,
22 but I don't, I don't have a note of that
23 specifically if I did.

24 Q For example, I'm sorry, I didn't mean to
25 interrupt.

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1 A Go ahead.

2 Q For example, in a case I worked in earlier this
3 year, you asked for the gentleman's military
4 records. You wanted to review these too because you
5 thought it might be relevant, correct?

6 A Yes. The person had told me he had some problems
7 with sexual offending in the military so I wanted to
8 see those, yes.

9 Q So as you said earlier, I believe, the more
10 information you have the better of conclusion you
11 can make; isn't that correct?

12 A Well, it depends on what the more information is
13 about.

14 Q Okay.

15 A You know ---

16 Q In general, is more information or less
17 information better in performing your evaluations?

18 A Again, it depends specifically what it's about.
19 If it's, you know, 3,000 pages of things that aren't
20 helpful I would say that that's not helpful and
21 that's not better. You know, it really does depend.
22 But typically it's helpful to have a description
23 what happened, a description of, you know, what the
24 charges were, what the conviction was, some
25 information about the victim.

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1 Q Okay. I don't hear any of that information
2 applied to by the attorney general anything from the
3 defense?

4 A I don't know if it's -- I mean, I will accept
5 records from, you know, most any source and people
6 are welcome to send things to me. Sometimes I
7 request records from, from cites independently like
8 maybe from a police department independently. You
9 know, sometimes it's trial transcripts. I will
10 accept records that a respondent provides me when
11 they come in for the interview which sometimes
12 happens. They'll give me maybe a documentation of
13 work that they've done in prison or the record or
14 accommodations, things like that.

15 Q Okay. In this case what you had to review was
16 what was provided to you by the attorney general,
17 correct?

18 A For the most part, yes.

19 Q And now we're talking about the fact that what
20 you read about that took place in 1980 or 81 was
21 provided to you by the Attorney General's Office and
22 you said that Mr. Grooms was originally charged with
23 criminal sexual conduct, correct?

24 A Yes.

25 Q Okay. But the State allowed him to plead to lewd

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1 act on a minor, correct?

2 A That's correct.

3 Q Okay. Do you have any information about why or
4 how that occurred?

5 A I don't believe so.

6 Q Okay. Then the next crime, sex offense that
7 comes up was in 1990, correct?

8 A Yes.

9 Q Okay. And there Mr. Grooms was charged with
10 criminal sexual conduct and it's my understanding is
11 he pled guilty to it. Is that square with your
12 recollection?

13 A He was actually charged with criminal sexual
14 conduct and kidnapping and pled guilty to criminal
15 sexual conduct and the kidnapping charge was not
16 processed or essentially dismissed.

17 Q Okay. And that is, 1990, is the last sex offense
18 for purposes of the sexually violent predator act
19 that Mr. Grooms has been convicted of; isn't that
20 true?

21 A It is the last offense that he committed that's
22 considered sexually violent for the sexually violent
23 predator act, correct.

24 Q Okay. Now yesterday you mentioned that two years
25 ago in 2011 Mr. Grooms was arrested, charged with

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1 criminal sexual conduct, kidnapping, strong armed
2 robbery, but he pled guilty to assault and battery
3 first degree in and all those other three serious
4 charges were dropped, correct?

5 A I don't know that that's exactly correct. On the
6 sentencing sheet it appears that the criminal sexual
7 conduct charge was pled down to assault and battery.

8 Q Okay.

9 A And that the strong armed robbery and the
10 kidnapping charge was not proessed or dismissed.

11 Q Okay.

12 A But it wasn't those three charges dismissed and a
13 new charge was formed. It was a linear sort of
14 change.

15 Q Lesser included offense?

16 A Yes, I guess that -- yes.

17 Q Okay, I understand.

18 A That's the way to say it.

19 Q You help me with the medical; I'll help you with
20 the legal. It's a lesser included offense. Okay.

21 So that didn't happen to come up with a new
22 indictment because assault and battery is included,
23 lesser included offense of criminal sexual conduct?

24 A You're the lawyer.

25 Q Okay.

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1 A All I know is that on the sentencing sheets it's
2 the indictment number from the criminal sexual
3 conduct that led to the conviction.

4 Q Okay. Would more information about why that
5 occurred and be important in your evaluation?

6 A It could be.

7 Q Okay. And I understand you didn't talk to his
8 defense attorney?

9 A No, I don't know who the defense attorney was.

10 Q And you didn't talk to the prosecutor?

11 A That's correct.

12 Q Okay. So all you know is that he was charged
13 with a bunch of serious stuff and you read a
14 victim's statement and arrest warrant; and that for
15 some reason the State allowed him to plead to
16 assault and battery first degree and everything else
17 and that was it, correct?

18 A Well, I did talk to the victim, and she gave a
19 very consistent account of being snatched off the
20 street, drug into an abandoned house. She said she
21 tried to escape out the window and he got really mad
22 about that and beat her up. He had something that
23 she described like sheets torn into strips already
24 there next to a mattress in this abandoned house and
25 he bound her hands behind her back. He threatened

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1 to kill her and he raped her.

2 Q Well, that sounds horrible. Why wouldn't the
3 State prosecute him for that.

4 A I think that they did. They pled it to assault
5 and battery. I mean, there are a variety of reasons
6 why prosecutors plead these things down.

7 Q Could one of those reasons have been that the
8 victim was a known prostitute?

9 A Could have been.

10 Q Could one of those reasons have been that the
11 victim had a known drug problem?

12 A Could have been.

13 Q Did you consider any of that information to be
14 relevant to your evaluation?

15 A What information? Did I consider what
16 information to be relevant?

17 Q Well, you know, why the State didn't prosecute
18 him for these serious crimes?

19 A Not, not necessarily. Why they did that would
20 just be speculation on my part. I do believe that,
21 you know, having spoke to the victim that there are
22 chances that she was not very cooperative or that
23 she wouldn't have made a good witness so they made a
24 choice to not put her on the stand or not put to
25 proceed in that fashion. I don't know why they pled

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1 it the way they did. I often read criminal history
2 reports and have no idea why people were offered
3 light sentences for murders or for other things. I
4 mean, you know, you might see those things in the
5 paper. You don't know why somebody gets -- Jerry
6 Sandusky gets, you know, a hundred years for
7 sexually molesting little boys, but I'll see a case
8 where somebody essentially did the same thing with a
9 little league baseball coach, molested 20 boys and
10 gets, you know, five years. I don't know why those
11 differences are. It's anybody's guess I guess.

12 Q Okay. But I guess my question is, you're having
13 to make a professional opinion and testify in this
14 court about why you came to this conclusion and you
15 conceded that as a general statement that more
16 information is better than less information. And
17 you said you didn't want to speculate but you could
18 have gone and found out was there some reason that
19 the victim wasn't believable or there was some real
20 problem with the arrest report or anything like that
21 that would cause the State to drop some pretty
22 serious charges to someone, quite frankly, had
23 Mr. Grooms out less than two years. Wouldn't that
24 have been good to know?

25 A It might have been satisfying to know. I don't

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1 know if it would be good to know because I don't
2 know how honest people would be with me. I don't
3 know if people can clearly state those reasons to
4 me. I don't know if I told you what the prosecutor
5 reasoning were, you know if you'd object to that, if
6 I would be allowed to talk about that. I don't know
7 if, you know, if I got one story from Mr. Grooms or
8 from his defense attorney and I got a different
9 story from the prosecutor, if they know what the
10 purpose of my evaluation is you would think that the
11 defense attorney would probably tell me something
12 like they had no case, you know, he didn't do it, he
13 only beat her up, you know, he knew her, or all
14 this, blah, blah, blah. And so that's gonna try to
15 sway me in that direction. And then the prosecutor
16 is most likely gonna say, yeah, oh, he did it, it
17 was very clear, but we just did this for this
18 reason, and that's gonna sway me in that direction.
19 I mean, I understand that people are trying to
20 influence and, you know, from their various
21 perspectives so I don't know if I would even trust
22 that information per se.

23 Q So again, you had to make a decision, a conscious
24 decision about what to believe?

25 A Well, what I did is I needed to establish a

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1 pattern of sexual offending or paraphilic behavior.
2 That's established with the 1981 snatch and grab
3 rape and established with the second offense in 1990
4 so that six month pattern is established that way.
5 I didn't consider that last offense necessarily in
6 making the diagnosis. It strengthened the
7 diagnosis; but without it, the diagnosis can still
8 be made. It is considered in the risk assessment
9 because charges are important to consider. Any
10 charges for sexual offending, that's been related to
11 recidivism even if they're acquitted, things like
12 that so it can be seen as a risk factor and it's
13 considered and when I calculated the Static-99.
14 Q Okay. Were you aware that after Mr. Grooms' last
15 conviction for sexually violent offense in 1990 that
16 he was reviewed under this very program to determine
17 whether or not he was a sexually violent predator,
18 ruled to not be. Did you have that information?
19 A Well, it's my understanding that because he was
20 convicted of a sexually violent offense after -- any
21 time that he would step foot in prison his case will
22 be reviewed. If he gets released and goes out and
23 commits a robbery he will still be reviewed at least
24 through the M.D.T., the multidisciplinary team, as
25 long as he steps foot in the South Carolina

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1 Department of Corrections. So yes, he has been
2 reviewed. I believe that after the 1990 sexually
3 violent offense he was referred by the
4 multidisciplinary team. The prosecutor's review
5 team referred him, a petition was filed, and a judge
6 found no probable cause.

7 Q Okay. And this review is gonna happen
8 automatically if he goes back to prison again he's
9 gonna get reviewed. That's your understanding;
10 isn't it?

11 A Yes, it is.

12 Q Okay. One of the things, to finish up, we were
13 talking a minute ago about volitional impairment.
14 In other words, the ability to control oneself.
15 Don't you sometimes do SCDC disciplinary records to
16 show that people have trouble controlling themselves
17 even in prison?

18 A Sometimes depending on the behavior or the type
19 of things that I'm looking at but, if somebody
20 commits a lot of sexual offenses in prison that can
21 be related to volitional impairment. But I'm
22 looking at volitional impairment in related to their
23 sexual behavior.

24 Q I understand. But have you ever taken into
25 consideration that someone had committed 20 rules

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1 violations in the Department of Corrections as a
2 sign that they can't control their behavior?

3 A It would depend in that context. I mean, it
4 would depend.

5 Q In a sexually violent predator context?

6 A It would depend on that specific case. You know,
7 whether, what type of offenses they were, you know,
8 I guess, engaging in in corrections.

9 Q Is it what -- does it relate more -- does it
10 relate more to the personality disorder part of your
11 evaluation?

12 A It can. It depends on what type of rule
13 violations they are.

14 Q Okay. Well, the fact that there's, for example,
15 someone had 30 rules infractions in the Department
16 of Corrections in the ten years they were in
17 wouldn't you consider that to be relevant?

18 A It could be.

19 Q Okay. What was Mr. Grooms' SCDC disciplinary
20 record?

21 A Had very few or I believe that he had one
22 infraction a while back.

23 Q Okay.

24 A So his disciplinary record was pretty good.

25 Q And while he was in prison he wasn't charged with

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1 any sex offenses of any kind?

2 A That's correct.

3 Q He didn't attack any of the women that work out
4 there?

5 A That's correct.

6 Q And so somehow he was able to control his
7 behavior even though he has this paraphilia disorder
8 not otherwise specified, right?

9 A Well, his behavior was controlled. It's hard to
10 say as to whether he controlled it or whether it was
11 controlled by the external forces, you know, of
12 being in a correctional system. He had less access
13 to drugs, more structured environment than he would
14 people would typically impose on themselves. And so
15 sometimes those things are what keep people's
16 behavior in check, sometimes not.

17 Q Where did you get the idea you have less access
18 to drugs in prison?

19 A It's a controlled environment and you do have
20 less access than you have on the street. I know you
21 might have a lot of access in a prison, but it's
22 less than it's on the streets.

23 Q Okay.

24 A You know, and probably pay a lot more and there's
25 lot more consequences, things like that.

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1 Q Have you done any studies of that fact?

2 A I haven't read any studies about that.

3 Q Okay. The last line of the State's -- what's
4 been, Court Exhibit 1, talks about treatment. Now I
5 don't want to get into the treatment. You don't
6 work with the treatment program, do you?

7 A That's correct.

8 Q All right. You did work with the treatment
9 program before you became licensed in the state to
10 be a psychologist, correct?

11 A I did before I was licensed and for a while after
12 I was licensed.

13 Q And but you don't really keep up. That was 2009
14 or '10?

15 A Yes.

16 Q And you don't know what they're doing out there
17 now with the treatment program, correct?

18 A I do not know specifically what they're doing
19 right now.

20 Q Do you know just from a part of the Department of
21 Mental Health what the average length of stay is in
22 the sexual violent treatment program?

23 A No. The average length of stay is very difficult
24 to determine because the law has only been around
25 since 1998. I mean, it would be some sophisticated

PW - M. GEHLE - CROSS

1 analyses to figure that one out.

2 Q Okay. I don't remember if it came up yesterday;
3 but in some of our previous cases the points been
4 made that under the sexually violent predator act
5 people that are put in the program can petition for
6 release every year. Are you familiar with that part
7 of the law?

8 A Yes.

9 Q Okay. How likely — I use the word from the
10 law — how likely is that someone would get out
11 after one year in that program?

12 MS. WEATHERTON: Objection, Your Honor.
13 We're going to object on the grounds of relevance.

14 MR. BELDING: Your Honor, the treatment is
15 listed in the statute. Doctor Gehle has testified
16 that she worked with the program when she first came
17 into the Department of Mental Health.

18 THE COURT: Hold on.

19 MR. BELDING: It is established that she

20 —

21 THE COURT: Hold on. Hold on. Come on
22 up.

23 (WHEREUPON, counsel approached the Bench
24 for an off-the-record discussion.)

25 BY MR. BELDING:

PW - M. GEHLE - CROSS

1 Q Okay, Doctor Gehle.

2 A Yes.

3 Q I want to make sure share, even though you have a
4 doctorate in clinical psychology and you're
5 qualified in forensic psychology I think you stated
6 you can't really tell what's going on in someone
7 else's brain, can you?

8 A What's going on in somebody else's brain?

9 Q Yes.

10 A You know, I don't know how to answer that.

11 Q Okay.

12 A There are some ways to tell what's going on in
13 somebody's brain. There's a lot of electrical
14 impulses but I don't know specifically what you
15 mean.

16 Q What they're thinking?

17 A No, it's very difficult to tell what somebody's
18 thinking. You can make some assumptions but it's
19 difficult to know exactly.

20 Q And I think you pointed out you don't have a
21 particular ability to predict the future, correct?

22 A I do not.

23 Q Okay. And so for purposes of this you had to
24 make some estimation whatever would make Mr. Grooms
25 likely to commit another act of sexual violence,

PW - M. GEHLE - CROSS

1 correct?

2 A Correct.

3 Q Can you tell this Court without a doubt that Mr.
4 Grooms will commit another sex offense?

5 A No, I can't say that without a doubt.

6 Q Okay. Now you testified yesterday that you've
7 done something like 150 evaluations, correct?

8 A Yes.

9 Q Something like that? And that in two-thirds of
10 those cases it was your opinion that the person was
11 not a threat?

12 A No, I've done 150 evaluations and two contacts.
13 I've done about roughly fifty evaluations like this.
14 This is to determine whether somebody needs to be in
15 the program or whether they're sexually violent
16 predator. But the remaining evaluations are
17 individuals who are in the program, and I do the
18 evaluations. We call them annual reviews. We call
19 these pre-commitments so it's not 150 people and
20 two-thirds as you said. That would be —

21 Q So, and I understand now. I forgot about the
22 annual review part. So of the 150 or so SVP civil
23 commitment evaluations you have performed about
24 two-thirds it's been your opinion they don't fit the
25 criteria?

PW - M. GEHLE - CROSS

1 A Correct.

2 Q And in those cases when they reported that to the
3 Attorney General's Office have they sought a second
4 opinion?

5 A I believe so. I'm not privy to how often they
6 seek a second opinion so — I know that they have in
7 some cases but I'm not sure how many cases.

8 Q And have you appeared in this courtroom with
9 other psychologists to testify about people that you
10 found not, did not meet the criteria of the program?

11 MS. WEATHERTON: Objection, relevance.

12 MR. BELDING: The objection should have
13 come up about a minute ago, Your Honor. The
14 question I've got for Ms. Gehle is I think it goes
15 directly to credibility, is what happens when she
16 does not give the State the answer that they're
17 looking for when she does not determine that person
18 is a sexually violent predator. She just testified
19 they go get a second opinion.

20 MS. WEATHERTON: No, not always.

21 MR. BELDING: And I think that's what she
22 stated.

23 THE COURT: First of all, she's Doctor
24 Gehle, not Ms. Gehle.

25

PW - M. GEHLE - CROSS

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 BY MR. BELDING:

4 Q Thank you, Doctor Gehle. No further questions.

5 MS. WEATHERTON: Just a few questions,
6 Your Honor.

7 THE COURT: Okay.

8 MS. WEATHERTON: I'll keep it brief.

9 **REDIRECT EXAMINATION**

10 BY MS. WEATHERTON:

11 Q I have a couple of questions regarding the
12 Static-99. I'm not gonna go too crazy about it; but
13 what was the actual group society group, for the
14 people that were studied, do you know?

15 A It was thousands upon thousands of people.

16 Q Okay. And you had testified as to there's a
17 30 percent chance, well, a group re-offending within
18 five years; is that correct?

19 A Well, not exactly. It's an individual with a
20 score of 7 so individuals in the sample with a score
21 of 7, as a group, they go on to re-offend.
22 30 percent of that group goes on to re-offend in
23 five years.

