

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No.: 2014-002414

IN THE MATTER OF THE CARE AND TREATMENT OF
JOHNNY GARRETT, Appellant

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG)
4
5 IN THE CARE AND TREATMENT)
6 OF JOHNNY RAY GARRETT,)
7 Plaintiff,)
8 Vs.) CASE NO. 2008-CP-42-5822
9 JOHNNY RAY GARRETT,) VOLUME ONE OF TWO
10 Defendant.)
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OCTOBER 6-7, 2014

SPARTANBURG, SOUTH CAROLINA

HONORABLE FRANK R. ADDY JR, JUDGE

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

BY: M. JAMES BOGLE, ESQUIRE

Attorney for the Plaintiffs

BY: TOMMY A. THOMAS, ESQUIRE

Attorney for the Defendant

TARA T. SCOTT, CVR

OFFICIAL COURT REPORTER

I N D E X

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1 THE COURT: We'll go back on the record in the
2 matter of The Care and Treatment of Johnny Garrett, Case
3 08-CP-5822. Mr. Garrett is present along with counsel.
4 The State is present. I believe that all jurors are
5 here. Anything before we bring them in from the State?

6 MR. BOGLE: No, Your Honor. Thank you.

7 THE COURT: Nothing from --

8 MR. THOMAS: No, Your Honor.

9 THE COURT: Let's have the jury in, please.

10 THE BAILIFF: Bring the jury in.

11 (The jury enters the courtroom)

12 THE COURT: All right. Let the record reflect that
13 the jury is back and seated. Ladies and gentleman of
14 the jury, thank you for being here on time. I apologize
15 for keeping you waiting. We were addressing some
16 matters on this case pretrial and we ran a little bit
17 longer than anticipated and we had to eat, too. And so
18 that's one of the reasons that I kept you waiting. We
19 had to quickly hurry up and get a bite to eat ourselves.

20 The first order of business is for me to appoint a
21 foreperson of the jury. Mr. D_____, I was going to
22 appoint you if that's okay with you?

23 MR. DEVORE: That will be all right.

24 THE COURT: I'll tell you, there's no heavy lifting
25 involved in this. Your primary responsibility as

1 foreperson is to preside over the deliberations in the
2 jury room and make sure that everybody has their chance
3 to have their fair say. Okay. If necessary, you'll be
4 the jury spokesperson here in Court as well. Okay.

5 The foreperson normally sits at the far end. Stay
6 where you are for now, but when you come back later on,
7 you can switch seats with the lady in the green. Ma'am,
8 Ms. Briggs, you're the alternate, if you'll stay in that
9 seat throughout the trial. Okay. Those will be the
10 only two assigned seats. If anybody wants to switch
11 seats or move around, feel free. If anyone has trouble
12 hearing, maybe the front row might be a little bit
13 better. Along those lines, if any juror has any
14 difficulty hearing any of the testimony from the
15 witnesses while the case is going on, I want you to
16 simply raise your hand and that will be my queue to ask
17 the witness to speak up. Okay. Or talk a little bit
18 louder. Additionally, if you need any sort of a
19 bathroom break or just a break during the testimony,
20 raise your hand and we'll take a brief break.

21 Now, ladies and gentleman, we're about to begin the
22 trial of the case which is entitled, In the matter of
23 the Care and the Treatment of Johnny Ray Garrett. And
24 before we begin the trial, I want to let you know that
25 this trial is probably a bit different from what you've

1 come to expect from seeing trials depicted on TV or in
2 the movies. From what you see in poplar media, you may
3 have come to think that trials are filled with intense
4 drama, ripping circumstances. Certainly sometimes
5 that's the case. More often than not though, trials
6 obviously take a little bit longer than the hour
7 depicted on TV or the two hours in the movies. And the
8 reason for this, ladies and gentleman, is what we're
9 engaged in today is an effort to make sure that justice
10 is done between the parties involved in this civil case.
11 Okay. And sometimes that takes a little bit longer than
12 the hour on TV or the two hours in the movies.

13 I want to thank you for your willingness to serve as
14 jurors in this case and help the parties resolve this
15 issue or this case. I'll tell you that obviously jury
16 service is in position upon you, but your presence here
17 is absolutely necessary. I can assure you of that.
18 With that, I'm going to invite you to stand where you
19 are and raise your right hand while the clerk
20 administers your oath to you as jurors. Madam Clerk.

21 (WHEREUPON, the jury was sworn in)

22 THE COURT: Ladies and gentleman, what I now say to
23 you is meant to serve as an introduction to the trial of
24 this case and these remarks are not charged on the law
25 that applies. I'll instruct you on the law that applies

1 at the conclusion of the trial before you retire to
2 deliberate or give us your verdict. Again, this is just
3 the procedure that we're going to use going forward so
4 that you can better understand what's happening.

5 Now, ladies and gentleman, you have been selected as
6 13 fair and impartial jurors whose purpose it is to find
7 and determine the facts in this case. You are the sole
8 Judges of the facts. So if at anytime I make any
9 comment concerning the facts, you must disregard that
10 comment. The law does not permit me to have any opinion
11 concerning the facts. You'll determine the facts from
12 the testimony that you hear as well as the other
13 evidence which is introduced during the course of the
14 trial.

15 You cannot be influenced by any opinions or
16 statements you may have heard outside the courtroom.
17 And it's specially important that you perform your duty
18 of determining the facts diligently and conscientiously.
19 Ordinarily, there is no way to correct an erroneous
20 determination of facts by a trial jury. When you comply
21 with the oath that you have just taken to impartially
22 determine the facts, you will have fulfilled your duty
23 as jurors and no one will have any right to criticize
24 your verdict.

25 On the other hand, with equal emphasis, the same law

1 that makes you the Judge of the facts, makes me the
2 Judge of the law. The law as given by the Court is the
3 only law that you can consider. You'll have to accept
4 the law and apply it even though you may disagree with
5 it. Again, I can't tell you what the facts are in this
6 case and you're not permitted to disagree with me about
7 what the law is or what the law should be.

8 It'll be your job to take the law as I give it to
9 you, apply it to the facts as you find them to be, and
10 after doing that, you will render your verdict a true
11 and just verdict under the oath that you have just
12 taken.

13 Now, as I mentioned before lunch, until I advise you
14 to begin your deliberations, please don't talk about
15 this case not with anyone. Not friends, family members,
16 not even your fellow jurors. The attorneys and the
17 other people involved in this suit are aware of my
18 instruction. My general instruction is they're to have
19 no contact with you while this case is going on. So if
20 you happen to see one of the lawyers or one of the
21 parties coming and going from the courthouse and they
22 don't say hello to you, understand, they're not being
23 rude, they're simply following my instruction to have
24 nothing to do with you while the case is going on.

25 Now, during this trial, ladies and gentleman, I

1 don't anticipate any media coverage. I will tell you
2 that as under your oath as jurors, you're not to perform
3 any sort of independent investigation of the facts
4 underlying this case. That includes anything like an
5 internet search of any of the parties' names. Don't go
6 online or Goggle individual's names. The reason for
7 this, ladies and gentleman, is self-apparent. The rules
8 of evidence are designed to give you the best
9 information possible. They've been tested over
10 centuries if not thousands of years. The same is not
11 said to what's reported in the papers or reported
12 online. Okay. There is no filter. There is no
13 guarantee of trustworthiness with that information. So
14 it would be improper for you to be influenced by
15 anything that might be out there online or otherwise.

16 Certain Judges in this state have been put in the
17 position of having to deal with jurors when that
18 instruction is disobeyed. I've never been placed in
19 that position. I don't want to be put in that position.
20 Okay. So simply trust me when I tell you you'll have
21 the information you need to render a good verdict just
22 based on the testimony and the other evidence presented.
23 Please don't go and take it upon yourself to investigate
24 any of the allegations involved in this particular case.

25 In a moment, ladies and gentlemen, the attorney for

1 the State will make his opening statement to you in
2 which he'll explain to you what the issues are in this
3 case or what he says the issues are. The attorney for
4 Mr. Garrett will also be able to give an opening
5 statement to you. I instruct you that what the lawyers
6 say during their openings is not evidence. It's simply
7 there contention as to what will be proven or what will
8 not be proven. Again, the evidence will be presented
9 from the testimony of witnesses from the witness stand
10 as well as any other exhibits introduced into evidence.

11 Now, during the trial, ladies and gentleman, from
12 time to time, it might be necessary for me to excuse you
13 to the jury room while I take up an issue of law with
14 the attorneys. The reason I'm asking you to leave the
15 courtroom is that sometimes the ruling on an issue of
16 law is necessary for me to make the comment on what
17 facts have been presented or have not been presented.
18 And I ask you to leave the courtroom during those times
19 so that anything I say about the facts has no influence,
20 no effect on what you ultimately determine those facts
21 to be. During those breaks, please don't speculate as
22 to what I'm saying out here because, again, you are the
23 sole Judges for the facts in this case.

24 In determining what those true facts are, ladies and
25 gentleman, you must decide whether or not the testimony

1 of witnesses is believable or not. It will be my
2 responsibility to rule as a matter of law as to whether
3 certain testimony is admissible. Once that testimony is
4 admitted, however, whether or not you believe it is
5 solely for you to determine. In deciding whether to
6 believe a witness, you have the right to consider
7 whether the witness has an interest in the outcome of
8 the case, whether the witness is prejudiced towards
9 either the State or the defendant, the opportunity for
10 the witness to have seen the matters and things about
11 which the witness may testify, and the way the witness
12 acts on the witness stand. You can consider anything
13 that's in the record in this case which will help you
14 evaluate the testimony of those witnesses.

15 So that means that your duty to pay attention to
16 them, to listen to them, observe them, and please pay
17 close attention to the attorneys and the Court. Try to
18 keep your thoughts from wondering because strict
19 attention to the testimony so at the conclusion of the
20 trial, you will be in the best position possible to
21 determine what the true facts are and thus render your
22 verdict.

23 Now, in order to preserve everyone's rights, I'll
24 give the parties an opportunity to object to anything
25 that I said during this opening comments and then we'll

OPENING STATEMENT - MR. BOGLE

1 proceed with the trial. Any objections from the State,
2 Mr. Bogle?

3 MR. BOGLE: No, Your Honor. Thank you.

4 THE COURT: From the defendant, Mr. Thomas?

5 MR. THOMAS: No, Your Honor.

6 THE COURT: Very good. We'll now proceed with the
7 trial. Mr. Bogle, you're recognized for your opening,
8 sir.

9 MR. BOGLE: Thank you, Your Honor. May it please
10 the Court.

11 THE COURT: Yes, sir.

12 MR. BOGLE: Mr. Thomas.

13 MR. THOMAS: Yes, sir.

14 MR. BOGLE: First let me apologize for sounding a
15 bit like a frog. This hot and cold whether we're having
16 brings back some allergies and that's what's happening
17 today. But anyway, here's what we're here about. In
18 1998, South Carolina passed a law called the Sexually
19 Violent Predator Act. When they passed that law, they
20 recognized as a certain class of individuals out there
21 who have been convicted of certain crimes called
22 sexually violent crimes. There are 16 of them listed in
23 the statute. And these are people that despite the fact
24 they served their prison time, they've done their time,
25 and they've been convicted, they still have a mental

1 condition. An abnormality of some sort or either a
2 mental abnormality or a personality disorder that makes
3 them likely to re-offend again when they get out of
4 prison unless they get treatment. And in certain cases,
5 the situation is so bad they have to be confined for
6 treatment.

7 The Department of Mental Health was given the job by
8 the State legislature to set up a place called the
9 sexually violent predator treatment program. Now, just
10 over four years ago, Johnny Garrett responded over a
11 petition in this case by calling the petitioner because
12 he's petitioning you to let him out of this treatment
13 center.

14 About four-years ago, Johnny Garrett's case came
15 before this Court. We did a trial, and the jury found
16 that he was a sexually violent predator. Now, what that
17 means is, he's been convicted of at least one sexually
18 violent crime. He had a mental abnormality that made
19 him likely to re-offend in the same way unless he was
20 confined for long term control, care, and treatment at a
21 place in Columbia. And that's what happened and that's
22 where he went. And that's where he's been ever since.

23 There comes a time in the law when a person can
24 petition to get out. And if the Judge rules they have
25 the right to petition to get out of treatment, then we

1 have a jury trial and that's what we're having today.

2 Now, the burden of proof is on the State. Because
3 on the State's witness to prove to you beyond a
4 reasonable doubt that Johnny Garrett's mental addiction,
5 his mental abnormality, and his personality disorder
6 have not so changed that he is safe to be at large and
7 if released, he is still likely to commit acts for
8 sexual violence. That's the burden of proof on the
9 State.

10 Now, we're in the Court of Common Pleas, civil court
11 where normally you would be hearing cases involving an
12 auto accident or a contract case or a foreclosure case
13 or something like that and the burden of proof is
14 typically what they call preponderance of the evidence.
15 Think of the justice scale is tipping one or the other,
16 slightly one way or the other to decide whichever side
17 you tip the scales. Well, not here. When the General
18 Assembly passed this law, they said, okay, if you're
19 going to have this type of case, the burden of proof is
20 going to be stronger. So the burden is on the State to
21 prove to you beyond a reasonable doubt that Johnny
22 Garrett's mental situation remains such that he needs to
23 continue being confined to his treatment he so badly
24 needs.

25 The Judge will explain to you in his charge at the

OPENING STATEMENT - MR. BOGLE

1 end of the testimony exactly what is meant by "beyond a
2 reasonable doubt." So I'm not going to talk about that,
3 that's the Judge's job.

4 Now, in the course of this case, you'll hear
5 testimony from the State from Dr. Marie Gehle. She's
6 sitting right there behind me. She is a chief
7 psychologist over at Mental Health. Her job for the
8 last several years has been nothing but this evaluating
9 people for two reasons. Number one, to see whether or
10 not they fit the criteria to be civilly committed for
11 treatment; or secondly, once they're in, how are they
12 doing and do they need to get out. Have they progressed
13 enough where their condition's so changed they're safe
14 to be at large or not. And in this case, her job was to
15 evaluate Johnny Garrett each of last three years. And
16 the one we're here about today is the most resent
17 evaluation where she concluded that he is still a danger
18 to the community.

19 Johnny Garrett has been diagnosed as a pedophile.
20 That means he has a sexual interest in prepubescent
21 children. This case, mostly girls. He's also been
22 diagnosed with something called an antisocial
23 personality disorder. And Dr. Gehle will explain that
24 when she gets on the stand. Those are basically people
25 who just don't believe the rules apply to them. And

OPENING STATEMENT - MR. BOGLE

1 when the two come together, the sexual interest in young
2 children, and the antisocial personality disorder,
3 you've got a perfect storm.

4 Now, in order for Dr. Gehle to testify about what
5 she found, it may be necessary for her to explain some
6 of the underlying details behind the clients who was
7 convicted of and also behind the conduct or misconduct
8 that he might have committed while at the treatment
9 place. And because of that, I just want to give you a
10 fair warning up front. You may have to hear some things
11 that are kind of unpleasant to hear. But it was
12 necessary for Dr. Gehle to rely upon this information to
13 form an opinion as to whether or not Mr. Garrett should
14 be released from where he is right now, it would be
15 necessary for her to explain to the Court and to you
16 exactly how she reached that opinion.

17 Typically, this is an explanation of the thing
18 experts in her field do all the time. So you may be
19 hearing some information like that. That's what the
20 case is. We're taking the position that his condition
21 is not so changed that he's safe to be at large. And
22 during this case as it progresses, we'll also be
23 introducing into evidence a certified copy of the
24 sexually violent conviction that got him in the thing to
25 begin with. It was a conviction back in 2005 in a

OPENING STATEMENT - MR. BOGLE

1 courtroom just like this one for a lewd act on a minor
2 child. The child I think was -- at the time the crime
3 happened was either 11 years old or less than 11 years
4 old, somewhere around in that range. So you're going to
5 hear about that as well. You'll have that piece of
6 paper to take back to the jury room with you.

7 So all I can do is this, ask you to listen carefully
8 to all the testimony you hear, look at any documents
9 that come in. The defense in this case has the right to
10 an independent evaluation, the second opinion, if you
11 will. And they hired Dr. Selman Watson sitting over
12 there in the gray suit. And he'll be testifying, I
13 think, for the defense in this case. And I think he
14 will be trying to testify what he thinks in his opinion
15 that Johnny Garrett is safe to be at large. So you're
16 going to have to decide.

17 And as the Judge will tell you like he told you a
18 minute ago, and he'll tell you at the end, you are the
19 sole Judges of the credibility of the witnesses. You
20 decide how much to believe. How much not to believe.
21 You can believe all of what a witness says or none of
22 what a witness says. Normally, a case as witnesses
23 can't give opinions about things. They can testify
24 about what they saw, what they heard, what they smelled,
25 or what they touched. However, in cases like this,

OPENING STATEMENT - MR. THOMAS

1 where a witness has a certain level of expertise, in
2 this case, the field of psychology in giving one of
3 these sexually violent predators at that point in time,
4 the Judge can recognize that if he hears enough to
5 support this, he can recognize that person is an expert
6 witness and they can testify as to an opinion. So
7 you'll hear that today from as well as Dr. Gehle and Dr.
8 Watson.

9 You'll meet Dr. Gehle's opinion based upon her
10 review of this guy. Or at least the last three years
11 and most recently the most year ending right now that
12 his mental condition is not so changed. He is still a
13 pedophile. He will be one forever. The question is,
14 has things changed enough for him to be able to control
15 that where he's safe to be free in Spartanburg County.
16 And I believe when the evidence is all over with, you'll
17 find that with meritory proof not safe to be at large.

18 Your Honor, thank you.

19 THE COURT: Thank you, Mr. Bogle. All right.
20 Mr. Thomas, you're recognized.

21 MR. THOMAS: May it please the Court.

22 THE COURT: Yes.

23 MR. THOMAS: Ladies and gentleman of the jury, I
24 want to thank y'all for being here this afternoon. I
25 know this is not something that we don't normally want

OPENING STATEMENT - MR. THOMAS

1 to do, but our system is based upon just this, 12 jurors
2 who are deciding the facts of the case, make a decision,
3 and that's how our system works.

4 One thing the Judge said that caught my attention
5 when the jury came in and we were talking was that
6 justice is done. And that's really what we're here for
7 today. That's what your job is to listen to the
8 testimony that's going to be presented. There's going
9 to be two experts, Dr. Gehle and Dr. Watson. Dr. Gehle
10 is, of course, from the Department of Mental Health.
11 It's her opinion that Mr. Garrett is not ready to be
12 released. Mr. Watson has evaluated Johnny Garrett and
13 it's his opinion that he does believe that he has
14 reached a point in his treatment plan and program and he
15 is safe to be released.

16 Jim Bogle did a good job of explaining kind of why
17 we are here. The legislature passed several laws that
18 said that if someone has a mental abnormality or
19 personality defect that renders them such that they're
20 not safe to be at large without being in a secure
21 environment and treated, then they are able to be
22 civilly committed. And to me, I have problems sometimes
23 with thinking about what we see on TV with Criminal
24 Court's and Civil Court's.

25 This is a Civil Court. A little difference is that

OPENING STATEMENT - MR. THOMAS

1 the State has the burden of proof and the State has to
2 prove to you that Mr. Garrett is beyond a reasonable
3 doubt that he is not safe. He's not reached a point to
4 where he is safe to be released. And we believe that
5 through the testimony and things that we're going to
6 present today that it's going to show that he is ready
7 to be released.

8 Johnny committed a crime and he was sentenced and
9 went to prison and served time in prison. When he got
10 out of prison, he was evaluated and determined that he
11 needed additional treatment for the problems that he
12 had. And that's how he ended up into the sexually
13 violent predator program. The -- what we intend to show
14 today is that he's participated in the program that they
15 had. He has taken the things that they have got to
16 teach him and he's taken those to heart. He's listened.
17 He's done what he's suppose to do. He has changed and
18 that's the purpose of the whole program is to change
19 someone hopefully to a point to where they are able to
20 be released.

21 They have reached a point to whatever problems that
22 they've had in the past they have been able to identify
23 those problems and to make changes in themselves and to
24 make these changes to where that they're released that
25 they don't commit another act or commit another crime.

OPENING STATEMENT - MR. THOMAS

1 And that's where we believe that Mr. Johnny Garrett is
2 today.

3 As Mr. Bogle said, some of this stuff that you will
4 hear is not things that are talked about, you know, in
5 our homes or talked about on the street corner and it is
6 a little bit uncomfortable, but it is important that we
7 pay attention to it. Because when we really get down to
8 it, the best thing that he's been diagnosed as a
9 pedophile and that he has a personality disorder. Those
10 are the two things to pay attention to that he has, a
11 mental abnormality or a personality defect that renders
12 him not safe to be released. And those things -- those
13 are what you're going to hear from the doctors today.
14 They're going to talk about those things as what is his
15 diagnosis or does he have a personality defect or --
16 that would cause these problems and make it likelihood
17 that he could re-offend.

18 Again, I appreciate you being here today. I think
19 that everything is pretty straight forward. And what I
20 ask for you to do is just to use your common sense. A
21 lot of times in my practice of law if something doesn't
22 sound right, it's probably not right. If something
23 sounds logical, makes sense, then it probably does. It
24 probably does make sense. So that's what we're asking
25 you to do today.

1 I believe that after you've listened to all the
2 evidence that's being presented, I think you'll find
3 that the State has not met their burden to show that he
4 is dangerous to be released.

5 Thank you so much.

6 THE COURT: Thank you, Mr. Thomas. All right.
7 Mr. Bogle, if you'll call your first witness, please.

8 MR. BOGLE: Thank you, Your Honor. Your Honor, the
9 State would call Dr. Marie E. Gehle.

10 MARIE E. GEHLE,
11 being first duly sworn, was examined and testified as
12 follows:

13 THE COURT: One second. Mr. Bogle, Mr. Thomas,
14 could y'all approach real quickly.

15 (Bench conference)

16 THE COURT: I apologize, Mr. Bogle. Please proceed.

17 MR. BOGLE: Yes, sir.

18 DIRECT EXAMINATION BY MR. BOGLE:

19 Q Good afternoon, Dr. Gehle. Would you please state
20 your full name and spell your last name for the court
21 reporter and the jury.

22 A It's Marie Gehle. G E H L E.

23 Q Dr. Gehle, what is your current employment?

24 A I'm a chief psychologist at the Department of
25 Mental Health.

1 Q Okay. And as the chief psychologist at the
2 Department of Mental Health, what is your connection
3 with this sexually violent predator of law. What are
4 your duties and have been your duties under that law?

5 A My job entails me to do evaluations pursuant to the
6 Sexually Violent Predator Act. I do precommitment
7 evaluations determining whether people meet the criteria
8 to be committed and then I do some annual review
9 evaluations. Currently I'm just doing precommitment
10 evaluations.

11 Q Okay. But the evaluation today is an annual review
12 evaluation of Mr. Garrett?

13 A That's correct.

14 Q Because he's already been committed to the unit
15 about four years ago; right?

16 A That's correct.

17 Q Okay. Now, what professional or educational
18 degrees do you possess?

19 A I have a bachelor's degree in psychology. A
20 master's degree in clinical psychology and a doctorate
21 in clinical psychology.

22 Q Have you had any specialized training in the area
23 of psychology?

24 A Yes. Throughout graduate school I also did a
25 predoctoral internship which focused largely on forensic

1 evaluations. During that internship, I did a rotation
2 at the Special Commitment Center in Washington State
3 which is a program similar to this in South Carolina.
4 It's for the treatment of sexually violent predators.

5 I also do a postdoctoral fellowship at a hospital
6 in Georgia doing forensic evaluations in treatment with
7 people who are Court ordered into the hospital.

8 Q Now, Dr. Gehle, in what states are you licensed to
9 practice psychology?

10 A I'm licensed to practice in South Carolina and in
11 Georgia.

12 Q And briefly what is the -- how would you define
13 psychology for us?

14 A Psychology is the study of mind and human behavior.

15 Q And a few minutes ago you mentioned the word
16 "forensic" psychology. When you use the word "forensic"
17 with psychology, what are we talking about there?

18 A Forensic just means sort of applied to the Court's
19 or legal questions. So a forensic psychologist does
20 things like evaluate people for competency to stand
21 trial or to see if people are not guilty by reason of
22 insanity. They can also do like risk assessments for
23 the Court or evaluations like this to determine if
24 somebody needs to be confined for control, care, and
25 treatment.

1 Q Dr. Gehle, have you previously been recognized by
2 the Circuit Court's of this state as an expert witness
3 in the fields of psychology and forensic psychology
4 specifically in the sexually violent predator case
5 arena?

6 A Yes, I have.

7 Q About how many times?

8 A Well more than 50 times.

9 Q Okay.

10 MR. BOGLE: And, Your Honor, at this time, I'd like
11 the Court to recognize Dr. Gehle as an expert in the
12 fields of psychology and forensic psychology.

13 MR. THOMAS: No objection, Your Honor.

14 THE COURT: Without objection. All right. Ladies
15 and gentleman, normally in a case, witnesses when
16 they're called to testify normally testify to something
17 that they saw, observed with one of their five senses.
18 Something they saw, heard, smelled, tasted, et cetera,
19 an exception to this rule exists for witnesses who are
20 qualified as experts in some particular field. In this
21 case, the parties agree that Dr. Gehle is an expert in
22 the field of forensic psychology and psychology.
23 Therefore, the rules allow her to give opinion of
24 evidence in that -- in those fields. It does not mean
25 you have to accept her opinion, but it is evidence that

1 you can use as you deem appropriate. Mr. Bogle you can
2 continue, please.

3 MR. BOGLE: All right. Thank you, Your Honor.

4 Q Dr. Gehle, when I talked earlier, I asked you
5 earlier about your job allowing you or having you
6 evaluate people under the Sexually Violent Predator Act.
7 About how many guys have you evaluated under this law?
8 We've got two categories, we've got precommitment and
9 annual reviews. Can you break it down and give me the
10 numbers, please?

11 A Yeah. I've done about 160 of these evaluations.
12 About 80 them are precommitment and about 80 are annual
13 reviews.

14 Q Okay.

15 A Annual reviews have been done on some people I've
16 seen more than once, so I haven't evaluated 80 people
17 for annual reviews. It's more around 55 or so. So some
18 of them I've seen more than once.

19 Q Okay. Now, the precommitment annual review, what's
20 the purpose of the precommitment annual review? What
21 are you trying to determine for the Court?

22 A The precommitment evaluation?

23 Q The precommitment evaluation. What are you trying
24 to tell the Court in that situation?

25 A Whether the person has a mental abnormality or

1 personality disorder that makes them likely to commit
2 acts of sexual violence.

3 Q Okay. In the precommitment evaluations you have
4 done, about what percentage of the time do you come back
5 saying that you've reviewed everything and the guy is
6 not a predator, he doesn't need to be civilly committed?

7 A I believe about 60 percent of the time I would say
8 that they do not meet the criteria. And about
9 30 percent -- about 40 percent of the time I would guess
10 -- I'd say that they do meet the criteria.

11 Q Okay. Now, in the context of an annual review like
12 the one today, you said that sometimes you have done
13 more than one annual review on the same guy. Is Johnny
14 Garrett an example of that?

15 A Yes.

16 Q Now, you did your current evaluation for the
17 hearing we're going on today; is that correct?

18 A Yes.

19 Q And how many previous times or years have you also
20 written up evaluations -- annual evaluations of Johnny
21 Garrett?

22 A I've completed three annual review evaluations of
23 him.

24 Q Okay. And what's the purpose of an annual review
25 treatment report or annual review evaluation from your

1 perspective as a psychologist?

2 A It's to tell the Court whether the person's mental
3 abnormality or personality disorder has so changed that
4 they're safe to be at large.

5 Q Okay. And when these annual reviews are done, have
6 you seen or are you familiar with the documents that are
7 sent to the Circuit Judge in the county where the guy
8 was committed such as the letter from the director?
9 Have you seen that document before?

10 A Yes.

11 Q Okay. And is it also a form in which the guy has
12 to check whether or not he wants a hearing or waives his
13 right to a hearing?

14 A Yes.

15 Q Because they have a right to a hearing, don't they?

16 A Yes.

17 Q Okay. And then the third thing would be the report
18 done by you or another psychologist whoever's assigned
19 to the case; is that right?

20 A Correct.

21 Q Okay. Now, turning to this case here, I believe
22 you've already said, but I'll ask you again, did you
23 evaluate Johnny Ray Garrett in connection with this
24 annual review trial we're here for today?

25 A Well, for this annual review trial, I saw him very

1 briefly in 2013 and he declined to interview because
2 these proceedings were underway and he talked to his
3 attorney and decided that it would not be in his best
4 interest to answer my questions. So I didn't see him
5 specifically for an interview for this evaluation.

6 Q Okay. Well, the prior evaluation for 2012 which is
7 also covered by today's hearing, would he talk to you
8 back then?

9 A Yes.

10 Q Okay. Do you know about how much time you spent
11 talking to him on the two combined times?

12 A Well, I saw him for about an hour and 35 minutes
13 for the 2012 annual review. And I saw him -- I'd say
14 that he was probably in the office building for maybe
15 like 30 minutes when I was around. Part of that time
16 was helping him make a phone call to his attorney and
17 giving him time to talk to his attorney and just
18 checking in with him, but we didn't get into any
19 specific questions.

20 Q Okay. He wouldn't talk to you?

21 A Correct.

22 Q Okay. Now, but is the man we're talking about just
23 for the record, is he present in the courtroom today?

24 A Yes, he is.

25 Q Would you point him out for the jury?

1 A Sitting next to his attorney.

2 Q Okay.

3 MR. BOGLE: Let the record please reflect she's
4 identified Mr. Garrett.

5 THE COURT: The record will so reflect.

6 Q Now, in addition to meeting with or attempting to
7 meet with Johnny Garrett, did you also review a file of
8 information on him?

9 A Yes, I did.

10 Q What type of information documentary information,
11 written stuff did you review on Johnny Garrett?

12 A Well, I reviewed his legal records, things like
13 police reports, indictments, warrant sentencing sheets,
14 witness statements if they existed, incident reports,
15 Department of Social Service records that were relied
16 upon in the treatment evaluation. Department of
17 Corrections records. The petition that was filed at the
18 time or prior to his commitment. I looked at his
19 criminal history report. Records from the sexually
20 violent predator program. I looked at prior evaluations
21 that I did and that were done prior to his commitment.
22 I looked at a penile plethysmograph examination that was
23 completed in 2013. And I reviewed the evaluation by Dr.
24 Watson.

25 Q Okay. Did this review also include what are called

1 behavior notes, his conduct at the treatment unit?

2 A Yes, that's part of the sexually violent predator
3 program.

4 Q Had he committed any misconduct while at the
5 treatment unit, was it also necessary to review that
6 kind of stuff?

7 A Yes.

8 Q Now, is this the type of information, the stuff you
9 just listed, is this the type of information that is
10 typically and reasonably relied upon by experts in your
11 field?

12 A Yes.

13 Q And did you rely upon this information together
14 with your interview with Mr. Garrett in forming the
15 basis for your opinion about whether or not he should
16 remain confined for treatment?

17 A Yes.

18 Q Okay. Why was it necessary to look at all of this
19 stuff? Why did you have to do it?

20 A Well, I had to do it for one because it exists and
21 I have to be thorough in my evaluation. And, too, I
22 need to understand the basis of his convictions, his
23 past behavior, how he's been doing in the program to see
24 what his risk factors are going forward to see how he's
25 addressing his risks. I need to do that to be able to

1 make a proper diagnosis of his personality and any
2 mental abnormality that he may have. Those are the
3 reasons.

4 Q How does his past behavior relate to future
5 behavior particularly in this context?

6 A Past behavior is one of the best indicators of how
7 somebody will act in the future. If they'll act this
8 way, it means that that's a threshold they can cross and
9 they're more likely to cross it in the future.

10 Q Now, looking around on page 2 of your report, was
11 he -- was it necessary for you to review all of the
12 criminal charges as well as criminal convictions that he
13 had?

14 A Yes.

15 Q And is reviewing the criminal charges and the
16 criminal conviction something that is typically done by
17 experts in your field?

18 A Yes.

19 Q And is that also the type of information you have
20 to look at to rely upon to give an opinion about whether
21 or not he should be released?

22 A Yes.

23 Q Okay. Starting with the criminal charges, was he
24 convicted of a crime of a sexual nature that you found
25 important?

1 A Yes. He was convicted of a lewd act upon a minor.

2 Q Okay.

3 MR. BOGLE: If I may approach the witness, Your
4 Honor.

5 THE COURT: Please.

6 Q Let me show you what's been marked as State's
7 Exhibit Number One, indictment for Johnny Ray Garrett in
8 Spartanburg County for lewd act on a minor child. Is
9 this the document you seen prior to or one of the
10 documents you're referring to that you've seen prior to
11 today's hearing?

12 A Yes. I've seen a copy of this.

13 Q Okay. And on the indictment, what does it give as
14 the age of the victim?

15 A It says here, a minor under age 16.

16 Q Okay. Now, this charge right here, is this a
17 conviction -- it's a sentencing sheet right here for
18 conviction?

19 A Correct.

20 Q Okay. What sentence did Mr. Garrett get for lewd
21 act on a child here in Spartanburg County?

22 A Got nine years.

23 Q Did he get any probation following the ending of
24 his nine-year sentence?

25 A No.

1 Q Okay. Now, did this particular conviction result
2 from the prior indictment for another charge? And if I
3 may approach, I will hand you a certified copy from the
4 Clerk's Office of Indictment Number 2004-4141.

5 A Yes. It's my understanding that he was indicted on
6 criminal sexual conduct with a minor in the first
7 degree. And then for whatever reason, under a direct
8 indictment, they changed the charge to lewd act upon a
9 minor.

10 Q Okay. So this one I just handed you, you looked at
11 it, was the original indictment for criminal sexual
12 conduct with a minor in the first degree?

13 A Yes.

14 Q And then what he plead out to was this direct
15 indictment here, State's Exhibit One for lewd act on a
16 minor; correct?

17 A Yes, that's my understanding.

18 Q Okay. Dr. Gehle, what were the underlying
19 background information regarding this conviction that
20 you found necessary to study and be aware of in order to
21 form an opinion about Mr. Garrett? Would you give us
22 the background information, please?

23 A Well, the age and the gender of the child and their
24 relationship is important for me to consider in terms of
25 diagnosis and in terms of risk assessment. In this

1 case, it was his eight-year old stepdaughter. And she
2 said that vaginal and anal penetration with his penis
3 occurred. He gave a different story. But those things
4 were important for me to consider.

5 Q Okay. And any underlying details of the crime you
6 found significant besides the ages and relationship you
7 just described?

