

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Union County

Honorable R. Scott Sprouse, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF MELVIN BEAM,

APPELLANT

RECEIVED

AUG 07 2017

SC Court of Appeals

APPELLATE CASE NO. 2016-002290

RECORD ON APPEAL

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1 State of South Carolina

In the Court of Common Pleas

2 County of Union

3

4 In the Matter of the)
5 Care and Treatment)
6 of Melvin Beam)
7 -----)

2012-CP-44-00272

November 7, 2016

Transcript of Record

Volume 1 (Pgs. 1-192)

8

9

B E F O R E :

10 The Honorable R. Scott Sprouse, Judge;
11 and a jury.

12

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

13

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16 Attorney for the State of South Carolina

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24

25

In the Matter of Melvin Beam 2012-CP-44-00272 November 7, 2016

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For the State:

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For the Respondent:

21	Marked	Description	I.D.	Admitted
22		None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
10:12 3 commencing at 9:42 a.m.)

10:12 4 THE COURT: Good morning, ladies and gentlemen. I
10:12 5 am Judge Sprouse. I am from the big city of Walhalla.
10:12 6 So I'm delighted to be over here in Union County this
10:12 7 week with you for a term of common pleas court. Common
10:12 8 pleas means civil court. If you're called to serve as
10:13 9 a juror this week, it means you will hear a civil case.

10:13 10 First order of business is to confirm that
10:13 11 everyone is in the right place. If you have been
10:13 12 summoned to appear in magistrate's court, municipal
10:13 13 court, or federal court, you're in the wrong
10:13 14 courthouse.

10:13 15 Is there anyone that thinks they might be in the
10:13 16 wrong place? Very good.

10:13 17 This term of court is for one week, meaning that
10:13 18 you are subject to being called as a juror during this
10:13 19 week. We understand the inconvenience that jury
10:13 20 service poses to your daily lives; however, it is a
10:13 21 very, very important part of our system. We appreciate
10:13 22 and acknowledge the sacrifice that you make being
10:13 23 jurors. Hopefully, this will be an enjoyable and
10:13 24 educational week for you.

10:13 25 Madam Clerk, have you introduced yourself and your

10:14 1 staff to the jury panel?

10:14 2 THE CLERK: No.

10:14 3 I'm June Miller, and I call myself intern clerk.

10:14 4 I'm just -- your governor appointed me for this year,

10:14 5 and I'm here until the end of the year. And then we

10:14 6 have Courtney. She's part of our staff as an assistant

10:14 7 and to Iris and common pleas. And Iris Whisnant. And

10:14 8 we're here to help you.

10:14 9 THE COURT: Ladies and gentlemen, this gathering,

10:14 10 this morning has two purposes. It's to determine your

10:14 11 eligibility and qualifications to serve as jurors. As

10:14 12 part of this process, a roll call is taken, and you are

10:14 13 placed under oath for the roll call.

10:14 14 So, Madam Clerk, would you place our jury panel

10:14 15 under oath, please, ma'am.

10:15 16 (WHEREUPON, the prospective jury panel was sworn.)

10:15 17 THE COURT: The clerk of court will now call the

10:15 18 roll. When your name is called, please stand, and in a

10:15 19 loud, clear and audible voice, give the following

10:15 20 information: One, your occupation, if you are

10:15 21 employed. If you're self-employed, state the nature of

10:15 22 your business. Two, if you are retired or disabled,

10:15 23 state your former occupation. Three, whether or not

10:15 24 you are married. And if so, what is your spouse's

10:15 25 occupation. And, finally, if your spouse is retired or

10:15 1 disabled, state their former occupation.

10:15 2 Madam Clerk, proceed.

10:15 3 THE CLERK: Number 4, Elizabeth G. Allison.

10:16 4 POTENTIAL JUROR: Assistant manager at Dollar

10:16 5 General.

10:16 6 THE CLERK: Number 5, Jaikaia B. Anderson.

10:16 7 POTENTIAL JUROR: Auditor for Michelin --

10:16 8 THE CLERK: We can't hear you.

10:16 9 POTENTIAL JUROR: Auditor for Michelin, and I'm

10:16 10 single.

10:16 11 THE CLERK: Okay.

10:16 12 Number 8, John M. Bailey.

10:16 13 POTENTIAL JUROR: Police officer, married. My

10:16 14 wife is a vet tech in Spartanburg.

10:16 15 THE CLERK: Okay.

10:16 16 Number 10, Jackie M. Barber.

10:16 17 POTENTIAL JUROR: Billing office at Spartanburg

10:16 18 Medical OB-GYN. I'm married. My husband is disabled.

10:16 19 He was a meat cutter prior to that.

10:16 20 THE CLERK: Number 14, Joshua N. Beaty.

10:16 21 POTENTIAL JUROR: Unemployed at the moment.

10:16 22 THE CLERK: Number 22, Christopher T. Bobo.

10:16 23 POTENTIAL JUROR: Behavioral Health, Spartanburg

10:16 24 Regional.

10:17 25 THE CLERK: Are you married?

10:17 1 POTENTIAL JUROR: Divorced.

10:17 2 THE CLERK: Number 23, Kimberly D. Booker.

10:17 3 POTENTIAL JUROR: Retired. Former employer, with

10:17 4 FedEx.

10:17 5 THE CLERK: Number 24, Rebecca A. Boulware-Davis.

10:17 6 POTENTIAL JUROR: General warehouse worker. I'm

10:17 7 married. My wife is a trainer at Dollar General.

10:17 8 THE CLERK: 25, Tericka J. Brannon.

10:17 9 POTENTIAL JUROR: I'm an order filler at Dollar

10:17 10 General Distribution Center.

10:17 11 THE CLERK: 27, Christopher M. Brewington.

10:17 12 POTENTIAL JUROR: Electrician, Spartanburg

10:17 13 Electric.

10:17 14 THE CLERK: 28, Cynthia S. Brewington.

10:17 15 POTENTIAL JUROR: Employed with Land N Sea in

10:17 16 Roebuck, South Carolina as an inventory control

10:17 17 manager. My spouse, I'm married. My husband is Troy

10:17 18 Brewington. He's a law enforcement officer currently

10:17 19 with USC Upstate Police.

10:18 20 THE CLERK: Number 30, Michael Briggs.

10:18 21 POTENTIAL JUROR: Glue technician for Coveris

10:18 22 Packing. Married, separated.

10:18 23 THE CLERK: 33, David A. Buchanan.

10:18 24 POTENTIAL JUROR: Mechanical teams leader. Repair

10:18 25 team leader. I'm married. My wife is an employment

10:18 1 coordinator.

10:18 2 THE CLERK: 34, Michael Budurka.

10:18 3 POTENTIAL JUROR: "Budurka." I'm a director. I'm
10:18 4 married. My wife is a Realtor.

10:18 5 THE CLERK: Number 41, Eric J. Cardwell.

10:18 6 POTENTIAL JUROR: I'm a technician at Vic Bailey
10:18 7 Ford. My wife works at Jean's Restaurant.

10:18 8 THE CLERK: 45, Frissco F. Chamberlain.

10:18 9 POTENTIAL JUROR: Disabled at the moment, single
10:18 10 parent.

10:18 11 THE CLERK: Number 46, Amber C. Lanier.

10:18 12 POTENTIAL JUROR: I work at Union Medical Center
10:18 13 as a patient access representative, and my spouse works
10:19 14 at Mermet in Cowpens as an IT specialist.

10:19 15 THE CLERK: 55, Mary K. Comer.

10:19 16 POTENTIAL JUROR: I work at Sunoco Alloyed in
10:19 17 Spartanburg. I'm married. My husband works at L&N.
10:19 18 He's an electrician in Simpsonville.

10:19 19 THE CLERK: 65, Christy A. Kerr.

10:19 20 POTENTIAL JUROR: I'm at Wal-Mart. I'm a
10:19 21 department manager of online services. I'm married.
10:19 22 My husband is a stay-at-home dad.

10:19 23 THE CLERK: Number 66, Judy M. Dyson.

10:19 24 POTENTIAL JUROR: I'm disabled.

10:19 25 THE CLERK: Number 75, Lashonda C. Farr.

10:19 1 POTENTIAL JUROR: I'm Lashonda C. Farr. I'm a
10:19 2 lead person at Haemonetics.

10:19 3 THE CLERK: Number 80, Sharon G. Foster.

10:19 4 POTENTIAL JUROR: I'm employed with Smile Makers
10:19 5 in Spartanburg, South Carolina. I am called an order
10:19 6 filler. I'm married. My husband is retired from R.R.
10:19 7 Donnelly.

10:20 8 THE CLERK: Number 82, Jason C. Fowler.

10:20 9 POTENTIAL JUROR: I'm a miner. My wife is a
10:20 10 nurse.

10:20 11 THE CLERK: 83, Ronald G. Fowler.

10:20 12 POTENTIAL JUROR: Ink technician at Siegwork,
10:20 13 single.

10:20 14 THE CLERK: 85, Shakiba N. Fuller.

10:20 15 POTENTIAL JUROR: I work at Dollar General
10:20 16 Distribution, single.

10:20 17 THE CLERK: 88, Bronson M. Garner.

10:20 18 POTENTIAL JUROR: I work at Global Felt
10:20 19 Technologies, and my spouse works at M&X.

10:20 20 THE CLERK: 89, Patrick A. Garner.

10:20 21 POTENTIAL JUROR: I'm a palletizer at Kraft-Heinz
10:20 22 Company. I'm married. My wife is retired.

10:20 23 THE CLERK: 93, Vivian V. Gilliam.

10:21 24 POTENTIAL JUROR: I'm administrative, and I'm
10:21 25 retired. My husband is disabled, and he's worked in a

10:21 1 shop.

10:21 2 THE CLERK: Number 94, Chrystal M. Gist.

10:21 3 POTENTIAL JUROR: I'm Chrystal Gist. I work at

10:21 4 Zaxby's. My husband works at Dollar General

10:21 5 Distribution. I'm married.

10:21 6 THE CLERK: 96, John M. Gist.

10:21 7 POTENTIAL JUROR: Self-employed as a church

10:21 8 musician, and I'm divorced.

10:21 9 THE CLERK: Number 101, Kesha L. Good.

10:21 10 POTENTIAL JUROR: I'm an inspector at Coveris, and

10:21 11 I'm single.

10:21 12 THE CLERK: Number 102, Terry G. Greene, Jr.

10:21 13 POTENTIAL JUROR: I'm a road maintenance foreman

10:21 14 at SC DOT. My wife works at Food Lion in Spartanburg.

10:21 15 THE CLERK: 103, Dennis Gregory.

10:21 16 POTENTIAL JUROR: I'm Dennis Gregory. I work for

10:21 17 Kohler Company. I'm married. My wife works for Kohler

10:21 18 Company in Spartanburg.

10:21 19 THE CLERK: Number 104, Sharon E. Gregory.

10:22 20 POTENTIAL JUROR: I work at Foster Park Elementary

10:22 21 School as a teacher's assistant. I'm married. My

10:22 22 husband is a truck driver.