24 Q Okay, and there's like a 40 percent chance within
25 ten years; is that correct?

PW - M. GEHLE - REDIRECT

1 A It's 39, yeah.

2 Q 39?

3 A Close to 40 percent.

4 Q In terms of what you're doing in precommitment
5 cases do you find those statistics significant?

6 A Yes.

7 Q Can you explain the significance of the
8 30 percent and the 40 percent?

9 A Well, when you're looking at whether somebody is
10 likely, we often think of it as the degree of
11 likelihood of a plane crashing to the point where it
12 would be, it would keep you off a plane because
13 that's such a dangerous thing if the plane would
14 crash. So if there's a 30 percent chance or
15 30 percent of the time the plane crashes, you know,
16 that to is significant enough to stay off the plane.
17 So in regards to a sexual offender, that is
18 significant. I typically consider, you know, scores
19 that are moderate high to high to be significant.
20 If they score in the lower range I will not consider
21 that, that person is likely unless they've said some
22 things like they're going to re-offend, you know,
23 things like that. But a score of 7 is considered
24 high. It corresponds to a comparison of if you
25 compared his score to a hundred people, only two or

PW - M. GEHLE - REDIRECT

1 three would be worse on the Static-99 than him or
2 only two or three would, you know, have more risk
3 factors. So that to me is significant.

4 Q And Mr. Belding talked about this article from
5 Criminal Justice and Behavior on your
6 cross-examination; is that correct?

7 A Yes.

8 Q Does this article make any recommendations as to
9 whether the Static-99 should be solely utilized by
10 professionals such as yourself in when making your
11 determination?

12 A They make a lot of recommendations; it's a very
13 dense article. I think that in the Static-99 they
14 always say to consider, you know, everything as a
15 whole. And in regards to the Static-99, it's one
16 piece of the puzzle. I mean, there's certainly
17 other things that you have to know in order to make
18 an opinion in these cases.

19 Q Okay. So therefore, in your expert opinion did
20 you follow the appropriate steps as stated in this
21 article?

22 A Yes.

23 Q Okay. Now are people committed to this SVP
24 program with paraphilia?

25 A Yes.

PW - M. GEHLE - REDIRECT

1 Q Are they committed to the SVP program with a
2 personality disorder?

3 A Yes.

4 Q Now it was stated by Mr. Belding on his
5 cross-examination that the State had the option of
6 seeking independent expert; is that correct?

7 A Yes, I believe that's what he said, to get a
8 second opinion.

9 Q Defense had that opportunity to do so as well?

10 A Yes. It's my understanding from the law that
11 either side can seek a second opinion once the Court
12 appointed expert, which was me in this case, when my
13 opinion comes out either side can get a second
14 opinion. And that's something that when I begin my
15 evaluations with, or begin the interview, that I
16 explain very clearly to the respondents. I have a
17 chart that I use a and I explain that very, in great
18 detail.

19 Q Okay. Thank you.

20 MS. WEATHERTON: Nothing further, Your
21 Honor.

22 THE COURT: All right. Recross.

23 **RECROSS-EXAMINATION**

24 BY MR. BELDING:

25 Q Doctor Gehle, I just want to ask you one thing

PW - M. GEHLE - RECROSS

1 about the Static-99. The article that Ms. Wetherton
2 was referring to, and I don't want to hold this to
3 you, you may not have read it recently. It's not
4 the easiest reading.

5 A It's not.

6 Q As I read it, weren't they trying to refine this
7 Static-99 to try to get their predicted ability of
8 relative risk more accurate all the time?

9 A I think that you could say that's true. The
10 bottom line that I take from this article is that
11 those groups that I talked about, the routine,
12 non-routine, preselected for treatment, and high
13 risk, high needs group, that's important to make
14 that determination as to which group to compare.
15 That helps you be much more accurate in the
16 estimations.

17 Q But the — and there again, this article is
18 written by the creators of the Static-99 article,
19 correct, Hanson and Thornton?

20 A Yes, they're authors.

21 Q And they admitted to, again, earlier some gross
22 simplifications in their projections. Are any of
23 those projections, the older ones, the ones we're
24 trying now to revise, would those used in your
25 evaluation in this case under the Static-99 article?

PW - M. GEHLE - RECROSS

1 A And what gross simplifications are you referring
2 to, if you — I have a copy of the article if you
3 can —

4 Q Why don't you turn to page 1166.

5 A And where on the page?

6 Q Under implications for practitioners.

7 A And can you direct me to a paragraph.

8 Q Now well, the first paragraph under implications
9 starting about the fifth line. It talks about gross
10 simplification. Current findings indicate that
11 evaluators cannot in an unqualified way associate a
12 single reliable recidivism estimate with a single
13 score on the Static-99R or Static-2002-R risk
14 scales.

15 A Again, this was saying that you need to make that
16 choice of the group, and this article was in
17 conjunction with the groups being introduced. You
18 used to have a static score, you know, many years
19 ago and you would have one group to compare it to.
20 This article was talking about, you know, this is
21 why we have introduced four groups for you to
22 compare your score to.

23 Q Okay. Ultimately, though, they also said that
24 you cannot use this to predict for any individual,
25 correct?

PW - M. GEHLE - RECROSS

1 A Well, it's an estimation; I don't say prediction.
2 I'm -- that's not the language that I use. I make
3 an estimate of recidivism.

4 Q Okay. Thank you very much.

5 MR. BELDING: I appreciate it, Your Honor.

6 THE COURT: All right. Is that what you
7 need?

8 MS. WEATHERTON: We're gonna ask that she
9 stay and we have no more questions for her.

10 THE COURT: Ladies and gentlemen of the
11 jury. We are going to take our morning break. We
12 will now take about ten minute. Please be mindful,
13 do not discuss this matter or allow anyone to
14 discuss it with you. Take about ten minutes.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 11:18 a.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: Anything before we take our
19 break from the Petitioner?

20 MS. WEATHERTON: Your Honor, just so I'm
21 clear, I believe the door's been opened at this
22 point I'm going to call Assistant Solicitor Margaret
23 Bodman in our case in chief.

24 THE COURT: Okay.

25 MR. BELDING: Now all I asked was did

1 Doctor Gehle get any information about what happened
2 in that crime. I didn't ask her to go through. I
3 didn't you contest it.

4 THE COURT: Sure you did. Why didn't the
5 State prosecute this very serious crime, do you know
6 why they did not.

7 MR. BELDING: And so that is part of what
8 Doctor Gehle used to form her conclusion, do you
9 know why, she said no. So she just doesn't know
10 why. And she came up with the conclusion he's a
11 sexually violent predator anyway. The facts don't
12 matter; she just doesn't know.

13 MS. WEATHERTON: I —

14 THE COURT: So — no, she hold on. Here's
15 what — she talked about, the victim's description
16 of what occurred.

17 MR. BELDING: Right.

18 THE COURT: So insofar as her information,
19 I mean, determination regarding prosecution, whether
20 it's good, bad, or different, that's not what she
21 does. What she does is, it seems to me, makes a
22 determination based on conduct. And she talked
23 about having had a conversation with the victim in
24 that matter, and that is clear. You then went on to
25 ask her, well Doctor, if it was all that serious why

1 didn't the State prosecute the case; and she said, I
2 don't know. So is it true they didn't prosecute the
3 case 'cause she's a prostitute, a known prostitute.
4 She said, I don't know. Did she, did they not
5 prosecute the case because she's a known drug
6 addict, I don't know. I think the door (makes sound
7 of a door opening).

8 MR. BELDING: Well, that's -- I understand
9 the ruling. I knew --

10 THE COURT: It's like, I'm not sure that
11 it's -- I think it's like a door opening up.

12 MR. BELDING: We knew we were kind of
13 close; but I think what's important to know that the
14 thing is, obviously Doctor Gehle did not know that
15 when she reached her opinion. And she's the one
16 that said by and large more information is better
17 than less so that would have been interesting
18 information for her to know.

19 THE COURT: Here's my problem with it. My
20 problem is that I don't think it really matters. It
21 was -- if it was a prosecutorial decision that was
22 made, I think it was a prosecutorial decision that
23 was made. I don't know that that information, and I
24 did not get with Doctor Gehle that that really had a
25 whole lot to do with her evaluation, what

1 specifically someone is convicted of. Once you get
2 over, I mean, once you get over the elements that
3 brings her involvement in that somebody's been
4 convicted of a sexually violent crime, I think from
5 her testimony I think that she then gets a little, a
6 lot at what conduct has been more so than what would
7 be the initial charge. I think there's some
8 relevance whether or not he followed the rules; but
9 in terms of whether or not somebody pleads to
10 assault and battery of a high and aggravated nature,
11 then gets tagged as being a sexual offense or
12 whether or not they plead to something, I didn't get
13 from her that it makes a whole lot of difference in
14 her evaluation. But the problem is -- and I'm
15 saying this for the record -- my concern is that is
16 that this is now in this case. And I think from a
17 sense of fairness, I mean, a sense of fairness that
18 the door has been open the and the Petitioner is
19 entitled to call the Solicitor to, what's up with
20 that. My concern is there was a objection with
21 regards to relevancy; you opened the door. And but
22 I think now that the door is open it would be unfair
23 not to allow the State an opportunity to explain to
24 this jury what the prosecutorial decision was. We
25 are who we are.

1 MR. BELDING: All right.

2 THE COURT: So you got that witness.

3 MS. WEATHERTON: Yes.

4 THE COURT: And that will be your
5 concluding witness?

6 MS. WEATHERTON: Yes, Your Honor.

7 (WHEREUPON, a recess was taken from the
8 proceedings.)

9 THE COURT: Anything before we bring the
10 jury out from the Petitioner?

11 MS. WEATHERTON: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. BELDING: No, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON, the jury was returned to the
16 courtroom at approximately 11:42 a.m., and
17 the following proceedings commenced in
18 open court.)

19 THE BAILIFF: Your Honor, the jury is
20 present.

21 THE COURT: Thank you so much. You may
22 call your next witness.

23 MS. WEATHERTON: Thank you, Your Honor.

24 The State calls Assistant Solicitor Margaret Bodman.

25 WHEREUPON,

1 **MARGARET BODMAN,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Please have a seat in
5 the witness chair.

6 THE WITNESS: Margaret Fent Bodman.

7 **DIRECT EXAMINATION**

8 BY MS. WEATHERTON:

9 Q And would you please spell your last name for the
10 record?

11 A Bodman, B-O-D-M-A-N.

12 Q And where do you currently employed?

13 A With the Fifth Judicial Solicitor's Office.

14 Q Okay. And how long have you been there?

15 A I have been here since 2005. I'll say prior tot
16 that I actually graduated law school 1991, and I was
17 a prosecutor in San Antonio, Texas for about seven
18 years, and then I moved up here to work at the
19 National Advocacy Center as a -- in the training
20 programs for prosecutors and then took the Bar here
21 in South Carolina and in 2005 and started working
22 here as assistant solicitor.

23 Q How long have you been prosecuting sexual assault
24 cases?

25 A Probably my entire career so about 22 years. I

PW - M. BODMAN - DIRECT

1 started out just doing some mixed in with all the
2 other crime. In 2005 when I joined this office I
3 expressed an interest in prosecuting sexual assault
4 cases; and then in 2006, the full time sexual
5 assault prosecutor left the office and so I started
6 doing it full time since 2006.

7 Q Now were you assigned to Mr. Grooms' case back in
8 2011?

9 A I was.

10 Q Are you familiar with this case?

11 A I am.

12 Q How are you assigned to handle that case?

13 A I am, I guess, the team leader of the criminal
14 sexual conduct team which is a team of one; that's
15 me. So I would say 99 percent of the sexual assault
16 offenses, either child victims or adult victims,
17 come to me. A small amount of them, other people in
18 the office help out.

19 Q So in preparation for Mr. Grooms' case what did
20 you do?

21 A Initially I would have gotten the entire case
22 report or case file from the law enforcement agency.
23 It was Columbia Police Department. Then I start
24 basically looking through and seeing what
25 information am I missing do I still need to get.

PW - M. BODMAN - DIRECT

1 Sat down, subpoenaed medical records, both the
2 emergency room record as well as the records from
3 the forensic nurse examiner that did the rape kit.
4 Looked to see that there was a crime scene
5 investigator that went out to the scene by making
6 sure that I have her report, that there were
7 photographs taken at the scene, making sure I get
8 those. In addition to the forensic nurse examiner's
9 report there are also was indication that
10 photographs were taken during that exam, and so I'm
11 making sure that I get all of those photographs that
12 were taken. Closer -- once all this information is,
13 you know, gathered and I've read through it I'm
14 gonna start meeting with witnesses and
15 investigators, the victim in preparation for a trial
16 or disposition. So I met with the victim, met with
17 Investigator Barbara Coleman, met with the crime
18 scene investigator, I believe it was Tammy Moore. I
19 met with the forensic nurse examiner Marlina Clary
20 and going over her report. I believe I also met
21 with the EMS, any medical people, and just
22 interviewing them and preparing them for potential
23 disposition of the charges.
24 Q Okay. Did law enforcement provide a file in this
25 case?

PW - M. BODMAN - DIRECT

1 A They did.

2 Q Was there any medical evidence in the file that
3 supported that a sexual assault had occurred?

4 A There was. In addition, the sexual assault kit
5 no was collected by the nurse Marlena Clary is then
6 sent out to SLED, the State Law Enforcement
7 Division, where they do the analysis of the rape
8 kit. And so the results came back with that with
9 the defendant's DNA, specifically his semen, on a
10 vaginal swab, a rectal swab, and a suspected bodily
11 fluid swab. Sometimes if victims indicate that the
12 person either kissed them or in any other way,
13 other fluids, they're gonna also swab in those
14 specific areas. So that report came back from SLED
15 as to a DNA match to the defendant.

16 Q And what was Mr. Grooms initially charged with?

17 A He was initially charged with a criminal sexual
18 conduct in the first degree, and he was charged with
19 a strong armed robbery. She'd indicated that at the

20 ---

21 MR. BELDING: Your Honor, object to the
22 hearsay.

23 MS. WEATHERTON: Your Honor, it's already
24 been established how he was initially charged with
25 Doctor Gehle.

PW - M. BODMAN - DIRECT

1 MR. BELDING: I'm okay with listing the
2 charges. She was getting ready to say something
3 that the victim apparently had said and that would
4 be —

5 THE COURT: It is hearsay.

6 MS. WEATHERTON: Okay.

7 THE WITNESS: And then also a kidnapping
8 charge, those three charges.

9 BY MS. WEATHERTON:

10 Q Okay. Did you file what is referred to as IWOP
11 notice?

12 A I did. Based upon his prior convictions he was
13 eligible for the State to seek a life sentence upon
14 conviction of the CSC or the kidnapping.

15 Q Is that considered standard protocol in your
16 office?

17 A It is.

18 Q Now what did Mr. Grooms plead to?

19 A He pled to an assault and battery in the first
20 degree, and there are a number of different ways
21 that someone can commit an assault and battery in
22 first degree, but specifically his was a sexual
23 related touching.

24 MS. WEATHERTON: Your Honor, permission to
25 approach the witness.

PW - M. BOLMAN - DIRECT

1 THE COURT: All right.

2 BY MS. WEATHERTON:

3 Q Ms. Bodman, I'm gonna show you a document. Can
4 you please tell us what that document is?

5 A This is the indictment for the criminal sexual
6 conduct in the first degree, and specifically, it's
7 the one that we used at the guilty plea for the
8 assault and battery in the first degree.

9 Q So you used that particular document ---

10 A Yes.

11 Q ---correct? Is there anything on that document
12 that has hand writing?

13 A Yes, it does. I wrote the language of the
14 assault and battery in the first degree offense that
15 he was pleading to as well as the defendant's name
16 and the crime he was pleading to I wrote on there.

17 Q On that document does it indicate whether or not
18 there was a sexual component?

19 A It did. As I said, an assault and battery first
20 degree can potentially be other types of assault.
21 It can be that the victim suffered great bodily
22 injury or a person is injured, but they're also a
23 victim of some other enumerated offenses. But
24 specifically in relation to this case, it was that
25 he did unlawfully injure the victim and did touch

PW - M. BODMAN - DIRECT

1 without her consent her private part either under or
2 above clothing with lewd and lascivious intent. So
3 it was specifically the assault and battery crime
4 that has to do with a sexual, a sexual component to
5 it.

6 Q And did Bernard Grooms sign that document?

7 A He did.

8 MS. WEATHERTON: Your Honor, I'd like to
9 admit that as State's Exhibit 3.

10 MR. BELDING: Without objection if I can
11 get a copy, Your Honor.

12 THE COURT: Yes, of course, you can and
13 it's admitted.

14 MS. WEATHERTON: Thank you, Your Honor.

15 (WHEREUPON, State Exhibit No. 3 was
16 received into evidence.)

17 BY MS. WEATHERTON:

18 Q Now was this a negotiated as to the charges and
19 the sentence?

20 A It was negotiated as to the charge. We had
21 agreed that in exchange for his plea of guilty we
22 would reduce it from the criminal conduct first
23 degree down to assault and battery first degree.
24 The sentence was a recommendation so the State would
25 be recommending four years.

PW - M. BODMAN - DIRECT

1 Q Okay. And as a prosecutor do you have discretion
2 based on the circumstance of the case to make those
3 decisions?

4 A I do.

5 Q Can you explain why you agreed to the plea?

6 A In all of my cases I have, I mean, a number of
7 factors that I am taking into consideration into how
8 to appropriately resolve the charges. In sexual
9 assault cases I'm always concerned about the victim
10 having to come to court to take the stand and to
11 re-live and testify about the horrors of what they
12 experienced so that is always one major factor I'm
13 gonna have in consideration. In sexual assault
14 cases I am also able to consider the fact that there
15 is this sexually violent predator commitment hearing
16 that can take place so am I, in my disposition, am I
17 always proving the tools to the Attorney General's
18 Office to be able to, you know, do something else
19 with this case. You know, I just always have to try
20 to take the shortest route and the best route to
21 insure, insure that there is a conviction so I'm,
22 you know, I'm taking a lot, a lot of things into
23 account.

24 Q Okay. Well, did you consider withdrawing the
25 charges in this case?

PW - M. BODMAN - DIRECT

1 A I never considered dismissing these charges,
2 never.

3 Q And why would that be?

4 A I believed that I had proof to establish that
5 this crime occurred. If — I have ethical
6 responsibility that if I don't believe that a crime
7 occurred, if I do not believe that I have
8 sufficient evidence to go forward I have to dismiss.
9 And I believed that I had the evidence to prove that
10 a crime occurred so I was never gonna dismiss this.