8 A Well, the sexual act, the vaginal and anal
9 penetration.

10 Q What was Mr. Garrett's version of what happened
11 when you talked to him when he would talk to you?

12 A Well, Mr. Garrett had said that he was drinking and
13 using drugs significantly around that time in the last
14 years prior to this sentence. He said that he woke up
15 to her on top of him, humping him, and she didn't have
16 her underwear on. Now, that story has fluctuated to
17 some degree over the years. When he was first
18 evaluated, that's what he said, exactly what I just
19 said. That she was on top of him, humping him, and he
20 woke up to this, and pushed her off, and said, you know,
21 I can't believe that she was doing this. And he pushed
22 her off and that probably scared her and that kind of
23 thing.

24 Q So is that like saying it's an accident?

25 A He's saying, I don't know that it's an accident,

1 he's saying that it's her fault. That she did it while
2 he was sleeping. That, you know, she essentially took
3 advantage of him while he was sleeping.

4 Q Eight-year old girl?

5 A Yes.

6 Q Okay.

7 A Since that time, he has maybe taken a little bit
8 more responsibility and now he's saying that he was
9 drunk, that he thought that the girl was his wife and he
10 probably pulled her on top of him and they humped
11 essentially.

12 Q Okay.

13 A He's not maybe admitting to any penetration.

14 Q On the second version of what I thought it was a
15 mistake, I thought it was my wife?

16 A Yes.

17 Q Any more versions since then?

18 A Those are the major versions.

19 Q Okay. Do these fluctuations in his version of what
20 happened cause you concern?

21 A Yes.

22 Q Why is that?

23 A Well, he's not taking responsibility. He's blaming
24 the victim. He's saying that he was intoxicated and
25 that, you know, she's the one that engaged in the

1 behavior. I mean, that's where he's at. You know, or
2 where he was at several years ago. He's taken a little
3 bit more responsibility, but still not full
4 responsibility. He's not admitting to any sexual
5 arousal involved with the girl. He's not talking about
6 his risks. The only thing that he says is important
7 was, you know, the drinking. And that can be related to
8 sex offending, but it's not usually a primary cause of
9 sex offending --

10 Q Okay.

11 A -- of children.

12 Q Were there prior sexual offenses where he was
13 arrested or indicted, but not convicted that were
14 necessary for you to review in forming your opinion
15 about him?

16 A Yes.

17 Q Okay. And why is it necessary to look at prior
18 stuff where he wasn't convicted of the crimes, but they
19 were sexual in nature?

20 A Well, it's important to see if there's a pattern of
21 behavior. It's important to know what sort of
22 consequences he had prior to this conviction and to see
23 if any of those charges made him change his behavior.
24 Even though he wasn't convicted, he still went through
25 the court proceedings or partial court proceedings that

1 can, you know, that can be a very severe consequence
2 just to be accused of sex offense. So those are some of
3 the reasons that it's important.

4 Q Okay. And as you're looking at these prior sexual
5 charges that didn't result in convictions, is this
6 something that is typically and reasonably done by
7 experts in your field?

8 A Yes.

9 Q Okay. Let's talk about that then. Going back to
10 1998 around that timeframe, would you please explain to
11 the jury what sexual charges you looked at from 1998 and
12 forward timeframe.

13 A Well, he had -- let's see here. He had charges
14 stemming from three victims. One was a 12 year old
15 stepdaughter. He allegedly performed oral sex on her
16 and ejaculated on her stomach. Another one was a friend
17 of his stepdaughter who was also 12 years old. He
18 allegedly digitally penetrated her vagina. And the
19 third one was another friend of his stepdaughter who was
20 11 years old and he allegedly fondled her vagina under
21 her clothes. That last one was not well founded by the
22 Department of Social Services.

23 Q Okay. But the others were investigated and well
24 founded?

25 A Yes. The investigator believed that there was --

1 that it was a substantial claim and they were going
2 pursue court criminal charges. Criminal charges were
3 filed, but the victim apparently tried to commit suicide
4 --

5 MR. THOMAS: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q Let me ask you this, Dr. Gehle, in a different way.
8 Was it necessary for you to -- on each of these
9 convictions -- on the conviction you looked at and all
10 the arrests that didn't result in convictions, did you
11 look at the police records in each case?

12 A Yes.

13 Q And did you look at witness statements and other
14 documents elected as part of the underlying criminal
15 investigation in each case?

16 A Yes.

17 Q Now, were they part of what you listed to the jury
18 a few minutes ago when you talked about documents you
19 reviewed telling the jury about that?

20 A Yes.

21 Q Are they part of the basis for your opinion?

22 A Yes.

23 Q And as far as prior evaluations, was one of the
24 things you looked at the prior precommitment evaluation
25 that got him committed done by Dr. Jeffrey Musick who's

1 also a chief psychologist at the Department of Mental
2 Health?

3 A Yes.

4 Q Why is it necessary to look at these prior
5 evaluations?

6 A Well, it's important to compare his story around
7 time and to see, you know, what the concerns were in
8 fact got him committed and how he's addressed those
9 concerns.

10 Q Okay. And is it also important for you as a
11 psychologist and to render an opinion to try and
12 determine why a charge got nolle prossed or dropped or
13 whatever with the conviction?

14 A To some degree it is.

15 Q Okay. Is that something in reviewing Dr. Musick's
16 report, was that something Dr. Musick inquired of like
17 how these charges were brought and why they didn't get
18 convicted?

19 A Yes.

20 Q So he looked into this?

21 A Yes.

22 Q And is this something typically relied upon by
23 experts in your field to look at prior reports and what
24 they found?

25 A Yes.

1 Q Okay. Now, based on Dr. Musick's precommitment
2 report, had you talked to the assistant solicitor in the
3 case?

4 A Yes.

5 Q Okay. And did he receive information as to why
6 these charges in 1998 were not prosecuted?

7 MR. THOMAS: Your Honor --

8 THE COURT: How old on one second. Yes, sir.

9 MR. THOMAS: Your Honor, I'd like to object at this
10 point.

11 THE COURT: Y'all come on up.

12 (Bench conference)

13 THE COURT: The objection is sustained. You can
14 continue.

15 MR. BOGLE: Thank you, Your Honor.

16 Q All right. Dr. Gehle, let me try it this way. You
17 looked at the prior 1998 convictions. And were those
18 charges -- those charges, the sexual assault you
19 described of those three victims you just talked about,
20 did those eventually lead to a conviction? The old ones
21 from 1998.

22 A It's my understanding they did not.

23 Q Okay. Did the assistant solicitor -- does your
24 information was that the assistant solicitor nolle
25 prossed or elected not to prosecute those cases?

1 A Correct.

2 Q Okay. But based upon your collected information
3 and your gathering of what happened based upon the
4 witness statements, the interviews, the DSS records that
5 you had to look at and things like that, did you find
6 all this information significant in forming an opinion
7 about Mr. Garrett right now today?

8 A Yes.

9 Q Okay. And what conclusion did you reach regarding
10 these prior offenses that's important to tell the jury
11 today about Mr. Garrett?

12 A Well, it's important, I mean, even just at a
13 minimum that he's been accused of sexual behavior
14 before. Before these 2004, 2005 charges came out. And
15 that he was sent to treatment and it didn't do anything
16 to change his behavior. He sexually offended after he
17 was sent to treatment.

18 Q Well, let's think about that for a minute. The
19 charges that could have -- were brought about him were
20 brought against him back in 1998 or so, had he been
21 convicted, do they carry a significant potential
22 sentence of prison time?

23 A Yes.

24 Q Okay. And then he went -- your records show that
25 he went to some kind of outpatient treatment as a result

1 of all this crime back in 1998?

2 A Yes.

3 Q Okay. And yet despite all that, he offends in 2004
4 leading to the 2005 conviction?

5 A Yes.

6 Q Okay. If the victim in this 2004, is there a
7 pattern here as far as age or the sex or relationship
8 with him and the victim in this case as well as the old
9 ones?

10 A Well, they're all prepubescent females. Access
11 through, I guess, you know, their stepdaughters or
12 friends of stepdaughters.

13 Q Okay. Okay. Now, were there any other charges of
14 a nonsexual nature -- let me ask you this. Rephrase
15 that. Was he also charged with a crime of contributing
16 to the delinquency of a minor back in the 1999
17 timeframe?

18 A He was charged with two counts of contributing to
19 the delinquency of a minor.

20 Q Okay. Now, the crime he pleaded guilty to right
21 here States Exhibit Number One, this lewd act charge.
22 Is that a sexually violent crime as defined by the
23 Statute?

24 A Yes, it is.

25 Q Okay. The contributing to the delinquency of a

1 minor charges, are those sexually violent crimes?

2 A Not apparently, no. So they're not listed, but a
3 Judge could determine that anything could be a sexually
4 violent crime.

5 Q And what happened to the contributing to the
6 delinquency of a minor charges?

7 A Those were nolle prossed.

8 Q Okay. As by the assistant solicitor choosing not
9 the prosecute, is that what that means?

10 A Yes.

11 Q Okay. But did you find anything significant about
12 the conduct -- the underlying conduct behind those
13 contributing charges?

14 A Well, they were sexual in nature in part. It was
15 alleged that he -- that he provided alcohol, cigarettes,
16 and pornographic films to these two other -- 10 year old
17 girl and an 11 year old girl. One was his stepdaughter.

18 Q Okay. Now, the plea on States Exhibit Number One,
19 they've written a big block with the word Alford plea.

20 A Yes.

21 Q Do you know what a guilty plea as to the case of --
22 under the case of North Carolina verses Alford?

23 A Yes.

24 Q What does that mean?

25 A It means that the person is essentially saying that

1 they can't prove their innocence or they believe that
2 the state can prove their guilt and so they are
3 essentially pleading no contest.

4 Q Okay. Okay. But that counts as a conviction, does
5 it not, under the sexually violent predator law?

6 A It counts as a conviction under that, so, yes.

7 Q Now, whether it's a nonsexual crime -- are there
8 nonsexual crimes and criminal behavior convictions by
9 Mr. Garrett over a period of time that you also looked
10 at?

11 A Yes.

12 Q And are these part of the things that you listed
13 for the jury when you talked about sources of
14 information?

15 A Yes.

16 Q Okay. Well, why is it important to look at
17 nonsexual convictions and criminal conduct?

18 A Well, pattern of criminal behavior can speak to
19 somebody's personality disorder, so it's important for
20 making a diagnosis. It's also important for risks,
21 certain types of crimes associated with higher risks of
22 sexual crimes in the future.

23 Q Okay. Well, what type of nonsexual criminal
24 activity or criminal convictions did you find regarding
25 Mr. Garrett?

1 A Well, there was a number of crimes that he was
2 convicted of. 1983 he was convicted of pointing a
3 firearm. 1988 he was convicted of simple possession of
4 marijuana. 1999 he was convicted of criminal domestic
5 violence. That one in particular would be considered a
6 violent crime on some of the risk assessment measures or
7 on a risk assessment measure I used. So that was
8 important.

9 In May of 2002, he was convicted of DUI, driving
10 under a suspension, operating an uninsured motor
11 vehicle. In August of 2003, he was I think convicted of
12 reckless driving, driving under suspension, possession
13 of marijuana, and failure to stop for a blue light.

14 Q Was there an issue -- going back to the 1998 sexual
15 charges, was he denied -- did you find an indication
16 that he had been denied bond during one of those
17 hearings?

18 A I believe so. I believe he was denied bond for the
19 last -- in the last incident.

20 Q The most recent conviction?

21 A Yes.

22 Q Was that because he was already on probation for
23 something?

24 A Yes.

25 Q Okay. Why was that important to you to learn that

1 he had been denied bond because he was charged with a
2 new crime, but on probation for something else?

3 A Well, it's important because it gives you some
4 insight as to how the Court was viewing ---

5 MR. THOMAS: Your Honor, I want to object at this
6 point.

7 THE COURT: All right. Insofar as that calls for
8 speculation, I'll sustain the objection. But if there's
9 a document that you can refer her to where the Judge
10 explicitly makes a finding of fact, you're free to do
11 that, Mr. Bogle.

12 MR. BOGLE: Thank you, Your Honor. We don't have
13 the documents, so I'll just move on.

14 Q But let me ask you this, when a person is denied
15 bond for whatever reason -- or let me ask you this.
16 Based upon your analysis of the criminal records, was he
17 on probation for something at the time this bond hearing
18 was held?

19 A Yes.

20 Q Okay.

21 A And that's what's more important to me is that he
22 committed an offense while he was on probation so while
23 he was under supervision of the Court.

24 Q Why is that important to look at when a person
25 commits a crime when they're under Court supervision for

1 probation? Why is that important to you?

2 A Well, I mean, typically when people are under
3 probation or Court supervision, you know, you will be on
4 your best behavior. You know that there's an end point
5 that you're being monitored, you're being scrutinized,
6 and it's easier to get in trouble when you're on
7 probation, so most people will try to really clean up
8 their behavior.

9 Q Okay. Now, Dr. Gehle in your research, did you
10 find any evidence where Mr. Garrett had sex offender
11 treatment while at the Department of Corrections --
12 while he was confined to the Department of Corrections
13 for the lewd act charge? Did he participate and/or
14 complete any sex offender treatment offered by the
15 Department of Corrections?

16 A It's my understanding that he did not participate
17 in sex offender treatment at the CDC.

18 Q Now, you did mention he had some outpatient
19 treatment following the 1998 arrest, is that chart true?

20 A Yes, that's my understanding.

21 Q Okay. And, again, did you have to review all of
22 the prior evaluations done of this man as well as the
23 precommitment evaluation?

24 A Yes.

25 Q You mentioned earlier a review by a doctor -- done

1 by a Dr. William Burke in 2013 called a PPG or a penile
2 plethysmograph?

3 A Yes.

4 Q Okay. Would you please tell the jury briefly what
5 that type of test is?

6 A That's a test to measure sexual arousal. Basically
7 it's typically uses with men, but can be used with
8 women. They put a gauge around somebody's penis and
9 then they have them listen to audio recordings of sexual
10 scenarios and then they show some pictures of the type
11 of person or victim that was in the audio scenarios.
12 They don't show them naked pictures of children because
13 that's illegal for anybody, a psychologist, a lawyer to
14 possess child pornography, so they show sort of girls --
15 little girls in bathing suits or things like that. Or
16 they show very muscly men to see if somebody has
17 homosexual readings. Or they'll show sort of pictures
18 from like bikini magazines to see if somebody is into
19 adult female, that sort of thing.

20 Q Okay. If I may approach. Is this a copy of Dr.
21 Burke's report that was provided to you in the course of
22 your evaluation?

23 A Yes.

24 Q Okay. In looking on the second page of the report
25 where he's describing the reaction Mr. Garrett had to

1 the different types of scenarios, there's one marked
2 down at the bottom where he got a 10.99, a very high
3 score, what was that a reaction to? How was it
4 described on the testing?

5 A It's described as teen female coercive.

6 Q Okay. Did you learn anything from Dr. Burke's
7 report that assisted you?

8 A I don't put a lot of weight into the PPG. There
9 are a lot of problems with that test, so I read it, I
10 included it in my evaluation, but I don't put a lot of
11 weight into it.

12 Q Okay. But the fact that he had such a high reading
13 on that, what do you call it, teen female coercive,
14 those type of pictures or whatever, is that of some
15 significants to you? Again, given your reservations
16 about the PPG?

17 A Well, it's a category that is -- it's not
18 necessarily a normative category, it involves some
19 coercion or, you know, talking somebody into sex or
20 being more forceful. There are categories where they
21 would consider a normal, so adult female persuasive,
22 that would be normal for somebody who says that they're
23 a heterosexual male. So it's not the best results, but
24 again, I don't put a lot of weight into it.

25 Q Okay. Now, did you also look at Dr. Selman

1 Watson's report on Mr. Garrett; is that right?

2 A Yes.

3 Q And what is Dr. Watson's, where does he fit into
4 this thing today?

5 A Well, he was hired, I guess, by Mr. Garrett and his
6 attorney to do a second opinion evaluation or to,
7 however you want to call that, so he is another, I
8 believe, psychologist who did an evaluation of
9 Mr. Garrett.

10 Q Okay. In looking at his report, was there any
11 minimizing of what happened by Johnny Garrett to Dr.
12 Watson as reflected in Dr. Watson's report?

13 A I think that he did sort of the same minimizing
14 that Mr. Garrett has done in treatment and in my
15 evaluations of him and Dr. Musick's evaluation of him.

16 Q Okay. Now, did Dr. Watson issue a diagnosis of a
17 mental abnormality in Johnny Garrett?

18 A Yes, I believe he did. But I can't find that part
19 of his evaluation.

20 Q All right. Well, let's go to your report -- let's
21 go to page 7 of your report. On page 7 of your report
22 there's a footnote referencing a diagnosis of pedophilia
23 episodic type by Dr. Watson in 2013. Now, what was your
24 diagnosis of Johnny Garrett as far as his mental
25 abnormality go? What did you diagnosis him as?

1 A I diagnosed him with pedophilia.

2 Q Okay. Did you also diagnose him with having a
3 personality disorder?

4 A Yes. He's diagnosed with pedophilia, sexually
5 attracted to females nonexclusive type, personality
6 disorder not otherwise specified. I also diagnosed him
7 with polysubstance dependents.

8 Q Okay. Well, let's back up a second. That
9 pedophilia sexually attracted to what?

10 A Sexually attracted to females, that means that he
11 has female victims not male victims.

12 Q Okay.

13 A And not male and female victims. Nonexclusive type
14 means that his sexual arousal is an exclusive to
15 children. He's also aroused by adult females from his
16 report.

17 Q Okay. And going back to page 7 of your report,
18 concluding on page 7, did Dr. Watson diagnose him with
19 something called pedophilia episodic type?

20 A Yes.

21 Q Okay. Now, Dr. Gehle, what is the DSM-IV? What
22 does that stand for?

23 A The DSM-IV is the diagnostic and statistical
24 manuals of mental disorders. It's basically the symptom
25 and mental illness book that we use, that most mental

1 health professionals use to make diagnoses.

2 Q And so it has a list of all the diagnoses and the
3 possible symptoms or criteria meeting each one?

4 A Yes.

5 Q That's your guidebook?

6 A Yes.

7 Q Now, when I say IV, is that the fourth edition?

8 A Yes.

9 Q And so now a DSM-V or fifth edition of the same
10 book that came out fairly recently?

11 A Yes. I think it was -- came out a little over a
12 year ago.

13 Q Is the phrase episodic type, Dr. Watson has him as
14 pedophilia episodic type. Is episodic type a qualifier
15 or phrase that occurred to anybody in the DSM-IV or the
16 DSM-V?

17 A It might for certain other disorders. It does not
18 for any paraphilic disorders such as pedophilia.

19 Q Okay. You're using big words on me here, Doctor.
20 When you say a paraphilic disorder, when you say
21 paraphilia, what are you talking about?

22 A Those are the sexually deviant mental illnesses.
23 So things where people are sexually attracted to or
24 hurting other people, humiliating them, rape, sexually
25 attracted to or sexually aroused by dressing up as a

1 member of the opposite sex, somebody who might have a
2 fetish to feet or shoes, things like that. Those are
3 paraphilic disorders.

4 Q Okay.

5 A And pedophilia is a specific paraphilic disorder.

6 Q Okay. So it's like a category and pedophile is one
7 of the ones under that broad umbrella?

8 A That's correct.

9 Q Okay. Now, is episodic type, is that inconsistent
10 with the definition of paraphilia or paraphilic disorder
11 as it's described in the manual version V or the manual
12 version IV?

13 A I'm not familiar with anything in the DSM or I'm
14 not familiar with any research that describes pedophilia
15 as episodic type. Essentially that's saying that, you
16 know, the person's only a pedophile when they're acting
17 on it. And I don't find that to be the case.

18 Q Okay. Now, let's move on and ask you about
19 something called the Static-99R. What is the
20 Static-99R?

21 A Static-99R is an actuarial risk assessment used to
22 estimate somebody as risk of sexual recidivism. So
23 whether they're going to go out and commit another sex
24 crime.

25 Q Okay. And is it based upon the study of thousands

1 of sex offenders from multiple countries?

2 A Yes.

3 Q That's the revised version of what we're dealing
4 with now?

5 A Yes.

6 Q Is scoring somebody giving them a score on
7 Static-99R something done by experts in your field?

8 A Yes. It's commonly used in these proceedings.

9 Q Okay. How would you compare the Static-99 scoring
10 system to something that we can all relate to?

11 A Well, if you have a heart attack and you go to your
12 doctor, your doctor is going to ask you questions maybe,
13 you know, do you smoke? Do you drink? How old are you?
14 Are you male? Female? Do you have a history of this?
15 And then they can calculate what your risk is to have
16 another heart attack. It's also similar to things that
17 your insurance adjustors use to determine what sort of
18 insurance premium you'll pay. So if you're a male who's
19 18 years old and you drive a sports car, you're probably
20 going to pay a higher insurance premium than somebody
21 who's 45 and drives a sedan and female and you're
22 married.

23 Q That's not based on the fact that they know that
24 young male will have that accident, it's based on
25 studies of thousands of young men; isn't that right?

1 A That's correct.

2 Q Is that what they've done here with the Static-99R?

3 A Yes.

4 Q Okay. And based on the factors of the scoring he
5 got, what score did he get on that instrument?

6 A He has a score of five.

7 Q What does a five mean as far as prediction?

8 A Well, the scores on the Static range from negative
9 three to twelve and so he got a five. Most people don't
10 score over a seven or eight, so anything above that
11 doesn't really help to predict anymore. A five is
12 considered a moderate high risk. And it translates to
13 basically it puts him in at or above 90.7 percent of the
14 thousands of sex offenders in the norm samples. So of
15 those samples that were studied.

16 Q These are people who have been convicted of a
17 sexual crime, gotten out and re-offended again; is that
18 right?

19 A Well, they look at a group of people who've been
20 convicted of a sex crime and then they look at those
21 people long term to see who re-offends and who doesn't
22 and they want to see what factors differentiate the two
23 groups. So they're looking at offenders, people who are
24 already sex offenders and they look at whether they've
25 done it again or not.

1 Q Okay. And here he got a five and that makes him
2 scoring worse than what percentage of the ones studied?

3 A That puts him at or above 90.7 percent.

4 Q Okay. And what is his risk of re-offending
5 sexually say five years out based upon that analysis?

6 A Well, when you're looking at group norms, I have to
7 look at what percentage of the group was that score
8 re-offended. So it's not a 25 percent chance, but it's
9 25 percent of the group with a score of five re-offended
10 in five years and about 35.5 percent of the group with a
11 score of five re-offended in ten years.

12 Q Okay. You mentioned earlier, let me ask you again
13 just to be sure about this. Is he having problems
14 accepting responsibility for his criminal conviction the
15 one I handed you earlier?

16 A Yes.

17 Q Do his stories keep changing about what happened?

18 A They change to some degree, yes.

19 Q Okay. And do these fluctuations in his story
20 concern you about how he's adjusting to treatment and
21 responsibility?

22 A Yes.

23 Q Okay. Now, your report in this case was completed
24 a few months ago, you as part of your preparation for
25 testifying today update yourself on his -- on the

1 treatment at his sexually violent predator treatment
2 unit?

3 A Yes, I did.

4 Q Okay. Now, beginning on page 8 of your report, how
5 has he been functioning at the unit? Does he have any
6 infractions or any disciplinary conditions listed in
7 your report beginning on page 8?

8 A He's had a couple of behavioral infractions. He
9 had a verbal warning for -- with the Department or the
10 unit call Penceless (phonetic). Basically that's
11 talking back or being rude or disruptive to staff
12 members and to peers. He had an episode of that and
13 then he got a warning for it in 2013.

14 In September of 2013, he got another verbal warning
15 for, I guess, missing a meeting. He had an infraction
16 in October of 2013 for putting a sheet over the window
17 of his room. That's an infraction. It's an ongoing
18 problem out there with people covering their windows so
19 that staff can't monitor them. So he did that.

20 And in November of 2013, he got a positive behavior
21 observation note for demonstrating good coping skills in
22 patients. So that was -- he did something good and the
23 staff wrote a note about that to make sure that his
24 treatment team knew that he did that.

25 Q Okay. Now, since your report was completed though

1 has there been a more resent infraction that he
2 committed based upon the evaluation of him at the unit
3 say in March or -- beginning of March until August of
4 this year, 2014?

5 A He's had a few behavioral infractions since I
6 finished my evaluation of him.

7 Q Okay. Well, let's start at the beginning and let's
8 talk about those behavioral infractions that have
9 happened since you finished your written report on him.

10 A Okay. In January 2014, he was -- had a behavioral
11 infraction for contraband and he was -- he basically was
12 collecting and reusing items around the unit that he
13 found. He had -- he had kind of fashioned a toothpick
14 and a paperclip to make an object that he could use for
15 crafts. It could be used for a weapon and he wasn't
16 suppose to have that stuff. They have to make sure that
17 things are very safe on there because there are a lot of
18 people who are violent out there. So this isn't a huge
19 deal, but it was just a rule infraction.

20 In March of 2014, he was infracted for contraband
21 for having sexually explicit materials and having
22 excessive items.

23 Q Let's talk about that for a second. There's some
24 information about a sexually explicit book and a
25 collective sexually explicit pictures. Is that what

1 you're referring to in March of 2014?

2 A Yes.

3 Q Okay. And was he found -- did he admit to having
4 any of that stuff?

5 A From my review of the behavior management
6 committee, those are people who see people that
7 investigate and review behavioral problems, he initially
8 denied the problems, denied that it was his. He said
9 that he was allowed to have these specially explicit
10 items. So they said that it was very hard to get him to
11 admit to any of it, but I think eventually he did admit
12 that it was his. But still said that he was allowed to
13 have these items which was absolutely untrue.

14 Q Is there anyway that sexually explicit books novels
15 or whatever or photographs will be allowed to present by
16 the guys in treatment at this unit?

17 A No. The rules state they're not allowed to have
18 that stuff.

19 Q Okay. When you refer to contraband as an example
20 of it?

21 A Yes.

22 Q Okay. Were there any other infractions after the
23 one you just talked about after this one holding the
24 book and the pictures?

25 A Yes. I think all that stuff happened at the same

1 time though. So he -- his old roommate was found with
2 sexually explicit book and the roommate said that it was
3 Mr. Garrett's. And the human management committee
4 investigated that and Mr. Garrett did admit that it was
5 his or he said he thought he had sent it home, that he,
6 of course, didn't read it, but he admitted it was his
7 book.

8 Q Okay. Is this something that is typically relied
9 upon by experts in your field to review infractions
10 while they're confined for long term control, care, and
11 treatment?

12 A Yes.

13 Q Okay. And on your report around page 9, 11, you
14 talk about disclosure. Why is that important?

15 A Well, disclosure is one of the major assignments in
16 sex offender treatment. It's basically where the person
17 sits down and writes a narrative as to what happened,
18 how they got themselves in this position, how they were
19 feeling, how they were thinking, and how they came to
20 get convicted of a sex offense.

21 Q Has Mr. Garrett been able to do this?

22 A He has completed the assignment or he's turned
23 stuff in, he's presented it, but it's never been very
24 good from my review of the records.

25 Q By very good, what do you mean? What's it lacking?

1 A It's lacking detail. It's lacked honesty. It's
2 lacked insight into how he was thinking or feeling.
3 Things like that.

4 Q If he's released by this jury, what is your
5 information that you've gotten from him or from other
6 sources about his plans and where he's going to live,
7 who he's going to stay with if he gets released?

8 A Bear with me, it's here somewhere. I believe he
9 plans to live with family members. Give me just a
10 minute. I had something that he wrote. I'm not finding
11 it, but I believe he plans to live with family members.

12 Q Okay. Does he plan to spend more time with kids
13 and grandchildren, is that also the plan?

14 A Yes. That was part of what he wrote in his plan.

15 Q Okay. Does that cause you some concern based upon
16 the age of his victim pool, the victims whom he
17 victimized?

18 A Yes.

19 Q Okay. Why would that be?

20 A Well, that's the situation that he was in when he
21 re-offended before. So that's some concern. I found
22 where he wrote -- he planned to spend a lot of time with
23 his family which could be a positive, it could be a
24 negative, it's hard to say. And he plans to go to AA,
25 but according to the timeline he filled out, he wouldn't

1 do that until he had been out for a couple of weeks.
2 Which is concerning because that is going to be a major
3 test for him whether he can be -- maintain his sobriety.

4 Q Now, you talked about his diagnosis earlier. You
5 diagnosed him as a pedophile; is that right?

6 A Correct.

7 Q You already explained that to the jury. And Dr.
8 Watson also diagnosed him as a pedophile with that
9 qualifier, episodic type; correct?

10 A Yes.

11 Q And the personality disorder, you've explained that
12 a few minutes ago what that was. You found -- so he's
13 got a mental abnormality and a personality disorder; is
14 that correct?

15 A Yes.

16 Q Okay. What are risk factors in cases like this?

17 A Risk factors are anything that have been shown in
18 the research to be related to recidivisms. So related
19 to re-offending.

20 Q Okay. Now, some risk factors are called static;
21 right?

22 A Yes.

23 Q Does static mean they don't change?

24 A Means that they're not amenable to treatment. That
25 they can change for the worse, they don't usually change

1 for the better.

2 Q Okay. What are risk -- some respects are called
3 dynamic risk factors. What does dynamic mean when you
4 talk about that?

5 A Dynamic risk factors are things that are changeable
6 or things that can be addressed in treatment, things
7 that are good targets for treatment.

8 Q And what are the risk factors that you have found
9 with Johnny Ray Garrett that you find significant?

10 A Well, he has the risk of substance abuse, that's
11 important for him. He states that that's related
12 significantly to his offending. He has some difficulty
13 with being honest. I'm trying to find exactly where I
14 wrote all this. He has pedophilia, that's a risk
15 factor. He has personality disorder, that's a risk
16 factor. Denial risk factor. Those are the major ones
17 for him. He's -- well, another major one would be he
18 has very poor boundaries.

19 Q What does that mean, boundaries?

20 A Boundaries are kind of the limits that you put on
21 yourself and on your relationships like lines you won't
22 cross. Such as most people have a boundary of, you
23 know, I'm not going to go up and slap somebody when I'm
24 mad. So it's not something that you can ever conceive
25 of yourself doing. Or I'm not going to molest a child.

1 Or I will never beat my wife, those kind of things.
2 Boundaries. Or even -- I wouldn't ever call somebody
3 this name. Whatever name that might be for you. And
4 with him, he's had a history with very poor boundaries.
5 He's crossed that line, crossed those lines with people
6 repeatedly in the past.

7 Q Do his risk factors also include his history of
8 nonsexual offending?

9 A Yes.

10 Q What about his probation violation? The fact that
11 he's on probation, got arrested for this sexual charge
12 that he got convicted of here in Spartanburg County?

13 A Yes, that's another risk factor.

14 Q And you mentioned substance abuse, drugs, driving,
15 alcohol, that sort of thing?

16 A Yes.

17 Q Okay. What about conflicts in intimate
18 relationships? He's had what, two divorces?

19 A Yes. And he's offended or allegedly offended some
20 of his wives' children, so his stepchildren. He has
21 beaten one wife, broke her jaw. He has a difficult time
22 trusting women in relationships and that can lead to a
23 lot of problems.

24 Q Dr. Gehle, do you have an opinion to a reasonable
25 degree of psychological certainty and based upon all the

1 factors we've been discussing and the things that you
2 reviewed as to whether or not Johnny Ray Garrett has a
3 mental abnormality and a personality disorder?

4 A Yes.

5 Q Now, the mental abnormality would be what?

6 A Pedophilia.

7 Q Okay. So attracted to females nonexclusive?

8 A Yes.

9 Q Okay. And what would the personality disorder be?

10 A He has a general personality disorder, so
11 personality disorder not otherwise specified with
12 antisocial features.

13 Q And does this mental abnormality and personality
14 disorder, does it remain such to this day that he is not
15 safe to be at large and if released will be likely to
16 commit acts of sexual violence?

17 A Yes..

18 Q Do you have an opinion about that again to a
19 reasonable degree of psychological certainty?

20 A Yes. It's my opinion that those things continue to
21 be relevant and put him at risk to re-offend if he's
22 released.

23 Q Does he minimize his sexual behavior?

24 A Yes.

25 Q Does he have a poor understanding of risk factors

1 or a good understanding of risk factors?

2 A He tends to find some risk factors, but has a lot
3 of trouble applying them to his own situations, so that
4 would indicate that he probably has some wrote memory,
5 but doesn't really understand them.

6 Q What about control over his sexual impulses?

7 A Well, that's a difficult thing to measure in the
8 program.

9 Q Well, there's no kids there.

10 A There's no kids there. And kids are very rarely
11 allowed to come visit. But -- and he probably would
12 have contact with them. But one thing that has happened
13 is he's had those sexually explicit items in the unit
14 and so that speaks in part to some impulse control
15 problems. Although it's not directly relevant to
16 children or to pedophilia.

17 Q And, Dr. Gehle, do you have an opinion again to a
18 reasonable degree of psychological certainty as to
19 whether Johnny Ray Garrett's diagnosis still affects his
20 volitional and emotional capacity so that he is still
21 predisposed to commit acts of a sexual violence?

22 A Yes.

23 Q When I say emotional and volitional, what am I
24 talking about? What do those words mean?

25 A Talking about whether he has the ability to make

1 decisions, whether his decisions are based solely on his
2 emotions, or how he's feeling, those sorts of things.

3 Q Okay. And do you also have an opinion again to a
4 reasonable degree of psychological certainty as to
5 whether or not Johnny Ray Garrett continues to meet the
6 definition of a sexually violent predator as defined by
7 in our law?

8 A It's my opinion that he does.

9 Q Okay. And finely, do you have an opinion to a
10 reasonable degree of psychological certainty as to
11 whether or not Johnny Ray Garrett needs continued
12 confinement for a long term control, care treatment?

13 A Yes.

14 Q Does he?

15 A I believe he does.

16 Q Okay. Who would be at risk if the jury releases
17 Mr. Garrett?

18 A Prepubescent girls in his vicinity.

19 Q Since he's not facing probation, do you know of
20 anything hanging over his head that could force him to
21 go to outpatient sex offender treatment if the jury
22 turns him loose?

23 A No. This program is in or out. So they're either
24 in the program or they're out of the program. If he's
25 released, the Department of Mental Health will have no

1 -- nothing, no contact with him per se at least the
2 sexually violent predator program won't have any contact
3 with him.

4 Q And based on this sentencing sheet, State's Exhibit
5 Number One, he wasn't sentenced to any kind of probation
6 along with his prison time, was he?

7 A Correct.

8 Q So he's not facing a probationary sentence hanging
9 over his head and make him go to say sex offender
10 treatment on the outside?