10:22 23 THE CLERK: 105, Anita A. Grizzle.

10:22 24 POTENTIAL JUROR: I'm retired from Smith Drug

10:22 25 Company. My husband works for BASF as a maintenance

10:22 1 operator.

10:22 2 THE CLERK: 108, Robert A. Hall.

10:22 3 POTENTIAL JUROR: I'm a caster. I work at Kohler
10:22 4 located in Spartanburg, and I'm single.

10:22 5 THE CLERK: 109, Shannon R. Hall.

10:22 6 POTENTIAL JUROR: I'm employed with Carolina
10:22 7 Community Actions, and I'm a teacher at Johnsville Head
10:22 8 Start. My husband is employed with Timken as an HVAC
10:22 9 technician and an environmental specialist.

10:22 10 THE CLERK: 110, Wendy C. Hames.

10:22 11 POTENTIAL JUROR: I'm an assistant analyst with
10:22 12 Spartanburg Regional, and my husband is currently
10:22 13 disabled but formerly a safety officer.

10:22 14 THE CLERK: Number 115, Angela L. Harris.

10:22 15 POTENTIAL JUROR: I work for Union Medical
10:22 16 Center/Austin Rehab of Union. And my husband, Jonathan
10:23 17 Harris, he's a lead man at ESAB Welding.

10:23 18 THE CLERK: 116, Tony R. Harris.

10:23 19 POTENTIAL JUROR: I work with South Carolina
10:23 20 Forestry Commission. My wife, Cindy, takes care of our
10:23 21 disabled son.

10:23 22 THE CLERK: 117, Donald C. Hayes.

10:23 23 POTENTIAL JUROR: I'm employed at Georgia Pacific
10:23 24 as an operator. My wife is currently disabled.

10:23 25 THE CLERK: 121, Deandre' M. Hill.

10:23 1 POTENTIAL JUROR: I'm a forklift operator at
10:23 2 Martex Fibers.

10:23 3 THE CLERK: 122, Wanda K. Hill.

10:23 4 POTENTIAL JUROR: I work at Milliken, and I'm
10:23 5 single.

10:23 6 THE CLERK: 125, Charles B. Horne.

10:23 7 POTENTIAL JUROR: I work for the state highway
10:23 8 patrol. My wife is employed for Union County.

10:23 9 THE CLERK: 128, Gerald D. Howell.

10:23 10 POTENTIAL JUROR: I work at B&M Fabrication and
10:24 11 I'm single.

10:24 12 THE CLERK: 133, Audrey L. Jeter.

10:24 13 POTENTIAL JUROR: Unemployed.

10:24 14 THE CLERK: 143, Tiffany N. Kershaw.

10:24 15 POTENTIAL JUROR: Manager at Hardee's, single.

10:24 16 THE CLERK: 145, Steven G. Lanier.

10:24 17 POTENTIAL JUROR: Superintendent at Crowder
10:24 18 Construction. My wife works for Piedmont Eye
10:24 19 Associates.

10:24 20 THE CLERK: 148, Robert L. Lawson, III.

10:24 21 POTENTIAL JUROR: I am a representative of
10:24 22 Primerica. I work as a life insurance agent. Only do
10:24 23 life insurance. My wife is employed at Belk
10:24 24 Distribution Center.

10:24 25 THE CLERK: 151, Brittney T. Lindsey.

10:24 1 POTENTIAL JUROR: Cashier at Zaxby's and single.
10:24 2 THE CLERK: 158, Taylor N. Mahan.
10:24 3 POTENTIAL JUROR: I'm a childcare worker at Mon
10:24 4 Aetna and a dog groomer at PetSmart, and I'm single.
10:25 5 THE CLERK: 163, Nicholas A. Mayes.
10:25 6 POTENTIAL JUROR: Office clerk, single.
10:25 7 THE CLERK: 166, Margaret C. McBeth.
10:25 8 POTENTIAL JUROR: I work at Qualmark in
10:25 9 Spartanburg and single.
10:25 10 THE CLERK: 168, Justin R. McCutcheon.
10:25 11 POTENTIAL JUROR: I work at Best Buy in
10:25 12 Spartanburg as a sales associate.
10:25 13 THE CLERK: 171, Christina A. McMillan.
10:25 14 POTENTIAL JUROR: I'm a stay-at-home mother. My
10:25 15 husband works for Charter Communications.
10:25 16 THE CLERK: 175, Ebany N. Miller.
10:25 17 POTENTIAL JUROR: (Inaudible), single.
10:25 18 THE CLERK: 177, James M. Millwood.
10:25 19 POTENTIAL JUROR: General warehouse worker for
10:25 20 Dollar General Distribution Center. I'm married. My
10:25 21 wife is a stay-at-home mother.
10:25 22 THE CLERK: 183, Terry F. Moore.
10:25 23 POTENTIAL JUROR: Self-employed, divorced.
10:26 24 THE CLERK: 188, Terry L. Morris.
10:26 25 POTENTIAL JUROR: Employed at Belk's Distribution

10:26 1 Center. My wife works for Mary Black Hospital.

10:26 2 THE CLERK: 193, Bernard M.

10:26 3 POTENTIAL JUROR: I work at true Cast in Newberry.

10:26 4 My wife is retired.

10:26 5 THE CLERK: Is that your last name, M?

10:26 6 POTENTIAL JUROR: Neal.

10:26 7 THE CLERK: 203, Harold D. Pendergraph.

10:26 8 POTENTIAL JUROR: I work for Osborn Contract

10:26 9 Service as a truck driver in Greer, South Carolina. My

10:26 10 fiancée works at Sunoco in Greer.

10:26 11 THE CLERK: 207, Kathy H. Plexico.

10:26 12 POTENTIAL JUROR: I'm a homemaker. My husband is

10:26 13 a machinist at Timken.

10:26 14 THE CLERK: 219, Deborah E. Robertson.

10:26 15 POTENTIAL JUROR: Self-employed, Dudley Lawson

10:26 16 Income Tax, Inc., divorced.

10:26 17 THE CLERK: 220, Martin Dale Robinson.

10:27 18 POTENTIAL JUROR: Plant manager, Division of

10:27 19 Industry, South Carolina Department of Corrections. My

10:27 20 wife is employed with the Department of Juvenile

10:27 21 Justice.

10:27 22 THE CLERK: 223, Nancy E. Rosenwald.

10:27 23 POTENTIAL JUROR: Director of Newberry College

10:27 24 Library. My husband is Jim Judd, and he works for LSI

10:27 25 International.

10:27 1 THE CLERK: 224, Javonnie J. Route.

10:27 2 POTENTIAL JUROR: Teacher, Fairfield County School

10:27 3 District, single.

10:27 4 THE CLERK: 225, Sonia L. Sanford.

10:27 5 POTENTIAL JUROR: I'm a human specialist at South

10:27 6 Carolina School for the Deaf and Blind. I'm married.

10:27 7 My husband works as a maintenance technician at

10:27 8 Spartanburg Steel.

10:27 9 THE CLERK: 226, James A. Sartor.

10:27 10 POTENTIAL JUROR: I'm retired. Formerly employed

10:27 11 at the Dollar General Distribution Center, single.

10:27 12 THE CLERK: 228, Denise Eubanks.

10:28 13 POTENTIAL JUROR: I'm a school teacher at Union

10:28 14 County High School. I'm married. My husband is a

10:28 15 retired public safety officer.

10:28 16 THE CLERK: 229, Andrew T. Shugart.

10:28 17 POTENTIAL JUROR: Radio show host, Fox Sports

10:28 18 Spartanburg.

10:28 19 THE CLERK: 231, Anthony L. Sims.

10:28 20 POTENTIAL JUROR: I'm Anthony Sims. I work at

10:28 21 Belk Distribution Center, single.

10:28 22 THE CLERK: He works at Belk's distribution

10:28 23 center, if you can't hear him.

10:28 24 232, April D. Sims.

10:28 25 POTENTIAL JUROR: Production operator at

10:28 1 Haemonetics.

10:28 2 THE CLERK: 233, Alicia B. Sinclair.

10:28 3 POTENTIAL JUROR: Belk distribution, and I'm

10:28 4 single.

10:28 5 THE CLERK: 235, Joshua D. Sinclair.

10:29 6 POTENTIAL JUROR: Electrician with H.R. Allen

10:29 7 Electric Company. I'm married. My wife works at

10:29 8 Paradise Home Center.

10:29 9 THE CLERK: 236, Pamela Sloss.

10:29 10 POTENTIAL JUROR: Contract educator for the

10:29 11 University of Phoenix, and military and law enforcement

10:29 12 widow.

10:29 13 THE CLERK: 137, Crystal B. Smith.

10:29 14 POTENTIAL JUROR: I'm a business office manager.

10:29 15 My husband is disabled. He is an ex-truck driver.

10:29 16 THE CLERK: 239, Emzy L. Smith.

10:29 17 POTENTIAL JUROR: I work for Ansco Corporation.

10:29 18 My wife works at Belton Medical.

10:29 19 THE CLERK: 241, Ronnie W. Smith.

10:29 20 POTENTIAL JUROR: I work for CSX. My wife is a

10:29 21 nurse.

10:29 22 THE CLERK: 252, Loretta A. Stevens.

10:29 23 POTENTIAL JUROR: Childcare provider, married.

10:29 24 THE CLERK: 256, Brittany E. Taylor.

10:29 25 POTENTIAL JUROR: Unemployed and single.

10:29 1 THE CLERK: 265, Christopher Vanderford.

10:30 2 POTENTIAL JUROR: Unemployed. My wife works at

10:30 3 Ingles.

10:30 4 THE CLERK: 267, Marianne T. Vanfossen.

10:30 5 POTENTIAL JUROR: Yes. I work in human resources,

10:30 6 and my husband is a history instructor.

10:30 7 THE CLERK: 273, Tammy L. Walden.

10:30 8 POTENTIAL JUROR: Certified pharmacy technician at

10:30 9 Rite Aid. My husband is self-employed for JBT Home

10:30 10 Maintenance.

10:30 11 THE CLERK: 278, Michael S. Weaver.

10:30 12 POTENTIAL JUROR: Retired from South Carolina

10:30 13 Highway Patrol. My wife works at Wal-Mart.

10:30 14 THE CLERK: 281, Channig H. West.

10:30 15 POTENTIAL JUROR: Chaney West. I work for Georgia

10:30 16 Pacific. My wife works at Petco.

10:30 17 THE CLERK: 287, Shirley A. Willard.

10:30 18 POTENTIAL JUROR: Employed with Nestle Frozen

10:30 19 Foods as clerical in zone logistics, and I'm a widow.

10:30 20 THE CLERK: 289, Albert A. Wilson.

10:31 21 POTENTIAL JUROR: I work as a mechanic at Carter's

10:31 22 Muffler, and my wife is disabled.

10:31 23 THE CLERK: 291, Charles W. Wilson, Jr.