11 Q Thank you.

12 MS. WEATHERTON: Offer for
13 cross-examination.

14 THE COURT: All right. Ladies and
15 gentlemen, we're going to take that after lunch.
16 We're about to go to lunch. Ladies and gentlemen,
17 the same admonitions as yesterday, please do not
18 discuss this matter or allow anyone to discuss it
19 with you. If you happen to see anyone involved with
20 this case please do not discuss this matter with
21 them. Don't let anyone discuss with it you. And
22 again, if you see these lawyers and they don't
23 speak, they're not being rude. They're simply not
24 speaking because you are the jury. Don't read
25 anything, don't listen to anything about this

1 matter. Don't do any Columbo. You must get all the
2 information from which you will make up your mind
3 here in court when it is in session. Remember your
4 cell phones, if you'd leave your cell phone
5 somewhere other than the courthouse. Or you can
6 give your cell phone to the bailiffs, they will take
7 good care of it until we reach a verdict. And we
8 are going to reconvene today, ladies and gentlemen,
9 at 1:0. At 1:30. It's 12:00 now. We will
10 reconvene about 1:30. Have a good lunch.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 11:55 a.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: All right, see you at 1:30.
15 Thank you.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: Anything before we bring the
18 jury out from the Petitioner?

19 MS. WEATHERTON: No.

20 THE COURT: Okay. Now I saw this and I
21 saw this. Now is there anything from you guys
22 before we bring the jury out?

23 MS. WEATHERTON: Oh, no, there's nothing.

24 MR. BELDING: Nothing from Respondent.

25 THE COURT: Got it.

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 1:30 p.m., and
3 the following proceedings commenced in
4 open court.)

5 THE BAILIFF: Your Honor, the jury is
6 present.

7 THE COURT: Thank you so much. Ladies
8 and gentlemen, I certainly hope that you had a very
9 pleasant lunch. At this time we will continue with
10 the Petitioner's case and the cross-examination.

11 MR. BELDING: Thank you, Your Honor. May
12 it please the Court.

13 THE COURT: Yes, sir. Yes, sir.

14 **CROSS-EXAMINATION**

15 BY MR. BELDING:

16 Q Good afternoon, Ms. Bodman.

17 A Hi.

18 Q I only have a couple of questions. I believe you
19 testified you've been prosecuting sexual assault
20 cases for 22 years?

21 A Around that, yeah.

22 Q Some of that in federal?

23 A No.

24 Q Did I pick up on any — you you were at the
25 advocacy school or something like that?

PW - M. BODMAN - CROSS

1 A Yeah, I worked at the National Advocacy Center
2 which is they train both federal prosecutors there
3 and state prosecutors, and I was on the state
4 prosecution side so I worked for the National
5 College of District Attorneys and the National
6 District Attorney Association.

7 Q Okay, on the State side. I just want to make
8 sure, okay. All right. So you had all this
9 training, had a lot of experience, you did a lot of
10 work preparing for this case. You got all the
11 documentation. You met with the victim. You met
12 with law enforcement. You got the rape kit. You
13 got the photos. You wind up charging him with
14 criminal sexual conduct first, kidnapping, and
15 strong armed robbery and served a notice that if he
16 was convicted of either of the kidnapping or the
17 criminal sexual conduct that you would seek a
18 sentence of life without possibility of parole?

19 A Yes.

20 Q And then in response to a question Ms. Wetherton
21 asked you, why did you agree to allow him to plead
22 to assault and battery of a first degree, your
23 answer was: One, well, a number of factors, that
24 you were always concerned about the victims having
25 to re-live the experience on the stand?

PW - M. BODMAN - CROSS

1 A Yeah.

2 Q If Mr. Grooms is bad enough a person that you
3 were willing to seek life without parole, why should
4 you allow him — your the protector of cover, right?
5 You're the one speaks for all of us. Why would you
6 allow him to plead to a sentence that actually would
7 have him released in less than a year?

8 A Well, in this particular case I did have the fact
9 that he had prior sexual assault convictions that
10 would increase the likelihood of a sexually violent
11 predator commitment. There are cases that I have
12 where the person has no prior convictions
13 whatsoever; and so I'm constantly thinking about
14 what are the other, you know, things that can
15 possibly happen to this person, what are the
16 collateral consequences. And in this case we had,
17 you know, someone with the prior, prior convictions.

18 Q Understanding that if you win the trial with all
19 this that you had going for you, he's got a life
20 without parole, you don't have to worry about him
21 again, do you?

22 A Correct.

23 Q But if this jury doesn't find him to be a
24 sexually violent predator he's back home?

25 A Well, you also have to — I can even potentially

PW - M. BODMAN - CROSS

1 get a CSC third conviction so if a lesser included
2 charge was submitted to the jury, and let's say the
3 jury said no on the kidnapping and no on the CSC
4 first, but even if they convicted him of the strong
5 armed robbery and a lesser CSC third that would not
6 be a life sentence, that would not be LWOP
7 eligible. So you always have to think about
8 potentially a jury coming back on convictions of a
9 non most serious offense.

10 Q Ms. Bodman, was there anything about the victim
11 that caused you concern in the prosecution of this
12 case?

13 A I mean, she had a challenging background and so I
14 always worry about, you know, how that is gonna play
15 out to a jury. You know, but in particular of what
16 happened to her? No. Her, you know, as a witness
17 and if she's gonna be articulate, those type of
18 things I'm always wondering, you know, how a
19 particular witness or victim is gonna be able to
20 communicate clearly on the witness stand; but what
21 happened to her no, no concerns.

22 Q But you left us with the impression, wouldn't you
23 agree, that you just didn't want to make her re-live
24 this event on the stand?

25 A That is one of the many factors that I'm gonna

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1 take into account. Like I said, if I have another
2 case where the person has no prior convictions
3 whatsoever, they're not already on the sex offender
4 registry, then I'm weighing the need to put the
5 victim through the experience a little heavier. But
6 in this instance, for example, I didn't have to
7 worry about sex offender registry; he was already
8 registered so we've got that. Then I have these
9 prior convictions that's gonna help with a sexually
10 violent predator commitment so I've got collateral
11 consequences. So no one particular factor is always
12 going to weigh out heavier than another. Every case
13 is unique and you just to use your experience and
14 weigh all that together.

15 Q We keep dancing around this. What was
16 challenging about her background?

17 A Well, there was mention about her prostitution
18 background and drug background.

19 Q Criminal record?

20 A Whether or not — she did have a criminal record,
21 whether or not those would be admissible to a jury
22 is not on the top of my head because some
23 convictions are not. But I also have to play out,
24 even if they're not admissible, you know, the
25 defense attorney could blurt it out it, it's out

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1 there, it's something that I got to deal with.

2 Q And he was sentenced in June of 2012, June 25th,
3 2012, correct? It was less than a year, well, a
4 little over a year ago. Also he owes, as a result
5 of that conviction he owes 133-dollars 90 cents to
6 the State, correct?

7 A I don't -- I don't put together the fine sheet.
8 I think the clerk does. I'm not sure what that is.

9 Q All right, Ms. Bodman. Thank you very much.

10 MR. BELDING: No further questions, Your
11 Honor.

12 THE COURT: Redirect?

13 MS. WEATHERTON: No, Your Honor.

14 THE COURT: All right. Is this witness
15 free to leave to go back to work?

16 MS. WEATHERTON: Yes, Your Honor.

17 THE COURT: Any objection?

18 MR. BELDING: No objection.

19 THE COURT: Thank you, you can go.

20 Next witness please.

21 MS. WEATHERTON: At this time the State
22 would rest.

23 THE COURT: Very well. Ladies and
24 gentlemen, we have now heard the witnesses you will
25 see, the evidence if you will, from the Petitioner

1 and the Petitioner's case in chief and that seems to
2 imply to me there are matters I must take outside
3 your presence; therefore, I'm gonna ask you please
4 go to the jury room. Do not discuss this matter or
5 allow anyone to discuss it with you. We will be
6 quite short so go with your bailiff.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 1:37 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: Okay, motions?

11 MR. BELDING: Your Honor, on behalf of
12 Respondent I'd like to move at this time for a
13 directed verdict. I believe that the State has not
14 put up enough evidence to go to the jury on the
15 charges against the Respondent. I think that the
16 testimony of the two witnesses was sufficiently
17 called into question and that the facts are in
18 dispute. And we think that this should not be a
19 jury question, and in fact, it should be a issue for
20 the Bench, and we would move for directed verdict on
21 that basis.

22 THE COURT: Thank you so much,
23 Mr. Belding. As you know, of course this is a civil
24 matter and the burden is beyond a reasonable doubt
25 and particularly based upon the testimony of the

1 expert Doctor Gehle, I find that there is evidence
2 from which the jury could make a determination under
3 the statute, and therefore, would respectfully deny
4 your motion and the statute thereto.

5 MR. BELDING: Thank you, Your Honor.

6 THE COURT: Absolutely. Now are you
7 prepared to go forward?

8 MR. BELDING: Yes, Your Honor, we are —

9 THE COURT: Very well. Now you had wanted
10 your client to be seated —

11 MR. BELDING: Actually, I think we took
12 care of that when we introduced him to the jury pool
13 yesterday. He got up and they all saw it so
14 we don't — I don't mind him just trudging up there.
15 If you'd like him seated first, that's fine.

16 THE COURT: In due process.

17 MR. BELDING: We'll just call him when
18 they —

19 THE COURT: Very well.

20 MR. BELDING: He can just trudge on up
21 there.

22 THE COURT: Thank you, sir. All right.
23 Anything from the Petitioner at this point?

24 MS. WEATHERTON: No, Your Honor.

25 THE COURT: Thank you. Let's have the

1 jury back please.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 1:41 p.m., and
4 the following proceedings commenced in
5 open court.)

6 THE BAILIFF: The jury is back, Your
7 Honor.

8 THE COURT: Thank you, sir. Ladies and
9 gentlemen, as I told you before you left us, you
10 heard from the Petitioner and Petitioner's case in
11 chief. Now you'll hear from Respondent.

12 Please call your first witness.

13 MR. BELDING: Thank you, Your Honor. I'd
14 like to call Mr. Bernard Grooms to the stand.

15 THE COURT: Very well. Mr. Grooms, come
16 forward to be sworn.

17 WHEREUPON,

18 **BERNARD GROOMS,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 THE CLERK OF COURT: Please have a seat.
22 State your full name for the record.

23 THE COURT: All right. State your full
24 name for the record.

25 THE WITNESS: Bernard Grooms.

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1 MR. BELDING: Thank you, Your Honor. May
2 it please the Court.

3 THE COURT: Sure.

4 **DIRECT EXAMINATION**

5 BY MR. BELDING:

6 Q Speak up just a little bit.

7 A Okay.

8 Q All right. Mr. Grooms, do you have a middle
9 name?

10 A No.

11 Q All right. Bernard Grooms is your full name?

12 A Yes, sir.

13 Q All right. Mr. Grooms, where are you from?

14 A Columbia.

15 Q All right. And how old are you?

16 A I'll be 57 next month.

17 Q What sort of jobs did you have or held?

18 A I'm a professional painter, painting, house
19 painter, and also roofer.

20 Q Roofer?

21 A Yea.

22 Q Okay. Now I notice that you're in full jail
23 regalia today. Are you still confined in Richland
24 County Judicial Detention Center?

25 A Yes.

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1 Q How long have you been there?

2 A Since March 1st.

3 Q All right. Where were you transported from?

4 A From Lieber Correctional Institution?

5 Q Greenwood?

6 A Lieber.

7 Q Lieber? I'm sorry, okay. And where is that?

8 A Ridgeville.

9 Q Ridgeville?

10 A Yes.

11 Q Okay. Now you were here yesterday. You heard
12 the testimony of Doctor Gehle; didn't you?

13 A Yes, I did.

14 Q Okay. And did she come to see you at the
15 detention center?

16 A No.

17 Q Okay, where did she interview you?

18 A I believe at Craft Farrow.

19 THE COURT: I need a little more volume.

20 BY MR. BELDING:

21 Q Yeah, we need you to speak up just a little bit.

22 A I believe it was Craft Farrow.

23 Q Craft Farrow?

24 A Yeah.

25 Q Is that a mental health facility?

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- 1 A I think so.
- 2 Q Here in Columbia?
- 3 A Yes.
- 4 Q Okay. Do you have a recollection of when that
- 5 was?
- 6 A It was just before I was tran-- was released
- 7 March the 1st.
- 8 Q Okay. February maybe?
- 9 A Maybe, possibly, I can't remember.
- 10 Q Now one of the things Doctor Gehle testified to
- 11 is that you had something like 26 crimes on your
- 12 criminal record. Does that sound about right?
- 13 A Give or take.
- 14 Q Well, is it give or take? I mean, is it more
- 15 than that or less or does that sound ---
- 16 A I believe it was something like 23.
- 17 Q Okay. Do you think you can list them all?
- 18 A Not all of them.
- 19 Q Okay. Well, we heard about three.
- 20 A Um.
- 21 Q You had a lewd act on a minor 1981, correct?
- 22 A Correct.
- 23 Q Criminal sexual conduct in 1990, correct?
- 24 A Correct.
- 25 Q You have the assault and battery first degree

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1 last year —

2 A Yes.

3 Q —essentially. Okay. What other kinds of
4 crimes have you been convicted of?

5 A Well, I would say 90 percent of my charges were
6 nonviolent, misdemeanors, 30 day charges,
7 trespassing, shoplifting, and I have a few not
8 register, failure to register.

9 Q Okay, failure to register. When were you told
10 you had to register on the sex offender registry?

11 A When, when I got out in 19— when I got out in
12 year 2000.

13 Q Okay. After your second conviction?

14 A Yes.

15 Q Okay. You say you got convicted of failure to
16 register; is that right?

17 A Yes.

18 Q Were you convicted once, twice, how many times?

19 A About three times.

20 Q Three times.

21 A Yeah.

22 Q What was your problem registering on the sex
23 offender registry?

24 A Well, back — if you're not employed or don't
25 have a stable place to live they normally just gonna

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1 violate you anyway and lock you back up.

2 Q Violate you from what? Parole or probation?

3 A The sexual predator thing.

4 Q Okay. So what caused you to not register? Do
5 you have problems with your residence or your
6 employment or that?

7 A It was, you know, I was, I admitted to having a
8 drug problem and it was relating to keeping a job
9 maybe and keeping a permanent resident. I was
10 staying with my sister here and there. And if you
11 don't have a stable resident or stable employment
12 they know normally will lock you back up.

13 Q Okay. Did you -- you were listing these 26 or so
14 crimes. Were any of them drug offenses?

15 A I had, I believe I had probably one drug offense.

16 Q Do you recall what it was?

17 A Marijuana. It was back when I was -- ten years.

18 Q Okay. Now the -- go back. Doctor Gehle
19 testified that in 1981 you were convicted of a lewd
20 act on a minor. Was that a plea or a trial?

21 A It was a plea.

22 Q Okay. What were you originally charged with?

23 A Criminal sexual conduct.

24 Q All right. Is lewd act on a minor a lesser
25 included offense of criminal sexual conduct to your

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1 knowledge?

2 A Not to my knowledge. I know it's a lesser
3 charge.

4 Q Okay. Why did you plead guilty to that?

5 A I mean, they gave me three years. It was three
6 year sentence.

7 Q Well, I mean, is that why you pled guilty to get
8 three years?

9 A No, I plead -- I wasn't guilty of rape, I mean,
10 but found out that the girl was a minor.

11 Q All right. So that was your decision, correct?

12 A Yeah.

13 Q And you pled guilty to that?

14 A Yeah.

15 Q Okay. Was -- Doctor Gehle talked yesterday about
16 you seeing the victim in a hospital. Was that this
17 one or another?

18 A Oh, it just -- only time I was arrested at a
19 hospital and a victim been there was 2011 and I
20 wasn't at the hospital as Doctor Gehle said to put
21 fear or whatever to our victim. I was out there
22 being treated; it's on record. I have what you call
23 bronch-- not bronchitis, emphysema lung disease. I
24 been hospitalized twice for it. It's on record,
25 June 8th, 2011.

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1 Q Okay. So that wasn't in relation to this lewd
2 act?

3 A No, no.

4 Q Then we move to you get out of prison after how
5 long? You got a three year sentence for lewd act.
6 How long did you stay in prison?

7 A I stayed in prison 18 months.

8 Q Okay, you got out. Did you get a job?

9 A I got a job, yeah.

10 Q Same thing, painting and roofing?

11 A No, I wasn't painting then. I was working with
12 my father then.

13 Q Okay. What did he do?

14 A My father heavy equipment operator. I was just
15 basically just doing a lot of grading, grading work.

16 Q Okay. Then in 1990, seven, eight years later
17 however, you are charged with criminal sexual
18 conduct. Did you plead guilty to that or did you go
19 to trial?

20 A I plead guilty.

21 Q You pled guilty to criminal sexual conduct?

22 A Yes.

23 Q Okay. Freely and voluntarily?

24 A Yes.

25 Q Was it because you were guilty of that?

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1 A I mean, when the girl said no, I didn't, I didn't
2 stop so yes, I guess, because I was guilty.

3 Q Okay. Was there any sadistic stuff going on?

4 A No.

5 Q Okay. Just straight sex that ended up being
6 non-consensual?

7 A Yes.

8 Q Okay. Now so both of those times you pled
9 guilty?

10 A Yes.

11 Q All right. Now have you been convicted of any
12 sexually violent offenses in the last 23 years?

13 A No.

14 Q Okay. Now we've discussed, you've heard, that
15 last year you entered a plea to assault and battery
16 in the first degree, —

17 A Yes.

18 Q —correct? Was that a guilty plea?

19 A No, it was what they call a Alford plea. I
20 wasn't confessing to any guilt. As my lawyer
21 explained to me it's more like a no contest, but I
22 would never confess that I committed any crime.

23 Q Well, without saying anything else anybody told
24 you, were you, were you advised, did you understand
25 from the court what an Alford plea entailed?

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1 A My lawyer explained some in details.

2 Q And again, what is your understanding of what an
3 Alford plea is.

4 A It was more than it's not being, accepting the
5 plea because of the benefit of the plea and that
6 you're not committing to any crime or any
7 wrongdoing.

8 Q Is it basically the same thing as no contest?

9 A Yes.

10 Q Okay. Was there a recommendation about your
11 sentence?

12 A A recommendation?

13 Q Yeah, was there an agreement as to what the
14 sentence would be.

15 A Yes, four years. It was already, had four years
16 of failure to register and it was to one, along,
17 which is concurrent. They say concurrent along with
18 the four years I already had.