11 A Not that I'm aware of.

12 Q Okay. Thank you, Doctor. Please answer any
13 questions counsel may have or the Court may have.

14 MR. THOMAS: Your Honor, I have an objection. May
15 we approach.

16 THE COURT: Sure. Actually what we're going to do,
17 ladies and gentleman, you've been at it for by my watch
18 you've been there for about an hour and twenty minutes,
19 we're going to go ahead and take a brief break. If you
20 need to step out to have a cigarette or what have you,
21 let the bailiff know and they'll take you downstairs.
22 I'm going to take up an issue with law with the
23 attorneys. Don't talk about the case yet, I'll let you
24 know when you can. So if y'all will adjourn for a
25 moment, we'll have you back here in about 10 to

1 15 minutes. Thank you.

2 (The jury left the courtroom)

3 THE COURT: All right. The record should reflect
4 that the jury is out, you have a matter that needed to
5 be taken up?

6 MR. THOMAS: I do, Your Honor. Your Honor, if it
7 please the Court, we would move for a mistrial. I
8 believe comments made by the State in a number of times
9 if you the jury let this man go -- if you let him go, if
10 you release him, is a burden shifting comment, Your
11 Honor, it's been made by counsel. I think what's
12 happened is that it now shifts the burden to us to prove
13 that he should not be released when in fact the burden
14 is that the State has to prove that he can't.

15 THE COURT: I sort of understand what you're getting
16 at. I don't necessarily agree though that Mr. Bogle's
17 characterization as the jury let's him go --

18 MR. THOMAS: I don't think they have to let him go,
19 Your Honor. I think what they do is that basically the
20 State has an obligation to show that he is still has a
21 personality defect or mental or abnormality of such that
22 he is not safe to be released. And I think the burden
23 is clearly on the State. What my concern is, is that by
24 the testimony of the jury letting him go in essence
25 shifts that burden to us to show in fact that he should

1 be let go. And I'm not sure that that's what our
2 standard of proof is.

3 THE COURT: All right. I do agree with you that
4 that's not what the standard of proof is. I tend to
5 disagree with you, Mr. Thomas, that the comments made by
6 the State shifted that burden. Obviously, the jury will
7 have two mutually exclusive options that the State has
8 met the burden that not met the burden. The natural and
9 probable result of the State not meeting that burden is
10 in fact the defendant being released or discharged from
11 the sexually violent predator unit. So I would be
12 inclined or I am inclined to decline your motion for the
13 -- a mistrial this point in time. If you would care --
14 I know that you've probably been provided with the
15 State's proposed jury instruction if you would care for
16 the Court to consider any other supplemental instruction
17 along the lines of -- and I'm sure it's in there, I've
18 read it, for the charge one time, but obviously the
19 verdict in this case has to be a verdict of further
20 commitment has to be the product of a reasonable --
21 beyond a reasonable doubt finding by the jury. I'm more
22 than happy to entertain any language you might suggest
23 that relates to the ultimate burden in this case and who
24 has it, et cetera. So I'll decline your motion for a
25 mistrial.

1 MR. THOMAS: Thank you, Your Honor.

2 MR. BOGLE: Thank you, Your Honor.

3 THE COURT: We'll be at ease for a few moments if
4 y'all need to step out and refresh yourselves, whatever.

5 (There was a short break taken)

6 THE COURT: All right. Have a seat, please. All
7 right. Let's go ahead and have the jury back, please.

8 (The jury reenters the courtroom)

9 THE COURT: All right. The record should reflect
10 that the jury is back and seated at this point.
11 Mr. Thomas, cross examination, sir.

12 MR. THOMAS: Thank you, Your Honor. Please the
13 Court.

14 THE COURT: Yes, sir.

15 CROSS EXAMINATION BY MR. THOMAS:

16 Q Dr. Gehle, and I apologize, I still have some
17 trouble kind of understanding exactly how the program
18 works. Now, your position with Mental Health is what?

19 A I'm chief psychologist.

20 Q Okay. So you don't work directly in the program?

21 A No.

22 Q You don't work on -- they are housed in an secure
23 location; is that correct?

24 A Yes.

25 Q Okay. And you don't work there?

1 A Correct.

2 Q And your office is where?

3 A My office is on the Crafts Farrow State campus.

4 Q Okay. So you're ten miles or so away from there?

5 A Umm --

6 Q Or just -- you're a distance from there from the
7 actual place where everybody is housed and treated?

8 A There are some residence who are housed on the same
9 campus where my office is.

10 Q In Geo Care?

11 A Yes.

12 Q And, in fact, Johnny was housed at Geo Care at one
13 time; is that correct?

14 A Yes.

15 Q All right. And is Geo Care, do that they receive a
16 higher level of treatment at Geo Care than they would at
17 the other location where Johnny is now?

18 A I would say, no.

19 Q Okay. All right. Why is Geo Care used?

20 A Geo Care unit is used for some people who have more
21 acute medical needs. That's sort of the original
22 purpose of it being used. But it was also used because
23 they had one unit at Broad River and that quickly got
24 full. And that they were trying to get more space and
25 now they have gotten another unit out at Broad River, so

1 they kind of doubled their space and so there's very few
2 patients who are left at Geo.

3 Q Okay. And Geo Care is pilotly run? It's a contact
4 with the state, but it's -- their staff is employed by
5 Geo Care and not the Department of Mental Health?

6 A It is a complicated structure. It's my
7 understanding, I don't know if this is on every unit,
8 but it's my understanding that staff level like direct
9 care staff, nursing staff are Geo employees and then
10 higher level staff from social workers on up to
11 psychiatrist and some administrators are Department of
12 Mental Health staff. I'm not sure if that's the case on
13 every unit. There are a couple of patients over on a
14 unit who have severe behavioral problems, so it's a more
15 acute unit.

16 Q Now, do you do treatment at all?

17 A I do not do treatment.

18 Q All right. And if you did treatment, are you
19 trained to do treatment or is that the Geo front area of
20 expertise?

21 A No, I'm trained to do treatment and I used to do
22 treatment in the SVP program or supervise the treatment
23 providers, but currently I just do evaluations and no
24 treatment.

25 Q And how long has it been since you were in

1 treatment itself?

2 A I would say over three years. That would be an
3 estimate.

4 Q Okay. And you personally were not involved in the
5 treatment or the treatment program for Johnny; is that
6 correct?

7 A What do you mean personally?

8 Q Were you involved in his day-to-day or weekly
9 treatment?

10 A No.

11 Q Okay. Did you evaluate or monitor his day-to-day
12 or weekly treatment?

13 A I don't believe so. We have tried to keep it very
14 I guess, compartmentalized, so somebody who's going to
15 do the evaluation will not be involved in the treatment
16 or the supervision of the -- of that person's specific
17 treatment.

18 Q So you are detached then from the actual treatment
19 for Johnny?

20 A I've been detached from his treatment purposely.

21 Q Okay. All right. Now, are you certified in any
22 manner to do the evaluations? Is there a certification
23 or is it because of the degree that you hold?

24 A There's no certification to do this type of work.
25 The degree would and the training made me qualified to

1 do it.

2 Q Okay. Are you a member of any professional
3 associations?

4 A Yes.

5 Q And what associations are you a member of?

6 A I'm a member of the American Psychology and Law
7 Society which is the division of the American
8 Psychological Association. And I'm a member of the Sex
9 Offender Civil Commitment Program Network which is an
10 organization for people who work or do evaluations
11 pursuant to sexually violent predator acts nationwide.

12 Q Okay. Now, so your evaluation is how? It's based
13 upon what is done in the past in regards to crimes that
14 he's committed and been convicted of is. That part of
15 it?

16 A That's part of it, yes.

17 Q Okay. But it's also crimes that he was accused of,
18 but not convicted of?

19 A Correct.

20 Q Okay. And it also consists of crimes that don't
21 have any sexual nature at all; is that correct?

22 A Yes. That's considered a risk assessment and maybe
23 diagnoses.

24 Q Which can also include crimes that he was accused
25 of, but not convicted of?

1 A Yes.

2 Q Okay. So the number of crimes that Mr. Garrett has
3 been convicted of that he is in the program is the one
4 that I think it's Exhibit Number One for is it lewd act?

5 A Do you mean the number of sexually violent offenses
6 that he's in the program for?

7 Q That he was actually convicted of?

8 A Yes, it's one.

9 Q One?

10 A That's correct.

11 Q All right. Now, the way this system works is that
12 he is entitled to petition on a yearly basis for a
13 review hearing?

14 A The review happens and I believe that he has been
15 given a choice as to whether he wants a hearing.

16 Q Okay. And he asked for -- he asked for a hearing,
17 he doesn't tell them directly to the stage that we're at
18 today for a jury trial, does he?

19 A No.

20 Q All right. There's another stage?

21 A That's correct.

22 Q And what is that stage?

23 A Stages, there's typically a hearing, it's called --
24 it can be called probable cause hearing. And it's a
25 hearing to determine whether there's probable cause to

1 believe that his personality disorder or mental
2 abnormality has so changed.

3 Q That he would be safe to be released?

4 A Correct.

5 Q All right. And did Mr. Garrett have a probable
6 cause hearing?

7 A Yes, he did.

8 Q And was probable cause found that he potentially
9 could be safely released?

10 A Probable cause was found to believe that his mental
11 abnormality or personality disorder so changed that he
12 was safe to be at large.

13 Q Okay. So after the probable cause hearing then it
14 was scheduled for a jury trial?

15 A That's correct.

16 Q Okay. And that's where we are today?

17 A Correct.

18 Q Now, you said that you had three evaluations for
19 Mr. Garrett, but you only testified to two. Is it
20 possible that you've only done two evaluations for
21 Mr. Garrett?

22 A I've only testified today to two or --

23 Q No. No. You testified today -- your testimony
24 today comprised of the most recent evaluation that you
25 did and then the one that you did back in, was it 2013

1 or '12?

2 A I have submitted reports to the Court on three
3 different occasions for him. Two of those I sat down
4 and interviewed him and the last one I did not interview
5 him.

6 Q Okay. And in those reviews, do you go back and
7 look at all or how do you do that? I mean, you're not
8 present for any of the weekly treatment sessions. So
9 you go back and review those treatment session notes or
10 how do you do that?

11 A Yes. I look at the treatment session notes.

12 Q Okay. And I know that you talked about some things
13 negatively that Johnny had done. One being that he had
14 the tong depressor and the toothpick; is that correct?

15 A It was a paperclip and a toothpick.

16 Q Okay. But were there any positive things that you
17 saw in there that Johnny had done?

18 A Yes.

19 Q Okay. And can you tell us about them?

20 A Well, the behavior observation note that you were
21 talking about when he had that behavior infraction,
22 that's typically -- I mean, it's treatment related, but
23 that's not specific treatment. So in your question, are
24 you talking about positive things in treatment or
25 positive behavior in the unit?

1 Q Yeah. Positive things in treatment or positive
2 things in the unit. I mean, if you reviewed all of
3 those, you would know that he's had good reports, that
4 they said that he's been attentive.

5 A Yes. He's attended 100 percent of the treatment
6 groups from my understanding. He seems to be
7 participating better maybe in the past year or for the
8 past year of my review, so might be longer than a year
9 now. Prior to that, he's more passive and not as active
10 in participation, so it seems like his participation has
11 increased which is good. He's usually, you know, polite
12 to people. He's attentive. He asks questions that are
13 relevant to help people, you know, think about their
14 behavior. So that's what the group treatment model
15 really is is you're talking about your offenses and your
16 past behavior in front of other people who can relate
17 and who can challenge you to evaluate your behavior.

18 Q Okay. So he's had 100 percent participation in
19 that level in those groups?

20 A Well, he's had 100 percent attendance.

21 Q Attendance?

22 A His participation has fluctuated although it's
23 improved overall I would say.

24 Q Okay. So what we have seen is a pattern of
25 improvement? You said overall his participation, his

1 attendance and those types of things have improved over
2 the last year and a half or two years?

3 A Yes.

4 Q Okay. Now, and you talk about having, I guess,
5 awareness and boundaries and, I guess, insight into a
6 crime that someone may commit. Those are important
7 factors?

8 A They can be, yes.

9 Q All right. And have those improved?

10 A That does not seem to be an improvement for him.
11 He seems to be able to have some insight into other
12 people's behaviors so he can ask questions that get
13 people thinking that are relevant. But as far as his
14 own behavior, he still is pretty evasive when he's
15 questioned especially when he's confronted. He lacks a
16 lot of honesty. He has difficulty expecting consequences
17 and he minimizes his behavior. Things like that.

18 Q Okay. One thing I was curious about. How do we
19 gauge honesty? You know, you said that we know that
20 Johnny is here and he's served his time on one criminal
21 charge that he was convicted of and he is now in the
22 sexually violent predator program for treatment. How do
23 we determine when someone is telling the truth? I mean,
24 is that based upon facts of the indictment or the facts
25 of -- or how do we determine that?

1 A Are you talking how do you determine what happened?
2 Or --

3 Q Yeah. How do we determine -- you know, because you
4 said that he was evasive or we know that he did an
5 Alford plea and you explained some of that to the jury.
6 Isn't an Alford plea saying that I am saying that I'm
7 innocent of this crime, but I'm concerned that if I go
8 to trial that I could be convicted of that?

9 A Yes. Essentially.

10 Q Essentially. So if someone asserts an Alford plea
11 saying that, you know, I'm really afraid to go to trial
12 on this case, I don't want to take the risk of being
13 convicted, but I'm saying in my part that I didn't do
14 this. How do we determine in regards to honesty when
15 they're in treatment whether they're telling the truth
16 or not?

17 A Well, I have to go back to what the indictment
18 says. This is what they were convicted of. The
19 Sexually Violent Predator Act outlines that a
20 conviction, there's several definitions or ways that to
21 something that's considered a conviction. It's not just
22 pleading guilty or being found guilty. An Alford plea
23 is one of those ways, but it's considered a conviction
24 for the purposes of the Sexually Violent Predator Act.

25 Q Right. And my concern is not necessarily -- I

1 mean, you know, Johnny has been convicted and Johnny
2 served his time and he's here today. But what happens
3 in taking into consideration in evaluating someone for
4 risk these things that they've been accused of, but not
5 found guilty of? How do we know in regards to honesty
6 or in the treatment program that they're telling the
7 truth or they're showing progress if we don't know
8 what's true and what's not?

9 A Well, it's going back to what they were convicted
10 of.

11 Q Right.

12 A We also know that it's a fact that he was charged
13 with prior offenses whether they happened or not is up
14 for debate.

15 Q Right.

16 A But the fact remains that he was charged with them.
17 He's talked about those offenses or those allegations
18 very minimally in his treatment. And it would also be
19 important for him to explore those reasons that he got
20 charged. I mean, that's a big consequence even if it
21 wasn't a conviction. And it would put most people on
22 guard with their behavior. And possibly they've made
23 some changes if they were accused even if they didn't do
24 it. But for this conviction, I mean, you know, for the
25 purposes of the SVP Act, whatever is in that indictment,

1 pled to it, that's what happened. And I'm not a fact
2 finder, so I have to go with what it says in there. But
3 it is a conundrum.

4 Q And I apologize for something I just don't
5 completely understand. Would it be a better safe to say
6 that if past is a prediction of the future that it's
7 better to say that the past based upon convictions is a
8 better predictor of the future than past based upon
9 allegations is a good predictor of the future?

10 A Some of the research says that it doesn't matter if
11 it's a charge or a conviction it increases the risk the
12 same.

13 Q If it's true?

14 A No. Because it's true that they were charged.

15 Q Just about being charged?

16 A Yes. Some of the research says that.

17 Q Okay. So, for example, a poor sole who is just
18 unfortunate say he drinks and he does this and then does
19 that and he gets charged with three or four things, but
20 he's found not guilty or they're dismissed and then he
21 has an allegation of something later that he may or may
22 not did and gets convicted, then even though the things
23 that are true that he was unfortunate enough to be
24 charged and unfortunate enough to be convicted, then he
25 would still put him in a category of being potentially a

1 sexual and violent offender?

2 A I'm not sure if I followed your question.

3 Q In other words, the system could be wrong. If
4 we're using it on things that people are accused of, but
5 not convicted, then we can come up with some wrong
6 results.

7 A Yes.

8 Q All right. And that leads me to my last question
9 on this line of thought. Is that, how do we tell how
10 somebody that's participating in a program when they
11 might be telling the truth and the evaluator is saying
12 that they're minimizing?

13 A Well, we know that he hasn't been telling the truth
14 because his story has changed. So he's lied at some
15 point or his story would stay consistent. It's very
16 unlikely that an eight year old took off her underwear
17 and got on top of a passed out man and started humping
18 him. That's very unlikely. And he's started with that
19 story, but he's revised it to say that, you know, he
20 maybe he pulled her up there. Maybe he thought it was
21 his wife. That sort of thing. He was intoxicated.
22 There are lots of stuff like that.

23 Q And anyway, he pled to that, he was convicted of
24 that and he's served his time for that; is that correct?

25 A Yes. But we know he was dishonest with that

1 because his story has changed and that's typical of sex
2 offenders. It is difficult to say that we don't use the
3 polygraph in the program, some programs do, that might
4 help. But he's also been -- had this same sort of
5 minimization evasive responding denial, things like that
6 with regular behaviors on the unit such as having that
7 book or giving somebody sexually explicit pictures. And
8 initially he's denied it and eventually he admitted to
9 it.

10 Q Now, in the book, didn't he admit to having a
11 motorcycle magazine?

12 A That's what he said.

13 Q That was his admission as to what was found in
14 regards to the material?

15 A Yes. And in my review of the material, they were
16 not from motorcycle magazines.

17 Q Okay. And isn't it also true that the individual
18 that had this material said that he had gotten it from
19 Mr. Garrett's room when he went to Geo group; is that
20 true?

21 A Those are two different things. I think what
22 you're saying is not true. The book was something that
23 his former roommate said Mr. Garrett left with him when
24 he moved to Geo. And the other thing was another guy on
25 the unit said that Mr. Garrett gave him sexually

1 explicit pictures and I'm the guy compiled sort of like
2 a scrapbook of those pictures. So two separate things.

3 Q Right. Do you know when he went to Geo Care?

4 A Not off the top of my head I don't know
5 specifically when he went there.

6 Q November of 2011, does that sound right?

7 A I'm not sure.

8 Q All right. So if it was '11, '12, '13, '14, that
9 was three years ago?

10 A I mean, if it was 2011, that would be --

11 Q It would be three years?

12 A Yes. I'm not sure if that's correct.

13 Q So if we're saying that this material was obtained
14 from even if we say that it was obtained from my client
15 before he went to Geo Care in 2011, that's still three
16 years ago?

17 A Yes, if that's true.

18 Q Okay. All right. Let me ask you about the
19 program. What type of method does the Department of
20 Mental Health employee to treat individuals who are in
21 the program?

22 A It's largely a cognitive behavioral group therapy.

23 Q All right. Is it based upon any national or
24 international programs?

25 A There are approaches what's been found to be most

1 effective in the research. They used to use a model
2 called the Rockwood model. They've moved far enough
3 away from that that I don't think they you can call it
4 the Rockwood model anymore.

5 Q All right. Who designed this program?

6 A It would be designed by the psychologist involved.

7 Q That are involved in this specific treatment
8 program?

9 A Yes.

10 Q Okay. Are there levels to this program?

11 A As far as where they're at in treatment?

12 Q Uh-huh. How do you advance?

13 A No, there's not levels to my understanding.

14 Q All right. How do you determine if somebody has
15 advanced -- well, I guess, we can't say the advance from
16 one level to another, so how do we say if someone has
17 advanced?

18 A Well, I don't know that we do say that somebody's
19 advanced.

20 Q Can they advance?

21 A Advance in what way?

22 Q To get better?

23 A Advance to the point where they're no longer likely
24 or, I mean, is that what you're asking?

25 Q Right. Advanced to where they have insight into

1 their problems, that they have boundaries that they're
2 able to set these goals for themselves and no longer
3 become a risk? How do they improve and advance towards
4 that goal?

5 A I'm not sure that I understand how to answer your
6 question. Are you asking how it's measured or how they
7 do it?

8 Q Well, how is it measured? How do you know if
9 someone is getting better?

10 A Well, the way that I do my evaluation is I ask them
11 questions that are based on relapse prevention
12 techniques. So I want to know if they can recognize the
13 moods that might lead to offending. If they can
14 recognize the thoughts that might lead to offending. If
15 they can recognize risk factors. What their high risk
16 situations are. How they can stop from re-offending
17 very early on. You don't want them to be sitting with a
18 child and realize, oh, I might offend. You want them to
19 recognize their triggers very early in the process. So
20 it's largely based on an interview.

21 Q Okay.

22 A And review of the records.

23 Q I know this is a broad question, but can people get
24 better?

25 A Yes.

1 Q Okay. How do they know if they're getting better?
2 If they're participating in the sexually violent
3 predator program, how does an individual know that
4 they're improving?

5 A Well, the treatment team meets with the people
6 periodically and I think some feedback happens there.
7 And some feedback happens from the annual review.

8 Q Okay. Now, you said that in doing your evaluation
9 that you looked at a host of things. One being the
10 legal records and everything that goes along with that.
11 Also -- let's see. Records from the South Carolina
12 Department of Corrections. Now, you said that Johnny
13 had not participated in any programs within the
14 Department of Corrections, sexual offender programs?

15 A That's my understanding he didn't -- did
16 participate in the sex offender treatment program there.

17 Q All right. Do you know if they have a sex offender
18 treatment program?

19 A Yes.

20 Q All right. Do you know if they have it at every
21 institution?

22 A They don't have it at every institution.

23 Q Okay. Is it not available at some institutions?

24 A No. Typically for how it works now and it's
25 changed over the years, that how it is now, they have it

1 at one institution and people are transferred to that
2 prison to go through the treatment.

3 Q All right. Is that program still active?

4 A Yes.

5 Q It's come in and out?

6 A It's been active for the last several years pretty
7 continuously.

8 Q Okay. But there have been times in which it didn't
9 exist?

10 A I would imagine there have been. I haven't been in
11 South Carolina to know that, but that's my
12 understanding.

13 Q And you don't know at the time in which Johnny
14 could have been in a served institution that he could
15 have participated in that program?

16 A Correct.

17 Q Okay. So it's possible that it's not that he
18 didn't want to participate in the program, but that it's
19 not available?

20 A That's possible. Yes.

21 Q Okay. The records of the sexual violent predator
22 program, it looks like a lot of information that you
23 relied on are static information; is that correct? By
24 static we're talking about things that have happened in
25 the past?

1 A Well, I don't know if I would say it's a lot. I
2 look at all the records that have happened in the
3 program as well.

4 Q Okay.

5 A And that is a significant amount of records.

6 Q Okay. But what we're doing is in looking in the
7 past. I mean, you made reference to -- and I apologize
8 for forgetting his name, the doctor that did the
9 preadmission?

10 A Dr. Musick.

11 Q Dr. Musick. You made reference to him. You've
12 made reference to the arrest records. We've gone back
13 as far as 1998 and all these things are things that
14 happened in the past; is that right?

15 A Yes.

16 Q Okay. Can we change any of those things that
17 happened in the past?

18 A No.

19 Q So we're stuck with those?

20 A Yes.

21 Q Can we change the future? Can we change our
22 behavior from today into the future?

23 A Yes.

24 Q Okay. So we can change our behaviors today, but
25 we're stuck with what we have in the past?

1 A That's correct.

2 Q Okay. So just because there may have been
3 allegations or just because Dr. Musick said such and
4 such, doesn't mean that that's true today?

5 A Well, I think that if you're saying Dr. Musick said
6 there are allegations, I think that's still true today.
7 Because the fact that allegations were made is a fact.

8 Q Right. But the thing -- the thing that we're
9 dealing with that we do know to be a fact is that
10 Mr. Garrett was arrested and convicted of the crime that
11 he served for prior to being placed in the sexually
12 violent predator -- that he has one conviction, we do
13 note that for a fact.

14 A He has one sexually violent conviction, yes.

15 Q Okay. Now, let's talk about the PPG. And this was
16 performed by Dr. Burke; is that correct?

17 A Yes.

18 Q You've got a copy of it?

19 A Somewhere.

20 Q Okay. You got it?

21 A Do you want me to find it? I don't know if I have.

22 Q I was going to ask you --

23 A I have a lot of things in here.

24 MR. THOMAS: May I approach, Your Honor.

25 Q You are welcome to look at mine.

1 THE COURT: Please.

2 MR. THOMAS: Thank you.

3 Q And, again, I apologize because I sometimes don't
4 completely understand these things, these testings.

5 Now, Dr. Burke is who?

6 A Dr. Burke is -- he's a man who works out of
7 Summerville and he does some evaluations and treatment
8 of sex offenders.

9 Q And he's heavily involved in the treatment
10 evaluation of sexual offenders; is that correct?

11 A I guess so. I'm not that familiar with him with
12 his practice.

13 Q All right. But he performed a PPG on my client.
14 And the results show that he's attracted to adult
15 females; is that correct?

16 MR. BOGLE: Object, Your Honor. To the question,
17 Your Honor.

18 MR. THOMAS: I'll rephrase it.

19 THE COURT: All right.

20 Q Who does it show that he's attracted to?

21 A Well, if I can read the conclusions.

22 Q Okay.

23 A It says, Mr. Garrett demonstrated significantly and
24 significant arousal towards the teen female coercive
25 stimuli presentation than all other presentations. His

1 arousal towards the teen female coercive presentation
2 was two and one half standard deviations were greater
3 than all other stimulus presentations then suggest a
4 preference for coercive sexual behavior with adolescent
5 females.

6 Q And I think that you had testified earlier that
7 that was not unusual; is that correct? That that's not
8 out of the ordinary to be attracted -- to have an
9 attraction to adolescent teenage females?

10 A I don't know if I said it's not out of the
11 ordinary. I'm not sure what you're referring to, but --

12 Q Let me see, I can go back and look. PPG. I think
13 you said that that's not an abnormal category. I'm
14 sorry. So it's not an abnormal category?

15 A I don't believe I said that.

16 Q Okay. All right. But does it show on there
17 anywhere that he's attracted to children? Prepubescent
18 children?

19 A On this test and it shows some numbers that could
20 indicate arousal towards other classes of people. The
21 most arousal was towards the teen female coercive group.
22 But he also showed some arousal to preschool male
23 persuasive group. And to teen female persuasive from my
24 reading of the results here.

25 Q Okay.

1 A Yes.

2 Q Do you read PPG's normally?

3 A I've read them many times in the past. But they're
4 not something that I do in my evaluations and not
5 something that I rely on.

6 Q All right. What kind of testing did you do as far
7 as -- I mean, we know about looking at Dr. Musick's
8 report, we know about looking at the incident reports,
9 and the non-convictions and those things, did you do any
10 actual testing in your opinion -- reaching your opinion
11 to that -- like PPG, did you do any other psychological
12 testings?

13 A I didn't do any traditional psychological testing
14 of Mr. Garrett in my evaluation.

15 Q Okay. Is that something that would normally be
16 done some sort of psychological testings?

17 A Not in these types of evaluations. There's been
18 really no research that's linked psychological test
19 results to risk a part from one test called the
20 psychopathy checklist revised and that's based on
21 interview data. And then you score somebody based on
22 the interview. I believe based on my interviews and
23 knowledge of Mr. Garrett, he would not qualify as a
24 psychopath, so I don't think that that test would apply
25 to him anyway. But that's really the only psychological

1 -- traditional psychological measure that has been
2 related to recidivism in the research.

3 Q So basically a lot of your opinion today is based
4 upon not scientific tests that were given, but opinion
5 based upon just evaluation of information of written
6 reports?

7 A Evaluation of information and an interview in the
8 past.

9 Q Okay. Let me ask you about Static-99 because
10 that's another test, I guess, that you made reference
11 to. And I want to show you this document.

12 MR. THOMAS: Your Honor, may I approach?

13 Q I show you this and ask you if you can identify
14 that.

15 A Well, it is a Static-99R Coding Form.

16 Q All right. And who's name is on the bottom of that
17 form? First page. Or not name, but caption. Is it the
18 South Carolina Department of Mental Health?

19 A Well, his name is on the bottom then it says, South
20 Carolina Department of Mental Health Sexually Violent
21 Predator Program.

22 Q All right. And look at the top. What's the date
23 on that?

24 A May 1, 2014.

25 Q Okay. And flip to the second page. Does it give a

1 score?

2 A Yes. There is a score of three.

3 Q Okay. And that was done this year?

4 A The date on this says May 1, 2014, date of
5 completion.

6 Q Okay. When was your test done?

7 A I completed mine prior to the last annual review in
8 preparation for the last annual review.

9 Q All right. Do you remember what that day is?

10 A It was in December of 2013.

11 Q Okay. So the report that I just handed you is more
12 recent in time than your report?

13 A Yes.

14 Q Okay. And that gives him a score of three?

15 A That's what it says.

16 Q What kind of a risk does a three put him in?

17 A Puts him in the moderate to low category.

18 Q Okay. It's a little different than what you placed
19 him in; is that right?

20 A Yes.

21 Q Okay. The Static-99 is truly static, isn't it? In
22 that it's based on historical factors; is that right?

23 A Largely based on historical factors, yes. One item
24 is age and that changes as somebody ages.

25 Q That's the only component that can change; is that

1 right?

2 A Well, the score can always change for the worst as,
3 you know, somebody was convicted of another sex crime or
4 if other factors were figured out like they had a male
5 victim or things like that. But other than age, it
6 doesn't usually improve.

7 Q Okay. And a matter of fact, they have such things
8 as -- well, age I guess is the first one. Prior
9 nonsexual violence. Any convictions. I mean, it's all
10 based upon what's happened to you in the past?

11 A Yes. Apart from age. Yes.

12 Q Okay.

13 MR. THOMAS: Your Honor, may I approach again?

14 THE COURT: Please.

15 Q Doctor, was that document -- does that document
16 appear to have signed in the sexually violent predator
17 program?

18 A I have no idea. I've actually never seen one of
19 these before.

20 MR. BOGLE: Can we see a copy of what he's showing
21 the witness, Your Honor?

22 THE COURT: Okay. I had assumed that you had
23 already seen it. Would you show Mr. Bogle what you're
24 showing her then maybe he hasn't -- perhaps he hasn't
25 seen it.

1 (Mr. Thomas complies)

2 MR. THOMAS: Your Honor, please the Court.

3 THE COURT: Yes, sir.

4 Q Doctor, do you have any reason to believe that
5 that's not a Static-99 that was performed in the sexual
6 violent predator program or as part of the sexually
7 violent predator program?

8 A Yes, I have plenty of reasons to believe that.

9 Q Okay. So you don't -- you believe that document is
10 a forgery?

11 A Well, I have never actually seen any document like
12 this in the program. Typically the Static-99 is so
13 allowed by the evaluator, so this would be a mark change
14 from how things are typically done. And I see nobody's
15 name on it. You know, whoever might have done the
16 evaluation, there's no name on it, so I'm not sure who
17 filled this out or why it was filled out. And I've
18 never seen it done before in the program.

19 Q Have you ever give a Static-99? Have you ever
20 performed that test?

21 A Yes. You score that test, yes.

22 Q Okay. Have you eventually ever given it to
23 someone?

24 A Well, you don't give it to somebody.

25 Q Okay.

1 A Do you mean like hand it to somebody?

2 Q No. As far as sitting down with them and going
3 through the questions. I know it's all historical, but
4 would you actually in doing a Static-99 test, would you
5 actually sit down with the individual and go through
6 those questions with that person?

7 A There are a couple of questions on Static that you
8 typically get from your interview with somebody. And
9 then other questions are answered by looking at the
10 criminal history and the past. So I don't ever sit down
11 and go through the findings with somebody or go through
12 how I'm going to score it with a respondent or, you
13 know, a resident of the program.

14 Q Okay.

15 MR. THOMAS: Your Honor, may I approach?

16 THE COURT: Sure.

17 MR. THOMAS: Your Honor, if I could beg the Court's
18 indulgence just for a second.

19 THE COURT: By all means. Take your time.

20 Q Doctor, how did you come up with the diagnosis of
21 pedophilia for Mr. Garrett?

22 A Pedophilia. Looking at a pattern of his behavior.

23 Q Okay. If the PPG says that he has at this point no
24 -- that he presents no attraction to children, to
25 prepubescent children I guess is what we're talking

1 about, would that change your diagnosis?

2 A Not for me because I think that there are way too
3 many problems with the PPG. The results are they vary
4 based on a lot of different factors that are not
5 considered such as the brightness of the room or the
6 intelligence of the person. Those things can be random
7 sort of factors can skew the results. So I don't put a
8 lot of weight to the PPG. They can also be easily faked
9 and that's been proven research. So somebody can
10 suppress their arousal.

11 When I viewed the PPG, sensuous sex, there's almost
12 all of the pictures of people are of white people, there
13 are -- I don't remember a single African American
14 person. That can change the results. You know,
15 depending on various factors. So that's something that
16 I don't consider in my evaluations.

17 Q Also, how about if any of the accusations or
18 arrests that turned out to be non-convictions, if those
19 turned out to be not true, if you could prove they were
20 not prove, would that change the diagnosis?

21 A It could, but I don't think it would in this case.
22 Because it's still a pattern of behavior that he has and
23 a conviction.

24 Q Okay. Is every individual who has some sort of
25 inappropriate contact with a child, are they pedophiles?

1 A No.

2 Q Okay. So there's a difference between a pedophile
3 and a sexual offender?

4 A Yes.

5 Q Okay. Now, is a pedophile a predator?

6 A Not necessarily.

7 Q Okay. So because you have some sort of
8 inappropriate contact with a child doesn't mean that
9 you're a pedophile?

10 A It doesn't always mean that you're a pedophile.

11 Q It doesn't always mean that you're a pedophile?

12 A Yes, that's correct.

13 Q And a predator is someone who -- well, what is a
14 predator? You probably know the definition better than
15 I.

16 A Predator is somebody who has a mental abnormality
17 or a personality disorder that makes them likely to
18 engage in acts of sexual violence if not confined for
19 long term control, care, and treatment. So generally
20 that's broke up into three sort of consideration. One
21 being the mental abnormality or the personality disorder
22 causing the likelihood or the risk to re-offend. And
23 then there's also a consideration of volitional
24 impairment. Or emotional or volitional impairment.

25 Q We're not talking about any type of sexual offense,

1 are we? We're not talking about anyone who is likely to
2 engage in some sort of sexually violent crime. Because
3 sexually violent crime can also involve an individual
4 who's not a child?