10:31 24 POTENTIAL JUROR: I'm a semi-retired mechanical

10:31 25 engineer.

10:31 1 THE CLERK: 297, Jefferson A. Woods.
10:31 2 POTENTIAL JUROR: Dollar General, single.
10:31 3 THE CLERK: 300, Rose M. Young.
10:31 4 POTENTIAL JUROR: Disabled and single.
10:31 5 THE CLERK: Is there a name that I did not call?
10:31 6 Stand and give us your name, please.
10:31 7 POTENTIAL JUROR: Kristy Painter.
10:31 8 THE CLERK: Painter?
10:31 9 POTENTIAL JUROR: Yes.
10:31 10 THE CLERK: Did you check in downstairs?
10:31 11 POTENTIAL JUROR: They told me to come straight
10:31 12 upstairs.
10:31 13 THE CLERK: We had a table down, but we'll have to
10:31 14 add your name.
10:31 15 What is your occupation?
10:31 16 POTENTIAL JUROR: I'm a site lead with EHDT
10:31 17 Technologies inside the stomp.
10:31 18 THE CLERK: What's your jury number?
10:31 19 POTENTIAL JUROR: 199.
10:32 20 THE CLERK: We'll have to take that one out.
10:32 21 And this other one. What's the other one?
10:32 22 POTENTIAL JUROR: Number 251. I'm a teller at
10:32 23 Wells Fargo Bank and a cashier at Zaxby's.
10:32 24 THE CLERK: 151?
10:32 25 POTENTIAL JUROR: 251.

10:32 1 THE CLERK: Okay. We'll check those two out.

10:32 2 Thank you.

10:32 3 THE COURT: All right. Ladies and gentlemen, I
10:32 4 now have certain questions to ask you to determine your
10:32 5 qualifications and eligibility to serve as jurors.
10:32 6 State law requires that I ask you these questions.

10:32 7 If any juror needs to respond to a particular
10:32 8 question, you will need to stand, give your juror
10:32 9 number first, then your name. It is absolutely
10:33 10 essential that we have accurate information.

10:33 11 Some of these questions are very personal. If you
10:33 12 do not wish to stand and disclose this information
10:33 13 openly in the presence of your fellow jurors, I will
10:33 14 give you the opportunity to come forward at the end.
10:33 15 Just be sure to remember to come forward at the end if
10:33 16 you do not stand when a question requiring an
10:33 17 affirmative response from you is asked.

10:33 18 Please listen very carefully to these questions.

10:33 19 Is there any member of the jury panel not a
10:33 20 citizen of the United States of America? If so, please
10:33 21 stand.

10:33 22 There are none.

10:33 23 Is any member of the jury panel not a resident of
10:33 24 Union County, South Carolina? If so, please stand.

10:33 25 Yes, sir. Your number?

10:33 1 POTENTIAL JUROR: Juror Number 177, James Michael
10:33 2 Millwood.

10:33 3 THE COURT: Mr. Millwood, what county do you
10:33 4 reside in now?

10:34 5 POTENTIAL JUROR: Cherokee County.

10:34 6 THE COURT: Okay. All right.

10:34 7 Remove Mr. Millwood from the pool. He's no longer
10:34 8 a resident of Union County.

10:34 9 Thank you, sir. You are excused.

10:34 10 POTENTIAL JUROR: Thank you, sir.

10:34 11 THE COURT: Any further?

10:34 12 Is there any member of the jury panel unable to
10:34 13 read, write, speak, or understand the English language?
10:34 14 If so, please stand.

10:34 15 There are none.

10:34 16 Does any member of the jury panel have less than a
10:34 17 sixth grade education or its equivalent? If so, please
10:34 18 stand.

10:34 19 There are none.

10:34 20 Is any member of the jury panel unable, because of
10:34 21 mental or physical infirmities, to render efficient
10:35 22 jury service? This means that does any member of the
10:35 23 jury panel have any medical condition that would
10:35 24 prevent from you serving?

10:35 25 Now, I get the question a lot about sitting for

10:35 1 extended periods of time. Some people have back issues
10:35 2 and other physical problems that make it to where they
10:35 3 can't sit for long periods. We take breaks usually
10:35 4 every one to two hours, and you will have the
10:35 5 opportunity to stretch your legs and will not be
10:35 6 required to sit all day.

10:35 7 So with that said, is there any member that has a
10:35 8 condition that would prevent them from serving this
10:35 9 week?

10:35 10 There are none.

10:35 11 Has any member of the jury panel been convicted by
10:35 12 guilty plea or trial in a state or federal court of
10:35 13 record of a crime punishable by imprisonment for more
10:35 14 than one year and your civil rights have not been
10:35 15 restored by pardon or amnesty? Punishable by more than
10:35 16 one year means that you could have received a sentence
10:35 17 of more than one year regardless of what sentence you
10:36 18 may have actually received. If so, please stand.

10:36 19 Yes, sir. Your number?

10:36 20 POTENTIAL JUROR: 264.

10:36 21 THE COURT: Yes, sir. What were you convicted of?

10:36 22 POTENTIAL JUROR: I got some gun charges.

10:36 23 THE COURT: What court was that in?

10:36 24 POTENTIAL JUROR: Union County.

10:36 25 THE COURT: Was it in this court?

10:36 1 POTENTIAL JUROR: Yes.

10:36 2 THE COURT: Okay. What sentence did you receive?

10:36 3 POTENTIAL JUROR: Up to ten years.

10:36 4 THE COURT: Okay. You would be excused. Thank

10:36 5 you, sir.

10:36 6 Number 264 is disqualified.

10:37 7 THE CLERK: Chris Vanderford, 265.

10:37 8 THE COURT: He gave us the wrong number.

10:37 9 THE CLERK: Okay.

10:37 10 THE COURT: Any further?

10:37 11 Yes, sir. Your number?

10:37 12 POTENTIAL JUROR: 183.

10:37 13 THE COURT: Okay. You are Mr. Moore?

10:37 14 POTENTIAL JUROR: Yes, sir.

10:37 15 THE COURT: What were you convicted of?

10:37 16 POTENTIAL JUROR: Strong armed robbery.

10:37 17 THE COURT: You would be disqualified. Thank you,

10:37 18 sir. You are excused.

10:37 19 Any further?

10:37 20 Is any member of the jury panel a clerk or deputy

10:38 21 clerk of court, constable, sheriff, or other

10:38 22 commissioned law enforcement officer, probate judge,

10:38 23 county commissioner, magistrate, or other county

10:38 24 officer or employed within the walls of any courthouse?

10:38 25 If so, please stand.

10:38 1 Yes, sir.

10:38 2 POTENTIAL JUROR: I work with the highway patrol.

10:38 3 THE COURT: Are you a commissioned officer?

10:38 4 POTENTIAL JUROR: Yes, sir.

10:38 5 THE COURT: You would be excused. Thank you, sir.

10:38 6 What's your number?

10:38 7 POTENTIAL JUROR: 125.

10:38 8 THE COURT: Okay. Mr. Horne would be excused.

10:38 9 Thank you, sir.

10:38 10 Yes, sir.

10:38 11 POTENTIAL JUROR: Law enforcement, Spartanburg

10:38 12 Methodist College.

10:38 13 THE COURT: What's your number?

10:38 14 POTENTIAL JUROR: Number 8.

10:38 15 THE COURT: Mr. Bailey?

10:38 16 POTENTIAL JUROR: Yes, sir.

10:38 17 THE COURT: Are you a commissioned law enforcement

10:38 18 officer?

10:38 19 POTENTIAL JUROR: Yes, sir.

10:38 20 THE COURT: Okay. You would be disqualified.

10:38 21 Thank you, sir.

10:39 22 Any further? All right.

10:39 23 Is there any member of the jury panel who has

10:39 24 previously served on jury duty in circuit court during

10:39 25 2016? Again, that does not apply if it was

1 magistrate's court, municipal court, or federal court,
2 but circuit court during 2016.

3 There are none.

4 Has any member of the jury panel served on the
5 Union County Grand Jury during the past several years?
6 If so, please stand.

7 Okay. There are none.

8 We now move to jury exemptions. State law
9 provides for several exemptions from jury service. An
10 exemption does not mean that you are not qualified to
11 serve, it simply means you have the right to say "I
12 choose not to serve."

13 Those of you who are 65 years of age or older may
14 be exempted from service. Those of you 65 years of age
15 or older represent a pool of tremendous talent for jury
16 service, and we urge you to serve this week if you are
17 inclined to do so. But if you wish to be exempted, you
18 may certainly do so.

19 Is there any member of the jury panel who is 65
20 years of age or older and wishes to be exempted from
21 jury service this week? If so, please stand.

22 There are none.

23 Another exemption concerns prior jury service. No
24 person is required to serve as a juror more often than
25 once every three calendar years. Therefore, if any

10:40 1 member of the jury panel has served on jury duty during
10:40 2 the last three calendar years, you may be exempt from
10:40 3 service this week if you choose to be exempted.

10:40 4 Please note: This exemption does not apply if
10:40 5 your service was in municipal court, magistrate's
10:40 6 court, or federal court. If this exemption applies to
10:40 7 any of you and you wish to be exempted, please stand.

10:41 8 There are none.

10:41 9 Persons who have served as grand jurors during the
10:41 10 last five calendar years may also be exempt from jury
10:41 11 service. If any member of the jury panel has served on
10:41 12 a grand jury during the last five calendar years, you
10:41 13 may be exempt from service this week if you choose to
10:41 14 be exempted. If this exemption applies to any member
10:41 15 of the jury panel and you wish to be exempted, please
10:41 16 stand.

10:41 17 There are none.

10:41 18 The next exemption deals with those of you who
10:41 19 have small children. Please listen very carefully to
10:41 20 this exemption. It has several parts all of which must
10:41 21 apply for you to be exempted on this basis.

10:41 22 You may be exempted from jury service if, one, you
10:41 23 have a small child or children under the age of seven
10:41 24 years; two, you have legal custody of the child or
10:41 25 children; three, you have the principal care, custody,

10:41 1 and control of your child or children; and four, you
10:42 2 are unable to make arrangements for the adequate care
10:42 3 of your child or children while performing jury duty.

10:42 4 If all of these requirements apply to you and you
10:42 5 wish to be exempted on this basis, please stand.

10:42 6 Okay. There are none.

10:42 7 The next exemption involves those of you who may
10:42 8 be attending school at this time or working in some
10:42 9 capacity with a school. If this exemption applies to
10:42 10 you, we will transfer your service to another term of
10:42 11 court that does not conflict with your school
10:42 12 responsibilities.

10:42 13 Ladies and gentlemen, you can go to any circuit in
10:42 14 the state. You see that June and July jury terms are
10:42 15 full of school teachers and college kids. So we can
10:42 16 accommodate you if you work at a school, but listen to
10:42 17 these choices.

10:42 18 Is there any member of the jury panel who is a
10:42 19 full-time student, school teacher, certified personnel,
10:42 20 school crossing guard, school bus driver or who serves
10:42 21 in any public or private school-related function
10:42 22 including technical colleges who is unable to serve on
10:43 23 jury duty this week as a result of that school
10:43 24 involvement? If so, please stand.