19 Q Okay. And were you in jail for a period of time
20 before entering this Alford plea?

21 A I been in jail for about a year.

22 Q Okay. So then last August, I'm sorry, last June,
23 you went ahead and entered the full plea that was
24 agreed to by the State —

25 A Yeah.

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1 Q —that Ms. Bodman spoke of, okay. I asked Ms.
2 Bodman about the victim. Were her answers
3 consistent with what you recall about the, you know,
4 victim of the offense in 2010?

5 A No.

6 Q Well, what was different?

7 A What was different is I didn't grab her or I
8 didn't rape her. It was just that I ran out of
9 drugs. And the next day when I left her, she, you
10 know, she was asking me for more drugs and I told
11 her I didn't have any and I left her standing there.
12 And from there I went to the hospital to be treated
13 because I was having trouble breathing.

14 Q Okay.

15 A Once I was coming out from being treated that
16 when I ran into her and she was with police, I guess
17 it was police, and she say he the one that did it,
18 did this to me.

19 Q But did you say something about being arrested
20 for trespassing?

21 A I been arrested for trespassing at the hospital
22 once, one time before, but it wasn't as Doctor Gehle
23 say. I been, I was arrested at the hospital for
24 trespassing, me and my girlfriend.

25 Q Okay. Was it the same hospital?

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1 A Yes.

2 Q Here in Columbia?

3 A Yeah.

4 Q What hospital was it?

5 A The Palmetto Richland.

6 Q Palmetto Richland, okay. Was the lady involved
7 in 2010, was she a prostitute?

8 A Yes.

9 Q Did you -- was your interaction with her because
10 she was a prostitute?

11 A Yes, and it was a -- more and more less it was
12 like, you know, sex for drugs. You do this, I give
13 you this.

14 Q Okay. So there was supposed to be some exchange?

15 A Yeah.

16 Q Did you end up giving her drugs?

17 A Yes, we smoked together.

18 Q Okay. Were you surprised that you got arrested?

19 A Yes, I was very surprised.

20 Q Okay. Now again, I think Ms. Bodman pointed out
21 that she served you with some papers?

22 A Yeah.

23 Q The State seeking life without parole.

24 A Yes.

25 Q How did that affect you?

RW - B. GROOMS - DIRECT

1 A Well, I was, you know, you talking about taking a
2 person's life. It affect me pretty bad.

3 Q Okay. But somehow you were allowed through
4 negotiation to plead to just assault and battery and
5 get four years, run it concurrent; is that right?

6 A Yeah.

7 Q Okay. And you said you entered an Alford plea
8 where it's no contest?

9 A Yeah.

10 Q Did you do that — did you enter that plea to
11 make sure you would avoid getting life without
12 parole?

13 A I made that plea. You know, it was a good plea.
14 I mean, to avoid going before a jury trial instead,
15 I mean, and I didn't commit the crime.

16 Q Okay.

17 A And —

18 Q Let me ask you this, what about — okay. All
19 right, so the assault and battery you didn't even
20 admit to that, correct?

21 A No.

22 Q Now Doctor Gehle, did she talk to you about all
23 three of these incidents when you met with her at
24 Craft Farrow?

25 A Yes.

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- 1 Q Did you talk about the past in detail?
- 2 A Yes.
- 3 Q Did you tell her about drug use?
- 4 A Yes.
- 5 Q Alcohol abuse?
- 6 A I never had alcohol abuse.
- 7 Q Just drugs?
- 8 A Yes.
- 9 Q Okay. Did you talk to her about the problems?
- 10 A Yes.
- 11 Q Now did you tell her the truth?
- 12 A Yes, I did.
- 13 Q I asked her this morning if she believed you. My
- 14 understanding is there were inconsistencies between
- 15 the report she was provided to what you were telling
- 16 her. Did she ask you about those inconsistencies?
- 17 A No.
- 18 Q She just went on?
- 19 A Yeah.
- 20 Q Did she seem to get mad at you?
- 21 A At one point she did.
- 22 Q What she get mad about?
- 23 A When she asked me about continuing did I commit
- 24 this crime, certain crime.
- 25 Q Okay. Did you say, yes, I did it?

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1 A I told her no.

2 Q And so in what way did she appear to be irritated
3 to you?

4 A I mean, because I won't confess to a crime that I
5 didn't commit.

6 Q Mr. Grooms, do you feel that you need this
7 treatment to be able to control yourself?

8 A No, I don't need any treatment.

9 Q Has there been anything in any of your criminal
10 history that was done because you couldn't control
11 your own behavior?

12 A No.

13 Q All right. Do you have some overwhelming
14 compulsion to commit crimes?

15 A No.

16 Q Did you just choose to commit these
17 circumstances?

18 A No. Only offenses I've committed that I, you
19 know, was mostly compelled was shoplifting, you
20 know, and I done that to support my drug habit.

21 Q If the jury finds you to not be a sexually
22 violent predator where will you go?

23 A I'm going to Columbus, Georgia. I been asked to
24 come down there to live with my sister; and my
25 brother-in-law, he already have a job stabilized for

RW - B. GROOMS - DIRECT

1 me.

2 Q What will you be doing?

3 A I be butching meat.

4 Q Butching meat?

5 A Yeah, I be a meat butcher.

6 Q What does that mean?

7 A Just cutting ---

8 Q Sales or something?

9 A Cutting meat up.

10 Q Oh, cut, I'm sorry, okay. All right, Mr. Grooms.
11 thank you very much. I appreciate it.

12 MR. BELDING: No further questions, Your
13 Honor.

14 THE COURT: All right. Cross-examination.

15 MS. WEATHERTON: Thank you, Your Honor.
16 Just a few questions.

17 **CROSS-EXAMINATION**

18 BY MS. WEATHERTON:

19 Q So is your testimony today the other 26 offenses
20 you were convicted of are relatively minor?

21 A Yes.

22 Q Weren't you convicted of assault and battery with
23 intent to kill?

24 A Yes, I was.

25 Q Weren't you convicted of two different weapons

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1 charges?

2 A Yes.

3 Q Were you convicted of burglary?

4 A Burglary? I never been convicted of burglary,
5 not —

6 Q You weren't convicted —

7 A Not that I can recall.

8 Q You weren't convicted of burglary in the third
9 degree?

10 A No, not that I can recall.

11 MS. WEATHERTON: Your Honor, if I can just
12 have a moment.

13 BY MS. WEATHERTON:

14 Q You weren't convicted of burglary in the third
15 degree in 1986?

16 A 1986? I, just like I said, I couldn't recall.

17 Q You don't remember?

18 A No.

19 Q Now the sex offender registry violations, you
20 actually have four, correct?

21 A Yeah.

22 Q You have four? Now the requirements once you get
23 out—make sure that you understand as well the jury
24 understands — when you come out you're supposed to
25 register as a sex offender. You have to do that

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1 within a certain amount of time, correct?

2 A Yes.

3 Q And you didn't do that?

4 A No, I didn't do it.

5 Q You didn't follow those rules?

6 A No.

7 Q On four separate occasions?

8 A No.

9 MS. WEATHERTON: And permission to
10 approach the witness?

11 THE COURT: You may.

12 BY MS. WEATHERTON:

13 Q I'm going to show you a copy of your sentencing
14 sheet from the 2011 case. Is there anything on this
15 that indicates -- I'm sorry, that indicates that
16 that was an Alford plea?

17 A From my understanding it's not anything on the
18 paper that indicates it.

19 Q Was it an Alford plea?

20 A From my understanding that it's never put on the
21 paper either.

22 Q And you said you did speak with your attorney
23 about what an Alford plea was?

24 A Yes.

25 Q Isn't it also true that if -- you also have to

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1 admit at the sentencing hearing that if the case
2 would have gone forward the case would have been
3 proven beyond a reasonable doubt?

4 A I don't recall that.

5 Q You don't remember that?

6 A No.

7 Q And just to make sure we get your side of the
8 story here, so you're saying that case where you
9 pled to lewd act and pled guilty in 1981, you're
10 saying that didn't happen?

11 A I didn't say I didn't have sex with the girl. I
12 just said —

13 Q So you're saying —

14 A I said I didn't rape her.

15 Q So you're saying you didn't rape her?

16 A Yeah.

17 Q So you're saying she wasn't telling the truth in
18 1981.

19 A No, it was, it was a proposition case, and she
20 was prostituting on Two Notch Road and—

21 Q Okay, and this is the 16 year old girl?

22 A 16 year old girl. Well, she didn't look like she
23 was 16. You can't tell age. I mean, 2, 3:00 in the
24 morning, what you would think.

25 Q So she went out and told a lie about you, got you

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1 —

2 A Yeah, she avoid being going to jail for
3 prostitution herself.

4 Q Okay. And then ten years later another woman
5 comes along —

6 A And I pleaded guilty to rape.

7 Q And you (inaudible) —

8 A Yes, I pleaded guilty to it.

9 Q (Inaudible.)

10 MS. WEATHERTON: Excuse me, Your Honor.
11 We're talking over one another.

12 THE COURT: You got to wait till she
13 finishes her answer and then you respond please,
14 sir.

15 THE WITNESS: Okay.

16 BY MS. WEATHERTON:

17 Q Well, then in 1990 another woman comes along
18 accusing you of rape. You plead guilty but she's
19 lieing as well?

20 A I didn't plead guilty to rape.

21 Q Criminal sexual conduct you pled guilty to?
22 1990.

23 A 1990 I plead guilty to rape then, yes.

24 Q Yes. But you're saying that didn't happen?

25 A I didn't say that didn't happen.

RW - B. GROOMS - CROSS

1 Q So did you rape her?

2 A Yes, I didn't stop having sex with her when she
3 told me to stop.

4 Q Okay. And then in 2010?

5 A 2010?

6 Q This is the one you said you didn't rape her so
7 she was lieing.

8 A I didn't have -- I didn't have a charge in 2010
9 for rape.

10 Q Well, you signed a piece of paper, isn't that
11 correct, there was a sexual component to the assault
12 and battery first degree?

13 A Assault and battery in the first degree?

14 Q You pled guilty to--

15 A That was in 2011.

16 Q 2011, I apologize.

17 A Yeah.

18 Q You pled guilty to assault and battery first
19 degree?

20 A Yes, I did.

21 Q Okay. And you signed a piece of paper with a
22 sexual component that you pled guilty to?

23 A I didn't understand anything about --

24 Q You didn't understand that?

25 A I didn't understand about a sexual component.

RW - B. GROOMS - CROSS

1 Only thing I knew I pleaded guilty to assault.

2 Q Are you saying now that that wasn't true either?

3 You didn't rape her either?

4 A I didn't say it wasn't true that we didn't have
5 sex. It wasn't — it now true that I raped her.

6 Q Did you rape her?

7 A No, I didn't.

8 Q She lied?

9 A Yeah, she lieing.

10 Q All right. Nothing further.

11 THE COURT: All right. Redirect?

12 MR. BELDING: Just one question, Your
13 Honor.

14 **REDIRECT EXAMINATION**

15 BY MR. BELDING:

16 Q Mr. Grooms, Ms. Wetherton asked you something
17 about I think when you entered this Alford plea who
18 represented you last year?

19 A Jay Cooper and Ms. Pinnock (ph).

20 Q Okay. And were they with the Public Defender's
21 Office?

22 A Yes.

23 Q You know where Mr. Cooper is now?

24 A My understanding is he's passed on.

25 Q Okay, thank you.

RW - B. GROOMS - REDIRECT

1 MR. BELDING: Nothing further, Your Honor.

2 THE COURT: All right. Recross?

3 MS. WEATHERTON: No thank you, Your Honor.

4 THE COURT: All right, you may come down
5 from the witness stand, sir.

6 Call your next witness.

7 MR. BELDING: Your Honor, the Respondent
8 rests.

9 THE COURT: All right. Will there be any
10 reply?

11 MS. WEATHERTON: No, Your Honor.

12 THE COURT: Very well. Ladies and
13 gentlemen, you have now received the evidence that
14 you have in this case. What remains for us are the
15 arguments of counsel and my charge or instruction on
16 the law; however, there are matters that I'm gonna
17 take up outside your presence. We're also gonna use
18 this as our afternoon break. Because you have not
19 heard the arguments of counsel, nor my charge on the
20 law, you are not prepared to begin your
21 deliberations. So please be mindful as you step to
22 your jury room, do not discuss this matter or allow
23 anyone to discuss it with you. We will be about 15
24 minutes. Please step to your jury room.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 202 p.m., and the following
2 proceedings commenced in open court.)

3 THE COURT: Thank you. All right,
4 motions.

5 MR. BELDING: Your Honor —

6 MS. WEATHERTON: I don't have anything.
7 None from the Petitioner.

8 MR. BELDING: Your Honor, at this time the
9 Respondent would like to renew it's motion for
10 directed verdict on the grounds that we think this
11 case just has too many loose ends towards being
12 reasonably sent to the jury for its consideration
13 and that it should, in fact, be dismissed as a
14 matter of record and as a matter of law by the judge
15 and we appreciate your consideration.

16 THE COURT: Thank you very much. And
17 Likewise, for the same reasons I will respectfully
18 deny your motion. I do believe there's evidence for
19 each element in which the jury could make its
20 determination and would respectfully deny your
21 motion.

22 Now you have a petition for proposed jury
23 charge? Do you have that?

24 MR. BELDING: I have a proposed jury
25 charge, yes, Your Honor. I think when I looked over

1 it, I think those are adequate for me. If there's
2 any, of course, that the Court would like to add I
3 don't have anything in addition to what the State
4 has.

5 THE COURT: Okay.

6 MR. BELDING: And I think they're
7 sufficient.

8 THE COURT: And have you seen the proposed
9 verdict form?

10 MR. BELDING: Well, I have, Your Honor,
11 and you know, I actually have a proposed order in
12 case it comes back not. I'm not sure if the State's
13 satisfied. They've seen that copy.

14 MS. WEATHERTON: That's the verdict form,
15 not the —

16 MR. BELDING: I understand. So that would
17 come first in any event. Now I have no problem with
18 the verdict form. I know it will be explained that
19 one has to come before the other and such things as
20 that so there's no problem with it.

21 THE COURT: Do you know why it has to come
22 down to —

23 MR. BELDING: Sometimes judges say, well
24 look, you know, like you've got to put one guilty or
25 not guilty.

1 THE COURT: Oh, absolutely.

2 MR. BELDING: I know you'll take care of
3 that, of course.

4 THE COURT: Yes, you're exactly right, I
5 do do that. Please don't take any hint. There's no
6 hinting in words going in a way — one's got to be
7 first, one's got to be second, absolutely.

8 MR. BELDING: And Your Honor, I think the
9 Respondent's closing is probably ten minutes tops,
10 something like that. If it goes later I won't be
11 long. But it won't be that long.

12 THE COURT: I won't hold you to that. How
13 long is yours?

14 MS. WEATHERTON: Your Honor, our closing
15 won't be very long either.

16 THE COURT: You know, again, you all are
17 professional. And I'm a fan, I look forward to
18 hearing it. Please don't feel like you got to rush
19 on my account because I want you to feel as though
20 you argued fully and you tell the jury exactly
21 everything that you want to tell them so don't y'all
22 worry. I looking forward to hearing your closing
23 arguments. If y'all want to take your little, as
24 they call it in Beaufort County, comfort break
25 before you start. All right.

1 MR. BELDING: Is there a time issue this
2 evening for Court? I know —

3 THE COURT: You are so very kind. Yes, it
4 will be 5:00.

5 MR. BELDING: Okay.

6 THE COURT: Thank you for asking.

7 MS. WEATHERTON: Thank you.

8 THE COURT: Okay. Y'all take — be at
9 ease. We'll be at ease. Take your break and we
10 will be back ready to go.

11 (WHEREUPON, a recess was taken from the
12 proceedings.)

13 THE COURT: Are you going to do both
14 arguments?

15 MS. WEATHERTON: I'm sorry?

16 MR. BELDING: Open and close, yes, if
17 that's what you're asking.

18 MS. WEATHERTON: Oh, you mean a reply?

19 THE COURT: Are you gonna do them?

20 MS. WEATHERTON: I don't know. It depends
21 on how crazy he gets.

22 MR. BELDING: If I really take off then
23 she's has to go forward.

24 THE COURT: I think he's going to — I
25 think he's going to, but you're gonna make both

1 arguments.

2 (WHEREUPON, the jury was returned to the
3 courtroom at approximately 2:18 p.m., and
4 the following proceedings commenced in
5 open court.)

6 THE BAILIFF: Your Honor, the jury is
7 present.

8 THE COURT: Thank you so much. Ladies and
9 gentlemen, you are about to hear the closing
10 arguments of the attorneys and I want to discuss
11 with you how they will proceed. You're first going
12 to hear from Ms. Wetherton on behalf of the
13 defendant, and then you're going to hear from
14 Mr. Belding on behalf of the Respondent. And then
15 you may very well hear a reply rebuttal argument
16 Ms. Wetherton. Once the closing arguments are
17 completed there'll be a very short break. The
18 break. It's gonna be self-explanatory when we reach
19 that point, and then I'm going to deliver the charge
20 or the instruction on the laws to you. And then
21 there will be another very short break. I'll
22 explain to you when we reach that point; and then
23 ladies and gentlemen, you will receive this case for
24 your deliberation. So at this point I ask that you
25 please start, folks, as we listen to the closing

1 argument.

2 Ms. Wetherton.

3 MS. WEATHERTON: Thank you, Your Honor.

4 Ladies and gentlemen of the jury, on behalf of Alan
5 Wilson and the Attorney General's Office I thank you
6 for your time. I can only imagine you all probably
7 got your civil jury summons you'll probably thinking
8 you're gonna see a slip and fall in a grocery store
9 or a car accident, and here you all are trying to
10 figure out if someone is a sexually violent
11 predator. Well, you know, this is a very important
12 case though. This is a very important case to
13 Mr. Grooms, and this is a very important case to our
14 office and it's a very important case to your
15 community.