5 A If I'm understanding your question, I'm sorry.

6 Q Okay. And I'll try to rephrase it. I'm sorry. A
7 sexually violent crime doesn't have to be a crime on a
8 child?

9 A That's correct.

10 Q A rape can be a sexually violent crime?

11 A That's correct.

12 Q Okay. So if Johnny's diagnosed with pedophilia,
13 that would mean that he's attracted to prepubescent
14 children?

15 A Correct.

16 Q Okay. All right. And according to the PPG that
17 was done, it doesn't show that he has any attraction to
18 prepubescent children?

19 A I don't think it did show that. I think it
20 actually showed some arousal towards child categories.

21 Q All right. And also the fact that and this time
22 we'll use Johnny, the fact that Johnny could have
23 committed a crime that was inappropriate with a child
24 based upon that alone doesn't make him a pedophile?

25 A Correct.

1 Q And if we take that Static-99 score of three, that
2 places him in a completely different category than a
3 five?

4 A Yes.

5 Q Puts him in a moderately low category?

6 A Low moderate I think it was.

7 Q Low moderate. Okay. Now, the infractions don't
8 really factor into anything, do they? I mean, in
9 Johnny's case we've got a situation where he had a
10 verbal warning for talking back to someone, he missed --
11 he missed a meeting although he has 100 percent
12 attendance, and he had a come to pressroom paperclip?

13 A Well, he went to a meeting with the behavior
14 management committee not a therapy meeting.

15 Q Okay.

16 A And I believe it was a paperclip and a toothpick
17 that he wrapped with something and fashioned into
18 something that he was using for crafts that he wasn't
19 suppose to have.

20 Q Okay. Do you know whether or not he's involved in
21 crafts?

22 A I believe he spends a lot of his time doing things,
23 drawing, doing crafts, and things like that to pass time
24 for him.

25 MR. THOMAS: May I approach, Your Honor.

1 THE COURT: Please.

2 MR. THOMAS: Thank you.

3 Q Doctor, let me show you this and see if you can
4 identify that form.

5 A This is not a form that I'm familiar with.

6 Q Okay. Is it a form that's on the lodge, do you
7 know?

8 A I have no idea.

9 Q Okay. Does it say that -- what does it say?

10 MR. BOGLE: Objection, Your Honor. She's not
11 familiar with it.

12 MR. THOMAS: I'll withdraw the question, Your Honor.

13 THE COURT: Thank you, sir.

14 Q Is that a tongue depressor in that form?

15 A Looks like it.

16 Q Thank you. Let me show you this one. See if you
17 can identify that.

18 A Yes. This is a referral to the behavioral
19 management committee.

20 Q Okay. And is that when he was covering the window?

21 A It appears so.

22 Q Did you see that form when you were evaluating or
23 reviewing his disciplinary history?

24 A Well, this looks like an original on what I saw
25 didn't look like that, so I want to make sure that I'm

1 looking at the same thing.

2 Q Okay.

3 A Give me a minute.

4 Q Yes, ma'am.

5 A I'm not sure if this is something that I saw or
6 not.

7 Q Okay.

8 A I can't find the one that I was looking at earlier.

9 Q Do you know what material was covered in the window
10 or why?

11 A This is actually something that looks like he
12 wrote. So apart from what this says, I'm not sure what
13 was covering it or why.

14 Q Okay. Thank you. Doctor, if I can move on to the
15 last stage, I guess. His release plan. Did you in your
16 evaluation you would look at a proposed release plan
17 that he had come up with if he was in fact released?

18 A I looked at a release plan that he made prior to --
19 this trial was rescheduled, but he had a trial date in
20 July and I looked at a discharge plan from in
21 anticipation of that trial.

22 Q Okay. And he said in that release plan that he
23 wanted to be around his family?

24 A Yes.

25 Q All right. I was a little bit confused because at

1 one time you said something about children and
2 grandchildren. But the second time you didn't say
3 anything about children and grandchildren, you said
4 family. So did he say family or did he say children?

5 A In this release plan he says, "spend time with
6 family generally." And then I think he talked about --
7 I think the only specific thing that he had here was go
8 fishing with his dad. But in a treatment assignment
9 that I reviewed, he said that he wanted to spend time
10 with his family, his grandchildren.

11 Q Okay. But in that one specifically he said family
12 and his dad, he didn't say anything about children and
13 grandchildren?

14 A He just says, family in general, yes.

15 Q Okay. All right.

16 MR. THOMAS: Your Honor, if I can beg the Court's
17 indulgence just for a second.

18 THE COURT: Certainly.

19 Q Doctor I have just one few last questions. We were
20 talking earlier about pedophilia. Is there also a
21 situation of someone just abusing children -- sexually
22 abusing children? Is that different from pedophilia?
23 Or does it put us back into the category of just sexual
24 offense verses pedophilia?

25 A Well, that's a very -- I'm not exactly sure how to

1 answer that question. But not all people who abuse kids
2 are pedophiles.

3 Q Right.

4 A So I guess somebody who sexually abuses kids, if
5 that's what you're asking, if are they always a
6 pedophile; is that your question?

7 Q Yes.

8 A They're not always a pedophile.

9 Q Okay. And, Doctor, with pedophilia, I guess you
10 normally have or I guess with predators you would
11 normally have some sort of activity such as like you
12 have stalking or grooming or how does that work? I
13 don't understand the exact element mechanics of a
14 predator.

15 A Well, predator in this state is not defined by
16 somebody who has to commit like predatory acts. It's
17 not a predator as, you know, lying, going out and
18 hunting animals or, you know. In other states, they do
19 have that sort of clause that the acts have to be
20 predatory as it's traditionally defined. In this state,
21 sexually violent predators is defined by somebody who
22 has committed at least one sexually violent offense, has
23 been convicted of a sexually violent offense which can
24 include an Alford plea which can include being found not
25 guilty by reason of insanity.

1 Q Right.

2 A Which can also include being found in certain cases
3 incompetent to stand trial, not likely to be restored to
4 competency. And they have a mental abnormality or a
5 personality disorder that makes them likely to commit
6 acts of sexual violence. That's how this state defines
7 a predator.

8 Q In our program, part of the mission of our program
9 is to treat is that -- that's what we're doing?

10 A Well, the law says long term control, care, and
11 treatment. And how that has been defined in Supreme
12 Court challenges is it's been viewed as it can in large
13 part be sort of public safety law or a law to protect
14 the public and treatment can be an ancillary goal. Not
15 everybody is going to benefit from treatment. But the
16 Supreme Court says that even those people who can't be
17 treated can still be civilly committed through these
18 types of laws.

19 Q But those individuals that can be treated can work
20 their way or, I guess, involve themselves in the program
21 to at some point be released?

22 A Yes. The program has released quite a few
23 individuals.

24 Q And that would be the goal?

25 A I would assume that it would be most people's goal,

1 but maybe not everybody's. It would depend on the
2 person whether they wanted to, you know, stay in that
3 sort of program or not.

4 Q Okay.

5 MR. THOMAS: Your Honor, I have no further
6 questions.

7 THE COURT: Redirect?

8 MR. BOGLE: Your Honor, very briefly.

9 REDIRECT EXAMINATION BY MR. BOGLE:

10 Q Dr. Gehle, just a couple of things. You mentioned
11 earlier on in your testimony that as far as the
12 treatment and the reviews done for the purposes of a
13 hearing like this is some kind of compartmentalization.
14 What do you mean by that?

15 A Well, it's an ethical problem to have somebody who
16 does the treatment also do the evaluations. When you're
17 a treatment provider, you're invested in seeing the
18 person improve and that has led to maybe some people
19 being recommended for release or some people maybe not
20 seeing the person as they actually are because they have
21 a therapeutic relationship. And can also cause a lot of
22 problems in the therapeutic relationship if you're
23 trying to help somebody, but your opinion might be that
24 they need to continue in the program and there can be
25 some hard feelings there. So we keep it separated.

1 Q So there's a logical reason for separating it out?

2 A Yes. That's practices to keep it separate.

3 Q Okay. And as far as the number of annual review
4 treatment reports you've done, the most recent one you
5 did, the trial we're here for today was dated December
6 of 2013; right?

7 A That's correct.

8 Q We had a hearing in July and the case was suppose
9 to be tried last July, but there was an illness and we
10 had to postpone the trial; right?

11 A Yes.

12 Q Okay. And prior to that you did his treatment
13 report dated around December of 2013 -- of 2012; is that
14 right?

15 A I'm not sure of the date.

16 Q Well, sometime in late 2012?

17 A Yes.

18 Q And that led to the hearing or this trial that
19 we're here about today; correct?

20 A That's correct.

21 Q Now, before that you did one for the time leading
22 in 2011. His first annual review after he had been
23 committed; right?

24 A That's correct.

25 Q And that went to a hearing and he was denied

1 release; is that right?

2 A That's correct.

3 Q That's the one you testified at before?

4 A I think I testified in two hearings before.

5 Q Okay. Now, is it your understanding of a plea
6 under that North Carolina verses Alford plea, the
7 defendant while not admitting his guilt, has to agree
8 that the State has enough evidence to convict him?

9 A Yes.

10 Q Okay. And as far as sex offender treatment in
11 prison, isn't the way it works, it's available if the
12 inmate wants it, can he transfer to the prison where
13 it's taught?

14 A That's how it works now. Yes.

15 Q Okay. And there's a new director has made the
16 program longer; right? Are you aware of that?

17 A I'm not sure if it's longer than it was before.
18 It's a little bit different.

19 Q Okay. And the guy had a force right from balance;
20 is that right?

21 A Yes.

22 Q He did it for a number of years?

23 A Yes.

24 Q I mean, five or six at least; right?

25 A Yes.

1 Q So the time he was offering it would have been the
2 time when Mr. Garrett was still in prison?

3 A (No response)

4 Q It goes back five or six years, Mr. Garrett was
5 committed in this program back in 2010, then it would
6 have been the time when he was in prison when that was
7 available?

8 A Quite possibly, yes.

9 Q Okay. And this Static-99 form that was shown by
10 counsel a few minutes ago showing a score of three. Had
11 you ever seen that before?

12 A I had never seen that before.

13 Q Okay. Did the treatment providing the treatment,
14 do they score the people on a Static?

15 A I've never seen them do that.

16 Q Okay. Signed by the evaluator like you?

17 A Yes.

18 Q Or it's done by you in a precommitment situation if
19 you were trying to decide whether or not a guy should be
20 committed; correct?

21 A Yes.

22 Q Okay. And when you do a Static form, you sign a
23 name to it, don't you? Is your name on --

24 A Well, I keep it in a file that I keep in my office
25 and so it will be in my handwriting. I don't ever do it

1 typed. I do it handwritten on a form that I print off
2 of the Static-99 website.

3 Q And your score form was a five?

4 A That's correct.

5 Q And you can pull it out right now if you want to
6 and show us the five things that gave him the five
7 numbers, couldn't you?

8 A Yes.

9 Q Would you mind doing that so we can get to it a
10 little quicker?

11 A (Witness complies)

12 Q Tell me what he got his five points for.

13 A A negative one for age. One point for prior
14 nonsexual violence. Two points for prior sex offenses.
15 One point for prior sentencing dates. One point for
16 noncontact sex offense. One point for unrelated victim.
17 And that's five altogether.

18 Q Okay. So minus one and then six more makes a total
19 net out of five; is that right?

20 A Yes, sir.

21 Q Okay. And would that be a Static score if you were
22 to score it today?

23 A Yes.

24 Q Because the only thing that would make it drop
25 would be if he passed the age of, what is it, 60?

1 A Yes.

2 Q So when they turn 60 they get a minus three or
3 something like that?

4 A Yes, he would lose two points.

5 Q Okay. Counsel asked you about -- well, let me just
6 ask you this. Is it true there's plenty of people out
7 there who are pedophiles?

8 A Yes, I would say.

9 Q Even living in their community right now that we
10 don't even know about?

11 A Yes.

12 Q Okay. But the ones that act upon it and get
13 convicted, that's the ones we're looking at right here;
14 right?

15 A Yes. But even pedophiles can get convicted and not
16 come into a program like this.

17 Q Correct. Correct. So for Johnny Garrett to come
18 into this program, he's got to be a pedophile. In this
19 case he was a pedophile; correct?

20 A He was diagnosed with pedophilia, yes.

21 Q And he acted upon it?

22 A Yes.

23 Q Several times getting arrested and then one time
24 getting convicted?

25 A Yes.

1 Q Okay. And then had met the definition in the
2 diagnostic and statistical manuals about how the
3 timeframe that has to be met at least six months acted
4 on these urges; is that right?

5 A Yes.

6 Q Okay. And you mentioned -- counsel mentioned
7 something about grooming. You studied cases where he
8 had been charged with contributing to the delinquency of
9 a minor, did you not?

10 A Yes.

11 Q And didn't that conduct include allegations of
12 showing little kids porn and giving them alcohol and
13 marijuana and things like that?

14 A Alcohol, cigarettes, and pornography, yes.

15 Q Are these examples of grooming?

16 A They can be, yes.

17 Q Okay. Thank you, Doctor. No further questions.

18 MR. THOMAS: Your Honor, if I may.

19 RECROSS EXAMINATION BY MR. THOMAS:

20 Q Doctor, let's go through the Static-99. And you
21 said that he picked up scores on a what? I apologize.
22 He had a negative one for his age.

23 A Yes.

24 Q And what were the others?

25 A One for prior nonsexual violence. Two for prior

1 sex offenses. One for prior sentencing date. One for
2 noncontact sex offense. One for unrelated victim.

3 Q All right. And some of these are based upon
4 non-convictions; is that right?

5 A Yes.

6 Q Okay. And one of them is based upon prior
7 nonsexual violence convictions, is that the CDV?

8 A Yes.

9 Q Okay. All right. And these are -- and it's call
10 the Static-99, these are things that you cannot change;
11 is that right?

12 A That's correct.

13 Q Now, counsel was asking about North Carolina verses
14 Alford. And I just wanted to ask you if -- because I
15 assume you're confused about the treatment plan and the
16 denial and the things that you're not having any insight
17 into your crime, you're not willing to admit that you
18 did something. And I'm not necessarily saying that this
19 applies to Johnny, but if you've got somebody who pleads
20 on Alford and they're saying, well, I'm afraid I'm going
21 to be convicted, but I'm still attesting before the
22 Court that I'm not guilty of this. In treatment, does
23 it then if they're in fact true, if what they're saying
24 is in fact true that they did not commit the crime and
25 they are concerned that if that he went to trial they

1 would be convicted, that would put them in a high risk
2 in treatment because they would be deemed to be denied.
3 Is that how that would work?

4 A I'm not exactly sure how to answer that. I think
5 that there is some -- it's a bit of a conundrum when you
6 have somebody who has not been -- not plead guilty or
7 not been convicted by a jury, even then you might have
8 somebody who didn't commit the act for the purposes of
9 the treatment program and the evaluations. You know,
10 the law says that even under the Alford plea, that's a
11 conviction. And so we have to assume that it's a
12 conviction. Well, it is a conviction. You have to
13 assume that those facts are true. If they weren't true,
14 the person would probably prove otherwise.

15 Q But -- and I don't want to beat a horse, but what
16 they're saying that an Alford is that I'm afraid that if
17 I go to trial, there's evidence that I might be
18 convicted, and I'm not willing to run that risk. I'm
19 going to plead to it, but I'm still asserting that I am
20 not guilty of the crime. I'm just curious about the
21 treatment and I guess this relates in ways to
22 non-convictions that someone could be deemed to not have
23 insight, not admitting to crimes when they're telling
24 the truth?

25 MR. BOGLE: I'm going to object on the grounds it's

1 been asked and answered, Your Honor.

2 THE COURT: Overruled.

3 MR. THOMAS: I'll withdraw.

4 THE COURT: I'll let it stand, but if you want to
5 withdraw it, that's fine.

6 MR. THOMAS: I will, Your Honor. I have no further
7 questions, Your Honor.

8 THE COURT: Doctor, thank you very much. You can
9 step down. Any additional witness from the State.

10 MR. BOGLE: No, Your Honor. At this time, the State
11 would rest.

12 THE COURT: Very good. All right. Ladies and
13 gentleman, what we're going to get to do is go ahead and
14 break for the evening and we'll proceed with trial
15 tomorrow morning. We have received the State's case in
16 chief at this point. I am well aware that your husband,
17 wife, significant other, or whoever it is that you share
18 a room with, I know that they know that you had jury
19 duty today. Okay. Because probably one of the first
20 things that happened when you got the summons a couple
21 of weeks ago, you opened the envelope and you said, oh,
22 great honey, I've got jury duty in about a week or a
23 couple of weeks. So naturally when you go home tonight,
24 they're going to ask you, well, were you selected for a
25 jury? Feel free to say, yes. Yes, I was selected for a

1 jury. Of course, the next question out of their mouth
2 is going to be, well, what kind of case is it? At that
3 point in time, you're going to need to draw a line.
4 Basically explain, well, I can't really talk to you
5 about it today, but I will be free to discuss it with
6 you tomorrow.

7 The reason for that, ladies and gentleman, is the
8 admonition I've given you throughout the trial. This is
9 going to be your decision to make tomorrow. And no
10 matter how well intention your spouse's comments may be,
11 we can't run the risk that what they say influences you.
12 Again, this is going to be your decision to make, not
13 your spouse, significant other, et cetera. All right.
14 So please don't discuss the case with them this evening.
15 Hopefully your lives are interesting enough that you'll
16 have other things to talk about as opposed to this
17 particular case. So just don't discuss the case with
18 anyone tonight.

19 I'm going to ask that if you could, be back in the
20 jury room tomorrow morning at 9:30. I anticipate we'll
21 be in a position to proceed at that point in time. So
22 come in tomorrow morning at 9:30, let the people at the
23 front know that you're a juror and they'll get you back
24 to the jury room. All right. I anticipate they'll have
25 coffee and maybe a few snacks back there, but probably

1 nothing too heavy, so you may want to grab breakfast
2 when you come in. With that, I hope you have a great
3 evening. I'll see you tomorrow morning at 9:30. The
4 jury is excused.

5 (The jury left the courtroom)

6 THE COURT: All right. The record should reflect
7 that the jury is out. At this point, Mr. Thomas, I
8 assume that the -- Mr. Garrett moves for a directed
9 verdict; is that correct?

10 MR. THOMAS: That's correct.

11 THE COURT: I will be happy to hear from you on that
12 if there are any specifics.

13 MR. THOMAS: Your Honor, just that we feel that
14 there's been no evidence so far.

15 THE COURT: Of course, you renew all prior motions?

16 MR. THOMAS: I do, Your Honor. We renew the prior
17 motion.

18 THE COURT: Including the one for a mistrial? So
19 that motion is before in the like most favorable to the
20 State, the Court will deny your motion. There is
21 evidence from which the jury might reasonably believe
22 that the State has met it's burden of proving beyond a
23 reasonable doubt Mr. Garrett qualifies for continuous
24 treatment.

25 All right. Gentleman, I'll see y'all in the

1 morning.

2 MR. THOMAS: Thank you, Your Honor.

3 MR. BOGLE: Thank you.

4 (Court was adjourned at 5:26 p.m.)

5 (Court resumed trial on October 7, 2014 at 9:45
6 a.m.)

7 THE COURT: All right. Everybody I apologize for
8 the delay. We're back on the record. I believe that
9 the jury is present and Mr. Garrett is present as well
10 as counsel. Anything before I bring them out?

11 MR. BOGLE: No, Your Honor.

12 THE COURT: Let's have the jury out then. Please,
13 someone.

14 (The jury enters the courtroom)

15 THE COURT: All right. The record should reflect
16 that the jury is back and seated. Ladies and gentleman
17 of the jury, I trust that y'all had a pleasant evening
18 last night. We are still involved in the trial of the
19 case of The State verses Mr. Garrett. At this point in
20 time, Mr. Thomas, anything? Call your first witness, I
21 suppose.

22 MR. THOMAS: Your Honor, please the Court. We'd
23 call Mr. Johnny Garrett to the stand.

24 THE COURT: Sir, if you'll come up, please.

25 JOHNNY R. GARRETT,

1 being first duly sworn, was examined and testified as
2 follows:

3 MR. THOMAS: Your Honor, if it please the Court.

4 THE COURT: Yes, sir.

5 MR. THOMAS: Your Honor, may I approach?

6 THE COURT: Please.

7 DIRECT EXAMINATION BY MR. THOMAS:

8 Q Johnny, I know you're nervous today.

9 A (No response)

10 Q Are you nervous?

11 A Yes, sir.

12 Q Okay. What's your full name, Johnny?

13 A Johnny Ray Garrett.

14 Q And where do you live?

15 A I live in Greer, South Carolina.

16 Q Okay. Spartanburg County?

17 A Yes, sir.

18 Q Okay. And you're currently where?

19 A I'm at -- in Columbia at Broad River Correctional
20 Institute, maximum security prison on death row.

21 MR. BOGLE: Objection, Your Honor. Classification
22 is run by the Department of Mental Health. It's not
23 death row. It's not mandatory prison.

24 THE COURT: All right. Sustained.

25 MR. THOMAS: That facility is a former --

1 THE COURT: Is the former --

2 MR. THOMAS: That's correct.

3 Q That facility is being rented by the Department of
4 Mental Health?

5 A Yes, sir.. I clarify that.

6 Q All right. And you're in technically a mental
7 health facility?

8 A Yes, sir.

9 Q Okay. Johnny, tell us a little bit about what got
10 you to where you are today. What's been going on in
11 your life?

12 A I started kind of young. I was about 13, I think,
13 when I first sampled marijuana and graduated to alcohol.
14 Over the years it got worse, you know. A lot of
15 irresponsible behavior. Crossed a lot of boundaries
16 that I didn't know. I didn't know anything about
17 boundaries back then really or risk factors or anything
18 else.

19 Q You had an addiction problem?

20 A I didn't realize it at the time. And all the way
21 through the military and all, I still didn't realize --
22 or I wouldn't admit that I had an alcohol problem or
23 drugs. But you don't really realize it or you just
24 don't want to man up and say you've got an alcohol
25 problem or you've got nobody to tell that you've got an

1 alcohol problem.

2 Q Right. Hold are you now?

3 A I'm 52.

4 Q Fifty-two. And you said you were in the military?

5 A Yes, sir.

6 Q Okay. What branch?

7 A I was in the Army.

8 Q Okay. Now, what were you -- were you working back

9 in those days or after you got out of the military?

10 What were you doing?

11 A I was doing construction. I became heavy equipment

12 -- probational heavy equipment operator and worked with

13 my dad a lot --

14 Q Right.

15 A -- over the years.

16 Q You were married?

17 A Yes, sir. I got married when I was 26, I think.

18 No, 23. Excuse me.

19 Q And you're divorced?

20 A Yeah. We stayed married for 14 years and ended in
21 divorce.

22 Q What caused the divorce? What happened?

23 A A lot of infidelities on both parts.

24 Q Okay. You still drinking during that period of
25 time?

1 A Yeah. Drinking. Me going out and staying out all
2 night. Coming home drunk. I worked out-of-town a lot.
3 You know, would be gone for a month at a time. Working
4 a crane, you know, in different states and stuff.

5 Q Yeah.

6 A Stayed gone a lot.

7 Q So you ended up in prison?

8 A Yes, sir.

9 Q And how did you end up in prison?

10 A Committed a lewd act on a minor.

11 Q What was going on with you during that period of
12 time?

13 A I had been -- we had been planning a Fourth of July
14 party. I hadn't been married for four months. I had
15 just recently married.

16 Q This was your second marriage?

17 A No, my third.

18 Q Third?

19 A Yeah. Third marriage. The second marriage, it
20 didn't last but about a year and a half. We were both
21 alcoholics in that one and that just didn't work out.
22 She worked for me, too, on the construction site. I was
23 the supervisor, so we eventually parted ways. There was
24 no -- it was a mutual agreement pretty much.

25 But my third wife, we dated for almost two years.

1 before we married. And we was going to church and I had
2 straightened up. I had quit drinking. Or let me
3 rephrase that. I wasn't drinking openly like I was. I
4 would still slip and drink, you know, a beer or two
5 every once in awhile. And eventually, we started
6 smoking marijuana and then right back into it again.
7 You know, we was right back -- within three months --
8 two months after we was married, we was back smoking pot
9 and doing cocaine and all kind of stuff.

10 We had built up to a party the Fourth of July which
11 I'm coming to, and she had the kids over. I didn't know
12 they was going to be there for the Fourth of July. And
13 my company, when I paid the guys that day, we had been
14 drinking that day at the job site and my wife came by
15 and she went and got some more alcoholic beverages and
16 we drank some more. Well, I left my truck at the job
17 site because I wasn't able to drive. And I don't even
18 remember going back and getting my truck. But the next
19 three days, we drank and partied and drank and, you
20 know, indulged in all kinds of alcohol and drugs.

21 Q Right.

22 A And the night of the offense, my wife, she said she
23 was going to the store to get some bread. You know, hot
24 dog buns and hamburger buns. And I told her, I said
25 take the kids with her. I ain't babysitting. You know,

1 I couldn't even take care of my own self much less try
2 to babysit her kids -- you know, the kids. And she
3 said, well, I'll only be gone like 15 minutes. And I
4 said, well, that won't hurt you then for 15 minutes to
5 take the kids with you, you know. She said, I'll be
6 right back. And I said, well, you better hurry back.
7 I'll be sitting right here in the recliner when you come
8 back.

9 And the kids were in the other room watching TV,
10 watching kid's movies. I don't remember -- I don't know
11 what time it was. I had no clue. That -- [] came in
12 and she wanted to sit down and watch TV. And I said,
13 [] you can go in there and watch the movies with
14 your sisters. And she went to fussing and everything.
15 I said, well, you can go to bed or go watch TV, one or
16 the other. And the kids' room -- the room was to the
17 right of the living room. It was a small trailer. And
18 there was no door anyway on the door and the little
19 single bed that she was laying on right there.

20 And I remember her fussing about the dog barking.
21 I had a coon dog outside on a long runner from the barn
22 to the house. And the dog -- she kept fussing about the
23 dog barking. And I said, well, you'll be fine. Just
24 don't worry about the dog. Then I just kept on
25 drinking. I'm thinking my wife will be back. So I

1 don't know what time it is. I could have fallen asleep
2 myself. I don't know. Then anyway, she kept -- I heard
3 her hollering about the dog. So I get up and I walk in
4 there and in the back -- in the back of the little room,
5 the trailer's got a big window. I'm looking at the
6 window, there's a big night light outside. I'm thinking
7 maybe I'll see what she's barking at, make her stop
8 barking. Well, this went on for two or three times.
9 Then finally, I just sat down.

10 The little bed was this way and the door here and
11 the TV is here and my recliner is here. So I sat down
12 on the end of the bed. I remember sitting on the end of
13 the bed and I'm just going to jump up and look out the
14 window and see what she's barking at. I remember doing
15 that. Later on. I didn't at that time, but, you know,
16 later on.

17 So at some point, I fell asleep. Sitting there
18 with my clothes on, a beer in my hand, and I feel
19 straight back, I guess, because when I woke up I had
20 [redacted] against me. You know, when she hollered, stop it,
21 papa. She said, stop it, papa. Stop. And it wasn't
22 registering in my mind. It would not register. And who
23 would say, stop it, papa? And I had my hands on the
24 back of her legs and on her butt. You know, rubbing.
25 And I'm thinking, you know, why is Christy -- I'm

1 thinking it's my wife.

2 Q Right.

3 A And then when she said, stop it, papa, the third
4 time, I shoved her away from me and I jumped up and
5 she's looking up at me like -- she's mad at me like --
6 and I said, oh. You know, I said, [redacted] it's okay.
7 You didn't do nothing wrong. I'm not mad at you.
8 Because I was cussing and I was mad. Angry. And I told
9 her, it's not your fault. You ain't done nothing wrong.
10 Just lay back and just go back to sleep.

11 And then I went through the house looking for my
12 wife and I couldn't find her. I looked outside and the
13 van's not out in the yard. We don't have a phone. She
14 has the cell phone with her. And I said, I wonder where
15 she's at. I'm getting mad. And I still didn't notice
16 what time it was. I wasn't -- it didn't register about
17 no time because I'm thinking she ain't been gone long.
18 And I sat there and I kept drinking and drinking and
19 drinking. And at 7:15 the next morning, she pulled in
20 the driveway with an arm full of groceries. And I said,
21 where have you been, you know. I mean, where have you
22 been. She said, well, I went by the job and they was
23 having a Fourth of July party and I stayed and I forgot
24 and lost time.

25 Q All right. Let's move on just a little bit. So --

1 and ultimately you were arrested for this?

2 A Oh, yes, sir. That day when she came back, I told
3 her what had happened and she went in there and talked
4 to [REDACTED] And I said, look, let's go take the kids home
5 now. And so we packed them and took them back to their
6 house. They had lived with my wife's mother. She had
7 custody of the kids, so -- my wife's first three kids.
8 And anyway, I was telling her about it and she comes
9 back out and she said her mom wanted to take her to the
10 hospital. I said, that's fine, go with her, and I'll be
11 at the house when you get home. I said go with her and
12 make sure that, you know. And she came back and she
13 told me the doctor said that everything was good that
14 she was not sexually assaulted -- physically sexually
15 assaulted. No penetration. No bruising or anything
16 like that. I said, well, I'm glad. I'm glad you know
17 that. She said, that's okay, we'll figure this out.

18 So we went on for about another month back and
19 forth with the detectives, cooperating, you know. I was
20 still drinking and taking pills. I was addicted to
21 them, I couldn't help that.

22 Q So you talking about drinking and the lifestyle and
23 things that were going on, whose fault was this?

24 A It was mine for the lack of knowledge of what it
25 could do to me.

1 Q And to everyone else?

2 A Well, my family would always tell me, well, you
3 need to quit that drinking. But I would always say,
4 well, I ain't drinking nothing but a beer or two. But I
5 was lying.

6 Q Right.

7 A Because I was ashamed to admit that I was an
8 alcoholic. I'm a recovering alcoholic now. I feel good
9 about me now.

10 Q So this was kind of, I guess, the darkest part of
11 your life?

12 A Yeah. Yes, sir.

13 Q Okay. And you pled under North Carolina verses
14 Alford?

15 A Yes, sir, at the direction of my attorney.

16 Q Right. And you went to prison?

17 A Yes, sir.

18 Q And how long did you go to prison for?

19 A Almost seven years -- six and a half years.

20 Q Okay.

21 A On a nine year prison sentence.

22 Q Now, what happened to you in prison?

23 A Well, I was scared when I went in. I didn't know
24 what was going to happen. I went into a room with -- I
25 had two roommates. We was stacked three bunks high.

1 And the first week I was there, the guys was -- they was
2 in the room smoking marijuana. And I didn't want to
3 ruffle no feathers. I was the only white -- I'm not
4 racial or anything like that, but I was the only white
5 guy in the room. And it was kind of -- prison is
6 different. If you don't understand the prison life,
7 it's like a whole new world.

8 And I didn't want to start out with people mad at
9 me, you know. So the guys were smoking a joint and they
10 handed it to me and I started to take a hit off of it
11 and I said, I can't do this. This is what got me --
12 this is the beginning of the beginning of what started
13 what got me here. Is that first toke off that marijuana
14 cigarette. And I said, no, I can't do this. I got to
15 clean myself up and do right.

16 And shortly after that, I started going to
17 education building and got me a job at the library. Got
18 a job PI. Got a job on the mess. I had clearance to
19 the whole prison system on the upper and lower yard at
20 Tyger River. Even the warden's area. Built trust and I
21 built a confidence in me and my self-esteem. I went to
22 AA in prison. Went through anger management group in
23 prison. There was no sex offender treatment that I knew
24 of that was recommended in prison. If they had of been,
25 I would have most likely volunteered to go. Even though

1 it would have been in Columbia and it would have cut
2 back on my visits, you know, because it's a long drive
3 for my family to drive to Columbia. And -- but I
4 straightened up.

5 I started teaching Voc Rehab in prison. I got a
6 Construction Engineer's degree in prison. Two Master
7 Carpenter degrees and a certificate of teaching Voc
8 Rehab. And I've been accepted in the outpatient Voc
9 Rehab already.

10 Q Now, did you get any disciplinary's?

11 A No, sir. I had one infraction in prison for -- I
12 was working double shifts in PI and I had fell asleep at
13 count time. I took my shower and I sat down at the door
14 and I fell asleep. And when they come through to count,
15 you're suppose to be standing in front of the door. And
16 the officer woke me up and he said, you know, he
17 startled me, I fell. When I jumped out of the chair, he
18 startled me and I fell down and he laughed. And he
19 said, you're okay. You're okay. And that's the only
20 infraction I had in prison.

21 Q Okay. So after you completed your prison, your
22 sentence, then you came into the -- this program, the
23 SVP program?

24 A I found out about the predator pending almost three
25 years before I maxed out of my prison sentence. And it

1 had startled me because I didn't know what it was. I
2 had never heard of it before. I thought everything was
3 going well. I had my whole life made out. My whole new
4 life. And I never did see my victim. I always wondered
5 how she was doing. If she was doing okay in school and
6 stuff like that. I thought about her, you know. I was
7 hoping she was doing good.

8 But then I went to the county jail in Spartanburg
9 County up here and I waited for a year to go to trial.
10 For a civil commitment to where I'm at currently at now.

11 Q And you're civilly committed?

12 A Yes, sir.

13 Q Okay. Now, what's happened to you since you went
14 into the program? When you first went in, what did you
15 do?

16 A January of 2010. I was confused. I was angry. I
17 had to go there. I couldn't understand why I was there.
18 I mean, I didn't understand anything about what is this
19 program about. You know, what is it. And it took a
20 little while and I went through a few case managers and
21 coach facilitators, you know, they change every five or
22 six months you get a new one or something or they'll
23 move on. And --

24 Q They have a lot of turnover?

25 A Yeah. I think I had 11 case managers, coach

1 facilitators over the last four, almost five years now.
2 It will be five years in January. But anyway, I would
3 -- I learned something from each one of them. You know,
4 they all brought something to the table. You know, we
5 learn empathy. I didn't have a clue what empathy was.
6 I mean, I thought we was born with it, we all have some
7 type of empathy. But I didn't understand how to express
8 empathy. That was one of the first assignments we
9 learned and boundaries. And I'm like boundaries, you
10 know, I didn't know the different types of boundaries
11 that could be until I was in the program. And risk
12 factors, I had no clue.

13 Q And you went into Geo Care, too; is that correct?

14 A Yes, sir.

15 Q And Geo Care is a little different than the general
16 housing unit?

17 A Yes, sir. I had some medical issues to begin with
18 and then while I was there, they started a unit on the
19 fourth floor. And it was suppose to have been like an
20 honor type unit. The better facilities. You had TV,
21 flat screen TV's in the room. There's four to a room.
22 Had air conditioner. That was a change. And it was
23 more comfortable and it was more relaxing. It was less
24 stressful in there and you could focus more -- stay task
25 focus so to speak on what your assignments were. And I

1 received -- I think that year alone I received 126 hours
2 of nothing but treatment program material and knowledge.