10:43 25 Yes, sir. Your number?

10:43 1 POTENTIAL JUROR: 168.

10:43 2 THE COURT: Okay. Mr. McCutcheon?

10:43 3 POTENTIAL JUROR: Yes, sir.

10:43 4 THE COURT: Are you a student?

10:43 5 POTENTIAL JUROR: Yes, sir, right down the road.

10:43 6 THE COURT: You wish to be transferred to a summer

10:43 7 term?

10:43 8 POTENTIAL JUROR: If you can. I'm supposed to be

10:43 9 taking a test right now.

10:43 10 THE COURT: Well, we want you to do well on your

10:43 11 test.

10:43 12 Madam Clerk, transfer Mr. McCutcheon to a summer

10:43 13 term.

10:43 14 THE CLERK: Okay. Probably next July. We'll send

10:43 15 you another notice.

10:43 16 POTENTIAL JUROR: What was that?

10:43 17 THE CLERK: We'll send you another notice just

10:43 18 like you got this time.

10:43 19 POTENTIAL JUROR: All right. Thank you.

10:43 20 THE COURT: Go make an A.

10:43 21 Are there any further?

10:43 22 Yes, ma'am. Your number?

10:43 23 POTENTIAL JUROR: 251.

10:43 24 THE COURT: Okay. You are -- what was your name,

10:44 25 ma'am?

10:44 1 POTENTIAL JUROR: Casey Stepp.

10:44 2 THE COURT: What's your situation, Ms. Stepp?

10:44 3 POTENTIAL JUROR: I go to USC Upstate. I'm a
10:44 4 full-time student, and I have a test this week as well.

10:44 5 THE COURT: Go like Mr. McCutcheon. We'll move
10:44 6 you to a summer term.

10:44 7 THE CLERK: We said July, but it will be June.

10:44 8 POTENTIAL JUROR: All right. That's fine.

10:44 9 THE COURT: Thank you, ma'am.

10:44 10 All right. Any further?

10:44 11 Is there any member of the jury panel who is
10:44 12 employed with the Department of Corrections at a
10:44 13 penitentiary? If so and you would like to be exempted,
10:44 14 please stand.

10:44 15 There are none.

10:44 16 Is there any member of the jury panel who performs
10:44 17 services for a business, a commercial or agricultural
10:44 18 enterprise which are so essential to the operation of
10:45 19 the business that if you are required to perform jury
10:45 20 duty, the enterprise would have to close or stop
10:45 21 functioning. If so and you wish to be exempted, please
10:45 22 stand.

10:45 23 Yes, ma'am.

10:45 24 POTENTIAL JUROR: 219. I'm self-employed. I run
10:45 25 accounting. I do payroll.

10:45 1 THE COURT: You're Ms. Robertson?

10:45 2 POTENTIAL JUROR: Uh-huh.

10:45 3 THE COURT: Is your business closed right now?

10:45 4 POTENTIAL JUROR: It is.

10:45 5 THE COURT: Okay. When you're gone?

10:45 6 POTENTIAL JUROR: I'm the only one there except
10:45 7 during tax season.

10:45 8 THE COURT: All right. Well, under the statute,
10:45 9 you would be exempt, ma'am.

10:45 10 POTENTIAL JUROR: Thank you.

10:45 11 THE COURT: So excuse Number 219.

10:45 12 All right. Any further?

10:45 13 Is there any juror who is the primary caretaker of
10:45 14 a severely disabled person who is unable to care for
10:45 15 himself who cannot be left unattended. If so and you
10:46 16 wish to be exempted, please stand.

10:46 17 Yes, sir.

10:46 18 POTENTIAL JUROR: 116.

10:46 19 THE COURT: 116. Mr. Harris?

10:46 20 POTENTIAL JUROR: Yes, sir.

10:46 21 THE COURT: And whom do you care for?

10:46 22 POTENTIAL JUROR: My son. He has muscular
10:46 23 dystrophy, and it takes me and my wife to take care of
10:46 24 him, both of us, to lift him and roll him and such.

10:46 25 THE COURT: Are you there full-time with him?

10:46 1 POTENTIAL JUROR: Yes, sir.

10:46 2 THE COURT: Okay. Under the statute, you would be
10:46 3 exempt, Mr. Harris. Thank you for coming.

10:46 4 Excuse Mr. Harris, Number 116.

10:46 5 Finally, is there any juror who is the primary
10:46 6 caretaker of a person aged 65 years of age or older?
10:46 7 If so, please stand.

10:46 8 There are none.

10:46 9 Ladies and gentlemen, that concludes the statutory
10:46 10 list of qualifications and exemptions from jury
10:46 11 service. It may be that you are qualified and that no
10:47 12 exemption applies to you, but that jury service this
10:47 13 week would constitute an extreme hardship on you for a
10:47 14 particular reason.

10:47 15 I cannot permanently excuse a qualified juror from
10:47 16 jury service, but I can, under extreme and compelling
10:47 17 circumstances, transfer a juror to another term of
10:47 18 court, particularly jurors who have not been previously
10:47 19 transferred. Please understand that general
10:47 20 inconvenience is not sufficient reason to transfer you
10:47 21 to another court. To justify a transfer, service this
10:47 22 week must constitute an extreme hardship to you.

10:47 23 Now is also the chance for any of you to come
10:47 24 forward who did not want to give a public response to
10:47 25 one of my previous questions, any of you who may have a

10:47 1 question about whether they are qualified or exempt or
10:47 2 those who wish to be transferred to another term of
10:47 3 court.

10:48 4 (The following proceedings were held at the bar.)

10:48 5 THE COURT: What's your number?

10:48 6 POTENTIAL JUROR: 143. I got to be at a jury
10:48 7 trial.

10:48 8 POTENTIAL JUROR: Ms. Kershaw?

10:48 9 POTENTIAL JUROR: Yes.

10:48 10 THE COURT: Have you ever been transferred before?

10:48 11 POTENTIAL JUROR: No.

10:48 12 THE COURT: You're wanting us to transfer you to
10:48 13 another term of court? What kind of jury trial is it?

10:48 14 POTENTIAL JUROR: It's a possession of marijuana
10:48 15 charge.

10:48 16 THE COURT: Where is that?

10:48 17 POTENTIAL JUROR: Here.

10:48 18 THE COURT: Okay. Well, I can put you in another
10:48 19 term. What time -- when is your jury trial?

10:48 20 POTENTIAL JUROR: I don't know. Might be a year
10:48 21 or two.

10:48 22 THE COURT: So you don't have one scheduled?

10:48 23 POTENTIAL JUROR: No.

10:48 24 THE COURT: Okay. Well, I can't excuse you based
10:48 25 on that, but I can transfer you.

10:49 1 POTENTIAL JUROR: Well, I'm just asking -- I was
10:49 2 just answering, you know, letting you know that I'm
10:49 3 going through that.

10:49 4 THE COURT: But it's not a conviction. You
10:49 5 haven't been convicted?

10:49 6 POTENTIAL JUROR: Oh.

10:49 7 THE COURT: I mean, you're still pending?

10:49 8 POTENTIAL JUROR: Yeah.

10:49 9 THE COURT: Okay. Well, it doesn't disqualify you
10:49 10 because you have not been convicted. Okay. Thank you,
10:49 11 ma'am.

10:49 12 THE BAILIFF: 233.

10:49 13 POTENTIAL JUROR: I'm 233. I have a six-year-old
10:49 14 and a three-year-old, but my three-year-old has surgery
10:49 15 Friday so I don't know if I'll be in here or not, so I
10:49 16 wanted to let you know.

10:49 17 THE COURT: I've been informed by the attorneys
10:49 18 that I think this case will be finished at least by
10:49 19 Wednesday.

10:49 20 POTENTIAL JUROR: Okay.

10:49 21 THE COURT: However, if you want to play it safe
10:49 22 and me transfer you to another term, I can do that.

10:50 23 POTENTIAL JUROR: Okay. Well, just -- just
10:50 24 transfer me, I guess. I'm working, too. I work third.
10:50 25 That's fine. I mean, I know I have to come back.

10:50 1 THE COURT: Have you ever been transferred before?

10:50 2 POTENTIAL JUROR: No, sir.

10:50 3 THE COURT: Okay. Number?

10:50 4 POTENTIAL JUROR: 233.

10:50 5 THE COURT: All right. Transfer Number 233.

10:50 6 THE CLERK: To June.

10:50 7 THE COURT: Good luck to you, ma'am.

10:50 8 THE BAILIFF: 104.

10:50 9 THE COURT: What's your name?

10:50 10 POTENTIAL JUROR: Sharon Gregory. I am a

10:50 11 diabetic, and I wanted to inform you that sometimes my

10:50 12 sugar will drop, but I can --

10:50 13 THE COURT: Well, what I tell people that have

10:50 14 diabetic issues, the clerk has -- because a lot of

10:50 15 times people say, I have to eat something, I have to

10:50 16 have a snack or something to drink.

10:51 17 POTENTIAL JUROR: If I just drink something, I'm

10:51 18 okay.

10:51 19 THE COURT: There will be snacks, drinks available

10:51 20 to you. If at any point you start feeling weak or need

10:51 21 assistance, let the bailiff know and we'll do

10:51 22 everything we can to accommodate you.

10:51 23 POTENTIAL JUROR: I can't bring it in my bag with

10:51 24 me?

10:51 25 THE COURT: Well, you can bring -- if you have

10:51 1 mints or something in your bag or if you have a
10:51 2 particular drink that you -- not alcoholic.
10:51 3 POTENTIAL JUROR: Okay.
10:51 4 THE COURT: Something appropriate, that's fine.
10:51 5 POTENTIAL JUROR: Okay.
10:51 6 THE COURT: Okay. Thank you, ma'am. Thank you
10:51 7 for calling that to my attention.
10:51 8 THE BAILIFF: 199.
10:51 9 THE COURT: Okay.
10:51 10 POTENTIAL JUROR: 199. But I didn't register
10:51 11 downstairs because I didn't.
10:51 12 THE COURT: You were the lady they added. What's
10:51 13 your name?
10:51 14 POTENTIAL JUROR: Kristy Painter.
10:51 15 THE COURT: Ms. Painter, what's going on?
10:52 16 POTENTIAL JUROR: One incident, my kids' father
10:52 17 died in jail in 2013. I had a lawsuit against that
10:52 18 which conveniently got lost. I have now an ongoing
10:52 19 lawsuit for my son who was illegally locked up for
10:52 20 transfer -- driving a motor vehicle without a license.
10:52 21 And he wasn't driving. So he was locked up for
10:52 22 24 hours this past Thanksgiving. They never let him
10:52 23 come home to me, so I do not think I could be very
10:52 24 fair.
10:52 25 THE COURT: Well, ma'am, this is not the time --

10:52 1 that would be something that when we select a jury,
10:52 2 that will come up. That doesn't disqualify you, make
10:52 3 you exempt. That's just something the attorneys can
10:52 4 consider when striking the jury so I'm going to have
10:52 5 you stay with us right now.