16 Now the State -- what did I have to prove
17 in this case? They told you in the opening
18 statements the State must prove the following. I
19 had to prove that he was convicted of a sexually
20 violent offense and that he suffers from mental
21 abnormality or personality disorder that makes him
22 likely to engage in act of sexual violence if not
23 confined in a secure facility for long term control,
24 care, and treatment. So in this case what did you
25 see? Well, admitted into evidence are two pieces of

1 evidence and they are certified convictions. And
2 the judge will charge you those are both considered
3 in the acts of sexually violent offense. However,
4 the sexually offending history does not end there.
5 And as you heard from the chief psychologist from
6 the Department of Mental Health -- and I want to
7 make clear you all understand that was a Court
8 appointed expert. That was not a State's expert.
9 That was a Court appointed expert. Now the State
10 brought them for their case, but the Court was the
11 one that originally appointed them to evaluate
12 Mr. Grooms. And as Mr. Belding pointed out, the
13 State could enforce the right to get an independent
14 expert similar to what the Defense could do, but
15 Doctor Gehle stated to you that he committed a
16 sexual offense against a woman in late 2010 which
17 resulted in this most recent incarceration. And
18 also, I have to prove that he suffered from a mental
19 abnormality and personality disorder. And you heard
20 from Doctor Gehle that based on her evaluation and
21 review that Mr. Grooms suffers from both paraphilia,
22 which is considered a relative type of mental
23 abnormality and a personality disorder. Now how do
24 we know that? Doctor Gehle testified that Mr.
25 Grooms engaged in sexual intercourse with

1 non-consenting women on more than one occasion
2 despite having consenting sexual partners. Doctor
3 Gehle further testified that he had an extensive
4 criminal history and the lack of remorse or
5 accountability supporting the diagnosis for a
6 personality disorder. Furthermore, he has a pattern
7 of criminal sexual conduct that spanned for over
8 three decades and they all had similar patterns. As
9 Doctor Gehle put it, the snatch and grab route. He
10 would see women walking down the street and he would
11 grab them. But with most again, three sexual acts
12 as late as 2010.

13 Doctor Gehle further testified that based
14 on what her review and experience it is her expert
15 opinion that Mr. Grooms has a lack of control over
16 both his mental abnormalities and personality
17 disorder so that he would commit acts of sexual
18 violence. Now how do we know that? As stated in my
19 opening by Doctor Gehle he has extensive criminal
20 history and not all of them were minor offenses, as
21 you heard in cross-examination of Mr. Grooms that
22 spanned over half his life, over 34 years. It
23 includes 26 convictions for both sexual and
24 nonsexual offenses. And he has significant risk
25 factors as Doctor Gehle testifies to. This is a

1 history of lifestyle of impulsiveness, resistance to
2 rules and supervision, and offending his right
3 having consensual partners, offending stranger
4 victims, offending while in a public place and using
5 a weapon in a sexual assault which I admit is
6 dangerous and shows that he lacks control.

7 Now Doctor Gehle stated that the best
8 predictor of future behavior is past and he has
9 a repetitive pattern of sexually violent behavior.
10 Along with these other risk factors Mr. Grooms
11 scored on the high risk category of the Static-99 to
12 sexually re-offend. Out of 95 percent of the
13 population tested which were convicted sex
14 offenders, he was found 95 percent of the convicted
15 sex offenders were found to be less risk to offend
16 than Mr. Grooms. Now I understand Defense during
17 cross-examination of Doctor Gehle talked about what
18 is likeliness, what is likeliness, to try to make it
19 a very confusing concept. Well, one of the things
20 you can do as a juror is use your common sense. And
21 I want you all to go back, if you can, to think, use
22 your common sense based on everything that was
23 submitted in court today and ask yourself, based on
24 what you saw is Mr. Grooms likely to re-offend.

25 Finally, I would like to point out that

1 Mr. Grooms participated in sex offender treatment,
2 which was not mandatory in 1995. And according to
3 the testimony he feels he doesn't have a problem.
4 Then he went out and committed offense where the
5 fact indicated he sexually assaulted again. This is
6 and indication of treatment failure. Based on that
7 information it is even more important that he is
8 required to attend sex offender treatment so he can
9 finally gain an understanding of his mental
10 abnormality and personality disorder so he does not
11 victimize another woman.

12 I believe I have met my burden of proof
13 beyond a reasonable doubt, and the judge in her
14 final instructions will explain to you what that
15 really means. And I will ask that you find
16 Mr. Grooms to be a sexually violent predator. Thank
17 you.

18 THE COURT: And thank you. Mr. Belding.

19 MR. BELDING: Thank you, Your Honor, may
20 it please the Court.

21 THE COURT: Yes, sir.

22 MR. BELDING: Thank you for your
23 attention. You're about to get this case. I have
24 several notes I just wanted to remind you of a few
25 things about the testimony we heard from the stand

1 over the last day. First of all, Doctor Gehle
2 admitted that we have a statute that's ambiguous and
3 we have several words, two particularly, that we
4 have to deal with. One is, what is mental
5 abnormality. It's not even defined as anything in
6 the diagnostic and sophisticated manual 5 that's the
7 Bible of the psychiatric and psychological world.
8 It's not even defined, but that's what she has to
9 deal with. But almost more important is likely.
10 And she testified that before she went and saw him
11 she did the Static-99 scoring. Static-99 is the
12 objective risk assessment tool that they all use,
13 you know, to find out, is this guy a risk to
14 re-offend. And based on the score which is higher
15 than 97 percent of people ever took this, he's got a
16 30.6 percent probability of committing a future sex
17 offense within the next five years. That's not
18 unlikeable. That's unlikeable by any stretch of
19 imagination. I mean, if you go betting on
20 30.6 percent chances in Vegas you'll go broke.
21 30.6. And then to beat all, Doctor Gehle admitted
22 that the authors, the creators of the Static-99,
23 come out with an article just last September,
24 admitting that some of their statistical, original
25 statistical presumptions end up being incorrect,

1 that some of their statistical projections weren't
2 right; that, in fact, you cannot use the Static-99R
3 to find to predict the behavior of an individual.
4 So what's likely about that. And she admitted, it's
5 based on statistics. I asked her, don't you have to
6 make a statistical analysis, don't you have to come
7 to some number that's a statistic in order to use
8 the Static-99. Absolutely. Absolutely.
9 30 percent. That's not likely beyond a reasonable
10 fact.

11 Now Doctor Gehle also spoke about spending
12 three hours with Mr. Grooms at Craft Farrow. She
13 looked at documents. I said, did you get more
14 documents? I mean, isn't more information better
15 than less information? She said, well, normally
16 yeah, as long as it's not too much. I asked, did
17 you, what do you know about these things? Said
18 well, I basically went on what the Attorney
19 General's Office sent me. So Ms. Bodman came,
20 Ms. Bodman came in, the prosecutor from last year.
21 You understand that we wouldn't even be here if
22 Bernard Grooms hadn't got caught up in this offense
23 back in 2011 and pled guilty to last June, June of
24 2012. Wouldn't even be here because the two sexual
25 offenses, you know, Ms. Wetherton is right, he has

1 to have been convicted of a sexually violent
2 offense. We stipulate he's got two of them, one in
3 1980 and one in 1991 or '81 or '90. '90, 23 years
4 ago he had his last qualifying offense, 23 years
5 ago. And when he was released from the Department
6 of Corrections at the end of that sentence of 1990,
7 he was reviewed in this same procedure and the court
8 ruled that he was not a sexually violent predator.
9 So the reason we're here 'cause he got caught back
10 up in the system again; and as Doctor Gehle said,
11 he'll always be reviewed. If he ever goes to the
12 Department of Corrections again, he's gonna get
13 reviewed under the same act again.

14 So what is important about what happened
15 two years ago? We brought in Ms. Bodman. She's the
16 prosecutor. Years of experience, these sex offense
17 prosecutor in the Fifth Circuit here. She's the
18 protector of the public. And Ms. Bodman thought it
19 was in the best interest of the government and the
20 public to let the criminal sexual conduct in first
21 degree go, let the kidnapping go, let the strong
22 armed robbery go, and let him plead to assault and
23 battery in the first degree for a four year sentence
24 knowing that he would be out in less than a year
25 from that date. He pled last June 25th. He got out

1 of the Department of Corrections last March, less
2 than a year later. When she was asked by
3 Ms. Wetherton, why did you do that? She said, well,
4 you know, it was all kinds of reasons. One in
5 particular is, we don't sometimes want to make the
6 victims re-live the experience on the stand. Folks,
7 good luck with that, all right. I got to tell you,
8 if I'm a woman and I get raped, I mean, it is the
9 worst crime in the world to my wife. I mean, you
10 can chop her head off first, don't rape me. It's
11 invincible with women, and I understand that.
12 You're a woman and you got someone that's done that
13 to you, you wouldn't sit up in that chair to put
14 this guy away for life? They noticed him with life
15 without parole. He'd been gone; we wouldn't have to
16 do this. You wouldn't get in that chair and testify
17 even though the sentence they negotiate gets him out
18 in less than a year? Of course, he's not out yet;
19 he's still here. He's been waiting five months at
20 the Richland County jail in those clothes waiting
21 for you all to hear this case.

22 Remember what Judge Goodstein said in the
23 beginning. Doctor Gehle is an expert. I
24 stipulated. I did not object to her being admitted
25 as an expert witness in this case because I've dealt

1 with her before. And she's got training, she's got
2 experience. She's the chief forensic psychologist
3 in this area out of the Department of Mental Health.
4 I'm not gonna get anywhere objecting anyway; she is
5 an expert. That doesn't mean she's always right.
6 She's got an opinion like we all do. In fact, the
7 judge will tell you and will instruct you that an
8 expert opinion is one piece of evidence for you to
9 consider. It is not presumed that you have to take
10 that at all. It's one thing for you to consider.

11 So what we have going on here is we've got
12 an ambiguous law. We've got an opinion based on
13 some information and not others. We've got
14 something to do with this rule not to be sexually
15 violent predator 13 years ago but is now back even
16 though he hadn't been convicted of another sexually
17 violent offense under state law. She wants you to
18 believe that it's likely when the statistics say
19 30 percent which is unlikely by any common
20 definition of whatever likelihood is. The Static-99
21 authors admit that they're -- the research, the
22 stuff needs to be reviewed, needs to be updated,
23 it's not solid science. There hadn't been any sex
24 offenses in 23 years; but the State wants to say,
25 look, don't get caught up in all that, don't get

1 caught up in all those facts, okay, this guy is a
2 predator, Doctor Gehle says it, you should go with
3 that. And again, Judge Goodstein will charge you
4 that's one piece of evidence for you to consider.
5 Judge Goodstein will also tell you that, even though
6 it's a civil case, remember this has to be beyond a
7 reasonable doubt because Mr. Grooms' liberty
8 interest is at stake here. The State is asking you
9 to send him out to a secure facility for long term
10 control, care, and treatment. And that beyond a
11 reasonable doubt on those facts from the evidence
12 you heard from this case, I don't know how you're
13 gonna do it. So I'm asking you to do this for
14 Bernard Grooms, send him back home. Let him go to
15 Columbus, Georgia, live with his sister, work for
16 his dad. Get him out of this because that's the
17 right thing to do in this case 'cause the State has
18 not proved this beyond a reasonable doubt. Get him
19 back in some civilian clothes. He's been sitting in
20 those long enough after he finished his sentence and
21 paid his debt to society. Thank you for your
22 attention, I appreciate it, so does Mr. Richardson.

23 THE COURT: Thank you, Ms. Wetherton.

24 MS. WEATHERTON: Just a couple of things.

25 THE COURT: Of course.

1 MS. WEATHERTON: The one thing I want to
2 remind you all is that Doctor Gehle did not take
3 hang her hat on the Static-99. In fact, she looked
4 at the totality of evidence, and I want you all to
5 remember that. She looked at his criminal history,
6 gave him the opportunity to speak with her. He
7 interviewed her. She spoke with one of the victims.
8 You know, she looked at the Static. She looked at
9 law enforcement documents. Those were compiled by
10 our office, but those are not created by our office.
11 Those were created from past case files, and that we
12 put them together as we send them to the Department
13 of Mental Health. There's nothing strange though,
14 there's nothing that we created or we wrote or we
15 sent to her to make her look at. The big thing to
16 put, to talk about, is his most recent
17 incarceration, involved a sexual offense against a
18 woman. And you heard the testimony of Margaret
19 Bodman and you saw the reason why she did what she
20 did. You know, we can all sit here and complain
21 maybe the sentence was wasn't tough enough, but you
22 saw the reason as why she made the decision that she
23 did. And if you feel it wasn't right, by all means
24 hold that against her because I'm here today
25 representing the State and I'm fighting to try to

1 keep the community safe and to prove that he has a
2 mental abnormality personality disorder and he's
3 likely to re-offend a person out in the community.
4 And if you listen to all the evidence, everything
5 that was submitted, the Static, the interview, the
6 26 crimes, and everything else, his testimony, and
7 you think that he's not likely to re-offend, by all
8 means ladies and gentlemen, let him out.

9 THE COURT: Very well. All right. Ladies
10 and gentlemen, now let's let ourselves go, just
11 stand up, you're free to walk. How about that?
12 See. That's a bit selfish on my part. That means
13 you stay awake and pay attention to me while I
14 deliver the charge to you so that's all I want you
15 to just move a little, get some oxygen flowing.
16 When you're ready, be seated, stretch a moment
17 please, and then sit when you're ready to do this.

18 (Pause.)

19 THE COURT: Ladies and gentlemen, the
20 Petitioner in this matter the State of South
21 Carolina has brought this case under a statute under
22 a law which is called the sexually violent predator
23 act. The State seeks the civil commitment of the
24 Respondent; and when I say respondent, I mean
25 Mr. Grooms, Mr. Bernard Grooms. When I say

1 Petitioner, I mean the State of South Carolina. The
2 State, Petitioner, seeks the civil commitment of Mr.
3 Grooms for long term control, care, and treatment in
4 a secure facility. Ladies and gentlemen, this is
5 not a criminal proceeding seeking incarceration, but
6 rather, a proceeding seeking civil commitment. The
7 State of South Carolina alleges, claims, that the
8 Respondent Mr. Grooms is a sexually violent predator
9 under the law. Mr. Grooms denies that he is a
10 sexually violent predator, and the burden of proof
11 is therefore on the State, on the Petitioner, to
12 prove by evidence sufficient to satisfy you beyond a
13 reasonable doubt that Mr. Grooms is a sexually
14 violent predator.

15 Ladies and gentlemen, if the State is
16 unable to meet that burden of proof as to one or
17 more elements of this claim, then Mr. Grooms is
18 entitled to a finding that he is not a sexually
19 violent predator. In most civil cases the
20 petitioner, the State, only has the burden of
21 proving that a fact is more likely true than not
22 true such as by the greater weight of the
23 preponderance of the evidence. For example, in
24 civil case such as a car wreck, the party with the
25 burden of proof must only prove by the greater

1 weight or the preponderance of the evidence that
2 their claim is so. However, ladies and gentlemen,
3 in this type of case, a civil commitment case, a
4 sexually violent predator act case, the State's
5 burden of proof must be more powerful than that. It
6 must be beyond a reasonable doubt.

7 Now ladies and gentlemen, under our
8 constitution and code of laws of South Carolina you
9 are the only and the sole finders of the facts in
10 this case. I am not allowed by our law to intimate,
11 suggest, or to in any way indicate to you an opinion
12 regarding the facts. I don't have an opinion
13 regarding the facts, ladies and gentlemen. That is
14 a matter solely for you to determine. So if I have
15 said or done anything during the course of this
16 trial which you believe is suggestive of an opinion
17 regarding the facts or if I state anything to you
18 now that you think is suggestive of an opinion
19 regarding the facts, I ask you, please disregard
20 that. I don't have an opinion regarding the facts.
21 That is a matter solely for you to determine.

22 Now ladies and gentlemen, you are the
23 judges of the credibility which simply means the
24 believability of the witnesses who have testified in
25 this case. In determining the credibility of the

1 witnesses in this case you may take into
2 consideration things such as, but not limited to,
3 what was the manner and appearance of the witness
4 testified, was he or she straight forward or
5 hesitant in answering, how did the witness come to
6 know the facts the witness testified to, or what was
7 his or her ability to know those facts, is there
8 some reason that a witness would want to give
9 testimony which would help or hurt one side or the
10 other, in other words, was the witness biased or
11 prejudiced. And was the testimony of the witness
12 strengthened or weakened by other testimony or
13 evidence. Ladies and gentlemen, you may believe as
14 much or as little or none of a witness' testimony as
15 you think proper. You may believe the testimony of
16 a single witness against that of multiple witnesses
17 or just the opposite. You can believe a part of a
18 witness' testimony and disbelieve the remaining part
19 of that same witness' testimony. Now of course,
20 ladies and gentlemen, you do not determine the truth
21 merely by counting the number of witnesses presented
22 by each side.

23 Now, ladies and gentlemen, in this case --
24 of course, you have heard one who was deemed to be
25 an expert witness. And normally under our rules of

1 evidence individuals, witnesses are not allowed to
2 testify regarding their opinions, nor the reasons
3 for those opinions. However, there is an exception
4 when by virtue of someone's knowledge, training,
5 profession and education, skill, experience, they
6 become an expert in some field, perhaps science or
7 art. And they are allowed, those individuals are
8 allowed to give an opinion within their field of
9 expertise. They're also allowed to give their
10 reasons for the opinion. Ladies and gentlemen, you
11 consider expert testimony the way that you evaluate
12 and determine the believability of other witnesses.
13 Ladies and gentlemen, you give expert witness
14 testimony the weight that you deem it is entitled.
15 The value and the effect of expert testimony is a
16 matter to be solely estimated by you, the jury.
17 Expert testimony, ladies and gentlemen, is to be
18 given no greater weight than that of other testimony
19 simply because a witness is an expert; and of
20 course, expert testimony is given for the purpose of
21 helping you understand the evidence and not for the
22 purpose of controlling your judgment.

23 Ladies and gentlemen, the fact that
24 testimony was not controverted does not mean that
25 you must accept it as true and uncontroverted. You

1 gain the credibility of these witnesses and you
2 determine the believability of each of these
3 witnesses. Keep in mind, ladies and gentlemen, that
4 throughout this trial that you have but one
5 objective to seek the truth regardless of the or
6 what source it comes.