3 I accomplished graduating ADSAP or AOD group,
4 alcohol and other drugs. And that was a big
5 accomplishment for me because that was one of the main
6 reasons that I was -- you know, the jury mentioned that
7 before I was civilly committed. And I went through
8 another anger management group there for 18 weeks while
9 I was at Geo. And, you know, I learned a lot about
10 thinking before you speak. Thinking about how somebody
11 else is going to feel on what you say. And how to cope
12 with other people's negativity. You don't have to
13 always think negative.

14 It's one thing I really learned a lot about is to
15 look around me and see what other people's thinking.
16 You know, not thinking, but, you know, how they feel or
17 how they're reacting to something you say. I try not --
18 used to I didn't think about it, didn't care whose
19 feelings I hurt, you know, back before I went to prison.
20 It didn't register that I was hurting anybody's feelings
21 because I didn't know how to recognized that. And I
22 learned a lot.

23 Q So you went from Geo Care and then you went back to
24 the unit that you're in now?

25 A That was a big traumatic experience really for

1 everybody that was involved. There was 40 of us at Geo
2 in that program. And we were moving, advancing. I lost
3 a couple of good friends over there that passed away
4 while we was in the program. And that was another
5 traumatic blow. Because they had helped me advance to
6 the -- to where I'm at now.

7 Q They didn't move you back because of anything that
8 you did, was it?

9 A No, sir.

10 Q You did not have any disciplinary's or anything
11 like that?

12 A No, sir. The contract or something ran out. So
13 they had started redoing the Congaree unit,
14 refurbishing, whatever, you know. And they moved us all
15 back. It was like a big mass of movement, you know,
16 like three or four a day, five a day. And the facility
17 was nothing. After you've been in a nice facility like
18 Geo and then you go back into an old building with mold
19 and, you know, the sinks were busted out, no
20 air-conditioning, it was a big difference and it
21 affected you in a way you think and the way you see the
22 program and say, man, what happened, you know. We was
23 moving along and all of a sudden, bang, we stalled out.

24 Q So how long have you been there? How long have you
25 been back?

1 A At Congaree?

2 Q Uh-huh.

3 A We moved back in March of 2013.

4 Q Okay. And what are your accomplishments? What
5 have you done since you've been in the system? You
6 talked about the programs that you took. What do you
7 feel like that you've learned or accomplished where you
8 are today?

9 A I've learned that I am a human being. And that
10 people do have feelings that you need to address those
11 issues. And I addressed those issues on how to handle
12 those problems. I have -- I learned how to talk to
13 people so to speak or try to talk to people where you
14 can understand why you shouldn't be so blunt, you know.
15 I think about people's feelings on what I'm going to
16 say. I learned what the risk factors were. I can't go
17 in to a store and look back there at the beer rack so to
18 speak and say, you know, I can drink one beer. I can't
19 drink one beer. And I know I can't drink one beer
20 because that's going to lead to another drink.

21 And if my daughter comes over at home, if she comes
22 to my house, if she's got her kids with her, and all of
23 a sudden her friend calls and says she wants to go
24 shopping and she asks me, says, dad, will you keep the
25 kids for me for a few minutes. I'm going to have to

1 tell her, no. And it's going to hurt her feelings, but
2 I'm going to have to say, no, I can't. I would love to
3 spend time with my grand kids, but I'm going to have to
4 have -- I want someone here with me while I'm spending
5 some quality time with my grand kids. I talk to them on
6 a regular basis on the phone, now. I have pictures. I
7 get pictures. And my case manager allows me to have
8 pictures of my grand kids. And my family and that
9 helps. And they send me pictures to keep me in the loop
10 of what's going on out here in the county, you know,
11 where I live.

12 And I've learned how to be a positive maybe a
13 support to my community. I've learned how to think
14 about other peopling's feelings than me. It's not all
15 me being me. It's about everybody. I don't know if
16 that sounds right, but, you know, I'm still working on
17 the speech stuff.

18 Q Right. Now, you're a convicted sex offender?

19 A Yes, sir. I will have to register. And I have
20 spoken with the lady that's going to be in charge of me
21 if I'm released. She said I have no restrictions on me
22 unless the Court's deem something necessary which I will
23 obey. I'm already set up for an outpatient program at
24 alcohol and substance abuse. I've been accepted into
25 the outpatient with Voc Rehab. And I've been accepted

1 in an outpatient sex offender treatment program. And
2 I'm willing to take part, if it's there. I have set up
3 for AA meetings already. It's two a week. You know,
4 I'm trying to -- I don't know how to say it. I'm trying
5 to, you know, show my family and show me that I can
6 change and I have changed and I will stay changed.

7 Q All right. Now, you talked about earlier in this
8 trial, you don't have any probation, do you?

9 A No, sir.

10 Q Okay. And there's nothing by not having any
11 probation, there's nothing that anybody can make you
12 seek outpatient treatment. They can't enforce it. You
13 understand?

14 A Yes.

15 Q Because you're not on probation, they can't say if
16 you don't do this then we can bring you back and try to
17 revoke your probation?

18 A Yes, sir.

19 Q What's your answer to that? Are you willing to do
20 these things?

21 A Well, I've learned something else in prison, too.
22 I went through small business class to get my small
23 business degree -- certificate. Because I'm planning on
24 starting a small company back up with my dad and my
25 brother-in-law. And a man, if he doesn't have his word,

1 my daddy always said, you got to have your word. And I
2 have lived by that through prison and through the
3 treatment program. If I told somebody I was going to do
4 something, you know, to do something. And if I told you
5 that I would be there to help you with an assignment,
6 I'm there. If I'm going to tell you I'm going to be at
7 work, I'm there. If I tell this Court that I'm going to
8 go to treatment, I'm going to finish it. And if anybody
9 in here can check on me anytime they want and see me
10 progressing and progressing further and further and
11 further if I go. I have no problem at all with that.

12 Q That was not your word before though, was it?

13 A I didn't have a word. My only word before was,
14 let's go get a beer. Or let's go to the strip club or
15 let's go to the bar. Or let's go mud bogging or
16 anything. Or let's go ride motorcycles. And that's the
17 only thing I thought about was partying. You know, or
18 chasing women or whatever you want to say. A lot of
19 inappropriate reckless behavior. I didn't realize that
20 when I got behind the wheel of a vehicle after I had
21 been drinking, I not only created a problem, I was
22 invading everybody's boundaries that I went by in a car
23 I was putting them at risk at being a potential victim.
24 It doesn't have to be a sex offense to have a victim.
25 You can have a victim by going down the road or a

1 potential victim is what I say. Every time I went out
2 the house, I had a potential victim because when I got
3 behind the wheel of that vehicle, it's like they say,
4 it's a two-ton killing machine. And I didn't think
5 about that because I didn't think. I wasn't thinking
6 about what was the consequences of everybody around me
7 of what was happening. And that was a big wake up
8 calling when I finally realized what I was really doing
9 to people around me an myself and my family.

10 Q Now, in the evaluation process, you heard Dr.
11 Gehle's testimony about you --

12 A Yes, sir.

13 Q When you met with Dr. Gehle, she asked you
14 questions?

15 A Yes, sir.

16 Q Okay. And you tried to answer those questions?

17 A Yes, sir.

18 Q And she used in her evaluation certain things that
19 you were accused of, but never convicted of; is that
20 true?

21 A Yes, sir.

22 Q And you had tried to explain those things to her?

23 A Yes, sir. And I didn't really know how to explain
24 to her. And I was kind of skittish of her because I had
25 heard so many rumors back in the program about, you know

1 staff and how they would do. And I was -- that first
2 meeting we had, you know, I was kind of guarded you
3 might say.

4 Q You were afraid of her?

5 A I was terribly afraid of her.

6 Q Okay. Now, in the program as far as part of the
7 treatment for sex offense is a lot of it is admitting
8 what happened?

9 A Yes, sir.

10 Q And not being in denial of certain crimes. And how
11 does that work?

12 A Well, the way the program looks at it, if you've
13 been charged with something, you're automatically guilty
14 whether you was convicted or not.

15 Q Right.

16 A And it's sort of like being in court, you have to
17 show the burden of proof to them. And if they don't
18 believe you, then you're never going to get recommended
19 to get out of the program. And that was told to me, if
20 I didn't take responsibility for all the crimes I was
21 charged for, I would never been recommended to leave the
22 program. That was the 30 hours in the program. That's
23 when I contacted you.

24 Q All right. So, if I can use Dr. Gehle's words a
25 conundrum, it creates a conundrum when you explain to

1 them what happened, if doesn't fit their perceived ideas
2 of what should have happened?

3 A Exactly. And that's sort of surprised me yesterday
4 when she used that word because I had just used that
5 word in group about two months ago I had found it in the
6 paper and I had the definition and I took it to group.
7 And I said, you know, I showed it to my case manager and
8 she read it. And she said, you know, that is an awesome
9 definition. I said, yes, so am I in this program.
10 Because we can't keep staff. We can't keep anybody
11 going. And, you know, we just have to catch bits and
12 pieces of, you know, what's going on and we take it and
13 we give it to other people in the community. It's
14 called a community. We have a president, vice
15 president, secretary, and stuff like that. I've been a
16 president of the community. I've been the vice
17 president. I've been a resident advisory board.

18 Q You've been active --

19 A Yes, sir. I've been active. I've taught arts and
20 crafts. I've been an arts and craft's assistant. I'm
21 very involved in the community. I would not have been
22 like that ten years ago. Or 15 years ago. I would have
23 gone and thought about me. And that tells me -- I mean,
24 when we came back from Geo -- let me explain this one
25 little quick thing. When we came back from Geo to

1 Edisto -- I mean, Congaree, which we used to be Edisto
2 and Congaree now. But I look around --

3 Q That's the name of --

4 A Yes, sir, there's two different -- there's two
5 units in one. It used to be just Edisto and then they
6 took the other part of the unit, Congaree unit and made
7 two big units. So there's 178 residence. We call them
8 residence. We're private citizens so to speak. But,
9 you know, it's like a little community and we all try to
10 work together and I would go help -- we'd take all our
11 assignments, everybody, and we try to work together to
12 learn or try to find out what they wanted us to do. We
13 would ask. If we don't, tell me what you want me to do.
14 Tell me what you want me to learn and I will learn it.
15 I'm open to learn.

16 MR. THOMAS: May I approach, Your Honor?

17 Q What's this?

18 A Those are works in progress. Work assignments.

19 Q What's this?

20 A Those are assignments and work assignments and
21 stuff. I brought this for three of the past two years
22 here. This is 2013 and up-to-date. Those are works
23 that I have done, works in progress. And assignments,
24 homework assignments that I've completed. And there's
25 more in here and there's more over there. And anything

1 -- everything I've done is right here. Activities,
2 therapy, certificates, BMC, Behavioral Management
3 Committee, total group hours, bills.

4 Q You just received a bill?

5 A I did for \$400,000, I think.

6 Q Was that sent to your family?

7 A Yeah. But, you know, I'm not required to pay that.
8 That goes to the State or to the community I live in.
9 They have to pay that bill. And I'm trying to stand up
10 to standards that they're going to expect out of me for
11 that type of money. But, I mean, I have journals for
12 every group I've had. Every hour in group that's spent.
13 I have journals of everything that we discussed whether
14 it was me presenting or somebody else in group that was
15 presenting. I brought a couple of pictures of some
16 activity therapies I had done for the activity staff.

17 Q Let me ask you about that. Because that ended up
18 getting you an infraction. They used the word
19 infraction verses disciplinary.

20 A Yes, sir. That's where we was headed with that.

21 Q So you've had a few infractions since you've been
22 in?

23 A Do what now?

24 Q You've had a few infractions?

25 A Yes, sir. And most of them had to do with just

1 miscommunication or a misunderstanding.

2 Q The covering of the window, what was going on with
3 that?

4 A We don't have -- we have just recently acquired air
5 conditioners and we've been there since 2013. I live
6 upstairs on the eastside and the sun comes and we have
7 two windows that are exactly four inches wide and four
8 foot high side by side. The sun shines in that window
9 all day. Okay. And I'm in a single room in the corner
10 and I have like 12 foot of space, of walk-in space,
11 square foot in my cell. The sun comes through and it
12 gets up to 93 degrees in the room. There was 33 people
13 on the eastside of the building that got a warning. It
14 was not an infraction, it was a warning. I had toilet
15 paper strips in the window and it would knock ten
16 degrees off the heat in my room. And we would do it and
17 in the afternoon we would take it down. We had a new
18 officer come through, she saw it. She didn't give us a
19 warning or nothing. We didn't even know she was coming
20 through and she wrote everybody up. And I never -- I
21 took responsibility for putting the toilet paper up.
22 But some of the guys had sheets or towels, you know.
23 And I put -- you can put in a request to -- what do you
24 call it? You know, to deny or not deny it, but ask for
25 like a little trial. Anyway, I admitted to having

1 toilet paper in the window. And they gave us all a
2 verbal warning. And that was the end of that.

3 Q Okay. And then you also had an infraction for
4 having a paper chip and a tongue depressor?

5 A Yes, sir. And a toothpick.

6 Q Toothpick?

7 A A toothpick.

8 Q And why did you have those?

9 A Well, my job has been since I've been in the
10 program, I clean the milieu. The milieu is the area of
11 the dining area. We all eat and sit and watch TV and
12 live in the common area. It's called the milieu. And I
13 sweep and mop that area after every meal. And they pay
14 us a little check it's like \$7 a week or something like
15 that. Yeah, it's 7.50 a week. And it's sort of like a
16 -- you know, it's not a hard job, but you sweep up stuff
17 and I had found a toothpick in the little plastic paper
18 -- plastic paper toothpick, you know. It wasn't a
19 toothpick, but a little old plastic thing and I had it
20 for three or four years in my arts and crafts stuff and
21 the Geo, they give us tongue depressors and I make
22 stuff.

23 MR. THOMAS: May I approach, Your Honor.

24 A With the tongue depressors and paper.

25 Q So you make items with these in your art or --

1 A Yes, sir. In hobby craft and the toothpick was
2 used to -- as a glue applicator. I had put paper around
3 it where I could hold it, you know, wrap paper around it
4 to glue stuff.

5 Q And the tongue depressors --

6 A And the tongue depressor I had got the paperwork, I
7 was trying to get a patten on a miniature parts basement
8 tool and I had done talked to some captains and
9 lieutenants and colonels -- I mean, majors in the prison
10 system said they would approve that for their arts and
11 crafts. And it was two tongue depressors made into a
12 little thing. Just two tongue depressors and a paper --

13 Q Is this -- these pictures are pictures of items
14 that you made in hobby craft?

15 A Yes, sir. I drew blueprints and built those out of
16 paper.

17 Q And what did you build them with?

18 A An emery board for your fingernails to cut the
19 paper. Which the paper was the backs off of legal pads.

20 Q Right.

21 A It was all recycled material.

22 Q Okay.

23 A It's all paper. Complete paper. And it's fully
24 functional.

25 Q Okay.

1 MR. THOMAS: Your Honor, we would like to introduce
2 these if we could, please.

3 MR. BOGLE: No objection.

4 THE COURT: Mark them separate, one and two.

5 (WHEREUPON, Defendant's Exhibit Numbers 1 and 2 were
6 marked and entered)

7 Q Johnny, let's move on. You did get another
8 infraction and that was involving an alleged book?

9 A Yes, sir.

10 Q Okay. And what happened with that?

11 A It was a magazine actually. It was called Hotbox
12 magazine. It's a Harley Davidson motorcycle edition. I
13 had been getting it for five years. My case manager
14 approved the magazine and the treatment team also
15 approved the magazine. And when I would get through
16 with those, I would put them on the shelf for everybody.
17 Everybody done that with magazines. We had like a
18 little magazine type club where like you can get five
19 magazines for 20 bucks for a year's subscription. So
20 there's eight or ten of us got together and we said,
21 well, look, you order these five. I'll order these
22 five. These five. These five. And we'll all have a
23 fresh -- the whole community will have a new set of
24 magazines every month. And the magazine I was getting
25 had, you know, it had women in bikinis sometimes, or

1 shorts and halter tops sitting on the motorcycles. And
2 to me, I was looking at -- I mean, yeah, they were
3 pretty. It was nice to look at. But it was no deviant
4 type thoughts or anything going through my head. I'm
5 looking at the motorcycles and the paintings because I
6 draw.

7 And I use to sell a few tattoo patterns. And I
8 draw tattoo patterns and I draw portraits or anything
9 else you -- I can draw anything. And I can draw
10 blueprints and build whatever I draw. I drew blueprints
11 for all this stuff. But it was nothing that my -- it
12 was nothing that a 10 or 12 year old couldn't walk in
13 Bi-Lo's and buy off the shelf. And anyway, now the case
14 manager that approved my magazines is now on the BMC
15 board that later punished me for the same magazine. But
16 now, they changed the rules with the magazines here
17 while I was at Geo. I was not aware. And I'm not
18 making excuses, but I still got the magazine even at
19 Congaree -- when we got to Congaree. The case manager
20 would get it or it would come in the mail. They would
21 give us a slip of paper saying it was received and then
22 when the case manager come through once a week or
23 whenever she came to the dorm, she would give us the
24 magazine. When I get through with it, I would either
25 put it on the shelf for the other guys.

1 Well, who's going to get it? And this one guy that
2 he had been getting them, I didn't know he had made --
3 he had took the centerfolds of all the motorcycles and
4 some of the other pictures and he had took a photo album
5 and put all those pictures from Esquire magazines and I
6 didn't -- I don't know what all was in it. But Esquire,
7 Men's Fitness, Men's Health magazine of all the women on
8 the motorcycles and bikinis. He would put these in this
9 photo album and made that book. He gave me this book to
10 look at. He said, check this out, Red. That's my
11 nickname. He said, check this out, Red. I made this.
12 He said, look at what I done with these magazines you've
13 been giving me. So I take it and I take it up and I
14 throw it in my room. I hadn't looked at it because I
15 was doing something else at the time or in a meeting and
16 I still had not looked at everything. I just flipped
17 through it and I could see what he had done. You know,
18 because I threw it in my room.

19 And then the next day -- no, it was that same day
20 he gave it to me, they had had a big shakedown like a
21 week before that. If I'm remembering right. And they
22 go through and they check everybody's stuff. They go
23 through all your stuff, this, that, and the other and
24 look through everything. And they had found in my old
25 roommate's room from 2011, they had found a book. It

1 was called The Pearl and it was a full volume set. And
2 I had gotten the books from Hamilton Bookstore. We
3 could order from those. All the books were pre-approved
4 before you ordered them. And I didn't realize he even
5 had the books. I had a very bad medical condition
6 occur. I wasn't going to mention it, but I had a stroke
7 and I had -- I packed everything up and mailed it home
8 or I thought I did. What I didn't know was my roommate
9 had those two books. At that time, they were not
10 considered -- it was adult reading material, you know,
11 nothing. Anyway, they had a shakedown and they found
12 the books in his room. It's been three years later.
13 Okay. I had no clue the books were even there.

14 Q But they found also with him they found more erotic
15 material?

16 A No, that was another guy that got caught with some
17 erotica.

18 Q Okay. But there was material in which, I guess,
19 was not pornography, but -- and it didn't involve
20 children, but it was much more of an erotic nature?

21 A It was an adult type stuff, yeah.

22 Q Right. And was that material that you possess, was
23 that yours? The more erotic material?

24 A No, sir. I didn't even have nothing like that in
25 my room.

1 Q Okay. But you ended up being charged with
2 everything?

3 A Yes, sir. And I put a request in to find out from
4 the BMC actually what the two sexually explicit
5 materials was they charged me with. And she told me it
6 was for the motorcycle magazine stuff, the photo album
7 the guy made, and the book that I took responsibility
8 for that the old roommate had. I took responsibility
9 that it used to be mine. But I had no clue it was still
10 in the building. I don't want to sound like I'm
11 minimizing it, but it surprised me. It knocked me off
12 my feet because, where did this book come from? And I'm
13 like, what are you doing with that? You know, I mean, I
14 thought it was gone. And it wasn't undoubtedly.

15 Q Okay. Johnny, we've heard Dr. Gehle talk about,
16 you know, working your way through the program and
17 getting, I guess, although she was some what vague about
18 the goal ultimately being released. That's your goal?

19 A Yes, sir.

20 Q Okay.

21 A That's all I strive for the whole I've been there.
22 Is work forward, to move forward, and don't go back.
23 And just keep moving forward even if something negative,
24 you know, think positive and keep moving. Don't dwell
25 on the negativity just like all this stuff happened. I

1 took responsibility and I moved forward. I talked about
2 it in group and moved forward in group. And that's the
3 whole purpose of the group is to express what you're
4 feeling and learn how to express your feelings to begin
5 with and then express it, talk about it in group and
6 then move on.

7 Q You talk about the hurt and some of her concerns
8 were being boundaries. What kind of boundaries have you
9 set for yourself?

10 A I've set several personal boundaries. Boundaries
11 about -- well, for one, with my kids. You know, my
12 grand kids. I can't cross those physical boundaries.
13 That's one of the main boundaries. I know I can't
14 because I'm a sex offender. And I've set boundaries on
15 who I hang out with. The type people I hang out with.
16 I can't hang out with the old guys I used to hang out
17 with because I would be crossing my own personal
18 boundaries that I've set. Because if I hang out with
19 them, I'll be right back down the same trail I used to
20 be. And it's everything I do.

21 I quit cussing. I made boundaries, you know, to
22 stop cussing. Go back to church. I've been going to
23 church. And I made boundaries to make sure I don't
24 cross other people's boundaries. You know, and I try --
25 I set like a boundary, like a three foot boundary, so to

1 speak. Mental boundary in me not to cross into your
2 boundaries. And I think we talked about that the other
3 day. But just -- it's so easy to cross a boundary and
4 not even know it. But other people -- you have to let
5 people know, look, don't talk to me like that. I'm not
6 going to talk to you like that. I'm not going to sit
7 here and say, well, you got big ears. I've crossed a
8 boundary. You know, into your personal space, so to
9 speak. I'm only using that as an example. But it's
10 just so many different ways you can cross a boundary and
11 not realize that.

12 Q How about insight into your problems. Insight
13 into, you know, what's gotten you here and things that
14 you've done?

15 A I have -- ever since I realized the hurt and the
16 pain that I've caused all the people that I've hurt over
17 the years, I have done nothing but try to go forward.
18 Change everything. If there's something negative, I've
19 tried -- I've changed it. Strode to change it. And
20 keep moving forward. That's all I'm trying to do. Is
21 just keep moving forward with my life and being
22 productive. Does that make sense?

23 Q How about empathy?

24 A Empathy. That one took me a minute to figure out
25 what they were talking about because I didn't know

1 exactly how to put myself into my victim's shoes or
2 anyone else's shoes, so to speak. I didn't know that
3 whatever I said or done, I didn't realize how I could
4 make another person feel by saying that or doing that.
5 Or hurting them emotionally or physically. I know now.

6 I think a lot of the program was designed to -- it
7 was more focused on empathy, but understanding the hurt
8 that you caused the victim or whoever. You follow me?
9 And that had a lot to do with empathy. But the way they
10 do that is you do an empathy assignment for you first.
11 You pick a traumatic experience in your life or a
12 drastic experience of something that happened to you and
13 then you write that summary out of what happened to you
14 and how you felt at the time, have you feel. Honest,
15 down to earth how you felt.

16 I used a motorcycle wreck I was in where I got
17 burnt up real bad. I felt helpless, abandoned, all kind
18 of stuff. And I wrote that in an essay. And then we go
19 back in group and I was with Mr. Daniels then,
20 Mr. Daniels is one of the best case managers. I had him
21 twice. You mentioned him yesterday, Mr. Bogle, but he
22 explained it to me to why I didn't have to have a
23 dictionary to look up the words. And that was the main
24 thing. And when he explained it to me, the way he
25 explained it to me, I said, oh, man, now I know what

1 you're talking about. When it hit me, I was in group
2 and it brought tears to my eyes because that's the same
3 way that my victim probably felt. Helpless, abandoned,
4 confused. And that's when it dawned on me what empathy
5 really was. And that's when I started thinking about
6 other people's feelings more than thinking about me.
7 And it helped me a lot to move forward in my group -- in
8 my treatment.

9 Q How about the minimize in what you've done?

10 A You can't minimize what I did. I may not know how
11 to explain it properly or the proper etiquette or
12 whatever. I know it was bad. I know I done something
13 wrong. Very wrong. And I feel so -- I hurt inside
14 every time. I don't ever forget it. I think about it
15 everyday. And I will. I always think about it
16 everyday. And every Fourth of July I really think about
17 it. And I will for the rest of my life.

18 Q How about your plans? What's your plan for the
19 future?

20 A Well, if I'm released, I'm going up here to
21 Spartanburg County and register. And then I got to get
22 set up, I'm going to ADSAP. I have to get my license
23 back. My dad's going to put me to work for a little
24 while, you know, do stuff for him and helping me get
25 back and forth, him and my mom. And my sister, she's

1 going to be part of my support team. My brother-in-law.
2 My kids. My daughter's outside. All my kids and the
3 church. My neighbors. You know, I have a support
4 system built up. Mr. Watson -- Dr. Watson, I mean.

5 And I have it set up to where if I start thinking
6 crazy thoughts or something, if I can't deal with it,
7 me, I'm my main support system. If my support system
8 starts falling, I know who I can go to. I can go to my
9 family first or if it's something real personal, I
10 would, you know, go to my dad or my preacher. And he
11 has wrote me a letter of support and said he would help
12 me anyway he could. And if all else failed, if I got in
13 a situation to where I felt threatened or in danger or
14 felt like I might even hurt anybody else, I got the
15 phone number to Chuck Wright, the Sheriff's Department,
16 I'll call and say, y'all need to come down here, I got a
17 problem. You know, I've learned that by avoiding -- by
18 avoiding, telling the truth or telling somebody or
19 reporting somebody for breaking the law, in the long
20 run, you could be hurting yourself and a lot of people
21 around you, you know, and I'm not going to do it
22 anymore. You know, if I see somebody breaking the law,
23 I'm going to tell on you sure as I'm sitting here. And
24 I expect the same out of you if you see me doing
25 something wrong.

1 MR. THOMAS: Your Honor, can I beg the Court's
2 indulgence?

3 THE COURT: Certainly.

4 Q What else do you have to do in the program? Is
5 there anything else that you need to do?

6 A I don't know, they haven't told me. I've asked my
7 case manager. She said she's through with me. She had
8 me do a -- set management goals and plans. And I redone
9 my risk factors again. And I wrote an assignment.
10 Probably left it over there, but I done my complete
11 goals and plans -- release plans, goals, management
12 plans on the way that I want to start out my life. And
13 readapting -- if I'm released, readapting myself into
14 society in the proper way. And it was -- I brought it.
15 I don't know if you want to put it into evidence or not,
16 but it shows everything I have lined up for my
17 outpatient treatment programs, to my AA meetings to what
18 I plan on doing with my family for the first two months.
19 It was -- the assignment was to do a two month planner
20 to explain what you're going to be doing if I'm
21 released. And I did that and I turned it in. And I
22 redone my disclosure again to where the way my case
23 manager wanted me to do it and it made more sense the
24 way I did it because in order the way I did it, it was
25 less technical and more -- it showed more feelings and

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG)
4
5 IN THE CARE AND TREATMENT)
6 OF JOHNNY RAY GARRETT,)
7 Plaintiff,)
8 Vs.) CASE NO. 2008-CP-42-5822
9 JOHNNY RAY GARRETT,) VOLUME TWO OF TWO
10 Defendant.)
11
12
13
14

OCTOBER 6-7, 2014
SPARTANBURG, SOUTH CAROLINA

15 HONORABLE FRANK R. ADDY JR, JUDGE
16

17 A P P E A R A N C E S:
18 BY: M. JAMES BOGLE, ESQUIRE
19 Attorney for the Plaintiffs
20 BY: TOMMY A. THOMAS, ESQUIRE
21 Attorney for the Defendant
22
23

24 TARA T. SCOTT, CVR
25 OFFICIAL COURT REPORTER

1 more of how I felt, you know, and how my victim may have
2 felt. I don't know how she felt for real because I
3 can't read minds. I don't know, but I know she was
4 confused. She was scared. I seen that in her face and
5 I will never forget that. And I will always remember
6 that in two ways, the hurt that I caused, and to remind
7 me to, you know, you need to stay clear of stuff like
8 that.

9 MR. THOMAS: Your Honor, please the Court. Your
10 Honor, that's all the questions I have.

11 THE COURT: Ladies and gentleman of the jury, we're
12 going to go ahead and take a brief break now. I don't
13 know if you need a break. I need a break. I'm the
14 Judge, so I'm going to take a break. Don't discuss the
15 case and we'll be back on the record in about
16 10 minutes. Okay.

17 (There was a short break taken)

18 THE COURT: The record should reflect the jury is
19 back and seated and we're still in the examination of
20 Mr. Garrett at this point. Mr. Bogle, your cross, sir.

21 MR. BOGLE: Thank you, Your Honor. May it please
22 the Court.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION BY MR. BOGLE:

25 Q Okay. So, Mr. Garrett, as I understand the

1 situation, while you weren't convicted, you were charged
2 back in 1998 with lewd act and illegal sexual acts on
3 some small children; correct?

4 A Yes, sir.

5 Q You weren't convicted. Those charges got dropped,
6 but you were charged, were you not?

7 A Yes, sir.

8 Q And the victims included your stepdaughter who was
9 about 12, another 12 year old friend, and an 11 year old
10 friend; is that correct?

11 A I don't know about the 11 year old. I know my
12 stepdaughter and her friend.

13 Q Okay. And then in 1999, you were charged, but not
14 convicted of contributing to the delinquency of a minor
15 where they contended you gave -- showed porn to and gave
16 alcohol to some young girls; correct? And those charges
17 also got dropped?

18 A I think that was through the Department of Social
19 Services. They came out and investigated and the lady
20 -- they had -- they was swiping beer out of the
21 refrigerator.

22 Q Well, my question was, you were charged with --

23 A Oh, yes, sir.

24 Q And both of these charges carried potential serious
25 prison time had you been convicted; correct?...

1 A Yes, sir.

2 Q All right. And you knew that at the time that,
3 whoa, if I'm convicted, I could go to jail for a long
4 time; right?

5 A Yes, sir.

6 Q Okay. And after those charges got dropped, you had
7 to go to some kind of sex offender treatment back then;
8 right?

9 A No, sir.

10 Q You didn't?

11 A No, sir. I went to a pretrial intervention type
12 thing before we went to court.

13 Q Okay. So that didn't involve sex offender
14 treatment?

15 A It was like a group and we discussed what happened.

16 Q Okay. Okay. And then winding the clock forward to
17 July 4th of 2004 when the crime happened involved a
18 little girl named [] you were on probation at the
19 time of that crime for a blue light offense, failure to
20 stop for a blue light, were you not?

21 A Yes, sir. And it was DUI involved in that, too.

22 Q Okay. So there was a probationary sentence, a
23 suspended sentence if you will hanging over your head at
24 the time the crime happened with the little girl named

25 []? right?

1 A Yes, sir.

2 Q Okay. So is it safe to say that whatever treatment
3 or groups you went to back in 1998 or 1999, did it help
4 too much?

5 A It wasn't focussed mainly on my alcoholism. It was
6 just focused on what happened that night.

7 Q Okay. Now, when your counsel asked you a few
8 minutes ago, Mr. Thomas asked you how was it you got in
9 prison and you said committed a lewd act; right?

10 A Yes, sir.

11 Q Okay. Are you admitting today right now in this
12 court that you committed a lewd act on a little girl
13 named [REDACTED]?

14 A I never denied committing a lewd act.

15 Q Never denied it. Isn't it true that in your
16 treatment records since you've been at the Department of
17 Mental Health that you denied doing it to her first?
18 First it was denied, it didn't happen. Because I pled
19 guilty under that Alford case when I don't have to admit
20 I'm guilty; isn't that correct?

21 A When I first went into the program, they weren't
22 even saying anything about the lewd act.

23 Q Okay. And later the story became that I was drunk
24 and I woke up with this little girl on top of me humping
25 me, so it was an accident. She did it. She got on top

1 of me. That was also your story, was it not?

2 A Well, the group I was in, it wasn't so much denial,
3 I just didn't know how to explain it.

4 Q Okay. Then the story today is that I was drunk and
5 I was pretty much half passed out and I woke up with
6 this girl on top of me and I thought it was my grown
7 wife, so it was a mistake. That's your story now; is
8 that right?

9 A Basically, yes, sir.

10 Q Okay. Would you agree with me that someone's
11 memory of an incident is going to be the best the closer
12 in time they're asked about that incident when it
13 happened?

14 A Well, it's like I said, when I first went into the
15 program, I was confused myself.

16 Q All right. Let me ask that again. Would you agree
17 with me that if someone is going to ask about something
18 that happened say in 1990, that your best memory of
19 that's going to be if someone asked you about it right
20 back in 1990 as opposed to waiting say until now? Your
21 memory is better the closer it is to the time the event
22 happened; isn't that right?

23 A Well, not necessarily. But my case manager helped
24 me understand how to explain what happened.

25 Q Okay.

1 A And not realizing I was in denial.

2 Q Well, let me ask you this. Back when you were
3 arrested in July of 2004, you were initially charged
4 with criminal sexual conduct with a minor in the first
5 degree; correct?

6 A Yes, sir.

7 Q In fact, we have an indictment here issued in the
8 Circuit Court by the grand jury --

9 MR. BOGLE: May I approach the witness, Your Honor?

10 THE COURT: Please.

11 Q This indictment right. Back in 2004, charging you
12 with criminal sexual conduct in the first degree. State
13 verses Johnny Garrett. Do you remember that?

14 A I never got one of those.

15 Q You never got one of those. Okay. And this
16 allegation -- and this is the indictment that got -- was
17 dismissed in return for you pleading guilty to the lewd
18 act charge; correct?

19 A That's what I'm saying, I don't know nothing about
20 all that stuff.

21 Q Okay. Well, do you remember getting arrested back
22 in 2004?

23 A Yeah, I was already there. I was already at the
24 detective's office.

25 Q Okay. And your age at the time you got arrested

1 for the lewd act charge against this girl named Janis,
2 you were about 41 years old; right?

3 A Forty. I just turned 40.

4 Q Okay. Did you live in a place on [] Road?

5 A Yes, sir.

6 Q [] Pond?

7 A Yes, sir.

8 Q Was your phone number [] back then?

9 A I don't remember.

10 Q Okay. Did your Social Security end in 5046?

11 A Yes.

12 Q Okay. Do you remember giving a statement to the
13 police, a written statement as to what happened?

14 A I didn't remember. I had to get a copy of it.

15 Q Okay. Let me show you a copy right now. Is this a
16 copy of the statement you gave the police with the
17 little girl's name blacked out?