10:52 6 POTENTIAL JUROR: Okay.

10:52 7 THE COURT: Thank you for bringing that to my
10:52 8 attention.

10:52 9 POTENTIAL JUROR: Yeah, because I know I wouldn't
10:52 10 be fair.

10:52 11 THE COURT: Thank you, ma'am.

10:52 12 POTENTIAL JUROR: Thank you.

10:53 13 THE BAILIFF: Number 27.

10:53 14 THE COURT: Yes, sir.

10:53 15 POTENTIAL JUROR: Chris Brewington.

10:53 16 THE COURT: What's going on?

10:53 17 POTENTIAL JUROR: Two things. I pay child support
10:53 18 every week, \$200. Me missing a week's worth of work,
10:53 19 and then I'm foreman for a small electrical company,
10:53 20 and they wrote a letter. I've got a big project going
10:53 21 on right now.

10:53 22 THE COURT: Well, what I can do, I can transfer
10:53 23 you to another term if this particular week is bad for
10:53 24 your company.

10:53 25 POTENTIAL JUROR: Yes.

10:53 1 THE COURT: But now the clerk will transfer you to
10:53 2 June, so that's going to give you seven months based on
10:53 3 that to make arrangements.

10:53 4 POTENTIAL JUROR: That will be great.

10:53 5 THE COURT: Transfer Mr. Brewington.

10:53 6 And you will get your notice, and that will give
10:53 7 you more time to make arrangements.

10:53 8 POTENTIAL JUROR: Thank you.

10:53 9 THE COURT: Good luck to you.

10:53 10 THE BAILIFF: Number 300.

10:54 11 THE COURT: What's your name, ma'am?

10:54 12 POTENTIAL JUROR: Rose Young. I got bladder
10:54 13 problems and --

10:54 14 THE COURT: Wait a minute. Let me find you.

10:54 15 Ms. Young, okay.

10:54 16 POTENTIAL JUROR: Then I got, you know, breast
10:54 17 cancer. Then I had surgery done on my rotary (sic)
10:54 18 cuff and all, too.

10:54 19 THE COURT: Are you --

10:54 20 POTENTIAL JUROR: My bladder, I constantly have to
10:54 21 go to the bathroom.

10:54 22 THE COURT: How long can you sit?

10:54 23 POTENTIAL JUROR: Not very long.

10:54 24 (Off-the-record discussion with the clerk.)

10:54 25 THE CLERK: Could you get a doctor's statement?

10:54 1 MS. GOOD: I don't have any transportation to the
10:54 2 doctor right now.

10:54 3 THE COURT: Ms. Young, I'm going to excuse you..
10:54 4 I'll let you go based on the issues affecting you.

10:54 5 POTENTIAL JUROR: All right. Thank you.

10:54 6 THE BAILIFF: Number 241.

10:54 7 POTENTIAL JUROR: My name is Ronnie Smith.

10:55 8 THE COURT: All right. You are number 231.

10:55 9 POTENTIAL JUROR: I have a question. I had a
10:55 10 charge in my background, and I haven't got it expunged
10:55 11 so I think this here --

10:55 12 THE COURT: What kind of charge was it?

10:55 13 POTENTIAL JUROR: Distribution charge.

10:55 14 THE COURT: It was distribution?

10:55 15 POTENTIAL JUROR: Yes, sir.

10:55 16 THE COURT: Okay. Well, that would disqualify
10:55 17 you.

10:55 18 Let me ask you this: Was it a conviction or
10:55 19 charge?

10:55 20 POTENTIAL JUROR: I think it was a charge.

10:55 21 THE COURT: Were you convicted of it?

10:55 22 POTENTIAL JUROR: No, sir.

10:55 23 THE COURT: It's only convictions. And if you
10:55 24 were charged with whatever, if you were found not
10:55 25 guilty or if it was dismissed, that doesn't count.

10:55 1 It's only convictions.

10:55 2 THE CLERK: Did you serve time?

10:55 3 POTENTIAL JUROR: No, ma'am.

10:55 4 THE CLERK: I think he's the one that had PTI.

10:55 5 THE COURT: That does not disqualify you.

10:56 6 THE BAILIFF: Number 256.

10:56 7 THE COURT: Ms. Taylor.

10:56 8 POTENTIAL JUROR: Yes, sir.

10:56 9 THE COURT: What's going on?

10:56 10 POTENTIAL JUROR: I have a learning disability,

10:56 11 and I have a 12-year-old.

10:56 12 THE COURT: Okay. Have you been placed on

10:56 13 disability?

10:56 14 POTENTIAL JUROR: Uh-huh.

10:56 15 THE COURT: When did you get placed on disability?

10:56 16 POTENTIAL JUROR: I was placed on disability since

10:56 17 I was a kid.

10:56 18 THE COURT: How far have you gone in school?

10:56 19 POTENTIAL JUROR: I went through the eleventh

10:56 20 grade ELA.

10:56 21 THE COURT: Are you able to read and write?

10:56 22 POTENTIAL JUROR: Uh-huh. I don't know big words.

10:56 23 I know small words.

10:56 24 THE COURT: All right, Ms. Taylor. I'm going to

10:56 25 excuse you.

10:56 1 POTENTIAL JUROR: Okay. Thank you.

10:56 2 THE BAILIFF: Number 175.

10:56 3 THE COURT: All right. Ms. Miller, what's going
10:56 4 on?

10:56 5 POTENTIAL JUROR: I didn't say because I do have a
10:56 6 small child. She goes to school, but she gets out --

10:56 7 THE COURT: Who's picking the child up today?

10:57 8 POTENTIAL JUROR: Well, I wasn't sure how today
10:57 9 was going to go because this is my first time. I was
10:57 10 just hoping that I would be there.

10:57 11 THE COURT: So you don't have any arrangements for
10:57 12 anyone to pick the child up?

10:57 13 POTENTIAL JUROR: No.

10:57 14 THE COURT: Okay. Do you work?

10:57 15 POTENTIAL JUROR: Yeah.

10:57 16 THE COURT: Where do you work?

10:57 17 POTENTIAL JUROR: (Inaudible).

10:57 18 THE COURT: Who keeps the child in the afternoon?

10:57 19 POTENTIAL JUROR: I'm there.

10:57 20 THE COURT: You work third shift. So you don't
10:57 21 have someone else picking the child up?

10:57 22 POTENTIAL JUROR: No.

10:57 23 THE COURT: The way this statute is written, you
10:57 24 would qualify for that, so I'm going to dismiss you.

10:57 25 POTENTIAL JUROR: For a later time?

10:57 1 THE COURT: No. How old is your child?

10:57 2 POTENTIAL JUROR: Four.

10:57 3 THE COURT: Okay. And the statute is worded if
10:57 4 the child is under seven years old and there's no other
10:57 5 person to care for the child. You can't make
10:57 6 arrangements for the child, so you would qualify. So
10:57 7 I'm going to exempt you. Thank you, ma'am. Good luck
10:57 8 to you.

10:58 9 She's excused.

10:58 10 Any further?

10:58 11 After conducting the statutory questions of the
10:58 12 pool, I find this jury panel is qualified to serve in
10:58 13 common pleas court in Union County.

10:58 14 Ladies and gentlemen, now that you've been
10:58 15 qualified, let me give you some basic guidelines. You
10:58 16 will not be allowed to use cell phones in court. You
10:58 17 also will have situations in any courthouse when you're
10:59 18 coming in and out, you may run into the attorneys or
10:59 19 litigants to cases. They're not going to speak to you.
10:59 20 It's not because they're trying to be rude. They know
10:59 21 they just can't have any contact with you as jurors.

10:59 22 You also will have times when we break and you get
10:59 23 a time to be back. Please be prompt. It's not fair to
10:59 24 your fellow jurors, not fair to the staff and the
10:59 25 litigants to the cases if a juror is late and we have

10:59 1 to delay the proceedings.

10:59 2 If you have any emergency or any issue that comes
10:59 3 up, your clerk of court and her staff are here to
10:59 4 assist you in that. If you need to get a message out
10:59 5 or information coming in, they can assist you with
10:59 6 that.

10:59 7 So, Madam Clerk, you have given the jury panel a
10:59 8 telephone number for contact information?

10:59 9 THE CLERK: They do.

10:59 10 THE COURT: Okay. So are we ready to draw our
10:59 11 first jury?

11:00 12 MS. GOOD: May I approach, Your Honor?

11:00 13 THE COURT: Yes, ma'am.

11:00 14 (WHEREUPON, a bench conference was held off the
11:00 15 record in the presence of the prospective jury panel,
11:00 16 but out of the hearing of the prospective jury panel.)

11:00 17 THE COURT: Ladies and gentlemen, we're going to
11:00 18 take a break before we select our first jury. So we'll
11:00 19 be back in here -- it's 11 o'clock now. We'll
11:00 20 reconvene in about 15 minutes. So be back in the
11:00 21 courtroom in 15 minutes.

11:00 22 (WHEREUPON, the jury exited open court at
11:00 23 11:00 a.m.)

11:00 24 (WHEREUPON, a recess was taken from 11:00 a.m. to
11:10 25 11:10 a.m.)

11:10 1 THE COURT: Anything before we get our jury panel
11:10 2 back in?

11:10 3 MR. BOGLE: Not that I can think of.

11:10 4 MS. GOOD: No, sir.

11:10 5 THE COURT: All right. Bring them on back in.

11:10 6 (WHEREUPON, the jury entered open court at
11:12 7 11:10 a.m.)

11:12 8 THE COURT: Is everyone back in the courtroom?
11:12 9 All jurors accounted for?

11:16 10 It appears we have the entire pool back.

11:16 11 Ladies and gentlemen, the first case on the docket
11:16 12 this week is the State vs. Melvin Beam. This is a
11:16 13 unique proceeding in which the State seeks to have the
11:16 14 respondent, Melvin Beam, declared a sexually violent
11:16 15 predator. The respondent denies that he is a sexually
11:16 16 violent predator. Our law places this dispute in
11:16 17 common pleas court where a jury will hear the evidence
11:16 18 in the case and determine whether the respondent is a
11:16 19 sexually violent predator.

11:16 20 You are called here to form a jury panel from
11:16 21 which the parties will select a jury to hear and
11:16 22 determine the facts of the case. Now, I know I've
11:16 23 asked you a whole bunch of questions already, but I'm
11:16 24 getting ready to ask you some more.

11:16 25 Now, let me remind you, you're still under oath.

11:16 1 These questions are not to pry into your private lives,
11:17 2 but this is to ensure that both the State and Mr. Beam
11:17 3 receive a fair and impartial jury to hear the facts of
11:17 4 this case.

11:17 5 First order of business, I'd like each attorney to
11:17 6 introduce themselves and any persons that may be
11:17 7 assisting you in the trial of the case and the
11:17 8 litigants.