7 Now ladies and gentlemen, normally there
8 are two types of evidence presented during trial.
9 One is called direct evidence and the other is
10 called crushed. Direct evidence is the testimony of
11 a person who claims to have actual knowledge of a
12 fact such as an eyewitness. It is evidence which
13 immediately establishes the main fact to be proved.
14 Circumstantial evidence is proof of a chain of facts
15 and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes
17 collateral facts from which the main fact may be
18 inferred. Circumstantial evidence is based on
19 inference and not on personal knowledge or
20 observation. The law makes absolutely no
21 distinction between the weight or value to be given
22 to either direct or circumstantial evidence, nor is
23 a greater degree of certainty required to
24 circumstantial evidence than of direct evidence.

25 Ladies and gentlemen, it's always tough to

1 give this particular example in the ending days of
2 July, but I wish to harken to February. It's cold,
3 snow is forecast, sky is all gray. You walk outside
4 and you get literally get hit in the eye with snow.
5 You really are an eyewitness to the fact that it is
6 snowing and you can testify that it is snowing.
7 That is direct evidence, direct testimony. You're
8 an eyewitness to the fact that it is snowing.

9 Now, an example of circumstantial
10 evidence. February, cold, snow is forecast. You
11 take a look outside before you go to bed and what
12 you see outside about 11:00 at night is old pitiful
13 February ground, not much grass, that's what you
14 see. Go to bed, you wake up in the morning and low
15 and behold snow covers everything as far as you can
16 see. Well, here's what you can testify to, it's
17 February and it's cold and snow was forecast; and
18 when you went to bed there wasn't much grass and
19 when you awoke snow covered everything. Those are
20 the facts you can testify to but by inference the
21 fact is proven that it snowed overnight.
22 Circumstantial evidence is evidence which is shown
23 through inference. Ladies and gentlemen, there is
24 no greater weight given to direct evidence than
25 circumstantial evidence. You should consider all

1 the evidence in the case, and the evidence that you
2 should give the most weight to is that which
3 convinces you of its truth regardless of from who or
4 from whence it comes.

5 Now ladies and gentlemen, to define for
6 you the burden of proof which is beyond a reasonable
7 doubt I will tell you that beyond a reasonable
8 doubt, that burden of proof is defined as follows.
9 Proof beyond a reasonable doubt is the kind of
10 proof, reasonable doubt, and in order to define
11 beyond a reasonable doubt it obviously is necessary
12 that you understand what you mean by reasonable
13 doubt. What is really meant by that in the law.
14 Well, reasonable doubt in the law means the kind of
15 doubt that would cause a reasonable person to
16 hesitate to act. Of course, the burden of proof
17 applicable here is beyond a reasonable doubt. Now
18 ladies and gentlemen, the same constitution and law
19 that makes you the finders of the fact as that I
20 discussed with you makes me the instructor of the
21 law. You must accept and apply the law exactly as I
22 give it to you. Ladies and gentlemen, if you came
23 into court and you had a preconceived idea about
24 what you think the law is, what it ought to be, that
25 might be a parade discussion for you to have with

1 your legislator at some point in the future; but for
2 our law to work correctly, you must take that and
3 you must apply the law exactly as I state it to you.

4 Now ladies and gentlemen, I'm going to
5 also — I've given you a short discussion and a
6 short definition of reasonable doubt and I'm gonna
7 give you a little bit of a long one and it's this.
8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the elements of that the
10 State must prove. There are few things in this word
11 that we know with absolute certainty, and the law
12 does not require to overcome every possible doubt.
13 What is required is, if based on your consideration
14 of the evidence you are firmly convinced that Mr.
15 Grooms, the Respondent, is a sexually violent
16 predator, then you must return a verdict for the
17 Petitioner and find that he is a sexually violent
18 predator. If, on the other hand, you think there's
19 a real possibility that he is not a sexually violent
20 predator you must give him the benefit of the doubt,
21 and you must find that the State has failed to meet
22 its burden and that he is not, that he is not a
23 sexually violent predator. Again, the burden is and
24 the burden remain on the Petitioner or the State to
25 prove beyond a reasonable doubt that he is a

1 sexually violent predator.

2 Now ladies and gentlemen, reasonable doubt
3 may arise from evidence that is in the case or from
4 the lack or absence of evidence. It is up to you to
5 determine whether or not reasonable doubt exists in
6 this case. Now what are the elements that the State
7 must prove beyond a reasonable doubt? And again, I
8 will call the State and the Petitioner. In this
9 case the State is the petitioner. Here are the
10 elements. Number one, the State must prove beyond a
11 reasonable doubt that the Respondent, Mr. Grooms,
12 has been convicted of a sexually violent offense. I
13 charge you that criminal sexual conduct in the first
14 degree and lewd act on a minor are sexually violent
15 offenses. Secondly, the State, Petitioner, must
16 prove beyond a reasonable doubt that the Respondent,
17 Mr. Grooms, suffers from a mental abnormality or a
18 personality disorder that makes him likely to engage
19 in acts of sexual violence if not confined in a
20 secure facility for long term control, care, and
21 treatment. Inherent in these two elements is that
22 the State, the Petitioner, must prove the
23 requirement that the Respondent, Mr. Grooms' mental
24 abnormality personality disorder caused him serious
25 difficulty in controlling his behavior. In other

1 words, the State must prove beyond a reasonable
2 doubt that the individual is seeking to commit
3 Mr. Grooms suffers from a mental illness which he
4 cannot efficiently control without the structure and
5 care provided by a mental health facility rendering
6 him otherwise likely to commit a dangerous act.

7 In order for you to better understand the
8 elements of the State, of the State petition, I'm
9 going to define for you some of the terms that I
10 just used. First term that I'm going to define for
11 you is mental abnormality. What do we mean by
12 mental abnormality? Well, mental abnormality means
13 a mental condition affecting a person's emotional or
14 volitional capacity that predisposes a person to
15 commit sexually violent offenses. This mental
16 abnormality or personality disorder must cause the
17 respondent serious difficulty in controlling his
18 behavior. Now let me define for you what is meant
19 by likely to engage in acts of sexual violence.
20 This means the person's propensity to commit acts of
21 sexual violence is of such a degree as to pose a
22 menace to the health and safety of others so that he
23 is dangerous to others.

24 Again, I remind you that the burden of
25 proof is on the State, it's on the Petitioner, to

1 prove to your satisfaction beyond a reasonable doubt
2 that the Respondent, Mr. Grooms, has been convicted
3 of a sexually violent offense as I've instructed
4 you, and also suffers from a mental abnormality or
5 personality disorder that makes him likely to engage
6 in acts of sexual violence if not confined in a
7 secure facility for long term control, care, and
8 treatment. If the State carries its burden of proof
9 and convinces you beyond a reasonable doubt as to
10 each of the two elements of its causal reaction, it
11 is entitled to a finding that Respondent is a
12 sexually violent predator. If the State does not
13 meet that burden of proof as to one or as to both of
14 these elements, the Respondent is entitled to a
15 finding that he is not a sexually violent predator.

16 Ladies and gentlemen, I am now growing
17 near the end of my charge and I want you to clearly
18 understand that you are not partisans or advocates
19 for the State or the Respondent, the Petitioner or
20 the Respondent. You do not serve as jurors to
21 reward your friends or punish your enemies; and in
22 this regard, you have been selected by both the
23 Petitioner and the Respondent to be fair and
24 impartial jurors. It is your duty by your joint
25 deliberations to determine the truth in this case

1 giving to the Respondent, giving to Mr. Grooms, the
2 benefit of every reasonable doubt to each, every
3 issue. Then to the facts which you determine to be
4 true, you should take and apply the law which has
5 been given to you by this Court and thus arrive at a
6 verdict which speaks the truth in this case. When
7 you have done this you will have satisfied your oath
8 as jurors and discharged your duty to this court.

9 Now, ladies and gentlemen, I'm going to
10 come down and go through the verdict form with you,
11 but on the way I'm gonna tell you two things. First
12 of all, your verdict must be unanimous. And what
13 this means is that this verdict must be the verdict
14 of each and every one of you. This is not majority
15 rules, and this is not the verdict of any one of
16 you. This must be the verdict of each and every one
17 of you, each and every one of the twelve of you.

18 Uh, oh, Mr. Spratley, that's a hint
19 because as I often -- and I'm gonna ask you when my
20 jury is released next time, stay with me, okay, if
21 you will. Thank you so much.

22 This verdict must be the verdict of each
23 and every one of you. It's not the majority rule
24 and this is not the verdict of any one of you but
25 this must be the verdict of each and every one of

1 you. Your verdict must be unanimous. Now ladies
2 and gentlemen, I also want to tell you that
3 although — I left the verdict form up here. There
4 are two possible verdicts. Now ladies and
5 gentlemen, when there are two possible verdicts
6 guess what, one of them has to be first and the
7 other one has to be second. They can't both be
8 first, okay. One of them has to be first and one
9 has to be second. So you put words on paper but
10 some first and some second. The only reason I'm
11 going over this with you is to tell you that there
12 is an order which these words have been put on
13 paper. Please don't take any hint from the Court
14 from the order in which these possible verdicts have
15 been put down on paper. It is just for — if you
16 don't put two possible verdicts on paper one has got
17 to be first and one has got to be second. I could
18 have just as easily reversed them and put the second
19 one first and the first one second so please don't
20 take any hint in me from the order in which these
21 possible verdicts have been put on paper.

22 Now ladies and gentlemen, I hope you all
23 can see and you probably can't, but you'll have it
24 with you in your verdict room. The first part is
25 simply the caption entitled the title of the case.

1 And then the instructions read as follows: Has the
2 Petitioner, State of South Carolina, proven beyond a
3 reasonable doubt that Bernard Grooms is a sexually
4 violent predator under the section under the South
5 Carolina section violent predator act. And you will
6 answer one of two possible answers. And it says
7 here: We, the jury, unanimously -- my children
8 think I'm a nag, now you'll know why -- unanimously
9 answer the question as follows. You're gonna answer
10 one or the other. I've written them in a particular
11 order so I'm gonna state them in reverse order.
12 Ladies and gentlemen, the second possible answer is
13 as follows: No, Bernard Grooms is not a sexually
14 violent predator. If that is the unanimous answer
15 of this jury, then I want you to mark it and circle
16 it so there's no question that that's what the
17 verdict of the jury is. The other possible answer
18 or verdict is as follows: Yes, Bernard Grooms is a
19 sexually violent predator. If this is the unanimous
20 decision, unanimous answer of this jury, then I want
21 you to check it and circle it so there's no question
22 but that this is the decision of the jury.
23 Whichever is the unanimous response, answer, verdict
24 of this jury I want you to check it and circle it so
25 there won't be any question which one the answer is

1 the unanimous answer of this jury.

2 Now when you have finished your
3 deliberations and you have filled out the verdict
4 form -- and here's where it goes -- just for your
5 informational purposes today is the 30th of
6 July 2012, and you know who are so you would write
7 your name here when you're finished where it says
8 the foreperson. Ladies and gentlemen, in just a
9 moment I'm going to ask you to step back to your
10 jury room with this instruction, do not discuss this
11 matter or allow anyone to discuss it with you. And
12 you're thinking, now wait a minute, I've been
13 telling you now for two days that this is when
14 you're gonna begin your deliberations, what in the
15 world am I talking about. I'm telling you, when you
16 you go back to your jury room on this I'm just gonna
17 turn to the lawyers and I'm gonna ask them two
18 questions: Have I given this jury all of the law
19 that they may need for their deliberations, and have
20 I stated it for them correctly. Now ladies and
21 gentlemen, sometimes I need to invite the jury just
22 come back into court because something has popped
23 out wrong. Goodness knows I didn't mean it but
24 sometimes that happens. So in the event I need up
25 invite you back out because I have stated something

1 incorrectly, I ask you in advance please allow me to
2 correct my error in your minds. Sometimes, ladies
3 and gentlemen, I fail to give a jury an instruction
4 that they may need for their deliberations so in the
5 event that I need to invite you back out for that
6 reason, please don't consider that instruction
7 within any emphasis. Just know this is my chance to
8 get this right, to give you all the law that you may
9 need for your deliberation and to state it for you
10 correctly.

11 Now in the event that I do not need to
12 bring you back out, you will be brought the verdict
13 form and the exhibits and an instruction to begin
14 your deliberations. You will not have the verdict
15 form and the exhibits unless you are prepared and
16 ready to deliberate and you will begin your
17 deliberation. Now all twelve of you have to be
18 present for you to deliberate so if somebody needs
19 to take a comfort break that's okay, stop your
20 deliberations, take your comfort break, and then
21 just reconvene your deliberations when all twelve of
22 you are together again. Just remember, all twelve
23 of you must be together for you to deliberate.

24 Now when you have finished your
25 deliberations, when you have reached your verdict

1 and then filled out your verdict form, you'll knock
2 on the door, return to the courtroom. You will take
3 the verdict form and hand it to one of our bailiffs
4 who will hand it to me and we'll publish the
5 verdict. Now I do want to give you one final
6 thought. And ladies and gentlemen, the word verdict
7 comes from the Latin phrase veredicto, which means
8 to speak the truth, to speak the truth just now,
9 your past. You step to your jury room. Do not
10 discuss this matter and do not allow anyone to
11 discuss it with you and we will be with you shortly.

12 But do not leave me, Mr. Spratley.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 3:08 p.m., and the following
15 proceedings commenced in open court.)

16 THE COURT: All right. One thing I'm
17 gonna ask you to do for me is give me 15 more
18 minutes because you see, I think should something
19 happen to one of our jurors, and it happened that I
20 could stop the deliberations and seat you, save the
21 day, save the trial so. But what I'm going to do is
22 feel free to go somewhere else, back of the jury.
23 You can't go in with the jury. Watch your watch
24 though, and when the jury starts its deliberations,
25 after 15 minutes just say, hey, y'all, I'm here and

1 then you'll be free to go with our appreciation at
2 that point. So if you'll go and he will put you in
3 a place separate from the jury, all right. Thank
4 you so much. Don't go with the jury though.

5 (Alternate was removed from the courtroom.)

6 THE COURT: All right, anything from the
7 Petitioner?

8 MS. WEATHERTON: No, Your Honor.

9 THE COURT: From the Respondent?

10 MR. BELDING: No, Your Honor, no
11 exceptions.

12 THE COURT: Do this for me please. I want
13 you all to eyeball both the verdict form please and
14 exhibits.

15 (Attorneys review exhibits with court reporter.)

16 (Jury began their deliberations at 3:13 p.m. and
17 court was in recess.)

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 4:01 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: Here's what I'm going to do.
25 I'm going to leave you with the sentencing sheet

1 because that is the appropriate document. The other
2 information were exactly correct. It is not
3 Mr. Bernard Grooms, but rather Mr. Raymond Grooms.
4 So what I'm going to do is I'm going to ask that you
5 just give me back the indictment and warrant. And
6 the gentleman the co-defendant which you're exactly
7 right is Mr. Raymond Grooms' file, the warrants and
8 the indictment, but I'm gonna leave you with the
9 sentencing sheet because it is appropriate because
10 that is the Respondent's Mr. Bernard Grooms. So I
11 am gonna ask those two documents back and it's just
12 so exciting that y'all are doing what you're
13 supposed to do. So you're correct, that is the
14 information that's not correct so I'll ask that you
15 need to keep the sentencing sheet. If that's not
16 clear then send the whole exhibit out and I'll do
17 the work and then I'll pull out what needs to come
18 out.

19 Now your second question, how long is long
20 term treatment, minimum treatment period, and how
21 often is that. That is not now for your
22 consideration. Ladies and gentlemen, when we went
23 through the instruction those are the matters that I
24 need you to determine based on the evidence which
25 has been presented and the matters addressing them

1 to actually are not for the jury's consideration. I
2 know that sounds harsh. I don't want to sound
3 harsh, I really don't. I want to say that the work
4 that you have to do is address, if you will, the
5 verdict form. These questions are questions which
6 are not encompassed within your consideration. So I
7 hope that is helpful. And again, probably the best
8 thing to do is to send that exhibit back out with
9 our bailiff very quickly and then I will redact it
10 and send it right back to you and then you may
11 continue your deliberations. Thank you so much.

12 (WHEREUPON, the jury was removed from the
13 courtroom at approximately 4:12 p.m., and
14 the following proceedings commenced in
15 open court.)

16 THE COURT: Now first of all, I want to
17 put on the record what I -- what my intention is.
18 Mr. Bedlam (ph) went downstairs to the post office
19 to retrieve the indictment and the warrants in
20 Mr. Bernard Grooms' case. And it's my understanding
21 that they're the defendant's. I anticipated that
22 the indictment and the warrants did not mirror, be
23 very close to what the jury has in its possession.
24 I am not going to send back, though, the indictment
25 or the arrest warrant on Mr. Bernard Grooms. I am

1 going to retrieve the warrants and the indictments
2 that the jury has, leave them the sentencing sheet
3 so they have the correct sentencing sheet. And I
4 will hear, first of all, from Petitioner any
5 objections to proceeding in that way?

6 MS. WEATHERTON: No, Your Honor.

7 THE COURT: Okay. I'm listening to you.

8 MR. BELDING: Respondent has no objection
9 either, Your Honor. We think it's appropriate.

10 THE COURT: All right. Very well, may I
11 say too, Mr. Belding, I know and believe from the
12 comments when we were at the Bench, I just want to
13 be clear that your assuming, assuming that the
14 indictment and the warrant mirror what they have
15 because of it has the co-defendant brother, you are
16 also at this point as I understand it, you're not
17 objecting because that's you're anticipating that
18 the record will show. If the record is something
19 different then you may change your position, but
20 anticipating that it will mirror what the jury has
21 had; you're not raising any objections at this
22 point, but if they do not mirror then you will, yes?

23 MR. BELDING: Agree, Your Honor. And in
24 my experience, as yours, when you have a
25 co-defendant the arrest warrants are almost

1 identical with the same things so I would anticipate
2 that they will be the same.

3 THE COURT: So okay, great. Y'all look
4 and tell me.

5 (Court's Exhibit Numbers 2, 3 and 4 were
6 marked and made a part of the record.)

7 THE COURT: Anything before I bring the
8 jury out from Petitioner?

9 MS. WEATHERTON: No, Your Honor.

10 MR. BELDING: No, Your Honor.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 4:12 p.m., and
13 the following proceedings commenced in
14 open court.)