18 A Yeah.

19 Q That's your signature down at the bottom?

20 A Yeah, it is.

21 Q Here's another page, has your name, address, phone
22 number, date of birth June 12th of [] is that right?
23 That's also signed by you; right?

24 A Yeah. I don't remember getting copies of it.

25 Q Okay.

1 A That's what I was thinking at the time.

2 Q Okay. So what this says and I'll let you look at
3 both of them. What these two statements signed by on
4 July 21 of 2004 and July 20 of 2004 --

5 A 28.

6 Q 28. Okay. Just a few weeks after the crime
7 happened, you're saying in those statements that you
8 were drunk and the little girl wanted to get in bed with
9 you and you said, no. No, don't do that. But then she
10 did get in bed with you and the next thing you know, you
11 woke up with her on top of you with her underwear off
12 and your pants unbuttoned and her humping on you.
13 That's what it says right there. Do you want to read
14 it?

15 A I see it. I don't even remember writing it, but I
16 see it.

17 Q Okay. But that's what you told the police three
18 weeks after this happened. So are you saying the little
19 girl -- this little eight or nine year old girl came on
20 to you?

21 A No, sir.

22 Q Can you give us any reason why an eight year old
23 girl would take her panties off and hop on top of a
24 grown man like you and start humping on you?

25 A No, sir.

1 Q Okay. But the story now is you thought it was your
2 wife so it was a mistake?

3 A That's --

4 Q You mistook the little girl -- the little eight
5 year old girl for your wife?

6 A Well, no, sir.

7 Q Isn't that what you said a few minutes ago, you
8 thought it was your wife Christy?

9 A I do -- at that time.

10 Q Okay. Okay. You said when Mr. Thomas was asking
11 you some questions that part of your future plans is you
12 would like to see your grandchildren, but you want
13 somebody with you at the time; is that right?

14 A That would just be --

15 Q Another adult be there with you. Common sense,
16 wouldn't it?

17 A Uh-huh.

18 Q Okay. Now, the behavior management committee
19 investigated you for having what they call contraband.
20 Or supplying contraband to another resident, the guy
21 that lived at Geo Care; is that right? It happened this
22 year?

23 A No -- yeah, for giving him the magazines. Yeah.

24 Q Is that the cover of it? A copy of the cover of
25 it?

1 A That looks like it, yeah.

2 Q Okay. So that's the book that you had and you left
3 in this guy's room and you admitted that to the
4 committee according to the records; is that right?

5 A That's the book I had four years ago.

6 Q Now, are you saying this book is something you're
7 authorized to have?

8 A We ordered -- yeah, we ordered it through Hamilton
9 Books.

10 Q Okay. Well, let's look at the first page right
11 here. Could you read me the highlighted language -- the
12 two lines I highlighted right there. What does that
13 say? Read it out loud.

14 A It says, pretty explicit --

15 Q Read it out loud, sir.

16 A It's talking about doing oral sex on someone.

17 MR. THOMAS: Your Honor, please the Court. I'd like
18 make an objection at this point.

19 THE COURT: All right. What's the nature of your
20 objection?

21 MR. THOMAS: Your Honor, may we approach?

22 THE COURT: Come on up.

23 (Bench conference)

24 THE COURT: Your objection is noted, but the parole,
25 Mr. Bogle, if you'll simply read that isolated passage

1 and you can then ask him if he agrees that that's what
2 it is.

3 Q All right. So we've already done this, that's the
4 book. And this is part of it right here. And the
5 passage says, "Ooh, ooh, aah, aah, aah, cried kitty.
6 Suck harder Teddy. Suck harder and make me cum." Is
7 that what it says? And you're saying that this is the
8 book that you were authorized to have at the sexually
9 violent predator treatment unit?

10 A At the time.

11 Q At the time.

12 A At the time it was -- we didn't know exactly what
13 all was in the book.

14 Q Okay. Okay. Now, these pictures that you had from
15 motorcycle magazines and gave to this other guy that he
16 made a scrape book out of, that was another problem.
17 The committee found that to be contraband; isn't that
18 correct?

19 A Yes, sir.

20 Q And they infracted you if you will for having that
21 kind of stuff?

22 A Yes, sir.

23 Q Is this one of the pages from this book?

24 A I don't remember seeing that page.

25 Q Don't remember that?

1 A I never looked at the book.

2 Q You never looked at the book?

3 A No, sir.

4 Q You don't know what was in it?

5 A I seen some motorcycle pictures.

6 Q Okay. Well, let's move on then from that. So
7 you're saying this is a book with pictures of girls on
8 motorcycles?

9 A Yes, sir.

10 Q Are you denying it was a book about suggesting ways
11 to have better sex?

12 A I never saw nothing like that. All I saw was
13 pictures in it. I never looked at the book fully.

14 Q Okay. Okay. Now, the question about the paperclip
15 and the toothpick and all that kind of stuff, you're
16 aware, are you not, that because you're in a secure
17 place they have very strict rules about things that
18 could be made into some kind of weapon; correct?

19 A Yes, sir.

20 Q And even a paperclip taped to a tongue depressor or
21 something like that could be a penetrating device and
22 could be used as a weapon, could it not?

23 A Yes, sir.

24 Q So these are the kind of things -- that's another
25 example of something you got infracted for. You were

1 found guilty of a violation on possessing that device;
2 is that right?

3 A Yes, sir.

4 Q Okay. Now, when I was reading some stuff, you told
5 Dr. Watson you mentioned some triggers. And triggers
6 are things that might make you commit an offense again;
7 right? You've got to avoid these triggers; correct?

8 A Well, the trigger, you've got to be able to -- if
9 you see a trigger you have to be able to change your
10 train of thought.

11 Q Okay.

12 A And go to something positive.

13 Q And one of the triggers in your situation would be
14 -- we're going back to the life the way it use to be,
15 you would be going to strip clubs and bars and hanging
16 out with bad associates; right?

17 A Yes, sir.

18 Q Okay. Well, the place where all these offenses
19 happened including the one you were convicted of, none
20 of them happened in a strip club or a bar, did they?

21 A No, sir.

22 Q And known of these bad associates were in the house
23 with you, were they?

24 A No, sir.

25 Q Just little girls?

1 A Yes, sir.

2 MR. BOGLE: One moment, Your Honor?

3 THE COURT: Yes, sir.

4 MR. BOGLE: Thank you, Your Honor. No further
5 questions.

6 THE COURT: Anything else on redirect?

7 MR. THOMAS: Your Honor, if I may, just one or two.

8 THE COURT: Please.

9 REDIRECT EXAMINATION BY MR. THOMAS:

10 Q Johnny, alcohol was one of your triggers?

11 A Yes, sir.

12 Q A big trigger?

13 A Yes, sir.

14 Q Okay. Are you alcohol free today?

15 A Yes, sir.

16 Q And you've been convicted of one crime?

17 A Yes, sir.

18 Q And that's what you're -- and what was that crime?

19 A Lewd act on a minor, nonviolent.

20 Q And that's what you served time for?

21 A Yes, sir.

22 MR. THOMAS: No further questions, Your Honor.

23 THE COURT: Thank you, sir. You can step down.

24 Call your next witness, please.

25 MR. THOMAS: Your Honor, please the Court. We would

1 call his daughter who is outside if I could go get her.

2 THE COURT: Yes, sir..

3

4 being first duly sworn, was examined and testified as
5 follows:

6 MR. THOMAS: Your Honor, if it please the Court.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION BY MR. THOMAS:

9 Q Would you please state your full name?

10 A [REDACTED]

11 Q Okay. And, [REDACTED] are you related to --

12 THE COURT: Can we get a spelling, [REDACTED] --

13 A [REDACTED]

14 THE COURT: All right. Spell middle and last,
15 please.

16 A [REDACTED]

17 [REDACTED]

18 THE COURT: Thank you.

19 MR. THOMAS: Thank you, Your Honor.

20 Q Valarie, you're related to Johnny Garrett?

21 A I am. He's my daddy.

22 Q Okay. And you're here to tell the truth?

23 A I am.

24 Q You've been sworn to tell the truth?

25 A I have.

1 Q Okay. And you been sitting outside?

2 A I have for two days.

3 Q Okay. So you haven't heard any of the testimony?

4 A I haven't.

5 Q All right. Let me just ask you a few questions.

6 You're familiar with the plan that has been put into

7 effect for Johnny if he was to come home?

8 A I am very familiar with it.

9 Q Okay. And just tell us a little bit about it.

10 What would he be doing?

11 A When he comes home, he's going to stay with my

12 granddad. He's going to help my grandpa get everything

13 in order from where things have just started to

14 deteriorate at home. He's going to help get everything

15 nice for the holidays. He's going to work with my

16 grandpa and fixing up around the property. He's going

17 to start doing more birdhouses. I'm even going to help

18 him open a web page to sell the birdhouses he builds.

19 I'm going to run it all myself. He'll just build the

20 product for customers.

21 I'm going to be there every step of the way because

22 he's my daddy. I love him. And I want him to have

23 everything he can have. So we're going to standby him.

24 We're going to keep him going to church. We're going to

25 keep him in NA. We're going to keep him in AA. We're

1 going to make sure that he does not like fall off in any
2 way. And like do anything bad. We're going to be there
3 for him. God's there for him. I mean, we're going to
4 be in church. We're going to be doing everything as a
5 family. Everything that he's missed out on in 13 years
6 he's been out of my life. My graduation. My marriage.
7 My first job. I want him to catch up and be a part of
8 it, so we're going to bring him in and pretend like
9 everything will be perfectly fine. We're going to make
10 sure everything goes like it needs to. He's just going
11 to be integrated back into our world. And that's how we
12 want it to be.

13 We want him to know that he's loved and that he's
14 never going to have our backs turn him. So we're going
15 to stay with him every step of the way.

16 Q And you're willing to also part of that would be to
17 -- you and the rest of your family would be to supervise
18 him?

19 A Yes.

20 Q Make sure that he has transportation?

21 A I have a jeep and then my grandparents have a
22 vehicles. We're going to take him everywhere he needs
23 to go. He's going to go to his meetings. He's going to
24 be at that church. He's going to be there with us with
25 God by his side.

1 Q Okay. And no one's going to leave him alone with
2 any children or anything?

3 A No one is going to leave him alone. Gosh, he's
4 been alone for 13 years, do you think I'm going to leave
5 him now.

6 Q Okay. You're real nervous today?

7 A I am. I've missed him so much. Like I said, he's
8 been gone for so long and I just want to be able to take
9 him home and hug him and fed him real food and have him
10 a part of my life and meet my husband that I've been
11 married to for seven years and been with for nine. I
12 want him to see my graduation pictures and see my
13 diploma and his baby girl to accomplish something even
14 though it was so hard to get through it all without him
15 there with me.

16 MR. THOMAS: Your Honor, may I approach?

17 THE COURT: Please.

18 Q You're the spokes person for the family?

19 A I am.

20 Q Okay. And you wanted to take the stand to tell us
21 that the family has made preparations if he was to come
22 home?

23 A We are very prepared for him to come home with us.
24 We have a meal plan. We have a meeting. We just want
25 to love him and hold him and feed him and be with him

1 and keep him strong and standby him for ever and ever.

2 MR. THOMAS: Thank you, Your Honor. I have no
3 further questions.

4 THE COURT: Mr. Bogle?

5 MR. BOGLE: Thank you, Your Honor.

6 CROSS EXAMINATION BY MR. BOGLE:

7 Q Good morning, ma'am.

8 A Good morning.

9 Q You were born in about 1988; is that right?

10 A I was.

11 Q Okay. When Mr. Garrett was charged with those
12 offenses, the ones he wasn't convicted of in 1998, were
13 you living with help at that time or in another place?

14 A I was.

15 Q You were?

16 A We were.

17 Q Okay. Who were the little girls that he was
18 charged with violating against?

19 A It was my older sister and her friends.

20 Q Okay. Stepdaughter and some friends?

21 A Yes.

22 Q So you would have been about ten then? Okay.

23 A I was.

24 Q All right. In 2004 when he was charged with the
25 crime that he eventually got convicted of involving a

1 little girl named [REDACTED], were you living with him at
2 that time?

3 A I went there every weekend.

4 Q You was there every weekend?

5 A I'm sometimes in between, depends on the school
6 schedule.

7 Q Okay. Now, you said you were familiar with his
8 plans if the jury lets him go; is that right?

9 A Yes, sir.

10 Q Okay. Where is he going to attend sex offender
11 treatment?

12 A In Spartanburg.

13 Q Okay. Do you know -- has he got an appointment?
14 Is there a place?

15 A We're going to set up everything --

16 Q Do what now?

17 A We are going to make sure he is registered. We're
18 going to get him registered. We're going to set up his
19 appointments. We're going to get him a shrink or I
20 think they call them a psychologist. We're going to
21 make sure he gets all the therapy he needs. We're going
22 to make sure that there is someone there for him by his
23 side so that there is nothing anybody has to even fret
24 about.

25 Q Do you know the name of the place he's going to go

1 to for sex offender treatment?

2 A I mean, as far as the name, I'm assuming it's the
3 same general vicinity he would go for just like alcohol
4 anonymous, anger management. I mean, there is a
5 location for these things.

6 Q Has an appointment been made like right now? Is
7 there an appointment say next week at 2 o'clock on
8 Thursday or something like that?

9 A Well, I mean, we can't make an appointment until we
10 know he's coming home? Why would we waste their time
11 and their -- I mean, time is money in companies like
12 this, so we've not made an appointment somewhere without
13 knowing that he's going to be home with us. But as soon
14 as we walk out this door today if he's coming home then
15 we can call them. I mean, I'm pretty sure they close
16 and we can call them and say, we need an appointment
17 immediately. We need this done now. We have no time to
18 waste.

19 Q Okay. And this place you're talking about, what
20 type of treatment do they offer that you know of for
21 sure?

22 A I mean, they're going to make sure he does not have
23 the teared towards what the charges were. They're going
24 to keep him on the correct path. They're going offer
25 him counseling.

1 Q And who is "they" though? I'm trying to figure out
2 who this is that does all these things?

3 A I don't know.

4 Q You don't know?

5 MR. THOMAS: Your Honor, may it please the Court.

6 THE COURT: Yes, sir.

7 MR. THOMAS: I think the line of questioning is
8 getting beyond what she would be expected to know. I
9 mean, she's -- she doesn't provide the treatment, you
10 know, she doesn't work for the treatment provider and
11 I'm not sure that she would know exactly how that
12 treatment would work and what the components of it would
13 be. I just think she's unable to answer those
14 questions.

15 MR. BOGLE: Your Honor, on direct examination she
16 said she was very familiar with his plans if he got out.
17 I'm trying to find out what those plans are.

18 A Well, I mean, the general plan --

19 THE COURT: Hold on one second, ma'am. The
20 objection is noted. It's overruled. If she does not
21 know of the treatment facility or the name of it,
22 clearly she's upset and somewhat animated, but she can
23 answer that question. Go ahead, please.

24 MR. BOGLE: Okay.

25 Q Let me back up. Do you know the name and the

1 address of the treatment place he would go to?

2 A No, sir.

3 Q Okay. And do you know for sure that this place
4 offers sex offender treatment in addition to what other
5 counseling they may offer?

6 A I'm pretty sure there is multiple people in this
7 world that have the same type of charges that receive
8 treatment just as well as he can.

9 Q So the answer is you don't know for sure what they
10 are?

11 A No, but, I mean, I don't work in this clinic. I'm
12 a pharmacy technician.

13 Q And one of the plans you also said was not to leave
14 him alone with small children; is that right?

15 A Yes, sir.

16 Q All right.

17 MR. BOGLE: Thank you, Your Honor.

18 THE COURT: Redirect?

19 MR. THOMAS: No, Your Honor. No further questions.

20 THE COURT: Thank you, ma'am. You can step down.

21 Feel free to stay in the courtroom if you want. Call
22 your next witness, please.

23 MR. THOMAS: Your Honor, can I begging the Court's
24 indulgence for just a second?

25 THE COURT: Yes, sir.

1 MR. THOMAS: Your Honor, if please the Court. We
2 would call Dr. Selman Watson.

3 SELMAN WATSON,
4 being first duly sworn, was examined and testified as
5 follows:

6 MR. THOMAS: Please the Court.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION BY MR. THOMAS:

9 Q Dr. Watson, state your full name for the record?

10 A My full name is Edwin, E D W I N, Selman, S E L M A
11 N, Watson, W A T S O N.

12 Q Dr. Watson, would you tell us a little bit about
13 your background education?

14 A Yes. I got an a degree in psychology from Mercer
15 University in Macon, Georgia. I then went to the
16 graduate program at USC, got a PhD degree in clinical
17 psychology. My internship was at MUSC in Charleston,
18 South Carolina. I worked for 27 years with the
19 Department of Mental Health. And since 1984, I've had a
20 forensic practice.

21 Q All right. And are you familiar with the SVP
22 program?

23 A Yes. I was the acting director there for four
24 years. January of 2003 to January of 2007.

25 Q You were the acting director of the same program

1 that Mr. Garrett's in now?

2 A That's correct.

3 Q But you're no longer employed in that program?

4 A I retired from Mental Health in 2007.

5 Q All right, sir. And in your practice, you have
6 evaluated or just tell us what all you've done in your
7 practice.

8 A I've done some criminal responsibility evaluations,
9 competency work. I've done a lot of worker's comp
10 assessments, a lot of my practice involve child custody,
11 visitation. And I've evaluated some of the SVP's on the
12 units.

13 Q All right, sir. And are you familiar with sex
14 offenders?

15 A Very much. Yes, sir.

16 Q And you've worked in that field?

17 A Yes. I ran the program for four years.

18 Q All right, sir. And you have a doctorate degree in
19 psychology?

20 A Got a PhD in clinical psychology, yes.

21 Q All right, sir. And have you testified in court in
22 this state before?

23 A Yes, many times.

24 Q And how many times? Do you know roughly?

25 A All of the courts?

1 Q Yes, sir?

2 A I've been in Probate Court hundreds of times
3 testifying as to a person's mental illness. I've been
4 in Circuit Court. I've been in Family Court. Probate
5 Court. I've done four or five cases for the US
6 Attorney, so I've been in Federal Court.

7 Q All right, sir. And did you in fact testify in the
8 probable cause hearing for Mr. Garrett?

9 A Yes, I did.

10 Q And you were qualified as an expert witness in that
11 case?

12 A That's correct.

13 Q All right, sir.

14 MR. THOMAS: Your Honor, if it please the Court. We
15 would ask the Court to qualify Dr. Watson as an expert
16 in psychiatry and also in forensic psychiatry.

17 THE COURT: Any objection?

18 MR. BOGLE: In psychology or psychiatry?

19 MR. THOMAS: Psychology.

20 THE COURT: Psychology. Yes, sir.

21 MR. BOGLE: No objection then.

22 THE COURT: Ladies and gentleman, as I mentioned
23 yesterday, normally a witness cannot testify concerning
24 opinions or conclusions, but an exception does exist for
25 this rule for expert witnesses. In this case, the

1 parties agree that Dr. Watson is an expert in the field
2 of psychiatry -- or psychology, sorry, and forensic
3 psychology. Therefore, he can give opinion testimony in
4 that area or in those areas. He already knows the area.
5 Does not mean you have to accept it, but it's evidence
6 for your use as you deem appropriate. Go ahead.

7 MR. THOMAS: Your Honor, please the Court.

8 THE COURT: Yes, sir.

9 Q Dr. Watson, did you have an opportunity to evaluate
10 Mr. Johnny Garrett?

11 A Yes. I spent about 14 hours with Mr. Garrett over
12 probably three sessions to complete the evaluation.

13 Q And over what period of time have you known Johnny
14 Garrett?

15 A From the time he was referred for the evaluation
16 until today.

17 Q So that would be a period of approximately a year?

18 A Year, year and a half. Yes.

19 Q All right. And during that period of time, what
20 steps or how would you go in regards to evaluating
21 Mr. Garrett for court today?

22 A I did a battery of psychological tests. And I saw
23 him with testing because I don't want clinical interview
24 exchanges to affect his response to a certain
25 instrument, so I collected a battery of psychological

1 results and then we spent the last part of the
2 assessment with me, you know, talking about his case and
3 learning some other background issues.

4 Q Okay. And you're familiar with Mr. Garrett's past?

5 A Oh, yes, I am.

6 Q Okay. You're familiar with his past crimes?

7 A I am.

8 Q Okay. And what other material would you gather in
9 your attempt to make a determination about his
10 wellbeing?

11 A Any other sources of information that might be
12 available. Police records, affidavits, any kind of
13 victim statements. In a case like this, I would at
14 least want to look at the transcript of maybe someone
15 that might have interviewed the child that was the
16 victim. So any source that might shed some light on the
17 case.

18 Q Okay. And you've also reviewed the testing that --
19 or the report from Dr. Gehle?

20 A Yes, I did.

21 Q And also the testing for the Static-99?

22 A Yes.

23 Q And also the PPG?

24 A Yes. I've talked to Bill Burke about the PPG. And
25 I've looked at the results on Johnny Garrett in regards

1 to the PPG. Yes, sir.

2 Q Okay. And kind of walk us through. How did you
3 come to your determination today? What steps did you
4 take? You want to start with the Static-99 and how --
5 what kind of test it is and how that applies to
6 Mr. Garrett?

7 A Well, we probably start with the MMPI-2. The
8 MMPI-2 is a personality projective. It's a 567 item
9 inventory. It's clear to me from his profile that he
10 generated on the MMPI-2 that he does have a personality
11 disorder. He had a 4-6 code type was the result. This
12 indicates that a person has had some antisocial
13 propensity in the past. These are individuals that tend
14 to act impulsively. Really kind of fits with the
15 history of what we know about Johnny Garrett. So he was
16 frank and sincere in taking this test. He did not to
17 minimize his problems. He did not try to fake good on
18 the test and present a picture of himself that was
19 false. He was frank and honest in taking this
20 particular inventory.

21 Q He actually has built-in component to it to
22 determine what truthfulness; is that correct?

23 A The test has validity scales. So we can tell by
24 the elevation on those validity scales as to whether
25 they're over reporting something or underreporting

1 something. It also has a scale called a lie scale where
2 it determines how frank and straight forward they are in
3 responding to the items. So it's a gold standard for
4 looking at personality issues.

5 Q And what were you able to determine from that test
6 in regards to Mr. Garrett?

7 A He was frank and straight forward in admitting his
8 problems. He took the test in an honest fashion. So I
9 felt like it was very valid, very reliable because it
10 really matched up well with his history.

11 Q What were you able to determine from that?

12 A That he's got a personality disorder.

13 Q Okay. And how does that fit into what he has today
14 in regards to -- what is a personality disorder and what
15 does that do?

16 A It's just a recurring pattern of behavior the way
17 he interacts with his environment. There are a number
18 of different personality disorders, but if you look at
19 his history, clearly there was a lot of antisocial
20 propensity there, a lot of impulsiveness, a lot of
21 acting out, a lot of drug and alcohol use itself. The
22 profile I got on the MMPI-2 matched up real well with
23 his history.

24 Q And what did you do, you have a patient or somebody
25 with that type of personality disorder, they're treated?

1 A They can be treated in therapy, yes.

2 Q And is that what Mr. Garrett -- he has been treated
3 in therapy?

4 A He's been treated for almost five years is my
5 understanding, yes.

6 Q All right. And is that the way you would address
7 an issue of that nature?

8 A Yes. I mean, there's causing complications and
9 problems. We would certainly refer them for therapy. I
10 mean, there's some antisocials that, you know, operate
11 on their environment that don't run in near the problems
12 that Mr. Garrett run into. You know, might not need any
13 therapy. May not want any treatment. But he clearly
14 has some antisocial characteristics.

15 Q And then what did you do after that?

16 A I gave him another battery of test. He took the
17 PAI, Personality Assessment Inventory. It's a 344 item
18 instrument. Interestingly enough, there's an antisocial
19 scale on the PAI, he did not elevate the parent scale.
20 There are three sub scales that go with that parent
21 scale. The only elevation he had was on antisocial
22 behavior. But the other two antisocial subscales were
23 not statistically significant. So he only elevated one
24 of the three sub scales and the parent scale was not
25 typically elevated.

1 Q Okay. And then in your process of evaluation, what
2 would be the next step?

3 A He would continue to take the test. I gave him the
4 SASSI-3 which is a test of alcohol and drug dependents.
5 He was honest taking that test. He triggered maybe four
6 or five of the rules, so it was clearly, clearly he's
7 had an alcohol and drug dependents most of his life.

8 Q Right.

9 A I noticed that when I talked to him about his case,
10 he was pretty frank and straight forward in talking
11 about some of the bar fights, you know, some of the
12 altercations, some of the drinking that went on in the
13 home, things such as this. So I felt like he was honest
14 if taking the SASSI-3.

15 Q With what you found, what you're saying today,
16 that's consistent with what Mr. Garrett testified to and
17 what you know about his past activities?

18 A That's correct.

19 Q Okay. But alcohol abuse?

20 A Alcohol abuse, some of the drug dependents. He
21 also completed a projective call the RISB. That's the
22 Rotter's Incomplete Sentence Blank. And we got a PPG
23 taken of him from Dr. Burke down in Summerville. The
24 interesting thing about the PPG that Dr. Burke
25 administered is that he doesn't show any deviant arousal

1 to prepubescent kids. Pedophiles typically show deviant
2 arousal to that age group to which they're attracted.
3 There was no deviant arousal in his record to any kind
4 of prepubescent kids.

5 Q What does that indicate to you?

6 A Well, it goes to the heart as to whether he's a
7 pedophile or not. Pedophiles typically target kids that
8 are 13 or younger. He didn't show any deviant arousal.
9 And he also didn't show any deception. He didn't try to
10 trick or monitor his breathing or anything such as that.
11 I think it goes to the heart of the case as to whether,
12 you know, he's a risk or not.

13 Q Now, Dr. Gehle talked about her reluctance to use
14 the PPG as in her concern the accuracy of the test.
15 What's been your experience with PPG?

16 A Well, she's right. There's some problems with the
17 test, but the test is used mainly as another data point.
18 You know, does this individual shows deviant arousal.
19 And it's widely used across the country. The other good
20 thing about the PPG is if you got a guy that denies any
21 kind of sexual involvement with children and he shows
22 deviant arousal on the PPG, then you can challenge that
23 denial with the therapist. So I think it has multiple
24 uses. You know, you can use it to help treat the
25 individual.

1 Q So you can use it to determine risk and also to use
2 as a treatment tool?

3 A That's correct.

4 Q To determine where the focus needed to be in
5 regards to the treatment?

6 A That's correct.

7 Q And how about the Static-99. Is that --

8 A I did not use the Static-99 with Mr. Garrett. But
9 there's a problem with the Static-99. Number one, it's
10 mostly historical factors. No dynamic factors.

11 Static-99 doesn't factor into what kind of gains or
12 improvements he's made in therapy. The other problem
13 with the Static-99 is with sex offenders, there's an age
14 out pattern. As individuals get older, their risk for
15 re-offending goes down. And that's not factored into
16 the Static-99. Hanson has recommended factoring in, I
17 believe, a two percent reduction in the risk for every
18 year over the age of 40. So he's 52, that would reduce
19 his risk by another 24 percent. So he's probably less
20 risk than what you heard in this court.

21 Q Okay. And what else would you do in regards to
22 coming to a final conclusion about his ability to be
23 released?

24 A I would want to hear what kind of progress he's
25 made. I want to hear what he's learned. I want to hear

1 about his behavior on the unit. Basically what the
2 program involves is building skills with these people so
3 they can manage their behavior on the outside. When I
4 was running the program, I operated the program, it was
5 a step program, so every time you passed a step, you
6 went to the next step and you can determine exactly
7 where you are in the program. Today the program is
8 different. I'm not sure how they made changes, but I
9 kind of get the sense that there's no way to measure
10 your progress. There's no way to determine what you've
11 got left to complete. Maybe the evaluations are much
12 more subjective than they were when I was running it.

13 Q Now, you were able to look at his notes from his
14 groups and those things?

15 A Yes. He seemed to be very active. He seemed to
16 participate. Apparently he had some recognition from
17 the unit and the rest of the residents because he was
18 nominated for president. So he had some respect in the
19 community.. They kind of looked up to him had he held
20 those kind of offices. Seemed like he was popular with
21 his peers.

22 Q And I noticed that you and I, you were showing me
23 his progress notes from, I guess, from the unit itself
24 and they were positive indications in the progress?

25 A Positive indications, he attended the groups. A

1 couple of the group leaders complimented on some of the
2 insights that he had for the group members. Just seems
3 that he was actively involved rather than sitting on the
4 sidelines.

5 Q Right. Were you able to come up with a
6 determination in regards to what kind of situation that
7 he is in today in regards to being released?

8 A Well, I think Mr. Garrett said it accurately on the
9 stand. He's not sure what else he's got to do in the
10 program. I think he said that his case managers even
11 told him that he's pretty much completed what she's
12 asked him to do. So he's -- you kind of get the feeling
13 he's in limbo. He's not sure, you know, what to do and
14 what else he can do to try and gain his release.

15 Q All right. And if we get into a more legal and
16 technical terms, you feel that he does have a
17 personality disorder?

18 A Yes, he does. Yes, he has a personality disorder.
19 But I'm convinced and feel as if he's safe to be at
20 large because he shows no deviant arousal on the PPG to
21 prepubescent kids.

22 Q How about mental abnormality. We're talking about
23 personality disorder and the other problem with that is
24 mental abnormality. Does he have a mental abnormality?

25 A I diagnosed him with pedophilia. It might be some

1 reason to question that diagnosis. But clearly he's got
2 a history that would indicate that.

3 Q Okay. And I guess the other part of that is that,
4 do you believe that his condition is so changed that he
5 would be safe to be released at large and is not likely
6 to engage in acts of sexual violence?

7 A I do if a good plan was put in place, yes.

8 Q Okay. Now, you understand that he is not -- he
9 doesn't have probation?

10 A That's correct. Once he's released, he's not
11 obligated to do any further treatment.

12 Q Have you been able to determine what his motivation
13 is in regards to continued treatment?

14 A I think he's interested in treatment. I think he
15 will follow up with some outpatient treatment.

16 Q Okay. And do you believe that without the
17 probation, we're not talking about any kind of mandated
18 treatment because you can't be mandated because he's not
19 on probation?

20 A That's correct.

21 Q Do you feel like that he is still safe to be
22 released without this mandated probation treatment?

23 A I do. I do. I think one of his biggest challenges
24 for Johnny when he gets out is he's got to manage his
25 stress. He's got to make good choices and use good

1 judgements about how he spends his time. Whom he's with
2 and avoid those associates and issues that might get him
3 into some trouble.

4 Q All right.

5 A Bill Burke is going to establish some treatment
6 groups in Greenville. He's already established a PPG
7 lab and some groups in Columbia and Lexington. It would
8 be my recommendation that he be the one to follow
9 Mr. Garrett because he also has a polygrapher. They
10 polygraph these outpatients every six months to make
11 sure that they're hearing the truth when they're in
12 group therapy. So he's probably the best trained that's
13 been in the business longer than anybody else to follow
14 these kinds of offenders.

15 Q That's what I was going to ask you. Who is Bill
16 Burke?

17 A He's a LPC. He's a licensed professional counselor
18 who runs a PPG lab in Summerville. But he also does
19 lots of outpatient groups for probation, pardon, and
20 parole.

21 Q Okay. All right. And we've heard Dr. Gehle talk
22 about lack of boundaries, lack of insight, minimization,
23 and those issues. Have you taken those issues into
24 concern as well?

25 A Yes. I think Mr. Garrett was most effective by

1 learning the definition of empathy in realizing that how
2 his behavior affects other people and when he share role
3 perspectives, come to a better understanding of that.

4 So I think he's learned some things in the program that
5 have helped him.

6 Q What's the purpose of the treatment program?

7 A To help him better manage his behavior when he gets
8 out.

9 Q Okay. So the treatment program, the sexually
10 violent predator program at least when you were there,
11 what was his goal?

12 A To treat these individuals and hopefully move them
13 towards release. But the way the statute is written in
14 South Carolina, the people that are looked at by
15 multiple disciplinary team, it sweeps in a lot of
16 people. It doesn't necessarily sweep in the worst of
17 the worst. It sweeps in a lot of people. Some of the
18 people probably don't belong there. The four years I
19 was running the program, I only released one individual
20 and I felt like he could be released because he was
21 inappropriately admitted. But these individuals are
22 treated over long term. I think the other stage that
23 had an SVP statute, as of maybe six months to
24 nine months ago, they had released very few individuals
25 because they are treating the worst of the worst. The

1 amount of people that are convicted of lewd act and some
2 of these other things.

3 Q Do you know how many people have been released from
4 the current SVP program?

5 A I think it's around 65 or 70.

6 Q Okay. Now, you've done other evaluations in
7 regards to these types of hearings?

8 A I have. I've done four for you. And the other
9 three were not recommended for release. So this is the
10 only individual that I've recommended for release in the
11 work that I've done for you.

12 Q That you've done for me?

13 A That's right.

14 Q All right. Okay. And, Doctor, just to recap.
15 According to the statute, do you believe that
16 Mr. Garrett's mental abnormality or personality disorder
17 has so changed that he is now safe to be at large?

18 A I do. And, again, I would point to the PPG
19 results.

20 Q Okay. And also in that determination, do you
21 believe that at this point, he is not likely to engage
22 in acts of sexual violence?

23 A That's my opinion. Yes.

24 MR. THOMAS: Okay. Your Honor, I have no further
25 questions.

1 THE COURT: Cross?

2 MR. BOGLE: Thank you, Your Honor. May it please
3 the Court.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION BY MR. BOGLE:

6 Q Now, this PPG performed by Dr. Burke down in
7 Summerville.

8 MR. BOGLE: If I may approach the witness, Your
9 Honor.

10 THE COURT: Please.

11 Q You have, of course, a copy of his report; right?

12 A I do.

13 Q And he talks on the second page about the amount of
14 arousal, if you will.

15 A That's correct.

16 Q The guy's got a show of a valid reading. He talks
17 about at least five millimeters of stretch; is that
18 right?

19 A No. I think it's got --

20 Q First paragraph right here.

21 A -- 20 percent increase in genesials (phonetic) to
22 be considered sexual arousal.

23 Q Okay. And in the sentence before this he talks the
24 minimal level of significant is five millimeters of
25 stretch; right?

1 A Then that would be a 20 percent increase in
2 genesials (phonetic).

3 Q Okay. And on this thing called teen female
4 coercive, he got a 10.99?

5 A Yes, that's right. His biggest -- his most arousal
6 came to the teen female coercive. But the teen subjects
7 in these slides look very much like adult women.