11:17 9 MR. BOGLE: Thank you, Your Honor. May it please
11:17 10 the court. My name is Jim Bogle. I'm an attorney from
11:17 11 the attorney general's office.

11:17 12 MS. GOOD: My name is Anna Good, attorney in
11:17 13 Columbia, South Carolina. And this is my client,
11:17 14 Melvin Beam.

11:17 15 THE COURT: Has any member of the jury panel ever
11:17 16 been represented by one of the attorneys involved in
11:17 17 this case, any law firm they may have been a part of,
11:17 18 or had one of these attorneys or any law firm they may
11:17 19 have been a part of represent someone against you in
11:17 20 court? If so, please stand.

11:17 21 There are none.

11:18 22 The following is a list of potential witnesses in
11:18 23 this case: Dr. Kimberly Harrison; Dr. Anna Gomez;
11:18 24 Mabel Beam; Raymond Valles, Union County Sheriff's
11:18 25 Department.

11:18 1 Is any member of the jury panel related by blood
11:18 2 or marriage or has a close personal or social
11:18 3 relationship with any of these potential witnesses? If
11:18 -4 so, please stand.

11:18 5 Yes, sir. Your number?

11:18 6 POTENTIAL JUROR: 235.

11:18 7 THE COURT: Which witness do you know?

11:18 8 POTENTIAL JUROR: Valles.

11:18 9 THE COURT: How do you know him?

11:18 10 POTENTIAL JUROR: He's kin to my son.

11:18 11 THE COURT: With that knowledge, do you feel that
11:18 12 you could be fair and impartial if selected as a juror
11:18 13 in this case?

11:18 14 POTENTIAL JUROR: Probably.

11:18 15 THE COURT: Excuse me?

11:18 16 POTENTIAL JUROR: Probably.

11:18 17 THE COURT: There's no "probably." You either
11:19 18 could or could not.

11:19 19 POTENTIAL JUROR: Yes.

11:19 20 THE COURT: Do you believe you could be fair and
11:19 21 impartial?

11:19 22 POTENTIAL JUROR: Yes.

11:19 23 THE COURT: All right. Thank you, sir. You may
11:19 24 be seated.

11:19 25 All right. Any further?

11:19 1 Has any member of the jury panel ever been treated
11:19 2 by any of the physicians listed?

11:19 3 There are none.

11:19 4 Does any member of the jury panel have any prior
11:19 5 knowledge from any source about the facts of this case
11:19 6 or the previous conviction of Melvin Beam? If so,
11:19 7 please stand.

11:19 8 There are none.

11:19 9 Would the fact that the respondent, Melvin Beam,
11:19 10 has been convicted of a sexual offense and has
11:19 11 completed his criminal sentence related to that
11:19 12 conviction in any way prevent you from being able to be
11:19 13 fair and impartial as a juror in this case? If so,
11:19 14 please stand.

11:19 15 Okay. There are none.

11:19 16 Has any member of the jury panel, a family member,
11:20 17 or close personal friend been the victim of a sexual
11:20 18 assault? If so, please stand.

11:20 19 There are none -- excuse me.

11:20 20 Your number, ma'am?

11:20 21 POTENTIAL JUROR: 171.

11:20 22 THE COURT: Ms. McMillan. Was this a family
11:20 23 member?

11:20 24 POTENTIAL JUROR: Yes, sir.

11:20 25 THE COURT: And with that knowledge, do you feel

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11:20 1 that you could be fair and impartial if selected to
11:20 2 serve as a juror?

11:20 3 POTENTIAL JUROR: No.

11:20 4 THE COURT: You do not. All right. Thank you,
11:20 5 ma'am. You may be seated.

11:20 6 MR. BOGLE: 171.

11:20 7 THE COURT: Juror number 171.

11:20 8 Has any member of the jury panel, family member,
11:20 9 or close personal friend ever been charged with or
11:20 10 convicted of a sexual offense? If so, please stand.

11:21 11 Okay. There are none.

11:21 12 Does any member of the jury panel have any
11:21 13 training in the fields of psychiatry, psychology, or
11:21 14 law? If so, please stand.

11:21 15 Yes, ma'am. Your number?

11:21 16 POTENTIAL JUROR: 228.

11:21 17 THE COURT: Ms. Eubanks.

11:21 18 POTENTIAL JUROR: Yes. My bachelor's is in
11:21 19 psychology.

11:21 20 THE COURT: Okay. And with that knowledge, do you
11:21 21 feel that you could be fair and impartial if selected?

11:21 22 POTENTIAL JUROR: I do.

11:21 23 THE COURT: Thank you, ma'am.

11:21 24 Has any member of the jury panel been involved in
11:21 25 a prison ministry, prison outreach program, or any

11:21 1 other program involving contact with incarcerated
11:21 2 persons? If so, please stand.

11:21 3 Yes, sir. Your number?

11:21 4 POTENTIAL JUROR: 220.

11:21 5 THE COURT: Mr. Robinson.

11:21 6 POTENTIAL JUROR: I work in the Department of
11:22 7 Corrections.

11:22 8 THE COURT: Okay. All right. And with that
11:22 9 knowledge, do you feel that you could be fair and
11:22 10 impartial if selected?

11:22 11 POTENTIAL JUROR: Yes.

11:22 12 THE COURT: Thank you, Mr. Robinson.
11:22 13 Your number?

11:22 14 POTENTIAL JUROR: 278.

11:22 15 THE COURT: All right. Mr. Weaver.

11:22 16 POTENTIAL JUROR: Yes, sir. I was a state trooper
11:22 17 for 26 years. Retired, sir.

11:22 18 THE COURT: And with that knowledge, do you feel
11:22 19 you could be fair and impartial if selected?

11:22 20 POTENTIAL JUROR: I feel like I could.

11:22 21 THE COURT: Thank you, sir.

11:22 22 Any further?

11:22 23 Has any member of the jury panel, one of your
11:22 24 family members, or a close personal friend ever been
11:22 25 subject to civil commitment proceedings or been

11:22 1 voluntarily or involuntary civilly committed? If so,
11:22 2 please stand.

11:22 3 There are none.

11:23 4 Is any member of the jury panel employed by,
11:23 5 related by blood or marriage to, or a close personal
11:23 6 friend of anyone employed by the attorney general, the
11:23 7 solicitor, a prosecuting attorney's office, or law
11:23 8 enforcement agency? If so, please stand.

11:23 9 Yes, ma'am. Your number?

11:23 10 POTENTIAL JUROR: 28, Cynthia Brewington.

11:23 11 THE COURT: Ms. Brewington, what's the nature of
11:23 12 that relationship?

11:23 13 POTENTIAL JUROR: My husband is a retired law
11:23 14 enforcement officer with 20-plus years with Union
11:23 15 County Sheriff's Office, currently employed with USC
11:23 16 Upstate.

11:23 17 THE COURT: And with that knowledge, do you feel
11:23 18 that you could be fair and impartial if selected?

11:23 19 POTENTIAL JUROR: Yes.

11:23 20 THE COURT: Thank you, ma'am.

11:23 21 Yes, ma'am. Your number?

11:23 22 POTENTIAL JUROR: 104.

11:23 23 THE COURT: Ms. Gregory.

11:23 24 POTENTIAL JUROR: Yes. My daughter-in-law, she's
11:23 25 a police officer.

11:23 1 THE COURT: And with that knowledge, do you feel
11:23 2 that you could be fair and impartial if selected?

11:24 3 POTENTIAL JUROR: Yes.

11:24 4 THE COURT: All right. Thank you, ma'am.

11:24 5 Yes, ma'am.

11:24 6 POTENTIAL JUROR: I'm -- my number is 236. I'm a
11:24 7 law enforcement widow, and my father is a retired South
11:24 8 Carolina law enforcement officer.

11:24 9 THE COURT: Okay. With that -- you're Ms. Sloss?

11:24 10 POTENTIAL JUROR: Yes, sir.

11:24 11 THE COURT: With that knowledge, do you feel that
11:24 12 you could be fair and impartial?

11:24 13 POTENTIAL JUROR: Yes, sir.

11:24 14 THE COURT: All right. Thank you, ma'am.

11:24 15 Your number?

11:24 16 POTENTIAL JUROR: 228.

11:24 17 THE COURT: Ms. Eubanks.

11:24 18 POTENTIAL JUROR: My husband is a retired South
11:24 19 Carolina law enforcement officer also.

11:24 20 THE COURT: Again, I'm going to ask you the same
11:24 21 question.

11:24 22 POTENTIAL JUROR: I do. I feel --

11:24 23 THE COURT: Do you feel you could be fair and
11:24 24 impartial?

11:24 25 POTENTIAL JUROR: I do.

11:24 1 THE COURT: Thank you, ma'am.

11:24 2 Is any member of the jury panel a member of,
11:24 3 contributor to, or has donated to any group which has
11:25 4 as its primary concern the promotion of law enforcement
11:25 5 or victims' rights? These groups would include but not
11:25 6 be limited to CAV, CADRE, MADD, SADD, or Sistercare.
11:25 7 If so, please stand.

11:25 8 There are none.

11:25 9 And does any member of the jury panel know of any
11:25 10 reason why he or she could not be fair and impartial to
11:25 11 each of the parties in this case? If you have already
11:25 12 answered the question, you don't need to answer it
11:25 13 again. But if there's any other reason why you don't
11:25 14 feel like you could be fair and impartial if you're
11:25 15 selected, please stand.

11:25 16 Yes, sir. Your number?

11:25 17 POTENTIAL JUROR: 241.

11:25 18 THE COURT: Mr. Smith.

11:25 19 POTENTIAL JUROR: Yes, sir.

11:25 20 THE COURT: What's that reason, Mr. Smith?

11:26 21 POTENTIAL JUROR: Could I come down?

11:26 22 THE COURT: Yes, sir.

11:26 23 POTENTIAL JUROR: My sister was molested, and
11:26 24 she's a teacher. I don't -- you know, everybody would
11:26 25 know that if I said that out loud.

11:26 1 THE COURT: You don't feel like you could be fair?

11:26 2 POTENTIAL JUROR: Absolutely not.

11:26 3 THE COURT: Thank you, Mr. Smith. Go have a seat
11:26 4 back there.

11:26 5 Okay.

11:26 6 MR. BOGLE: Judge, there was that woman that came
11:26 7 up during your initial questioning and said she
11:26 8 couldn't be fair.

11:26 9 THE COURT: That was number 199, but she didn't
11:26 10 answer it this time. So you can take note of number
11:26 11 199 has already indicated that she would have trouble
11:26 12 being fair.

11:26 13 MR. BOGLE: Yeah. I wonder if we should get her
11:27 14 up now and ask her point blank. I'm not sure how to
11:27 15 handle it.

11:27 16 THE COURT: We can do that.

11:27 17 Juror number 199, come forward.

11:27 18 And are there any other questions a juror may
11:27 19 have?

11:27 20 Yes, sir. If you would come forward, please.

11:27 21 (Juror 199 approached the bar.)