15 THE BAILIFF: Your Honor, the jury is
16 present.

17 THE COURT: Thank you so much. Madam
18 presiding juror, it's my understanding that the jury
19 has reached its verdict; is that correct?

20 THE FOREPERSON: Yes, ma'am.

21 (Verdict form tendered to the Court.)

22 THE COURT: Madam Clerk, would you please
23 publish it.

24 THE CLERK OF COURT: Case number
25 2012-CP-40-593, State of South Carolina, County of

1 Richland, in the matter of the care and treatment of
2 Bernard Grooms. We, the jury, unanimously answer
3 the question as follows: Yes, Bernard Grooms is a
4 sexually violent predator. Signed by the
5 foreperson, Cynthia Humphreys, 2013. Madam
6 Foreperson, is this your verdict and the verdict of
7 the entirety?

8 THE FOREPERSON: Yes.

9 THE COURT: All right. Anything from the
10 Petitioner before we dismiss our jury?

11 MS. WEATHERTON: No, Your Honor.

12 THE COURT: Anything from Respondent?

13 MR. BELDING: No. Thank you, Your Honor.

14 THE COURT: And I will simply ask, ladies
15 and gentlemen, if this was your verdict and
16 continues to be your verdict here in the courtroom
17 with you, please indicate by raising your right
18 hands.

19 (Jurors complied.)

20 THE COURT: Let me state for the record
21 all our jurors have their right hands raised. Thank
22 you very much. Ladies and gentlemen, I want to
23 thank you for your service on this jury panel.
24 Thank you for your time and you are free to go.

25 (WHEREUPON, the jury was removed from the

1 courtroom at 4:18 p.m., and the following
2 proceedings commenced in open court.)

3 THE COURT: All right, anything further
4 from the Petitioner at this time?

5 MS. WEATHERTON: Your Honor, I do have a
6 proposed order of commitment.

7 THE COURT: Okay, and I'll certainly take
8 a look at it.

9 MR. BELDING: I approve this, Your Honor.
10 That's a statement of what happened.

11 THE COURT: Very well. Anything further
12 from the Respondent at this time?

13 MR. BELDING: No, thank you, Your Honor.

14 THE COURT: Very well. All right.

15
16
17 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

18

19

20

21

22

23

24

25

1 **C E R T I F I C A T E O F R E P O R T E R**

2
3
4 STATE OF SOUTH CAROLINA)
5 COUNTY OF FLORENCE)

6
7 I, FRANCES BAKIS-RAY, Registered
8 Professional Reporter (RPR), court reporter for the
9 State of South Carolina, Twelfth Judicial Circuit,
10 do hereby certify that the foregoing proceeding was
11 transcribed for Elizabeth Harris using
12 computer-aided transcription; that the foregoing
13 transcript contains a true record of the proceedings
14 to the best of my ability.

15 I further certify that I am neither
16 counsel for, nor related to nor employed by any of
17 the parties connected to the action, nor am I
18 financially interested in the action.

19 Witness my hand at Florence, South
20 Carolina, this 7th day of January, 2014.

21 *Frances B. Ray*
22 _____
23 FRANCES BAKIS-RAY, RPR

24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
IN THE MATTER OF THE CARE	)	CASE NO. 2012-CP-40-5933
AND TREATMENT OF	)	
BERNARD GROOMS,	)	ORDER OF COMMITMENT
RESPONDENT.	)	
_____	)	

RICHLAND COUNTY
 FILED
 2013 JUL 30 PM 4:24
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

The trial of this case was held in the County of Richland in the Court of Common Pleas the week of July 29, 2013. A jury of citizens from Richland County heard this case pursuant to a request for a jury trial filed by the State. Assistant Attorney General Nicole T. Wetherton represented the State. David E. Belding, Esquire, represented the Respondent. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-90 and 44-48-100:

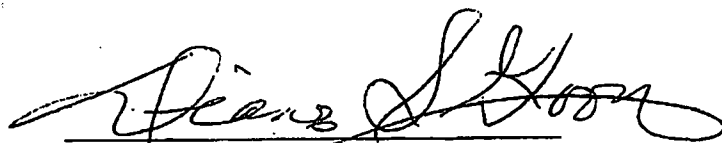
The State has proven beyond a reasonable doubt that Respondent, Bernard Grooms, is a sexually violent predator as that term is defined in South Carolina Code Section 44-48-30.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT

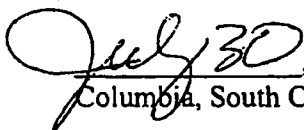
(a) Respondent is committed to the Department of Mental Health for his long-term control, care and treatment;

(b) Respondent is to continue to be detained at the Alvin S. Glenn County Detention Center, and then transported to the secure facility of the South Carolina Department of Mental Health, at 4460 Broad River Road, Columbia, SC 29210. The Detention Center is to transport Respondent on such scheduled date as it coordinates with the Department of Mental Health.

AND IT IS SO ORDERED.



 Presiding Judge
 for the Fifth Judicial Circuit
 Court of Common Pleas


 July 30, 2013
 Columbia, South Carolina

THE STATE OF SOUTH CAROLINA

RICHLAND COUNTY

Fifth Circuit

August 10, term, 1981

The State of South Carolina

vs

Bernard H. Hooms

Sex B Race B DOB 4/30/36

Soc. Sec. No. 251-04-3256

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO. 81-GS-10-1522

COPY OF SENTENCE (COMMITMENT)

INDICTMENT FOR

Criminal Sexual Conduct - 1st Degree

The prisoner, Bernard H. Hooms

() having entered a guilty plea to Sexual acts upon a minor

() having been found guilty by jury trial

it is the

SENTENCE

The Sentence of the Court is that the prisoner

Bernard H. Hooms, shall be confined in the custody of the Board of Corrections of the State of South Carolina for a period of Three (3) years and the Board of Corrections shall designate a place of confinement where this sentence shall be served

1st William J. Howell,
Presiding Judge
8/13/81

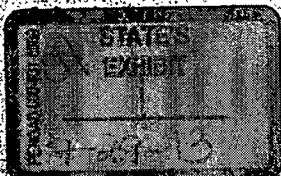
The State of South Carolina
County of Richland

I, John R. T. Major, Clerk of the Court of General Sessions for Richland County, State aforesaid, do hereby certify that the foregoing is a true copy of the sentence pronounced by the Court in the case above entitled

GIVEN under my HAND and the Seal of said Court at Columbia,

this 13 of Aug, 1981

John R. T. Major
C. C. G. S. R. C.



81-65-40-1597 W

58793

Witnesses

W. B. Carter - CPD

Verdict

The State of South Carolina

County of RICHLAND

COURT OF GENERAL SESSIONS

825 JULY Term, 1981

THE STATE

VS.

BERNARD CROOKS

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT-FIRST DEGREE

15-3-652

TRUE BILL

Foreman of Grand Jury

The Prisoner Bernard Crooks
is out to the bar and arraigned and upon his arraignment
pleads Guilty, as charged. He stands before me

Alfred

John P. Hines Bernard Crooks
C.C. P. & S.S.
8/13/81

The sentence of the Court is that the
prisoner Bernard Crooks
shall be confined to the custody of the Board of
Corrections of the State of South Carolina for a
period of three (3) years
and the Board of Corrections shall designate a
place of confinement where this sentence shall
be served.

Presiding Judge

Columbia, S. C.

24-13, 10-7

I FIND THAT THE IMPOSITION OF THE
PENITENTIARY FOR THE COMMUNITY NON-
REENTRY PROGRAM WILL BE OF SEVERE
PENALTY, GUARDIAN OF PROBATION

Presiding Judge

WB1-2502

160

S612852

The State of South Carolina

INDICTMENT FOR

County of RICHLAND

CRIMINAL SEXUAL CONDUCT-FIRST DEGREE

At a Court of General Sessions, convened on the 13th day of July
19 81, the Grand Jurors of Richland County present upon their oath:

That Bernard Grooms

did in Richland County on or about the 2nd day of June
19 81, wilfully, unlawfully and feloniously commit a sexual battery upon a woman,
to wit: Jeannette Johnson, by means of aggravated force;

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

James C. Anderson
Solicitor

SENTENCE

STATE OF SOUTH CAROLINA

CASE NO. 90-594423

COUNTY

The defendant Bernard Groves is committed to the State Department of Corrections/County for a term of 24 months/years and/or to pay a fine of \$ provided upon the service of months/years and/or payment of \$ plus pay/waive costs and assessments as applicable. X the balance suspended with probation for months/years.

Restitution

For physical injury \$

Yes/No

property damage \$ to be paid to clerk for Other conditions Credit for time servedDate 10/17/90

Carol Connor
Presiding Judge

*Costs and Assessments

Non-waivable \$ Not waived \$ Total \$

Barbara A. Scott
Clerk of Court

**Pay to Victim's Compensation Fund if subrogated

SCCA Form 217 (3/86)

Give in Recommendation

0184-1344

RECEIVED

W812502

STATE OF SOUTH CAROLINA

81-35062

County of Richland
or Municipality of Columbia

THE STATE
against

Berrard Groome
2512 1/2 Laurel St., Apt. C
Columbia, S.C.

(Arrested)

ARREST WARRANT

Offense Criminal Sexual Conduct - 1st Degree

Code (or Ordinance) Section _____

Date June 2, 1981

Officer and Agency Inv. W. B. Carter
Inv. J. L. Swatts
J. L. Totten
J. L. Kinsey

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name State

Address State

Phone _____

Sex M Race B Height _____

Weight 152 Birthdate _____

Social Security Number _____

INFORMATION ON WITNESSES

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

PRELIMINARY HEARING held by

Judge _____

on _____

with _____
Attorney for Defendant.

Decision: _____

BAIL

Date Set _____ 19 _____

Judge _____

Amount _____

Surety _____

RECEIVED

JUN 5 1981
JOHN R. T. MAJOR
C.C.P. & C.S.

RECEIVED
JUN 3 1981
A copy of this Arrest Warrant was delivered
by me to the following defendant:
Berrard Groome
on the 2nd day of JUNE
19 81
J. L. Kinsey
County Clerk
Law Enforcement Officer

This Warrant is certified for service in
County for _____ Municipality.
The accused is to be arrested and brought
before me to be dealt with according to law.

(L.S.)

Signature of Judge

Approved by
 Attorney General
 Section 17-1-160
 October 18, 1979

STATE OF SOUTH CAROLINA

COUNTY OF RichlandOR MUNICIPALITY OF Columbia

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
 MUNICIPALITY OF Columbia AND ANY CONSTABLE OF THIS
 MAGISTERIAL DISTRICT:

It appearing from the attached affidavit that there are reasonable grounds to believe that [name of
 defendant] Bernard Groves
 did on the 2nd day of June, 1981
 violate the criminal laws of the State of South Carolina [or ordinances of the municipality
 of Columbia] as set forth below:

DESCRIPTION OF OFFENSE

Criminal Sexual Conduct - 1st Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring
Bernard Groves before me forthwith to be dealt with according to law.

A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon
 thereafter as is practicable.

Done at Columbia, S.C., this 2nd day
 of June, 1981.

H.S. #842 (L.S.)
 Signature of Judge
 Municipal Recorder

STATE OF SOUTH CAROLINA

COUNTY OF Richland

AFFIDAVIT

Personally appeared before me, judge of this Court, one W. B. Carter
 who, first being duly sworn, deposes and says that [name of defendant]

Bernard Groves

did within this County and State on the 2nd day of June,
 1981, violate the criminal laws of the State of South Carolina [or ordinance of the municipality of
Columbia] in the following particulars:

DESCRIPTION OF OFFENSE

Criminal Sexual Conduct - 1st Degree

The Affiant states that there is probable cause to believe that the defendant named above did commit the
 crime(s) set forth, and that such probable cause is based on the following facts:

Officer J. L. Totten responded to a silent alarm at Waverly School, 2200 Lady St.,
 Columbia, S.C. Officer Totten pulled into the school yard and heard a female scream
 who was found to be the victim of the crime, Jeannette Johnson. Co-defendant Raymond
 Groves came running out of the bushes with his pants half down and was arrested.
 The victim stated "they were raping me". Officer Totten then arrested the above
 named defendant hiding in the bushes with his pants half down. The victim stated
 that the two followed her from Two North Rd. When she got on Lady St. they both
 grabbed her and carried her into the school yard. She further stated they took her
 clothes off and had intercourse with her and that they also forced her to perform
 Sworn to and Subscribed before me oral sex on them.

this 2nd day of June, 1981

H.S. #842 (L.S.)
 Signature of Judge
 Municipal Recorder

W.B. Carter
 Affiant

Address of Judge

Address CPD

Phone

Phone

FORM CONTINUES ON BACK

ORIGINAL

RICHLAND COUNTY
SOUTH CAROLINA

00305469

RETURN

A copy of this Arrest Warrant was delivered to the following defendant:

X Bernard Grooms

on the 6TH day of MAY 19 90

G. S. Sullivan 7790

Signature of Constable or Law Enforcement Officer

This warrant is certified for service in

County _____ (Circle one)
Municipality _____ (Circle one)

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

PRELIMINARY HEARING held by

Judge M. W. S.

on JUL 30 1990

with USDC 6750 St

Attorney for Defendant

Decision

BAIL

Date Set _____ 19 _____

Judge _____

Amount _____

Surety _____

RETURN WARRANT TO

ARREST WARRANT

No. C 763933 90-14542

STATE OF SOUTH CAROLINA

Columbia County (Circle one)
Municipality _____ (Circle one)

THE STATE

Against

Bernard Grooms

Address _____ Road _____

Columbia, S.C.

Phone _____ SSN _____

Sex M Race B Height _____ Weight 160

DOB _____ DL _____

Offense Criminal Sexual Conduct - 1st Degree

Code (or Ordinance) § 16-11-652 Offense Code 111

Issuing Judge _____ Judge Code 111

Officer A. B. Walker

Agency CPD ORI No. 111

Card of Offense MAY 6, 1990

Date of Disposition _____

Disposition _____

Sentence _____

Co-Defendants _____

WITNESSES:

Name _____

Address _____ Phone _____

Name _____

Address _____ Phone _____

Name _____

Address _____ Phone _____

Name _____

Address _____ Phone _____

Name _____

Address _____ Phone _____

Name _____

Address _____ Phone _____

Name RECEIVED

Address _____

JUN 17 1990

CRIMINAL RECORDS

WITNESS NOTIFIED

OFFICER _____

DATE _____ HRS _____

NOTE: ALSO NOTIFY OFFICER IF CHARGE IS A GENERAL RESISTANCE

TRUE COPY FILED

9

RETURN TO

812503

STATE OF SOUTH CAROLINA

A 519305

572
19

RECEIVED
JUN 3 - 1991
MUNICIPAL
A copy of the Warrant was delivered
by me to the following defendant:
Raymond Grooms

County of Richland
or Municipality of Columbia

THE STATE
against
Raymond Grooms
2512 1/2 Laurel St., Apt C
Columbia, S.C.

(Arrested)

ARREST WARRANT

Offense Criminal Sexual Conduct -
1st Degree

Code (or Ordinance) Section _____

Date June 2, 1991

Officer and Agency Inv. M. B. Carter
Inv. J. L. Sweatt
J. L. Totten
J. C. Emsay

Disposition _____

Sentence _____

Co-Defendants _____

INFORMATION ON DEFENDANT

Name Same
Address Same
Phone _____
Sex M Race B Height 5'10"
Weight 145 Birthdate _____
Social Security Number _____

INFORMATION ON WITNESSES

Name _____
Address _____
Phone _____
Name _____
Address _____
Phone _____

PRELIMINARY HEARING held by

Judge _____
on _____, 19____
with _____
Attorney for Defendant _____
Decision _____

BAIL

Date Set _____, 19____
Judge _____
Amount _____
Surety _____

RECEIVED
JUN 5 1991
JOHN R. T. MAJOR
C.C.P. & G.S.

287

WITNESSES

✓(S) Barbara L. Coleman - Columbia Police
Department

ARREST WARRANT NUMBER

K643637

ACTION OF GRAND JURY

J. C. Holt
Foreperson of Grand Jury
Date: JUL 13 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS4002052

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2011

92

THE STATE

vs.

BERNARD GROOMS

Indictment for
CRIMINAL SEXUAL CONDUCT
(ADULT) 1ST DEGREE

SC Code: 16-03-0652

CDR Code: 0160

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Bernard Grooms
Defendant

Bernard Grooms
hereby appear in my own proper person and plead
guilty to the within indictment or to

Assault & Battery 1st degree

Bernard Grooms
Defendant

Witness:
[Signature]
C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

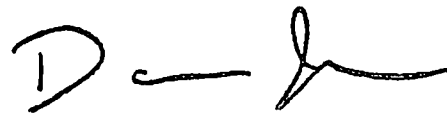
At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT (ADULT), 1ST DEGREE

CDR: 0160 16-03-0652

That BERNARD GROOMS did in Richland County on or between January 6, 2011 and January 8, 2011, engage in a sexual battery with BRENDA JONES AKA PAMELA HUGGINS, using aggravated force and/or the victim submitted to the sexual battery under circumstances where the victim was also the victim of forcible confinement or kidnapping or any other similar offense or act; in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

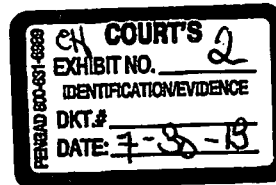


DAN JOHNSON, SOLICITOR

Assault & Battery - First degree

That Bernard Grooms did in Richland County on or between January 6 2011 and January 8, 2011 ~~engage in sexual battery~~ did unlawfully injure Pamela Huggins ~~by~~ and did touch without consent the private parts of Pamela Huggins, either under or above clothing, with lewd and lascivious intent; in violation of 16-3-600 (c)(1)

CDR 3412



① The 1981 copy of sentence backup shows name Raymond Gross. + different SS# & address.

The 1990 copy of sentence backup shows name Bernard Gross.

Do we have incorrect paperwork?

② How long is long term treatment?
Minimum treatment period & how often assessed?

CH. COURTS 3
 EXHIBIT NO.
 IDENTIFICATION EVIDENCE
 DKT. #
 DATE 7-30-81
 PENAD 800-631-6989

81-GS-40-1596

58794

Witnesses

W. B. Carter - CPD

Verdict

Foreman

H51-2503
 bk
 S312851

160

The State of South Carolina

County of RICHLAND

COURT OF GENERAL SESSIONS

#25 JULY Term, 1981

THE STATE

VS.