8 Q Well, now, you don't administer PPG's, do you?

9 A I've went through the PPG with Bill Burke.

10 Q My question is, did you administer this one?

11 A No. No.

12 Q Were you in the room when it was done?

13 A Yeah, I was -- no, not this one. No.

14 Q Did you see the pictures he was going to show
15 Mr. Garrett?

16 A I've been through the procedure. Bill Burke took
17 me through the --

18 Q Let me ask you again. Did you see the pictures he
19 was going to show Mr. Garrett in Mr. Garrett's specific
20 examination?

21 A I was not present.

22 Q Is Mr. -- Dr. Burke here today?

23 A No, sir. No, sir.

24 Q Okay. And then the next thing right below that,
25 grammar school male persuasive, a 6.22 which again is

1 above 5; is that right?

2 A That's right.

3 Q And then the conclusion that he reached on the
4 final page is that Mr. Garrett demonstrated
5 statistically significant arousal to the teen female
6 coercive stimulus?

7 A That's right. But those aren't prepubescent kids.

8 Q Okay. But teen female coercive, to me that says
9 teenagers forcing them to have sex. What does that say
10 to you?

11 A Of course it just means for what she had access the
12 scenario.

13 Q Okay. In your report, just to make sure we're on
14 the same page, is this a copy of the report that you did
15 for this case?

16 A I believe so. Yes.

17 Q Okay. And on page -- let's see, 3, it lists the
18 sources of information; right?

19 A That's correct.

20 Q Did you review the underlying police reports,
21 interim reports, witness statements, and things like
22 that?

23 A Those were only made available by your office
24 Friday morning when I picked them up this past Friday
25 and I looked at some of that material, but I could not

1 review it all.

2 Q Okay. Did you talk to Dr. Musick the psychiatrist
3 or psychologist who did the precommitment evaluation of
4 Mr. Garrett?

5 A No, but I read his report.

6 Q Okay. Did you talk to the case manager which
7 everybody is saying, thinks he's good to go?

8 A No, I haven't spoken to his case manager.

9 Q You don't know if it's a woman or a man or -- you
10 haven't talked to that person?

11 A No, sir.

12 Q Okay. If this case manager supposedly thinks that
13 Mr. Garrett is good to go and ready to be released,
14 wouldn't talking to that person be a pretty important
15 resource for you?

16 A If I had her name, I'd be glad to approach her.

17 Q Okay. Now, you testified at a prior hearing back
18 in July of 2013 just like you did today; correct?

19 A That's correct.

20 Q So this case has been pending at least in our
21 minds, your mind, and my mind, and Mr. Thomas' mind for
22 almost a little over a year, a year and three months;
23 right?

24 A It was really scheduled for July of this year.

25 Q It was postponed because you were ill?

1 A That's right.

2 Q Right. So the case has been pending for at least a
3 year?

4 A That's correct.

5 Q So if you wanted to talk to some case manager, you
6 had a year and three months to do it, haven't you?

7 A I didn't have a name and I didn't know if I had
8 permission to talk to the case manager.

9 Q Okay. Let me show you the voluntary statement
10 Johnny Garrett gave the police on July 28th, just a few
11 weeks after the incident which led to the lewd act
12 conviction. Do you remember looking at that when you
13 looked through his police reports?

14 A No. I went through a lot of that and I can't
15 remember them all.

16 Q Okay. Well, in this document which he identified a
17 few minutes ago, he's saying that he was asleep on the
18 bed and the next thing you know, this little girl is on
19 top of him humping me on my private area and her panties
20 were off and his pants were unbuttoned. Would you agree
21 that that's what he -- that statement and the other
22 statement here also talks about?

23 A I think those statements are implausible.

24 Q Okay. Implausible?

25 A Implausible.

1 Q Meaning -- well, this is Mr. Garrett's initial
2 version to the cops about what happened, is it not?

3 A I don't know. I'm not familiar with those
4 documents.

5 Q Okay. Okay. Okay. Okay. You're not familiar
6 with them. Would you like to take some time and get
7 familiar with them?

8 A What's your question?

9 Q Well, in this statement, he says that the little
10 girl basically came on to him. That he's laying in bed
11 drunk and suddenly this little girl gets on top of him
12 with her panties off and starts humping on him. That's
13 what he's saying to the police.

14 A Okay.

15 Q Okay. Do you want to read it and check?

16 A No, I've heard you mention it and interrogating him
17 about it.

18 Q And you think that's implausible?

19 A I think it's implausible and unreliable. I don't
20 think little girls act that way.

21 Q I don't either. So why would a person like
22 Mr. Garrett claim that they would?

23 A Maybe he didn't tell the truth.

24 Q Maybe he didn't. And when he told you a second
25 version that he thought the little girl on top of him

1 was his wife, mistook her for his wife, maybe that
2 wasn't the truth either, was it?

3 A Perhaps.

4 Q Okay. Did he admit to you committing the lewd act
5 on that little girl?

6 A He was vague in describing some of his offenses.

7 Q Uh-huh. Well, he pleaded guilty under that case of
8 North Carolina verses Alford. And as a forensic
9 psychologist, you're aware of how that case works,
10 aren't you?

11 A Yes. He thinks the solicitor has enough
12 information to convict him, so he plead guilty. Yes.

13 Q Okay. In fact, a person has to admit on the
14 record, the defendant has to admit in front of the Judge
15 that they believe the State has enough evidence to
16 convict; right?

17 A That's correct. That's correct.

18 Q And yet in your report on page 5 when he's talking
19 to you, he's insisting that they had no evidence against
20 him?

21 A You got a copy of my report?

22 Q Do you? I mean, yes, sir, I have one. Mine's kind
23 of marked up. Here's one that's not marked up if you
24 would like to look at it.

25 A I've got it right here.

1 Q Okay. So on page 5, about a third of the way down
2 when he talks about the Alford plea, and right above
3 that he says, "to hear Mr. Garrett, no evidence was
4 found then a week later he was arrested." Right?

5 A Yes, that's the statement. I guess he means by
6 evidence, physical evidence.

7 Q Okay.

8 A Physical evidence of abuse.

9 Q On page 12 of your report, you talk about him
10 minimizing his contact with victims, denying ever
11 introduce to pornography to one of the victims. That
12 was one of the contributing to the delinquency of a
13 minor charge. So he minimizes his contact with the
14 victims, does he not?

15 A Yes, I think he does.

16 Q He blames a lot of this on being angry, being
17 drunk, and being bored?

18 A He does.

19 Q And you talk about his triggers being things like
20 bad associates, in bars, and strip clubs, and places
21 like that. Triggers that could cause him to re-offend;
22 right?

23 A Drugs and alcohol I think weakened his controls.

24 Q Okay. But strip bars, the bars, the bad
25 associates, that kind of stuff; right?

1 A That's his history. Yes.

2 Q But none of those folks were present in the house
3 on the day he committed the lewd act on that eight year
4 old girl, was it?

5 A I'm not aware of anybody being there.

6 Q It wasn't in a bar? It wasn't in a strip club?

7 A No.

8 Q No bad associates there? Just him and that little
9 girl; right?

10 A That's right.

11 Q Okay. And your diagnosis I heard you say was
12 pedophilia as a mental abnormality and then a
13 personality disorder of antisocial; is that right?

14 A Antisocial personality disorder.

15 Q Okay. And as I understand an antisocial
16 personality disorder, it's a person who just doesn't
17 believe the rules apply to them?

18 A Yes, sir.

19 Q They violate lots of crimes?

20 A That's part of it.

21 Q In this case, Mr. Garrett has a lengthy criminal
22 history of stuff not having anything to do with sex?

23 A He does.

24 Q DUI's, a driving under suspensions, a blue light
25 offense?

1 A He does.

2 Q Which he was on probation for and arrested for this
3 lewd act; right?

4 A That's correct.

5 Q Okay. And in your report on page 13, it mentions
6 that he will accept sex offender treatment imposed by
7 any Court on him?

8 A Well, you can't mandate outpatient treatment once
9 they're released from this unit. But I think he would
10 voluntarily participate in outpatient treatment.

11 Q And you would agree with me that since he's not on
12 probation, there's no probationary sentence hanging over
13 his head, there's no way for a Court to impose anything
14 on him if he gets released by the jury?

15 A No. Once he's released, he's released.

16 Q He's out. Okay. And I believe you said that you
17 believe his mental abnormality is so changed that he's
18 safe to be at large and not likely to commit acts of
19 sexual violence if he has a good plan. By plan, you're
20 talking about the good plan with family and the plan
21 with this sex offender treatment and stuff like that; is
22 that right?

23 A I think he's safe to be at large because his PPG
24 was negative.

25 Q All right. But it's also tided -- you think he

1 should go to outpatient treatment, don't you?

2 A I think he should be in outpatient treatment. I
3 think he should be polygraphed every six months.

4 Q Okay. So that would be part of the plan that he
5 would have to have in your opinion if he was released?

6 A That's right.

7 Q Okay.

8 MR. BOGLE: Thank you, Your Honor.

9 THE COURT: Redirect?

10 MR. THOMAS: Your Honor, if it please the Court.
11 Just briefly.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION BY MR. THOMAS:

14 Q Doctor, on PPG, it showed no arousal to children?

15 A That's true.

16 Q Okay. And that's one of the -- that's an important
17 factor in making your determination today?

18 A It is.

19 Q Did you have significant -- did you have sufficient
20 information to come to your conclusion today?

21 A I do.

22 Q Okay. And Mr. Bogle has talked about these things
23 that have happened in the past being the nature of the
24 crime, the statement that he made when he was arrested,
25 and those types of things, those types of things are

1 historical, aren't they?

2 A That's correct.

3 Q And like Static-99, that's historical?

4 A That's correct.

5 Q Those are things that he can't change?

6 A That's right.

7 Q What can he change?

8 A He can change his behavior and I think he has with
9 some of his treatment.

10 Q What is the purpose of the sexually violent
11 predator program?

12 A Change their behavior so they won't re-offend when
13 they're released.

14 Q So that's the goal of the program or at least the
15 goal when you were there?

16 A That's right.

17 Q And you believe that Mr. Garrett has reached that
18 point?

19 A I do.

20 MR. THOMAS: Thank you, Your Honor.

21 MR. BOGLE: If I may briefly, Your Honor.

22 THE COURT: Sure.

23 RECROSS EXAMINATION BY MR. BOGLE:

24 Q You mentioned in response to the questions counsel
25 just asked you, the Static-99 was something that based

1 on historical data. Now, earlier you said that
2 Professor Hanson -- or Dr. Hanson, the guy who developed
3 the thing, said there should be a two percent reduction
4 for every year a person ages past 40?

5 A That's correct.

6 Q Have you got any possible document that supports
7 that claim?

8 A That is a recent research on the Static-99. As
9 these people age out and as they age out, their risk of
10 re-offending is reduced.

11 Q Well, you understand that on the Static-99 -- have
12 you ever seen the Static-99 coding form?

13 A Sure. I've got it.

14 Q And the only place it knocks off points is when you
15 turn over 60; right?

16 A This is recent research. This is recent research
17 coming out of this kind of treatment literature.

18 Q Recent as in last week? Last month? Last year?

19 A Last year. Eighteen months. Yes.

20 Q All right. Did you then take that recent research
21 and run a Static on him?

22 A No, I didn't.

23 Q Okay.

24 MR. BOGLE: Thank you, Judge.

25 THE COURT: Thank you, sir. You can step down. All

1 right. Call your next witness.

2 MR. THOMAS: Your Honor, if I can beg the Court's
3 indulgence just for a second.

4 THE COURT: Yes, sir.

5 MR. THOMAS: Your Honor, please the Court. That's
6 the petitioner's case.

7 THE COURT: Anything in reply, Mr. Bogle?

8 MR. BOGLE: No, Your Honor. Thank you.

9 THE COURT: Very good. Ladies and gentleman of the
10 jury, let me ask you to step back to the jury room for a
11 few moments. Don't talk about the case. I want to
12 discuss with the attorneys the logistics involved with
13 this whether we go ahead and send you to lunch or to
14 proceed with argument instructions and then send you to
15 lunch. So don't talk about the case yet. I'll have you
16 back in here in about five or ten minutes. Okay. Thank
17 you very much.

18 (The jury left the courtroom)

19 THE COURT: Let's go back on the record. Are there
20 any motions at this point in time?

21 MR. THOMAS: Your Honor, if it please the Court. We
22 would renew our motion for a directed verdict. And we
23 would also renew our motion for a mistrial.

24 THE COURT: All right. Very good.

25 MR. THOMAS: Thank you, Your Honor.

1 THE COURT: For the reasons stated yesterday, both
2 motions are denied.

3 MR. BOGLE: Your Honor, if it please the Court.
4 This being a civil case, the State would move for a
5 directed verdict. Code Section 44-48-110, governs
6 annual review release trials. It says the burden is on
7 the State to prove that the committed verses mental
8 abnormality or personality disorder remain such that he
9 is not safe to be at large and if released is likely to
10 engage in acts of sexual violence.

11 Section 44-48-120 is the release paragraph that
12 deals with situations when the Department of Mental
13 Health certifies that a person is ready to be released.
14 I think you've got to read them together. Because it
15 says that a person can only be released when the
16 Department determines that that person's mental
17 abnormality or personality disorder is so changed that
18 the person is safe to be at large and if released is not
19 likely to commit acts of sexual violence. It's absolute
20 in this state, Judge. Some states have conditional
21 outpatients, some states have conditions, some states
22 have probationary releases, this state does not.

23 When Dr. Watson was testifying on direct examination
24 while he did say when I called the magic words, he also
25 tided it to a good plan. That he's safe to be at large

1 as long as he has a good plan. And that good plan would
2 include AA, outpatient treatment of sex offender
3 treatment, and things like that. Okay. In this state,
4 it's either all or nothing. In this situation, the
5 defense's expert tied the release to having a good
6 plan. That's not what the statute says. We would
7 submit that based on that, the state's entitled to a
8 directed verdict in it's favor.

9 THE COURT: I appreciate your position. This is
10 clearly a situation where there's conflict --
11 conflicting evidence. The jury will have to weigh that
12 and consider that and decide if the State has met it's
13 burden in this particular instance. So the Court will
14 deny the State's motion as well.

15 MR. BOGLE: Thank you, Your Honor.

16 THE COURT: Let's go ahead and have the jury back in
17 here. I'm going to release them for about -- how long
18 is it going to take you to anticipate on closings, about
19 15 minutes each or so?

20 MR. THOMAS: I'll probably be very short.

21 THE COURT: Let's have them back in, please.

22 (The jury enters the courtroom)

23 THE COURT: Okay. The record should reflect that
24 the jury is back and seated. Ladies and gentleman of
25 the jury, I've made the decision, we're going to go

1 ahead and take our lunch break. I'm going to ask that
2 you be back in the jury room at 1:15. I had spoke with
3 the attorneys, I anticipate closing arguments and my
4 instruction to you on the law should take no more than
5 approximately an hour or a little bit less. We have the
6 other jury coming in at 2:15, but we can -- we have two
7 separate jury rooms. So if need be, we can start that
8 second trial while you're deliberating and just
9 interrupt that trial whenever you reach ultimately your
10 verdict.

11 As I said earlier, please don't talk about the case
12 with anyone while you're on lunch break. Obviously
13 you've not heard the arguments of counsel or my
14 instructions on the law. So as you probably understand,
15 it's important not to make up your mind at any point in
16 this case until you've had a chance to hear my
17 instruction and the argument of counsel.

18 With that, enjoy your lunch and I will see you back
19 in the jury room -- if you'll be back in the jury room
20 rather at 1:15, we'll proceed with the closing
21 summations and my instructions. You are excused. See
22 you back in an hour and fifteen minutes.

23 (Lunch break)

24 THE COURT: Let's have the jury, please. All right.
25 I believe the jury is probably back there, I'm assuming;

1 is that right?

2 BAILIFF: Yes, sir.

3 THE COURT: State will go first, Mr. Thomas, then
4 you go; is that correct?

5 MR. BOGLE: I think the way it works is we lead
6 opening in full, he then does his -- if he says
7 something new, I can reply to it. And that's pretty
8 much it.

9 THE COURT: Exactly. Let's have the jury, please.

10 (The jury came into the courtroom)

11 THE COURT: All right. The record should reflect
12 that the jury is back and seated. Ladies and gentleman
13 of the jury, we've reached that portion in the trial
14 where you've received all the evidence that you're going
15 to have in order to make a decision. And it's now an
16 opportunity -- the lawyers will have an opportunity
17 rather to give you their closing summation or their
18 closing argument. I'll tell you the same thing I said
19 yesterday. Obviously, what the lawyers say during their
20 opening or closing argument is not evidence. It's
21 simply their contention as to what has been proven or
22 has not been proven. And even though their argument is
23 not evidence, obviously you should pay attention to it.

24 It's normal for lawyers to refer to the facts when
25 they're arguing their closings to you. And I anticipate

1 that the lawyers will make reference to the facts.
2 However, if at anytime they say something about the
3 facts and what they say differs from what your
4 recollection of the facts is, you should go with your
5 recollection as opposed to what they say the facts are.
6 Because obviously you are the Judges of the facts. The
7 sole Judges of the facts, so you should go with what you
8 recall the testimony or the evidence being. For
9 example, if they said that yesterday -- if one of the
10 lawyers were to have said that yesterday it was cold,
11 wet, and rainy, and miserable outside and you recall
12 that yesterday it was sunny and rather temperate, you
13 should go with your recollection as opposed to what they
14 say.

15 The way that we'll proceed is Mr. Bogle will go
16 first on behalf of the State followed by Mr. Thomas on
17 behalf of Mr. Garrett and then Mr. Bogle will have an
18 opportunity to reply to anything that Mr. Thomas said in
19 his closing. So with that, Mr. Bogle, you're recognized
20 for your summation.

21 MR. BOGLE: Thank you, Your Honor. May it please
22 the Court.

23 THE COURT: Yes, sir.

24 MR. BOGLE: Mr. Thomas. Okay. Well, like the Judge
25 said, we're at the end right now. The case is over as

1 far as the testimony and the presentation of all the
2 evidence. The State has introduced into evidence one
3 exhibit, you'll have that in the jury room with you.
4 And that's the record of the sexually violent
5 conviction. Now, I'd like to thank you for your
6 service. For the hard work. It's just been two days,
7 this is hard work, it's a difficult job. And it also
8 requires like we kind of suggested yesterday, you had to
9 listen to some stuff that maybe you'd rather not hear,
10 some very personal stuff about what happened to the
11 victim in this case. But at the same time, I think we
12 can all agree it was necessary for both experts. Both
13 Dr. Watson and Dr. Gehle to explain how they reached
14 their opinion to talk about what happened.

15 Now, like I said yesterday, when we generously
16 passed this law in 1998, what they said was, there's a
17 certain class of people out there who are so dangerous
18 and so likely to commit a sexually violent crime despite
19 the fact they served their prison term. That these
20 people need to be committed to a secure place for
21 control, care, and treatment. And then they set it up
22 by the Department of Mental Health, it's called the
23 sexually violent predator unit, you heard reference to
24 where it's located. It's located at the Broad River
25 Correctional Institution. But like the Judge said

1 earlier, I think one of them, in response to a comment
2 made, it's not a prison. It's on the same campus. It's
3 not a prison, it's a treatment place. And it's secure
4 and they can't get out. But it's there for treatment
5 and that's what Mr. Garrett's there for, he's been there
6 since about January of 2010.

7 Now, the burden of proof as the Judge said and we
8 all agreed at the beginning is, the State has the burden
9 of proving to you beyond a reasonable doubt that Johnny
10 Garrett's mental abnormality and his personalty
11 disorder, he's got one of each, has not changed or
12 remains such that he is not safe to be at large and if
13 released is likely to commit acts of sexual violence.

14 Now, you heard the testimony of two people
15 classified by the Court as expert witnesses. Have you
16 ever heard the phrase, the elephant in the room? The
17 thing is so big and so obvious that nobody wants to see
18 it. Well, there's an elephant in this room right now.
19 And here's what it is. You have heard the testimony of
20 two people, Dr. Marie Gehle, Dr. Selman Watson. Both of
21 them qualified by the Court as experts in their field of
22 psychology, able to give opinions, examined the same guy
23 for the same reasons, yet when looked at the same stuff,
24 yet came up with different opinions. Dr. Gehle thinks
25 he has not completed treatment, has not progressed

1 enough to be safe. Dr. Watson thinks he has. So by
2 definition, the fact that different experts saw the same
3 guy for the same reason, isn't that reason now? And I
4 would suggest to you it is not.

5 Like the Judge said, even though a person is
6 declared an expert, it is your prerogative as jurors to
7 evaluate their testimony, weigh their testimony, what
8 they did, what they looked at, how they said it, and
9 decide how much to believe, how little to believe, or
10 whatever dividing line you make in between. And I would
11 suggest to you that the evidence overwhelmingly supports
12 the State's burden of proof that Mr. Garrett has not
13 progressed in treatment enough to be safe to be at
14 large. Now, what do we have to support that. Well,
15 look at Dr. Gehle's credentials. She's done over 125 or
16 150 evaluations just for people involved in the sexually
17 violent predator program. She's done precommitment
18 hearings before a vast committee, and she's done
19 evaluations like this one, an annual review of a guy
20 who's already in the system. What did she say? She
21 said when she evaluates them prior to trial, about 60
22 percent of the time, she finds the guy's not a predator
23 and dismiss the case. So -- but she's honest about it.
24 Sometimes she finds for the other side.

25 Now, in this case, she did not. She reviewed all of

1 his records, she looked at everything, and her
2 credential is such that she deals with this type of guy
3 every day all the time. That's her credentials. What
4 has she looked at? Well, in 1998, Mr. Garrett had some
5 charges involving three young girls. Now, those charges
6 got dismissed and he was suppose to go to some kind of
7 outpatient treatment, although, I think Mr. Garrett
8 testified he wasn't quite sure about that. Her records
9 -- Dr. Gehle's records showed he was suppose to go to
10 some kind of sex offender treatment, but, you know, if
11 you look at that, he's got these charges pending back in
12 1998. They include significant jail time if he was
13 convicted of lewd act, criminal sexual conduct, that
14 sort of thing. Also contributing to the delinquency of
15 a minor. Supplying porn and alcohol to little kids.
16 Some people call them grooming. A pedophile does to get
17 used to be around him and used to -- and easing into
18 sexual acts. Those charges got dismissed. No question
19 about it. But my point about bringing those up is,
20 here's the logical thing, that he knew at that time he
21 was facing some serious prison term. And when they got
22 dismissed, wow, that's a relief. And yet what happens?
23 A few years later, he winds up doing the same thing
24 again to this little girl here in indicted for criminal
25 sexual conduct and pleas to lewd act on a minor back in

1 2005. A lewd act is a sexually violent crime. So
2 that's what got him in the system where he is right now.
3 And you think he would of all the person's to be on his
4 guard, don't do this type of thing again. But, no, he
5 does it and he gets caught and he gets convicted this
6 time.

7 Now, I think the most bothersome thing about all of
8 this is his version of what happened and how that seems
9 to fluctuate from day-to-day. At first it was denial.
10 Then it was, I was asleep, and this little eight year
11 old girl crawls on top of me with her panties off and
12 starts humping me. A grown man. Like I said, try to
13 see this as an eight year old girl came on to him. Then
14 it was, like he was saying, it's an accident. Well,
15 then the version that comes it's an honest mistake. I
16 was laying there drunk, half asleep, she climbs on top
17 and I think it's my wife. Well, the fact that his
18 versions keep changing suggest to me and Dr. Gehle and I
19 think to you as well that Johnny Garrett is still
20 struggling with recognizing and acknowledging what he
21 did. And until he does, he's not safe to be at large.

22 We have some false alarms that have been tossed out.
23 Counsel argue, well, it's only one conviction. Only one
24 conviction. Well, that was enough. He got committed
25 four years ago, we all know that. The Judge talked

1 about that. We all talked about that during this trial.
2 It's not just that conviction. If you look at Dr.
3 Gehle's testimony, there's a cumulative effect under the
4 prior arrest of the same type of stuff and then the fact
5 that he was convicted. At the time convicted, he was on
6 probation for another nonsexual offense. Also, he's got
7 this history of nonsexual convictions. The guy just
8 breaks the law a lot and that leads to the personality
9 disorder diagnosis by Dr. Gehle and Dr. Watson.

10 A lot was made about the Static-99R. Well, that's
11 just a scoring mechanism. The defense counsel showed a
12 witness a Static-99 coding form that had a three on it.
13 That's the last we saw. No one's authenticated that.
14 No one said it was even done by DMH. It's a piece of
15 paper. What Dr. Gehle said was that she scored the guy
16 and she followed the rules. She scored him and she came
17 up with the number with five. And like she talked
18 about, this thing was developed for sex offenders just
19 like your heart monitor develops a system of risk for
20 you. Like Dr. Gehle said, if you're having a concern
21 about having a heart attack, or let's say you want to
22 get life insurance and the insurance company sends you
23 in for a health exam. Well, let's go to the doctor and
24 ask him. He's going to ask you a series of questions to
25 see whether or not your risk of having a serious health

1 condition like a heart attack or something else. Do you
2 smoke? Do you have high blood pressure? Is there a
3 family history? All those questions we're all familiar
4 with involved with that, now that doesn't mean that a
5 doctor has seen thousands and thousands of patients. He
6 might be fresh out of med school, but he knows from
7 prior research on thousands and thousands of people that
8 have those conditions they're likely to have a serious
9 health problem. And if he finds that, your insurance
10 rate is going to be higher than they might be for the
11 help you got when it comes in the next time. Well,
12 that's a Static is. It's not the only tool. And Dr.
13 Gehle was very effective to say that she looked at all
14 of his risk factors. But in addition to that, using
15 this tool, he ran a score of five which means he scored
16 worst than about 90 percent of the thousands and
17 thousands of sex offenders who were a part of that
18 study.

19 The diagnosis by both expert witnesses, he's a
20 pedophile which means he has a sexual interest in
21 prepubescent children. Purest girls. So a lot was made
22 about the PPG. Well, the PPG exam was administered by a
23 Dr. Burke down in Summerville. Both experts did
24 acknowledge there was some issues with how authentic and
25 how useful it is, and I would suggest to you, it's just

1 another tool. Well, what did the PPG say? He didn't
2 seem to blow the mark off when it comes to hearing
3 things or seeing things about small children. But teen
4 female coercive. Coercive means force folks. They did
5 kind of score real high on that one. And no one seems
6 to be worried about that. I guess cause the girls
7 aren't young enough. Coercive sexual behavior with
8 adolescent females. So one more tool, one more thing to
9 look at. Dr. Gehle doesn't put a lot of faith in them
10 and she explained why. But still there's one more tool
11 that we have to deal with. Now, when I looked at the
12 testimony presented by the defendant, I really
13 appreciate his daughter coming forward and the family
14 wants to take a look at this guy. But think about it
15 and use your common sense here. If I'm going to trial
16 and the chance the jury might come back with a verdict
17 of releasing me, I can go home today, I'd make me an
18 appointment next week, say next Tuesday at 3 o'clock
19 with some sex offender treatment program so I could tell
20 that jury, I'm locked in. I can always cancel the
21 appointment if the verdict doesn't go in my favor, but
22 I'm locked in. I've got an appointment. I'm good to
23 go. Didn't hear that. We heard promises that he will
24 go to something somewhere, not sure where. And even his
25 daughter, I know she loves her daddy a whole lot, but

1 she said and Johnny Garrett said, I shouldn't be alone
2 with children. His daughter said one of the things
3 we're not going to do is leave him alone with children.
4 Well, folks, if they don't think he should be a lone
5 with small children, he doesn't think he should be alone
6 with small children, then there's some kind of risk
7 factor. Maybe that's another elephant in the room.

8 Dr. Watson in his report did acknowledge that
9 Mr. Garrett tends to minimize what happens. It wasn't
10 my fault. I was drinking. I was hanging out with a bad
11 crowd at strip clubs and bars and things like that.
12 Well, while those might be triggers to him, that's not
13 where this crime happened. It didn't happen at a strip
14 club or a bar or anything like that. There weren't any
15 bad associates in the house when it happened. He was
16 alone with a young girl. So that's what you have.

17 We heard the statements that Johnny Garrett gave the
18 police right after he was arrested. He gave the first
19 group that he was asleep in the bed and the little girl
20 crawls on top of him with her panties off and starts
21 humping him. Remember he read those statements into the
22 record? So that's where we are. That's the case. Not
23 much else I can say. The way it works is, is if
24 Mr. Thomas says something new that I haven't covered
25 then I can get up and reply to it. That usually doesn't

1 happen, although it does. But here's what it is.
2 You've got to decide has the State proven to you through
3 it's witnesses beyond a reasonable doubt that Johnny
4 Garrett's mental abnormality, pedophilia, a lifelong
5 condition, and the antisocial personality disorder he
6 has, do those remain such that he is not yet safe to be
7 at large and if released is likely to commit acts of
8 sexual violence? That's your job. And I would submit
9 to you that the State has met that burden of proof.
10 Thank you ladies and gentleman.

11 THE COURT: Mr. Thomas, your recognized.

12 MR. THOMAS: Thank you, Mr. Bogle. Your Honor, if
13 it please the Court.

14 THE COURT: Yes, sir.

15 MR. THOMAS: Thank you. Ladies and gentleman of the
16 jury, thank you for your being here, for your attention,
17 and listening to all the evidence that's been presented
18 and I appreciate that and that's how our legal system
19 works. And like the Judge said in the beginning of his
20 -- what we're here today is to do the right thing, to do
21 justice.

22 I listened to Mr. Bogle and I've been listening to
23 the testimony as well throughout this trial. And one
24 thing that I think that I'm hearing is a difference
25 between what is historical, what happened a long time

1 ago, what happened back in 1990, and all these things
2 are things that we can't change. Things that they are
3 what they are as bad as it may be. The drinking, the
4 use of drugs, the failed marriages, the other things
5 that have gone on, and the things that he admits that he
6 did that he understands they were wrong and he shouldn't
7 have done them.

8 What we're here today and I think is for change.
9 What I see in the program is that it's called the SVP
10 program of the sexually violent predator program, but
11 it's a treatment program. I think when the legislature
12 established it in 1990 -- when it was established in
13 1998, that the purpose of the program was treatment.
14 And in treatment, I think that that means that people
15 either they get better. We try to make them reach a
16 goal of being released. And so I think it envisions
17 change. And the statute, in essence what we're here for
18 today is that we believe that a person's mental
19 abnormality or personality disorder, which he has both,
20 has so changed that the person is safe to be at large
21 and if released is not likely to commit acts of sexual
22 violence.

23 Now, if we talk about the things that we've done 10,
24 15, 20 years ago, that's what he was convicted for.
25 That's what he went to prison for. That's what he was

1 put into the program for. But I think we have to look
2 beyond those things. And surely -- I mean, we don't
3 want to minimize anything, but what I think we have to
4 use is our common sense. And we look at Dr. Gehle. Dr.
5 Gehle is certainly qualified. She's an excellent
6 doctor. Dr. Watson who is here today was the director
7 of the SVP program for four years. He was the director
8 of the program, so he is all for it. Also, excellently
9 qualified and is a good doctor. And what we're saying
10 is that Johnny has reached a point and that he's
11 participated in this program. And when he took the
12 stand, he was talking about these are the things that
13 I've done. I went to Geo Care. I have all my
14 assignments that I've been working on. I have done
15 these things to make myself a better person.

16 And we talk about boundaries that he set. And, you
17 know, we're talking about the family, of course, here.
18 His daughter was saying, you know, we're there to
19 support him. We're there to do everything we can for
20 him. We're willing to be there for him. The church is
21 willing to be there for him. These people are there and
22 we're willing to help him if the jury decides that he's
23 ready to be released, we're there. We will provide
24 transportation for him. We're going to take him to his
25 medical appointments when he gets out, we will set those

1 up. These are the things that are going to be done for
2 him. He's got good support. And I think that's part of
3 being successful. Part of improving your chances of
4 support. You do have a family. You do have people that
5 care for you. And you have people who are willing to be
6 there for you and to help you to continue the changes
7 and improvements that you've had.

8 I like the idea of the insurance company. The
9 insurance policy. I think that's an excellent example
10 of what we're talking about today. Ten years ago, if I
11 was drinking, smoking a couple of packs of cigarettes a
12 day, doing all kinds of stuff, parachuting, engaging in
13 all kinds of dangerous activity, I'm racing cars,
14 whatever, what do you think my health insurance premium
15 is going to be? Or what is my life insurance premium
16 going to be? Well, that may have been Mr. Garrett 10 or
17 15 years ago. Now, I go to my doctor and he says,
18 Tommy, you know, if you don't make these changes, you
19 know, the next thing we're going to do, we're going to
20 be going to your funeral. Cholesterol is high. I'm
21 concerned about your life and other things, so I decide
22 that I'm going to change. Joining the gym. I take the
23 nutrition class and I learn about the better foods to
24 eat and how these things affect my body. And then ten
25 years later, I'm exercising, running in marathons, I

1 don't smoke anymore, I don't drink anymore, and I am
2 really paying attention to my health. And I walk back
3 into that insurance company, what kind of premium am I
4 going to get? Is it going to be less than it was when
5 it was ten years ago when I had all these problems?

6 Yeah. It's going to be less. Because I'm in a better
7 situation and certainly with health insurance because
8 they do a medical exam. And I think that that's very
9 comparable to what we're talking about today.

10 We can't change the past. The PPG is based on the
11 past -- not the PPG, I'm sorry. The other test that the
12 Static-99 is generally -- it is that, it's Static. And
13 generally the only way you can change it is get older.
14 We had the PPG that showed which I think is extremely
15 important. It showed no arousal for children. And so
16 what we have is a situation where we have complied with
17 what the statute had envisioned to begin with. We
18 treated this individual and we changed. And the SVP
19 program. We take them, we take some of the worst, we
20 treat them, and we hope that they change. And I think
21 that's what we're talking about today.

22 There are things that we can't change. The past.
23 My past. Our past. We can't change that. But what we
24 can change is how we behave. And we can change and we
25 can learn. And that's what I think we demonstrated to

1 y'all today and that's what Dr. Watson was talking
2 about. He acknowledged that Johnny had his problems in
3 the past. He didn't try and say, oh, no. You know, he
4 did. He said he's got a diagnosis. He said he had some
5 question because of the PPG about the arousal to
6 children, about the diagnosis of pedophilia. But he
7 said he did diagnose him with pedophilia. And he does
8 have a personality disorder.