11:27 22 THE COURT: You indicated earlier you didn't feel
11:27 23 like you could be fair.

11:27 24 POTENTIAL JUROR: I don't. I just -- got too much
11:27 25 under me right now, too soon.

11:27 1 THE COURT: Because of pending lawsuits?

11:27 2 POTENTIAL JUROR: Pending lawsuit and my
11:27 3 children's father died in Union County Jail, and
11:27 4 everything just conveniently disappeared. So my
11:27 5 children --

11:28 6 THE COURT: Does that answer your question?

11:28 7 MR. BOGLE: Thank you, Your Honor.

11:28 8 THE COURT: All right, ma'am. Go back and have a
11:28 9 seat. Thank you.

11:28 10 I'm going to take her out.

11:28 11 (Juror Number 96 approached the bar.)

11:28 12 THE COURT: Yes, sir. 96, Mr. Gist.

11:28 13 POTENTIAL JUROR: (Inaudible) and I actually pled
11:28 14 for ten and --

11:28 15 THE REPORTER: I'm sorry. I cannot hear.

11:28 16 THE COURT: Okay. The victim is to Mr. Beam's
11:28 17 case.

11:28 18 Okay. All right. Do you feel like you could be
11:28 19 fair?

11:28 20 POTENTIAL JUROR: It's I'm also related to them by
11:28 21 marriage.

11:28 22 THE COURT: Again, do you feel like you could be
11:28 23 fair?

11:28 24 POTENTIAL JUROR: There's no way.

11:28 25 THE COURT: Thank you for calling that to my

11:28 1 attention.

11:28 2 POTENTIAL JUROR: I was just trying to get all
11:28 3 this out and everything but make sure I fit, you know.

11:28 4 THE COURT: All right. Thank you, Mr. Gist. I'll
11:29 5 have you go sit down.

11:29 6 Take Mr. Gist out.

11:29 7 MR. BOGLE: One additional thing, Judge. The last
11:29 8 time I was in this county for a jury trial, it was
11:29 9 sometime during the 2000s. I'm not sure how long it's
11:29 10 been. But I defended -- it was an active state trooper
11:29 11 charged with perjury. He went to a jury trial here.

11:29 12 Juror number 278 is a retired state trooper. Now,
11:29 13 he hasn't said anything yet. I don't know if he
11:29 14 recognized me or not, but I'm concerned since he was
11:29 15 retired, he would have been on duty here at the time
11:29 16 the trial happened. The defendant was acquitted of the
11:29 17 charge, but it bothers me.

11:29 18 THE COURT: He stood up a while ago, didn't he?

11:29 19 MR. BOGLE: No. It was another state trooper, an
11:29 20 active state trooper.

11:29 21 THE COURT: I've got retired South Carolina
11:29 22 trooper.

11:29 23 MS. GOOD: He says he can be fair.

11:29 24 THE COURT: He disclosed that he was a retired
11:29 25 state trooper.

11:29 1 MR. BOGLE: All right. I'm just thinking because
11:30 2 I had that trial against one of his people, there might
11:30 3 be some kind of bias that I'm not aware of.

11:30 4 THE COURT: I mean, I think if you question him,
11:30 5 you're going to call attention to it.

11:30 6 MR. BOGLE: Not really.

11:30 7 MS. GOOD: It's fine if you want to question him.

11:30 8 THE COURT: Would juror 278 come forward, please.
11:30 9 Juror 278.

11:30 10 MR. BOGLE: I don't remember the guy's name.

11:30 11 (WHEREUPON, Juror 278 approached the bar.)

11:30 12 THE COURT: You don't remember --

11:30 13 MR. BOGLE: It happened within the last 15 years.

11:30 14 THE COURT: Mr. Weaver, you are retired highway
11:30 15 patrol.

11:30 16 POTENTIAL JUROR: I am, sir.

11:30 17 THE COURT: Mr. Bogle remembers prosecuting a
11:30 18 highway patrolman as attorney general and was just
11:30 19 wondering if you remembered the case or had any
11:30 20 recollection of him.

11:31 21 POTENTIAL JUROR: The highway patrol?

11:31 22 MR. BOGLE: Yes, sir. It was a criminal case the
11:31 23 solicitor transferred to our office against a state
11:31 24 trooper.

11:31 25 POTENTIAL JUROR: I remember several cases, but I

11:31 1 can't say that I remember that exact case.

11:31 2 MR. BOGLE: Okay. Thanks.

11:31 3 THE COURT: Does that answer your questions,

11:31 4 Mr. Bogle?

11:31 5 MR. BOGLE: Yes, sir. Thank you.

11:31 6 THE COURT: You can take your seat.

11:31 7 Okay. Anything further?

11:31 8 Anything further from the State?

11:31 9 MR. BOGLE: No, sir.

11:31 10 THE COURT: Anything further from the respondent?

11:31 11 MS. GOOD: No, sir.

11:31 12 THE COURT: Ladies and gentlemen, we are to the

11:31 13 point now where we're going to pick the jury. I date

11:31 14 myself, but when I started practicing law years ago,

11:31 15 they drew names out of -- in Oconee we have a hopper.

11:31 16 Did y'all have one here where you turn the wheel?

11:31 17 THE CLERK: Yes. Bingo box.

11:32 18 THE COURT: In the olden days they would have a

11:32 19 blind person or a child, someone who couldn't read the

11:32 20 numbers, reach in and pull the names out of a hat.

11:32 21 Well, we don't do that anymore. The computer does it

11:32 22 all for us.

11:32 23 So what the clerk is going to do is generate a

11:32 24 computer list, give those to the attorneys, and they

11:32 25 will strike the jury from the computer-generated list.

11:32 1 So we're going to take a few minutes.

11:32 2 Madam Clerk, if you could go ahead and run the
11:32 3 list for the attorneys, give them a minute to look at
11:32 4 it, and then we'll get started.

11:36 5 Y'all just need one alternate?

11:36 6 MR. BOGLE: Yes, I think so.

11:36 7 MS. GOOD: (Nodding.)

11:40 8 THE COURT: Ladies and gentlemen, we are having
11:41 9 some technical issues with the computer, so I'm going
11:41 10 to take a short recess. Be back in the courtroom at
11:41 11 12 o'clock.

11:41 12 (WHEREUPON, the jury exited open court at
11:41 13 11:41 a.m.)

11:41 14 (WHEREUPON, recess taken from 11:41 a.m.
11:41 15 to 12:05 p.m.)

12:05 16 THE COURT: Ladies and gentlemen, as I told you,
12:05 17 the computer takes care of our jury selection. It was
12:05 18 so much of an improvement over the old days, well,
12:05 19 that's until the computer goes down. And we are
12:05 20 victims of a centralized computer system. And your
12:05 21 clerks are working very diligently with court
12:05 22 administration in Columbia, trying to get this working
12:05 23 so we may be reduced to drawing out of a hat. That's
12:05 24 what we're waiting on now. They're trying to get the
12:05 25 list done.

12:05 1 We'll stand down.

12:07 2 Counsel, approach.

12:07 3 (WHEREUPON, a bench conference was held off the
12:07 4 record in the presence of the prospective jury panel,
12:10 5 but out of the hearing of the prospective jury panel.)

12:10 6 THE COURT: Counsel, just strike the first name on
12:11 7 the list.

12:11 8 MR. BOGLE: Number 1 comes off?

12:11 9 THE CLERK: Right.

12:18 10 THE COURT: When the attorneys are finished
12:18 11 looking over the list, let the court know and we'll
12:18 12 proceed.

12:18 13 (WHEREUPON, recess taken from 12:11 p.m.
12:18 14 to 12:18 p.m.)

12:18 15 THE COURT: Respondent finished?

12:18 16 MS. GOOD: Yes.

12:18 17 MR. BOGLE: I'm done, Your Honor.

12:18 18 THE CLERK: Okay.

12:18 19 Plaintiff goes first.

12:18 20 MR. BOGLE: The State would strike Number 2.

12:19 21 THE CLERK: State will strike Number 2.

12:19 22 MS. GOOD: Respondent strikes Number 6.

12:19 23 THE CLERK: Respondent strikes Number 6.

12:19 24 MR. BOGLE: State would strike Number 9.

12:19 25 THE CLERK: State strikes Number 9.

12:19 1 MS. GOOD: Respondent strikes Number 14.
12:19 2 THE CLERK: Respondent strikes Number 14.
12:19 3 MR. BOGLE: State would strike Number 10.
12:19 4 THE CLERK: State will strike Number 10.
12:19 5 MS. GOOD: Respondent strikes Number 18.
12:19 6 THE CLERK: Respondent, Number 18.
12:19 7 MR. BOGLE: The State would strike Number 11.
12:20 8 THE CLERK: State strikes Number 11.
12:20 9 MS. GOOD: Respondent strikes Number 19.
12:20 10 THE CLERK: Respondent, Number 19.
12:20 11 Okay. Now for the alternate.
12:20 12 MR. BOGLE: State would strike Number 22.
12:20 13 THE CLERK: Number 22.
12:20 14 MS. GOOD: Respondent strikes Number 23.
12:20 15 THE CLERK: Respondent strikes number 23.
12:20 16 Okay. For the plaintiff, it's Number 2, 9, 10,
12:20 17 11, and 22.
12:20 18 MR. BOGLE: That's correct.
12:20 19 THE CLERK: For the defense, it's 6, 14, 18, 19,
12:20 20 23.
12:20 21 MS. GOOD: That's correct.
12:20 22 THE COURT: Okay.
12:20 23 THE CLERK: As I call your name, please come and
12:21 24 take your place in the jury box.
12:21 25 Number 25, Tericka J. Brannon.

12:21 1 (WHEREUPON, a black female stepped forward.)
12:21 2 POTENTIAL JUROR: Number 188, Terry L. Morris.
12:21 3 (WHEREUPON, a white male stepped forward.)
12:21 4 POTENTIAL JUROR: Number 287, Shirley Willard.
12:21 5 (WHEREUPON, a white female stepped forward.)
12:21 6 THE CLERK: Number 46, Amber Lanier.
12:21 7 (WHEREUPON, a white female stepped forward.)
12:21 8 THE CLERK: Number 226, James A. Sartor.
12:21 9 (WHEREUPON, a black male stepped forward.)
12:21 10 THE CLERK: Number 117, Donald Hayes.
12:21 11 (WHEREUPON, a black male stepped forward.)
12:21 12 THE CLERK: Number 128, Gerald Howell.
12:22 13 (WHEREUPON, a white male stepped forward.)
12:22 14 THE CLERK: Number 267, Marianne Vanfossen.
12:22 15 (WHEREUPON, a white female stepped forward.)
12:22 16 THE CLERK: Number 16, Wendy Hames.
12:22 17 (WHEREUPON, a white female stepped forward.)
12:22 18 THE CLERK: Number 17, Jason Fowler.
12:22 19 (WHEREUPON, a white male stepped forward.)
12:22 20 THE CLERK: Number 224, Javonnie Route.
12:22 21 (WHEREUPON, a black female stepped forward.)
12:22 22 THE CLERK: Number 108, Robert A. Hall.
12:22 23 (WHEREUPON, a black male stepped forward.)
12:22 24 THE CLERK: And Number 23, Kim D. Booker.
12:22 25 (WHEREUPON, a black female stepped forward.)