RAYMOND GRCONS JR.

mb 17

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT-FIRST DEGREE

15-3-652

TRUE BILL

Rich D. Walker
 Foreman of Grand Jury

McCAY THISTERS

COLUMBIA, S. C.

The Prisoner *Raymond Grcons Jr.* is put to the bar and arraigned and upon his arraignment pleads Guilty *to have act on a minor*

Arrest

John R. Hays
 C.C.P. & S.
 8/13/81

The Sentence of the Court is that the prisoner, *Raymond Grcons Jr.* shall be confined in the custody of the Board of Corrections of the State of South Carolina for a period of *18 months* and the Board of Corrections shall designate a place of confinement where this sentence shall be served.

The sentence of the Court is that the prisoner *Raymond Grcons Jr.* be sentenced pursuant to Section 5(c) of the Juvenile Offender Act, the Defendant, *Raymond Grcons Jr.* to the custody of the Board of Corrections of the State of South Carolina for a period of time not to exceed *18 months* years.

Presiding Judge

Columbia, S. C.

Aug 13, 1981

I FIND THAT THE IMPOSITION OF THE
 ASSASSINMENT FOR THE COMMUNITY CON-
 FLECTIONS PROGRAM WILL PLACE SEVERE
 FINANCIAL HARDSHIP ON DEFENDANT.

Presiding Judge

Presiding Judge

FORM 6
The State of South Carolina

INDICTMENT FOR

County of RICHLAND

CRIMINAL SEXUAL CONDUCT-FIRST DEGREE

At a Court of General Sessions, convened on the 13th day of July
19 81, the Grand Jurors of Richland County present upon their oath:

That Raymond Grooms, Jr.

did in Richland County on or about the 2nd day of June
in 81, wilfully, unlawfully and feloniously commit a sexual battery upon a woman,
to wit: Jeanette Johnson, by means of aggravated force,

Against the peace and dignity of the State, and contrary to the statute in such case and made and
provided.

James C. Ogilvie
Solicitor General

RICHLAND COUNTY
SOUTH CAROLINA

0068 49748

CH COURTS 4
EXHIBIT NO. _____
IDENTIFICATION EVIDENCE
DKT. # _____
DATE: 7-30-13

THE STATE OF SOUTH CAROLINA

RICHLAND COUNTY

Fifth Circuit

August 10, term, 1981

The State of South Carolina

vs

Bernard H. HoomsSex B Race B DOB 8/20/36Soc. Sec. No. 251-04-3256

IN THE COURT OF GENERAL SESSIONS

INDICTMENT NO. 81-65-10-1592

COPY OF SENTENCE (COMMITMENT)

INDICTMENT FOR

Criminal Sexual
Conduct - 1st DegreeThe prisoner, Bernard H. Hooms() having entered a guilty plea to Sexual acts upon
a minor

() having been found guilty by jury trial _____

It is the

SENTENCE

The Sentence of the Court is that the prisoner

Bernard H. Hooms, shall be confined in the custody
of the Board of Corrections of the State of South Carolina for a period
of Three (3) years and the Board of Corrections
shall designate a place of confinement where this sentence shall be
served _____William J. Howell,
Presiding Judge
8/13/81The State of South Carolina
County of RichlandI, John R. T. Major, Clerk of the Court of General Sessions for
Richland County, State aforesaid, do hereby certify that the foregoing
is a true copy of the sentence pronounced by the Court in the case
above entitled.GIVEN under my HAND and the Seal of the
said Court at Columbia,
this 13 of Aug.John R. T. Major,
C.C.G.S. ClerkCERTIFIED TRUE
ORIGINAL
C.C.G.S.
RICHLAND
SOUTH CAROLINA

Respondent's
1
7-30-18 EH

Static-99R Coding Form

Question Number	Risk Factor	Codes		Score
1	Age at release	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older		1 0 -1 -3
2	Ever Lived With	Ever lived with lover for at least two years? Yes No		0 1
3	Index non-sexual violence - Any Convictions	No Yes		0 1
4	Prior non-sexual violence - Any Convictions	No Yes		0 1
5	Prior Sex Offences	<u>Charges</u> 0 1,2 3-5 6+	<u>Convictions</u> 0 1 2,3 4+	0 1 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more		0 1
7	Any convictions for non-contact sex offences	No Yes		0 1
8	Any Unrelated Victims	No Yes		0 1
9	Any Stranger Victims	No Yes		0 1
10	Any Male Victims	No Yes		0 1
	Total Score	Add up scores from individual risk factors		

Translating Static-99R scores into risk categoriesScore Label for Risk Category

-3 through 1 = Low
 2, 3 = Low-Moderate
 4, 5 = Moderate-High
 6 plus = High

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-40-

IN THE MATTER OF THE CARE)
AND TREATMENT OF)
BERNARD GROOMS,)
RESPONDENT.)

PETITION PURSUANT TO THE
SEXUALLY VIOLENT PREDATOR ACT

2012 AUG 31 AM 10:21
FILED
RICHLAND COUNTY
JACQUELINE W. McBRIDE
C.C.P. & S.

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (Supp. 2008).
2. The South Carolina Department of Corrections, having determined that Respondent, Bernard Grooms, had been convicted of at least one Sexually Violent Offense, referred Respondent to the Multidisciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40 (Supp. 2008). **Respondent's projected max-out date is June 8, 2013.**
3. The Multidisciplinary Team on **July 19, 2012** determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30 (Supp. 2008), and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 (Supp. 2008) as to whether probable cause exists to believe Respondent is a Sexually Violent Predator. **(PETITIONER'S EXHIBIT A)**. The assessment of the Multidisciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee on **August 20, 2012** determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute. **(PETITIONER'S EXHIBIT B)**. The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multidisciplinary Team including any information provided by the agency that prosecuted the qualifying offense.
5. The Petitioner now alleges that Respondent is a Sexually Violent Predator as defined by S.C. Code Ann. Section 44-48-30 (1) (Supp. 2008), to wit:
 - (a) On or about May 6, 1990, Respondent sexually assaulted **Victim 1** (17-year-old). According to law enforcement records, around 3:00 a.m., the

victim was walking to her grandmother's house when she saw a car pass her several times. When she turned the corner onto another street, Respondent jumped out from the now parked car and grabbed her by the throat and mouth. Respondent dragged the victim into the car and picked up a knife and held it to her neck. Respondent then drove toward Pinehurst Park. After stopping in a wooded area, Respondent put down the knife, slapped the victim across her right cheek, and removed a revolver from the glove compartment. While Respondent held the gun to the victim's head, he forced her to have sexual intercourse with him. Following the assault, Respondent drove the victim to her grandmother's house. Respondent subsequently called the victim to arrange to meet her at Pinehurst Park. The victim notified law enforcement. Investigators arranged to have the victim identify Respondent during the arranged meeting at Pinehurst Park. As investigators approached Respondent, he attempted to flee the scene. He was subsequently caught following a short foot chase. Respondent was charged with **Criminal Sexual Conduct in the First Degree** in violation of South Carolina Code Section 16-3-652. On October 17, 1990, Respondent pled guilty as charged and received a sentence of 21 years. At the same time, Respondent pled guilty to Assault and Battery with Intent to Kill for an assault that took place on February 2, 1990. Respondent received a concurrent sentence of 20 years. (PETITIONER'S EXHIBIT C).

- (b) Prior to the assault described in subparagraph 5(a), on or about June 2, 1981, Respondent and his brother sexually assaulted **Victim 2** (an unknown age minor female). According to the arrest warrant, the reporting officer reported to a school based on the triggering of a silent alarm. Upon arriving at the school yard, the officer heard a female scream. The officer observed Respondent's brother running out of some bushes with his pants halfway down. The officer proceeded to arrest Respondent who was hiding in the bushes with his pants halfway down. The victim stated Respondent and his brother were "raping her." She reported the brothers had followed her down the street and then grabbed her and brought her to the school. She stated they removed her clothing and had intercourse with her. She also stated they forced her to perform oral sex on them. Respondent was charged with **Criminal Sexual Conduct in the First Degree**. On August 13, 1981, Respondent pled guilty to **Lewd Act on a Minor** in violation of South Carolina Code Section 16-15-140 and was sentenced to 3 years. On May 27, 1982, Respondent was released on parole. On July 23, 1983, Respondent's parole was revoked based on his use of drugs; based on his conviction for having Alcohol in a City Park, Possession of Marijuana, and Destruction of City Property; and based on his failure to pay his supervision fee. He was required to serve the remainder of his original sentence. (PETITIONER'S EXHIBIT D).

- (e) Respondent has also pled guilty to Sex Offender Registry Violation – Second Offense on November 28, 2006. He received a 1-year sentence with credit for time served. **(PETITIONER'S EXHIBIT G).**
- (f) As a result of Respondent's qualifying sexually violent offenses described in subparagraphs 5(a) and 5(b), Respondent was reviewed by the Multidisciplinary Team on March 16, 2000, prior to his March 6, 2001 release. By a vote of 5-0, the Multidisciplinary Team referred Respondent to the Prosecutor's Review Committee for review finding Respondent did satisfy the definition of a sexually violent predator at that time. Following a vote by the Prosecutor's Review Committee, the State filed a petition seeking Respondent's commitment to the Sexually Violent Predator Treatment Program. Following a probable cause hearing held pursuant to South Carolina Code Section 44-48-80 on November 7, 2000, the Honorable James R. Barber, III, found the State failed to demonstrate probable cause exists to find the Respondent is a sexually violent predator in Case No. 2000-CP-40-1807. Following Respondent's return to the Department of Corrections on a Sex Offender Registry Violation on December 7, 2006, on January 18, 2007, by a vote of 5-0, the Multidisciplinary Team did not refer Respondent to the Prosecutor's Review Committee. Respondent was again reviewed by the Multidisciplinary Team on February 19, 2009, and by a vote of 4-0, did not refer Respondent to the Prosecutor's Review Committee. Respondent's most recent sexual offense occurred after this February 19, 2009 meeting of the Multidisciplinary Team. **(PETITIONER'S EXHIBIT H).**
- (g) During Respondent's multiple incarcerations at the South Carolina Department of Corrections, Respondent has had 3 disciplinary infractions, including Supervised Furl II Violation; Refusing or Failing Obey Orders; and I/M Under Influence/Poss Alcohol or Buck. **(PETITIONER'S EXHIBIT I).**
- (h) 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 Respondent has serious difficulty in controlling her behavior or sexual desire impulses.
- (i) In support of the State's allegations that 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. Psychological evaluations of Respondent dated April 27, 1993 and July 28, 1995, report Respondent blaming his sexual offenses on his continued drug abuse. The April report notes Respondent was excluded from continued participation in Sex Offender Treatment because of his continued denial of his sexual offenses. **(PETITIONER'S EXHIBIT J).**
- ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilia**:
 - A. Recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving (1) the suffering or humiliation of oneself or one's partner, or non-consenting person, (2) over a period of at least 6 months. **(PETITIONER'S EXHIBIT K).**
- iii. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S.Ct. 2072, 2080 (1997). Respondent's instances of violent and non-violent behavior are:
 - A. Respondent's 1990 conviction for Criminal Sexual Conduct in the First Degree as set forth above. **(PETITIONER'S EXHIBIT C, supra).**
 - B. Respondent's 1981 conviction for Lewd Act on a Minor as set forth above. **(PETITIONER'S EXHIBIT D, supra).**
 - C. Respondent's 2012 conviction for Assault and Battery in the First Degree as set forth above. **(PETITIONER'S EXHIBIT E, supra).**
 - D. The basis of the allegations of sexual assault for an incident in 2010 as set forth above. **(PETITIONER'S EXHIBIT F, supra).**
 - E. The basis of his 3 disciplinary infractions while incarcerated at the South Carolina Department of Corrections as set forth above. **(PETITIONER'S EXHIBIT I, supra).**

(c) Subsequent to the sexual assaults described in subparagraphs 5(a) and 5 (b), between January 6 and 8, 2011, Respondent sexually assaulted **Victim 3** (50-year-old female). According to law enforcement documentation, the victim left a residence on the night of the assault and was walking on the street when Respondent jumped out from a shortcut in the neighborhood and placed the victim in a headlock. Respondent then dragged the victim into an abandoned house. Respondent told the victim to "Shut up bitch, I will kill you." Respondent then told the victim to remove her clothes. The victim attempted to escape from the house by attempting to jump out of a window, but the window frame did not break. Respondent then kicked the victim and tied her hands behind her back. Respondent removed the victim's shoes and pants then made her perform oral sex on him for over an hour. He then forced his penis into the victim's vagina and raped her multiple times over the course of the night and early morning. He did not wear a condom and ejaculated at least twice in the victim's vagina. For the rest of the day and night, the victim remained bound in the abandoned house. The following morning, the victim told the Respondent she needed to go to her brother's funeral. Respondent told her he would get dressed and leave first and she could follow. While Respondent was dressing, he took \$120 from the victim's pants. After fleeing the abandoned house, the victim flagged down a taxi cab and contacted law enforcement. She was transported to the hospital. While at the hospital receiving medical attention, Respondent came into the emergency room. The victim identified Respondent as the man who assaulted her to the investigating officer and medical personnel. Respondent was apprehended at the hospital following a short foot chase. A DNA analysis of semen obtained from the victim's vagina matched Respondent's DNA profile with a probability of randomly selecting an unrelated individual matching Respondent's profile being one in 45 quadrillion. Respondent was charged with Criminal Sexual Conduct in the First Degree, Kidnapping, and Strong Arm Robbery. On June 25, 2012, Respondent pled guilty to Assault and Battery in the First Degree in violation of South Carolina Code Section 16-3-600(c)(1). He was sentenced to 4 years. **(PETITIONER'S EXHIBIT E).**

(d) On or about June 4, 2010, Respondent allegedly sexually assaulted **Victim 4** (44-year-old female). According to law enforcement documentation, the victim ran up to a law enforcement officer while working a traffic stop and reported Respondent had sexually assaulted her. The victim subsequently refused a medical examination and declined to cooperate with law enforcement. Respondent gave a statement to law enforcement wherein he said he and the victim had consensual intercourse after an evening of drinking alcoholic beverages and smoking crack. **(PETITIONER'S EXHIBIT F).**

F. The basis of his record of convictions and arrests, dating back to at least 1977, including convictions for:

1. 10/26/1977 – Unlawful Possession of a Weapon
2. 6/14/1983 – Carrying a Concealed Weapon
3. 3/28/1984 – Shoplifting
4. 1/14/1985 – Receiving Stolen Goods
5. 8/20/1985 – Auto Tampering and Failing to Stop for a Police Command
6. 9/11/1986 – Receiving Stolen Goods
7. 9/29/2004 – Shoplifting
8. 3/20/2005 – Shoplifting and Entering Premises After Warning
9. 6/18/2005 – Shoplifting 3rd or subsequent offense
10. 9/16/2006 – Sex Offender Registry Violation 2nd Offense
11. 5/6/2008 – Sex Offender Registry Violation 3rd & Subsequent Offense
12. 1/10/2012 – Sex Offender Registry Violation 3rd & Subsequent Offense

(see **PETITIONER'S EXHIBIT G**, *supra* and NCIC Report, **PETITIONER'S EXHIBIT M**, *infra*).

- iv. The facts of Respondent's offenses indicate the existence of a mental abnormality in that they involve recurrent sexual urges or behaviors involving non-consenting women occurring over a period of at least six months.

- v. **Known risk factors** increasing Respondent's likelihood to re-offend include: 1) Not related to victim; 2) Stranger to victim; 3) Prior non-sexual convictions; 4) 4 or more prior sentencing dates; 5) Prior sexual offenses; 6) Offense committed in a public place; 7) Force or threat of force used; 8) Multiple act on a single victim within a single contact event; 9) 2 or more age groups victimized; 10) Pattern of substantial substance abuse; 11) More than one victim; 12) Offender history of physical injury to victim; and 13) Offender history of use of a weapon or threat of death.
- vi. Upon information and belief, Respondent completed Phase I (Education) of the C-Star Sex Offender Treatment with Excellent Participation while incarcerated in the South Carolina Department of Corrections in 1993, prior to his most recent sexual offense. **(PETITIONER'S EXHIBIT L).**
- vii. Attached also is Respondent's NCIC Report. **(PETITIONER'S EXHIBIT M).**

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. 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, 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

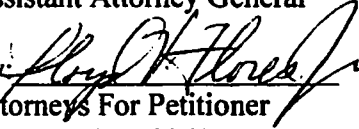
custody of the South Carolina Department of Mental Health for control, care, and treatment until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Section 44-48-10 *et seq.* (Supp. 2008), and

8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

LLOYD V. FLORES, JR.
Assistant Attorney General

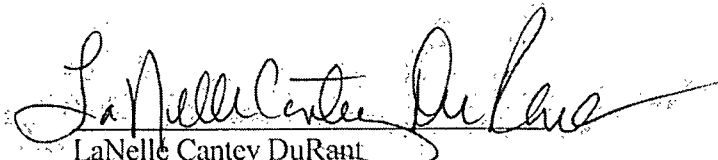
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August 30, 2012
Columbia, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 13th, 2014



LaNelle Cantey DuRant
Appellate Defender

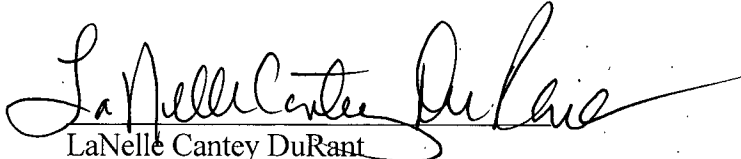
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Division of Appellate Defense
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(803) 734-1330

ATTORNEY FOR APPELLANT

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Appellate Defender

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

JUN 13 2014

IN THE MATTER OF THE CARE AND TREATMENT
OF BERNARD GROOMS,

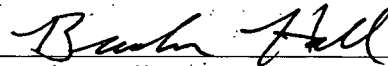
SC Court of Appeals

APPELLANT,

APPELLATE CASE NO. 2013-001626

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Bernard Grooms, Sexual Violent Predator Program, 7901 Farrow Road, Columbia, Sc 29203, this 13th day of June, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2014.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2014.