9 But what I think we've done is that we've reached
10 that point for Johnny to be released. And we've reached
11 that point to where he can be safe. And the last thing
12 I want to cover was about the -- that he's not on
13 probation. The Court didn't put him on probation. They
14 sentenced him and he served the time. He didn't have
15 any probationary period. But Dr. Watson said when
16 asked, given the fact that he's not on probation or
17 won't be on probation, do you still believe that he can
18 be safely released and he said, yes. So even if we took
19 the situation where we said, well, Johnny's not going to
20 do anything and you saw him on the stand, and this is
21 where your ability to judge the credibility of witnesses
22 comes into play. Did you believe him? Or did you not
23 believe him? Was he credible to you? That's where we
24 have to make that determination. We had a situation
25 where they're saying Dr. Watson says that even if he

CLOSING ARGUMENT - MR. THOMAS

1 doesn't go for treatment, I think he still can be
2 released. But Johnny says he's willing to do anything.
3 He's willing to go to the programs. He feels like in
4 his road to recovery that he is on that that is
5 important to him. And that is what he is still willing
6 to do.

7 So I believe that if you use your common sense and
8 if you look at what everything has been said today, the
9 State has the burden to prove to you beyond a reasonable
10 doubt, not just preponderance of the evidence, not just
11 that judicial scale where you tip it one way or tip it
12 another, beyond a reasonable doubt that his personality,
13 the person's mental abnormality, or personality disorder
14 has not changed. They have to prove to you that it has
15 not changed. That it creates a situation that he would
16 be dangerous to be released and that he is likely to
17 commit acts of sexual violence. I don't believe the
18 State's proven that. I believe that he can be safely
19 released. I believe which he has admitted that he will
20 always be an alcoholic. He has admitted that he will
21 always have to stay focused, understand what he needs to
22 do and I believe that you will find that he can be
23 released. Thank you so much.

24 THE COURT: Thank you, Mr. Thomas. Mr. Bogle,
25 anything in reply, sir?

JURY CHARGE BY THE COURT

1 MR. BOGLE: No, Your Honor. Thank you.

2 THE COURT: Very good. Ladies and gentleman, it now
3 becomes my obligation to instruct you on the law that
4 applies in this particular case. And the way that this
5 has traditionally been done in South Carolina or at
6 least the way it's done -- or it was done when I first
7 started practicing 20 plus years ago and even some
8 Judge's do it today, is the Judge sits up here and reads
9 you ten pages of what the law is that's gathered from
10 the books that are sitting beside me and you're suppose
11 to sit there and absorb all of this and get it right on
12 the first time after hearing it just once. All right.

13 Like most people, it took me three years to get
14 through law school. And I've always found it a little
15 bit unreasonable to just expect the jury to be able to
16 hear what the Judge is saying and when you go back there
17 and apply it. What I'm telling you in the not so short
18 way is that you're going to have a copy of these
19 instructions that you can refer to during your
20 deliberations if you need to. All right. Obviously pay
21 attention to the instructions in the whole and don't
22 simply read part of the instructions to the detriment of
23 the other part of the same instructions.

24 At this point in time, ladies and gentleman, again,
25 the evidence is closed. All the evidence has been

JURY CHARGE BY THE COURT

1 presented that you'll have to judge this case upon. So
2 it's not possible for me to reopen the record and allow
3 additional evidence to be introduced. However, if you
4 have any questions or any problems with the
5 instructions, I can try and help you on the law that
6 applies. All right. I cannot help you on any factual
7 issue, that's for you to decide. But if you do have
8 difficulty or if you do struggle with what the law is,
9 just send me a note, let me know what it is that y'all
10 are struggling with and I'll try and help you. Okay.

11 Now, ladies and gentleman, I remind you that during
12 this trial, you and I have certain duties to perform.
13 As the trial Judge, it's my responsibility to preside
14 over the trial of this case. And I also have the duty
15 to rule on upon the admissibility of evidence offered
16 during the trial. You're to consider only the evidence
17 before you and the testimony which has been presented
18 from the witness stand as well as any exhibits which
19 have been made a part of the record. The judicial duty
20 to charge the law applicable in this case, and again,
21 it's your duty as jurors to accept and apply the law as
22 I state it to you now. If you have any idea or you
23 think you have any ideas to what the law is or what it
24 should be and it disagrees with what I now tell you the
25 law is, you must abandon this idea because you're sworn

JURY CHARGE BY THE COURT

1 to accept and apply the law as I now state it to you.

2 Now, in every case tried in this court before a
3 jury, the jury becomes the sole and exclusive Judge of
4 the facts. A trial Judge cannot comment on, make any
5 statement about or intimate anything about the facts in
6 the case. Since you're the Judge -- the sole Judges of
7 the facts, please don't think that by anything that I
8 said during the trial that I have any opinion about the
9 the facts. Ladies and gentleman, the law doesn't allow
10 me to have any opinion about the facts. This is solely
11 for you, the jury, to determine.

12 Technically, ladies and gentleman, there are two
13 types of evidence presented during a trial, direct
14 evidence and circumstantial evidence. Direct evidence
15 is the testimony of a person who claims to have actual
16 knowledge of an event or a fact such as an eye witness.
17 It's evidence which immediately establishes the main
18 fact to be proven. Circumstantial evidence is a proof
19 of a chain of facts and circumstances indicating the
20 existence of a fact. It's evidence which immediately
21 establishes collateral facts from which the main fact
22 may be inferred. Circumstantial evidence is based upon
23 inference and not on personal knowledge or observation.
24 It's proof that does not actually establish the fact in
25 question, but asserts or describes something else from

JURY CHARGE BY THE COURT

1 which you may either reasonably infer the truth of the
2 fact or at least reasonably infer an increase in the
3 probability that the fact is true.

4 Circumstantial evidence to be sufficient to warrant
5 the finding of a fact, the circumstances must lead to
6 that fact with reasonable certainty. The facts and
7 circumstances should be considered in light ordinary
8 experience and common sense, ladies and gentleman.
9 Obviously, the existence of a fact cannot be based upon
10 speculation, surmised, or conjecture. Now the law
11 makes absolutely no distinction between the weight or
12 value to be given to either direct or circumstantial
13 evidence nor is a greater degree of certainty required
14 of circumstantial evidence than of direct evidence.

15 Ladies and gentleman, necessarily you have to
16 determine the credibility of witnesses who have
17 testified in this case. And, again, credibility simply
18 means believability. The country of duty as jurors to
19 evaluate the evidence and determine which evidence
20 convinces you it is true. In determining the
21 believability of witnesses who have testified in this
22 case, you can believe one witness over several witnesses
23 or several witnesses over one witness. You can believe
24 part of the testimony of a witness and reject the
25 remaining part of the testimony of that same witness.

JURY CHARGE BY THE COURT

1 You may believe the testimony of a witness in its
2 entirety or reject the testimony of a witness in its
3 entirety. You may consider whether the witness has an
4 interest in the result of the trial, whether the witness
5 is prejudiced towards either the State or the
6 petitioner, the opportunity for the witness to have seen
7 the matters and things about which the witness testifies
8 and the way the witness acts on the witness stand.

9 Now, ladies and gentleman, as I explained earlier,
10 normally the rules of evidence do not permit witnesses
11 to testify to opinions -- as to opinions or conclusions.
12 An exception to this rule does exist though for
13 witnesses who by education and experience have become
14 expert in some art, science, or profession. Such
15 individual of such expert witnesses may give an opinion
16 as to the subject the witness claims to be an expert in
17 and then they also give the reasons for that opinion.
18 You should consider any expert opinion given by a
19 witness in this case and like any other evidence, give
20 it the weight you think it deserves. If you decide that
21 an expert witness' opinion is not based upon sufficient
22 education and experience or if you decide that the
23 reasons given in support of the opinion are not sound or
24 that the opinion was outweighed by other evidence, you
25 may disregard the opinion entirely.

JURY CHARGE BY THE COURT

1 Ladies and gentleman, an expert witness' testimony
2 is to be given no greater weight than that of any other
3 witness simply because the witness is an expert. And
4 you don't have to accept an expert's opinion even though
5 it's uncontradicted.

6 Now, ladies and gentleman, the State of South
7 Carolina has brought this case under the Sexually
8 Violent Predator Act. And South Carolina's General
9 Assembly has determined that those person's who are
10 found to be sexually violent predators under the law
11 require involuntary civil commitment in a secure
12 facility for long term control, care, and treatment.

13 Additionally, the General Assembly has determined
14 that a separate involuntary civil commitment process,
15 independent of Probate Court process, is necessary for
16 these individuals. The involuntary civil commitment of
17 a sexually violent predator for control, care, and
18 treatment is not a criminal proceeding seeking
19 incarceration for purposes of punishment. To be
20 committed, the State in a prior proceeding had to prove
21 beyond a reasonable doubt that Mr. Garrett had been
22 convicted of at least one sexually violent crime as
23 they're listed in the act and that he suffered from a
24 mental abnormality or a personality disorder that made
25 him likely to engage in sexually violent crimes in the

JURY CHARGE BY THE COURT

1 future unless he was committed to a secure facility for
2 long term control, care, and treatment.

3 The petitioner Mr. Garrett was committed under the
4 law in January of 2010. He's resided at the sexually
5 violent predator treatment program administered by the
6 Department of Mental Health since that time. Each year
7 under the law a committed person is entitled to an annual
8 review. He may petition to be released at such time.
9 Mr. Garrett has done so and that makes him a petitioner
10 in an annual review trial that we're doing right now.

11 Now, this jury trial is to determine whether
12 Mr. Garrett should remain civilly committed at this
13 sexually violent predator treatment program. The State
14 bears the burden in this case to prove beyond a
15 reasonable doubt that Mr. Garrett's mental abnormally or
16 personality disorder remains such that he is not safe to
17 be at large and that if released, he is likely to engage
18 in acts of sexual violence. You'll make that decision
19 on the basis of the evidence which you have seen and
20 heard and on the law which I now instruct you.

21 If the State is able to meet its burden of proof,
22 it's entitled to a finding that Mr. Garrett should
23 remain committed to the sexually violent treatment
24 program. If the State is unable to meet that burden of
25 proof, Mr. Garrett is entitled to a finding that he

JURY CHARGE BY THE COURT

1 should be released from confinement at the sexually
2 violent predator treatment program.

3 Now, in most civil cases, ladies and gentleman, the
4 party with the burden of proof only has the burden of
5 proving that a fact is more likely true than not true
6 such as by the greater weight with a preponderance of
7 evidence. However, in this type of case, the State's
8 burden of proof must be more powerful. It must be
9 beyond a reasonable doubt. Well, what is a reasonable
10 doubt in the eyes of the law? Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced.

12 Now, ladies and gentleman, there are very few things
13 in this world that we know with absolute certainty and
14 the law doesn't require proof that overcomes every
15 possible doubt. What is required is if based upon your
16 consideration of the evidence, you're firmly convinced
17 that Mr. Garrett's mental abnormality or personality
18 disorder remains such that he is not safe to be at large
19 and that if released, is likely to engage in acts of
20 sexual violence, then you should return a verdict for
21 the State.

22 If on the other hand, you think there is a real
23 possibility that his mental abnormality or personality
24 disorder has changed such that he is safe to be at
25 large, and if released, is not likely to engage in acts

JURY CHARGE BY THE COURT

1 of sexual violence, you should give him the benefit of
2 the doubt and find a verdict for Mr. Garrett.

3 Reasonable doubt, ladies and gentleman, may arise
4 from evidence that is in the case or from the lack or
5 absence of evidence in the case. It's up to you, ladies
6 and gentleman, to return whether or not reasonable doubt
7 exists in this case. Ladies and gentleman, the State
8 must prove beyond a reasonable doubt that Mr. Garrett's
9 mental abnormality or personality disorder remains such
10 that he is not safe to be at large and that if released
11 is likely to engage in acts of sexual violence. What is
12 required is if based upon your consideration of the
13 evidence, you're firmly convinced that Mr. Garrett's
14 mental abnormality or personality disorder remains such
15 -- I'm just repeating myself here. And that's what I
16 get for continuing to read here. All right. Scratch
17 through that. I duplicated something, ladies and
18 gentleman. So on these instructions on the part that I
19 scratched through in blue, that's the part I just read
20 you. Okay. So we're not going to read that to you
21 again.

22 All right. Here we are. Ladies and gentleman, the
23 State must prove beyond a reasonable doubt that
24 Mr. Garrett's mental abnormality or personality disorder
25 remains such that he's not safe to be at large and that

JURY CHARGE BY THE COURT

1 if released is likely to engage in acts of sexual
2 violence. Inherent in this case is that the State must
3 prove the requirement that Mr. Garrett's mental
4 abnormality or personality disorder causes him serious
5 difficulty in controlling his behavior. In other words,
6 the State must prove beyond a reasonable doubt the
7 individual it seeks to remain committed suffers from a
8 mental illness which he cannot sufficiently control
9 without the structure and care provided by a mental
10 health facility rendering him otherwise likely to commit
11 the dangerous act.

12 In order for you to better understand the elements
13 of the State's cause of action, I'm going to define for
14 you some of the terms that I've used. A mental
15 abnormality, ladies and gentleman, means a mental
16 condition affecting a person's emotional or volitional
17 capacity that predisposes of the person that commits
18 sexually violent offenses. This mental abnormality or
19 personality disorder must cause petitioner serious
20 difficulty in controlling his behavior. The phrase,
21 "likely to engage in acts of sexual violence," means the
22 person's propensity to commit acts of sexual violence is
23 of such a degree as depose a menace to the health and
24 safety of others so that he's a danger to others.

25 Again, I remind you that the burden of proof is on

JURY CHARGE BY THE COURT

1 the State to prove to your satisfaction beyond a
2 reasonable doubt that Mr. Garrett's mental abnormality
3 or personality disorder remains such that he is not safe
4 to be at large and that if released, he's likely to
5 engage in acts of sexual violence.

6 Now, ladies and gentleman, I prepared a brief
7 verdict form that will help guide your deliberations.

8 All right. It has two mutually exclusive statements.

9 The first basically says -- it asks this question, says,

10 we are -- makes this statement. "We the jury

11 unanimously answer the question above as follows." The

12 question is this. "Has the respondent State of South

13 Carolina proven beyond a reasonable doubt that Johnny

14 Ray Garrett's mental abnormality or personality disorder

15 remains such that he's not safe to be at large and if

16 released is likely to commit additional acts or is

17 likely to commit acts of sexual violence." And it has

18 two options. "We the jury unanimously answer the

19 question as follows." The first blank just simply says,

20 "yes." Okay. "Yes, we the -- the State of South

21 Carolina has proven beyond a reasonable doubt that

22 Mr. Garrett's mental abnormality or personality disorder

23 remains such that he's not safe to be at large and if

24 released is likely to commit acts of sexual violence."

25 Second one is, "no." Okay. So if you find that the

JURY CHARGE BY THE COURT

1 State has met its burden of proof, you would initial
2 next to, yes, Mr. Foreman. If, however, you find that
3 the State has failed to prove beyond a reasonable doubt
4 that Mr. Garrett's mental abnormality or personality
5 disorder remains such that he's not safe to be at large
6 and is likely to commit acts of sexual violence, then
7 you initial, no. All right. Sign the form as
8 Foreperson, knock on the door, and let the bailiff know.

9 Now, ladies and gentleman, all twelve of you have to
10 agree on the verdict. We don't have majority verdicts
11 in South Carolina. I hope we never have majority
12 verdicts. So all twelve of you have to agree on the
13 ultimate verdict in this case. Your verdict, of course,
14 cannot be based upon sympathy, passion, prejudice,
15 emotion, or any other consideration which is not in
16 evidence in this case. And I remind you that you've
17 been selected as fair and impartial jurors in this case.
18 That means you have no friends to reward, you have no
19 enemies to punish.

20 Again, when the jury agrees on the verdict,
21 Mr. Foreman, just let the bailiff know by knocking on
22 the door and telling him that you have reached a
23 verdict, we'll receive you back in the courtroom at that
24 time. All right. I'm going to ask that you return to
25 the jury room, but don't start your deliberations yet.

JURY CHARGE BY THE COURT

1 I want to double check with the attorneys and make sure
2 I've covered everything I need to cover with you as far
3 as the instructions. If there are additional
4 instructions, I'll bring you back out here. However, if
5 I've covered everything and everyone is satisfied I've
6 covered everything, your que to begin your deliberations
7 will be receipt of the instructions, the verdict form,
8 any evidence introduced into the record, and my asking
9 y'all to step out. Okay. So if you will, go back to
10 the jury room, but don't start talking about the case
11 quite yet.

12 (The jury left the courtroom)

13 THE COURT: All right. Exceptions from the State?

14 MR. BOGLE: No, Your Honor. Thank you.

15 THE COURT: None from the defense?

16 MR. THOMAS: No, Your Honor.

17 THE COURT: Very good. All right.

18 MR. BOGLE: When the Judge is sending the charge
19 back, do we have to do any consent on the record of
20 that? I know you said part of the charges would have
21 to, but I'm not sure about the whole charge.

22 THE COURT: Not the whole charge.

23 MR. BOGLE: We don't object to it. I just wanted to
24 put that on the record. I just wanted to say that.

25 THE COURT: Good enough. Anything, Mr. Thomas?

VERDICT OF THE JURY

1 MR. THOMAS: Nothing, Your Honor.

2 (The jury began their deliberation)

3 (Off the record)

4 THE COURT: All right. We're going to switch gears
5 again and go back on the record in Case 08-CP-42-5822 in
6 the Matter of Care And Treatment of Johnny Garrett. I'm
7 informed, gentleman, that the jury has in fact reached a
8 verdict. Anything before the jury is received back in
9 the courtroom from the State?

10 MR. BOGLE: No, Your Honor. Thank you.

11 MR. THOMAS: No, Your Honor.

12 THE COURT: Very good. Bring them back in, please.

13 (The jury enters the courtroom)

14 THE COURT: The record should reflect that the jury
15 is back and seated. Mr. Foreman, I'm told that the jury
16 has reached a verdict; is that correct, sir?

17 MR. DEVORE: Yes, Your Honor.

18 THE COURT: If you would hand the verdict form,
19 please, to the bailiff.

20 (The Foreman complies)

21 THE COURT: All right. Madam Clerk, if you'll
22 publish, please.

23 THE CLERK: Yes, sir. "On Case Number
24 2008-CP-42-5822, in The Matter Of Care Of The Treatment
25 Of Johnny Ray Garrett, has the respondent, the State of

VERDICT OF THE JURY

1 South Carolina, proved beyond a reasonable doubt that
2 Johnny Ray Garrett's mental abnormality or personality
3 disorder remains such that he is not safe to be at large
4 and if released is likely to commit sexual violence. We
5 the jury unanimously answered the question as follows.
6 Yes, the State of South Carolina has proven beyond a
7 reasonable doubt that Johnny Ray Garrett's mental
8 abnormality or personality disorders remains such that
9 he is not safe to be at large and if released is likely
10 to commit acts of a sexual violence. Dated October 7th
11 of 2014, signed by the Foreperson."

12 Ladies and gentleman of the jury, is this your
13 verdict as to your verdict? If so, please raise your
14 right hands.

15 (They all comply)

16 THE CLERK: So say you all.

17 THE COURT: The record shall reflect that all twelve
18 jurors have in fact raised their right hands. Anything
19 further from the jury from the State?

20 MR. BOGLE: No, Your Honor. Thank you.

21 THE COURT: From the defense?

22 MR. THOMAS: Your Honor, we would just ask the Court
23 if they would poll the jury, please.

24 THE COURT: All right. Ladies and gentleman, the
25 clerk will go down the list of all your names. When

POLLING OF THE JURY

1 your name is called, she'll ask you a simple question,
2 if this was your verdict and if it's still your verdict.
3 Okay. And simply reply appropriately based upon that
4 question. She'll ask you is this your verdict, the
5 verdict that was just read, and is it still your
6 verdict. Okay. Madam Clerk, you can proceed.

7 THE CLERK: Yes, sir. Ladies and gentleman of the
8 jury, I will pose a question to you after which I will
9 ask individually each of you to stand and respond to my
10 question. My question being, is this your verdict as to
11 your verdict? Juror number 2, [redacted] is?

12 MR. ADAMS: Yes.

13 THE CLERK: Juror number 32, [redacted]

14 MS. CHAMBERS: Yes.

15 THE CLERK: Juror 95, [redacted]

16 MR. LAMBERT: Yes.

17 THE CLERK: Juror 9, [redacted]

18 MR. BARRIAGE: Yes.

19 THE CLERK: Juror 199, [redacted]

20 MS. WRAY: Yes.

21 THE CLERK: Juror 46, [redacted]

22 MR. DEVORE: Yes.

23 THE CLERK: Juror 113, [redacted] Ashton:

24 MS. ASHTON: Yes.

25 THE CLERK: Juror 25, [redacted]

POLLING OF THE JURY

1 MS. BUTLER: Yes.

2 THE CLERK: Juror 26, ~~Carrie~~

3 MR. BYERLY: Yes.

4 THE CLERK: Juror 197, ~~Carrie~~

5 MS. WALKER: Yes.

6 THE CLERK: Juror 27, ~~Carrie~~?

7 MR. CADMUS: Yes.

8 THE CLERK: And, Juror 178, ~~Carrie~~

9 MS. TURNER: Yes.

10 THE CLERK: Your Honor, the jury's been polled.

11 THE COURT: Nothing further from the jury then,

12 Mr. Thomas?

13 MR. THOMAS: Nothing further, Your Honor. Thank
14 you.

15 THE COURT: Ladies and gentleman of the jury, I want
16 to thank you for your service here these last two days.
17 And I'll tell you that I truly appreciate your work
18 here. These cases are never easy whenever you're called
19 in to resolve a dispute whether it's a civil case or a
20 criminal case. Obviously, you're often exposed to
21 things which I've become accustomed to because I do this
22 every day. This is my life. This is what I hear day in
23 and day out, five days a weeks, 365 days a year. Except
24 for weekends and holidays. So I appreciate how
25 difficult it may have been to reach a verdict in a case

1 of this nature and how perhaps being exposed to some of
2 this stuff may have been somewhat unsettling for you.

3 I want to thank you for your service and apologize
4 for the inconvenience to you. I'll tell you what I have
5 explained to the jury panel yesterday. Jury service is
6 probably one of the most important responsibilities that
7 any citizen has in this country. We are unique in our
8 country in the way that we handle these kinds of
9 disputes and resolve these kinds of disputes. In other
10 nations, you have Judges who are appointed by the
11 President or some other authority and they can quickly
12 and easily become co-optive by that authority. They're
13 no longer independent. They simply answer to whatever
14 the powers maybe tell them to do. And we don't do that
15 in this country. We have citizens who are in charge of
16 our civil justice system and our criminal justice
17 system. I hope that never changes.

18 You will get a letter from me probably sometime
19 Friday or Saturday thanking you again for your jury
20 service. The letter's purpose is twofold. First, of
21 course, to thank you, but more importantly to solicit
22 any feedback. If there was anything that you liked
23 about jury service, let me know. If there was anything
24 that you did not like about it, definitely let me know.
25 This courtroom does not belong to me. It doesn't belong

1 to Judges, it belongs to the people of the State of
2 South Carolina, that's you folks. And I have changed
3 the way I operate based upon feedback that I've gotten
4 from jurors. So definitely, if there's anything that
5 you felt confused about, any question you have, or any
6 issue that you have with jury service this week, let me
7 know. Good, bad, or ugly. Okay. I'm not going to keep
8 you any further. Your check is in the mail. It's not a
9 lot of money. Cash it and spend it. You'll get it in a
10 few days. If you need a work excuse, you can go down
11 the hall to the Clerk of Court's office, they'll give
12 you one right now. Other than that, it's been a
13 pleasure to meet you folks. It's been a good time
14 working with you on this case and I hope to see y'all
15 again in a less formal situation or circumstances. All
16 right. Y'all take care. You are excused. Thank you
17 very much.

18 (The jury left the courtroom)

19 THE COURT: I've executed the order of continued
20 commitment for Mr. Garrett. So he'll remain committed
21 to the Department of Mental Health. Mr. Garrett, I want
22 you to continue to work on this. Okay. And please
23 don't give up hope. If you continue to apply yourself,
24 at some point in the future you'll be in a position to
25 get out. Okay, sir. We're concluded on this case. Ten

CERTIFICATE OF REPORTER

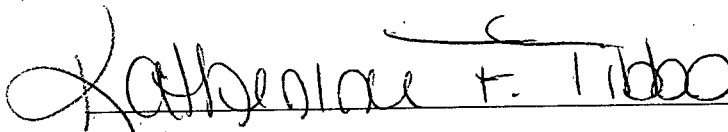
STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Forty-second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 6th and 7th of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

(This transcript was transcribed from the record taken by Tara Scott)

February 6, 2015

A handwritten signature in black ink, reading "Katherine F. Tibbs". The signature is written in a cursive style with a large, looping initial "K".

Katherine F. Tibbs

Registered Professional Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE MATTER, CARE AND)
TREATMENT OF)
JOHNNY GARRETT,)
PETITIONER.)IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CASE NO: 2008-CP-42-05822

ORDER GRANTING RELEASE TRIAL

This matter came before the Court on July 31, 2013 for an annual review hearing concerning Petitioner's sexually violent predator civil commitment status. Present at the hearing were Petitioner, Johnny Ray Garrett, Tommy A. Thomas, attorney for Petitioner, and Senior Assistant Attorney General James G. Bogle, Jr., attorney for the State of South Carolina. For reasons set out below and evidence presented at the hearing, this Court finds Petitioner is entitled to a Release Trial on the issue of whether Petitioner's mental abnormality or personality disorder has so changed that Petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence.

Dr. Marie E. Gehle, Chief Psychologist at the Department of Mental Health, performed Petitioner's annual mental evaluation and issued a written evaluation report on October 24, 2011.

Pursuant to S.C. Code Ann. 44-48-110, Petitioner moved for and received an Order allowing expenses for an independent evaluation conducted by an expert of Petitioner's choosing. Dr. E. Selman Watson performed that evaluation.

The purpose of an annual review hearing is for the court to determine whether probable cause exists to believe "the person's mental abnormality or personality disorder has so changed that the person is safe to be at large, and if released, is not likely to commit acts of sexual violence." S.C. Code Ann. Section 44-48-110.

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The committed person bears the burden of establishing probable cause that his mental condition has so changed that he is safe to be released. *See In the Matter of the Care and Treatment of Tucker*, 353 S.C. 466, 578 S.E.2d 719 (2003). Probable cause is established when evidence is presented which "would lead a reasonable person to believe and conscientiously entertain" the proposition set forth. *See In re the Care and Treatment of Brown*, 372 S.C. 611, 643 S.E.2d 118 (Ct. App. 2007). Absolute certainty is not required in order for one to establish probable cause: "[p]robable cause 'does not demand any showing that such a belief be correct or more likely true than false.'" *In the Matter of the Care and Treatment of Brown*, 372 S.C. 611, 619, 643 S.E.2d 118, 123 (Ct. App. 2007).

Petitioner offered testimony from Dr. Watson at the annual review hearing. The State presented testimony of Dr. Gehle.

Based upon the expert testimony presented, this Court finds Petitioner is entitled to a trial on the issue of whether Petitioner's mental abnormality has changed so that Petitioner is safe to be at large, and, if released, is not likely to commit acts of sexual violence.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that a trial be scheduled on the issue of whether Petitioner's mental abnormality or personality disorder has so changed that Petitioner is safe to be at large and, if released, is not likely to commit acts of sexual violence.


 ROGER L. COUCH
 Chief Administrative Judge
 Seventh Judicial Circuit Court of
 Common Pleas

10/2, 2013
 Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 IN THE MATTER OF THE CARE)
 AND TREATMENT OF)
 JOHNNY RAY GARRETT,)
 PETITIONER.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-42-5822

ORDER OF CONTINUED COMMITMENT

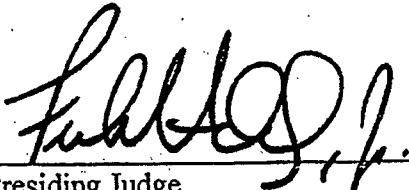
The trial of this case was held in the County of Spartanburg in the Court of Common Pleas the week of October 6, 2014. A jury of citizens from Spartanburg County heard this case pursuant to a request for a jury trial filed by the State. Senior Assistant Attorney James G. Bogle, Jr. represented the State. Tommy A. Thomas, Esquire, represented the Petitioner. The jury having heard the presentation of the evidence made the following findings of fact pursuant to South Carolina Code Sections 44-48-10 through 44-48-110:

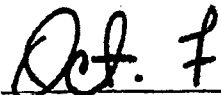
The State has proven beyond a reasonable doubt that Petitioner's mental abnormality or personality disorder remains such that he is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

Petitioner Johnny Ray Garrett is to remain committed to the Department of Mental Health for his long-term control, care and treatment.

AND IT IS SO ORDERED.


 Presiding Judge
 Seventh Judicial Circuit
 Court of Common Pleas

 , 2014
 Spartanburg, South Carolina

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

Docket No.: 2008-CP-42-5822

IN RE: THE MATTER OF THE)
 CARE AND TREATMENT OF)
 JOHNNY RAY GARRETT,)

MOTION FOR JUDGMENT
 NOTWITHSTANDING THE VERDICT
 (RULE 50 SCRPC) AND MOTION FOR A
 NEW TRIAL (RULE 59 SCRPC)

 Petitioner.)

That the Petitioner sought release from The Department of Mental Health Sexually Violent Predator Unit. A Jury was convened and the Petition was heard by the Jury on October 6 and 7, 2014. A verdict was returned on October 7, 2014. The Jury determined that the State of South Carolina had proven beyond a reasonable doubt that the Petitioner's mental abnormality or personality disorder remained such that he is not safe to be at large and if released is likely to commit acts of sexual violence.

The Petitioner through undersigned counsel moves for Judgment notwithstanding the verdict pursuant to Rule 50 SCRPC and for a New Trial pursuant to Rule 59 SCRPC.

MOTION FOR JUDGMENT
NOT WITHSTANDING THE VERDICT

That Counsel at the close of the State's case and at the close of the Petitioner's case moved for Summary Judgment, which was denied by the Court. The Petitioner would now move for Judgment not withstanding the verdict on the basis that there is no evidence to support the Jury's verdict.

MOTION FOR NEW TRIAL

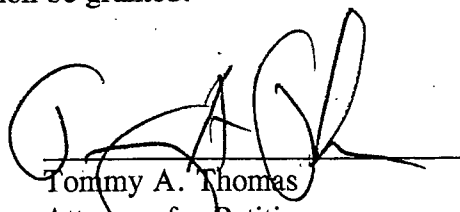
That the State in examination of their expert witness, Dr. Marie E. Gehle made numerous reference to the Jury "letting the Petitioner go". That a motion for a mistrial was made on the basis that the question has the effect of shifting the burden from the State to the

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Petitioner. It was and is the burden of the State to prove beyond a reasonable doubt that Johnny Ray Garrett's mental abnormality or personality disorder remains such that he is not safe to be at large and, if released, is likely to commit acts of sexual violence.

Therefore based upon the above, the Petitioner moves for a New Trial.

The Petitioner respectfully request that this Motion be granted.



Tommy A. Thomas
Attorney for Petitioner
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

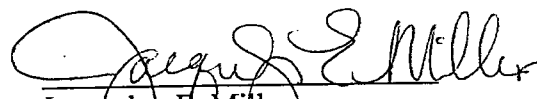
October 17, 2014

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO.: 2008-CP-42-5822
IN RE: THE MATTER OF THE	)	
CARE AND TREATMENT OF	)	CERTIFICATE OF SERVICE
JOHNNY RAY GARRETT,	)	
	)	
Respondent.	)	

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for the Applicant, hereby certify that I placed in the United States Mail, a copy of a Motion for Judgment notwithstanding the Verdict (Rule 50 SCRPC) and Motion for A New Trial (Rule 59 SCRPC), with postage prepaid and the return address clearly shown on said envelope, to James Bogle, Esq., at:

James Bogle, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549


Jacquelyn E. Miller
Secretary to Tommy A. Thomas
Attorney for Ronald Owen
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, SC
October 17, 2014

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CLERK OF COURT
JACQUELYN E. MILLER

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP4205822

State Of South Carolina	Johnny Ray Garrett
-------------------------	--------------------

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: See page 2

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

10/8/2014

Date

For Clerk of Court Office Use Only

000266

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James G. Bogle Jr. PO Box 11549 Columbia, SC 29211

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

M Hope Blackley / Denise Greene
M Hope Blackley - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The State of South Carolina has proven beyond a reasonable doubt that

Johnny Ray Garrett's mental abnormality or personality disorder remains such

that he is not safe to be at large and, if released, is likely to commit acts of sexual violence.

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CLERK OF COURT
SPARTANBURG COUNTY
2014 OCT -9 AM 8:56
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CASE NO. 08-CP-42-5822

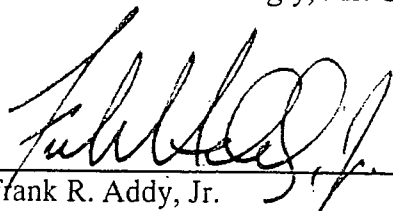
IN THE MATTER OF THE CARE AND
TREATMENT OF JOHNNY GARRETTORDER DENYING MOTION FOR NEW
TRIAL

THIS MATTER COMES BEFORE THE COURT on motion of counsel for Johnny Garrett who moves for judgment notwithstanding the verdict and for a new trial. This matter was tried before a jury, and on October 7, 2014, the jury returned a verdict finding that Mr. Garrett's mental abnormality or personality disorder remains such that he is not safe to be released from the Sexually Violent Predator Unit of the Department of Mental Health. Mr. Garrett's motion for JNOV and a new trial were timely filed. The court finds as follows:

A hearing is not necessary for the court to rule, and the court recalls the underlying facts at trial and rulings made during the course of the trial. The court finds that the jury's verdict is supported by credible evidence and that the jury's verdict was not the result of passion, caprice, prejudice, corruption, or other improper motive. Accordingly, the court did not err in submitting the case to the jury, so Mr. Garrett's motion for JNOV is denied.

Similarly, the court finds that any purportedly improper comments made by Dr. Gehle were not so improper and/or prejudicial as to warrant a mistrial. Accordingly, Mr. Garrett's motion for a new trial is denied.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

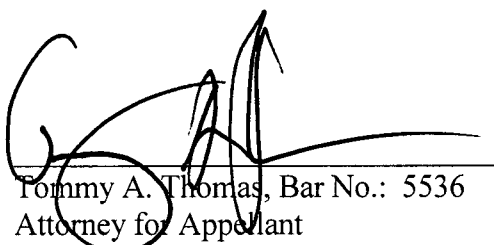
October 28, 2014
Greenwood, South Carolina

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SPARTANBURG COUNTY
2014 OCT 31 AM 11:12
M. HOPE BLACKLEY

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."

October, 27, 2015



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