12:22 1 THE CLERK: I'm not sure whether I got the
12:22 2 alternate in the right place or not.

12:23 3 Kimberly Booker is the alternate.

12:23 4 THE COURT: All right.

12:23 5 Any motions or exceptions to the selection of the
12:23 6 jury from the State?

12:23 7 MR. BOGLE: There are none, Your Honor.

12:23 8 THE COURT: Any motions or exceptions to the
12:23 9 selection of the jury from the respondent?

12:23 10 MS. GOOD: No, sir.

12:24 11 THE COURT: All right.

12:24 12 Madam Clerk, would you swear our jury.

12:24 13 (WHEREUPON, the jury was impaneled.)

12:24 14 THE COURT: All right. Ladies and gentlemen in
12:24 15 the remainder of the jury pool, this will conclude your
12:24 16 service. I have been informed that the other two cases
12:24 17 on the docket this week have been taken off, have been
12:24 18 resolved in some manner. So this satisfies your
12:24 19 requirement for serving on circuit court jury. So you
12:25 20 are free to go home. Hope everyone has a good week.

12:25 21 (The remainder of the panel left the courtroom.)

12:26 22 THE COURT: All right. Ladies and gentlemen,
12:26 23 before we start the trial, I'm going to explain to you
12:26 24 our roles.

12:26 25 I'm the judge of the law. You are the judges of

12:26 1 the facts. As the judge of the facts, you will have
12:26 2 the duty to evaluate the evidence that is presented,
12:26 3 and you and you alone determine the credibility of
12:26 4 witnesses and how much weight to give their testimony.

12:26 5 Evidence is the sworn testimony from the witness
12:26 6 stand or any exhibits that are entered. The attorneys
12:26 7 will have the opportunity to give opening statements.
12:26 8 They also will have the opportunity to make a closing
12:26 9 argument at the end of the case. Keep in mind that the
12:27 10 statements of the attorneys are not evidence but merely
12:27 11 tools that they will use to help you understand their
12:27 12 respective positions.

12:27 13 The State has the burden of proof in this trial.
12:27 14 It must prove its case beyond a reasonable doubt. If
12:27 15 the State does not prove beyond a reasonable doubt that
12:27 16 Melvin Beam is a sexually violent predator, then you
12:27 17 shall find that he is not a sexually violent predator.

12:27 18 Now, like I said before, as we go through the
12:27 19 case, we will take breaks as we go along. We're
12:27 20 getting ready to take our first break. This is not an
12:27 21 endurance contest. If you get in distress and you need
12:27 22 a break, let your bailiff know. Bailiffs are here to
12:27 23 assist you. So if there's any issue that needs
12:27 24 resolution, let the bailiff know.

12:27 25 Now, I'm going to give you three instructions, and

12:27 1 these are very important. You can't do three things
12:27 2 when you leave this courtroom. First is you cannot
12:28 3 conduct independent investigation. This era of
12:28 4 Internet access with Wi-Fi and smart phones, it's so
12:28 5 easy to try to research either the facts of the case or
12:28 6 the law. You are prohibited from doing that.

12:28 7 You are also prohibited from deliberating amongst
12:28 8 yourselves. Now, when you're in the jury room, when
12:28 9 you're at lunch, elsewhere, you can talk about anything
12:28 10 you want to talk about except the facts of this case.
12:28 11 I will tell you when you may begin your deliberations
12:28 12 at the end. You can't deliberate until I tell you to.

12:28 13 The last thing is you can't talk to third parties
12:28 14 about the case. And this is really hard because when
12:28 15 you go home and when you go to lunch or go home this
12:28 16 evening, if the case is still going on, your family is
12:28 17 going to want to know what you're doing up here.
12:28 18 They're going to want to talk to you about it. You're
12:29 19 just going to have to tell them you can't talk about
12:29 20 the case while you're serving as a juror. Talk to them
12:29 21 after it's all over, but you can't talk to them until
12:29 22 this case is concluded. So, those are three very
12:29 23 important things to remember.

12:29 24 Now, you're not -- I deal with this at the start
12:29 25 because I get this question. I don't allow note-taking

12:29 1 in the courtroom. Some judges do. I do not for this
12:29 2 reason: Some people are good note-takers; some are not
12:29 3 good note-takers. I was always one of the ones who
12:29 4 didn't take good notes in school so I understand where
12:29 5 you're coming from if you're in that crowd. But we
12:29 6 don't want the deliberations at the end of the case to
12:29 7 turn into a contest between those who take good notes
12:29 8 and those who do not.

12:29 9 Also, the demeanor of a witness may be an
12:29 10 important factor in some cases, and if your head is
12:29 11 buried in a notepad, you might miss something that's
12:29 12 important in a case. Also, when the case is underway,
12:30 13 there may be objections. One attorney may want to ask
12:30 14 a question or put in a piece of evidence that the other
12:30 15 attorney objects to. They're doing their job when they
12:30 16 do that. The fact that I rule one way or the other
12:30 17 should not be interpreted to mean that the court favors
12:30 18 one side or the other. My job is to ensure that each
12:30 19 party receives a fair and impartial trial in accordance
12:30 20 with the law.

12:30 21 So I'm going to send you to lunch now. We will
12:30 22 commence the trial at 2 o'clock. What I would like for
12:30 23 you to do is be in the jury room at about ten minutes
12:30 24 until 2:00, and you will have one order of business.

12:30 25 THE CLERK: And that clock is not right.

12:30 1 THE COURT: What time is it?

12:30 2 THE CLERK: 12:35.

12:30 3 THE COURT: Right. That clock hasn't been
12:31 4 adjusted for Daylight Saving Time, so it's 12:30 right
12:31 5 now. So be in your jury room at ten minutes until
12:31 6 2:00. Your order of business will be to elect a
12:31 7 foreperson. This will be the juror who presides over
12:31 8 your deliberations at the end. This will be the juror
12:31 9 that communicates with the court if there are any
12:31 10 issues that arise that the court needs to take action.
12:31 11 That juror will communicate with the court by written
12:31 12 note.

12:31 13 So that will be your first order of business.
12:31 14 When you finish doing that, let the bailiff know and
12:31 15 give the note with the identity of the foreperson to
12:31 16 the bailiff, and then we will commence the trial at
12:31 17 2 o'clock.

12:31 18 So I hope everyone has a good lunch and we'll see
12:31 19 you at 2 o'clock.

12:31 20 (WHEREUPON, the jury exited open court at
12:32 21 12:31 p.m.)

12:32 22 THE COURT: All right. Anything from either party
12:32 23 before we go into recess?

12:32 24 MR. BOGLE: Would you like to look at the motions
12:32 25 in limine at this time? Just take a few minutes, I

12:32 1 think.

12:32 2 THE COURT: That's -- we can go ahead and deal
12:32 3 with that.

12:32 4 Yes, sir.

12:32 5 MR. BOGLE: Okay. The State's first motion -- I
12:32 6 think we have got an agreement on some of these.

12:32 7 The State's first motion in limine, as you know,
12:32 8 Your Honor, we're seeking civil commitment. What we're
12:33 9 asking is there be no testimony or no comment by either
12:33 10 side about the where, where the respondent might go.

12:33 11 As Your Honor is aware, the facility run by the
12:33 12 Department of Mental Health is located behind the wire
12:33 13 at Broad River Correctional Institution. Any reference
12:33 14 to it being the old death row, which it is, or a prison
12:33 15 or incarceration or lockup or something like that,
12:33 16 that's not something we have to prove. What we have to
12:33 17 prove is that he's been convicted of the right kind of
12:33 18 crime and has the required mental abnormality that he
12:33 19 cannot control. So testimony about it being death row,
12:33 20 Department of Corrections, a prison, being punished,
12:33 21 and the general conditions are not relevant to what
12:33 22 we're doing here today.

12:33 23 MS. GOOD: We don't object to that.

12:33 24 THE COURT: That would be so granted.

12:33 25 MR. BOGLE: The second motion in limine, Number 2,

In the Matter of Melvin Beam 2012-CP-44-00272 November 7, 2016
Motions in limine

12:33 1 Your Honor, without repeating what I just said as far
12:33 2 as our burden of proof, any question as to treatment he
12:33 3 might get out there would be speculative. No one knows
12:33 4 until they arrive. So we would request that the State
12:34 5 just be allowed to have to prove what it has to prove,
12:34 6 the crime and the mental abnormality and the lack of
12:34 7 control, that any testimony about treatment, kind of
12:34 8 treatment, length of treatment, who does the treatment
12:34 9 is not really relevant and would not be appropriate in
12:34 10 a case like this.

12:34 11 MS. GOOD: We agree, Your Honor.

12:34 12 THE COURT: So ordered.

12:34 13 MR. BOGLE: Thank you, Your Honor.

12:34 14 Those are the two motions the State had.

12:34 15 THE COURT: Anything from the respondent?

12:34 16 MS. GOOD: Yes, sir, Your Honor. First, after
12:34 17 trying multiple cases with Mr. Bogle on these, we would
12:34 18 ask at this time to prohibit him from quoting the
12:34 19 legislative findings in the Sexually Violent Predator
12:34 20 Act, specifically Section 44-48-20. Mr. Bogle has made
12:34 21 it common that he normally, in his openings as well as
12:34 22 closing, states that there is an extremely dangerous
12:34 23 group of sexual violent predators and pretty much says
12:34 24 verbatim on finding on why they created this statute.

12:34 25 I believe it's very prejudicial, as he has not

12:34 1 been determined to be a sexually violent predator.
12:35 2 That's what the jury is here to determine. I believe
12:35 3 it's prejudicial to go through how significant these
12:35 4 SVPs are out in the community and they're dangerous to
12:35 5 society. I believe that, as he has not been found to
12:35 6 be an SVP yet, that this is inappropriate and
12:35 7 prejudicial to the jury.

12:35 8 THE COURT: Mr. Bogle.

12:35 9 MR. BOGLE: Your Honor, if I may pass up, I
12:35 10 drafted the actual paragraph. It's 44-48-20, the first
12:35 11 paragraph of the legislative findings. And oftentimes
12:35 12 I read that to them in my opening argument just to give
12:35 13 them an idea of why we're here and what the case is
12:35 14 about. Certainly, and this will be charged very
12:35 15 thoroughly by Your Honor, I'm advocating for a cause.
12:35 16 And I think stating the law as the General Assembly has
12:35 17 passed it is fair advocating.

12:35 18 At the same time, Your Honor is going to charge
12:35 19 them very thoroughly as to what the burden of proof is
12:35 20 on and what they have to find. So my quoting the law
12:35 21 verbatim to them and that one paragraph I don't think
12:36 22 causes any prejudice because they will know what the
12:36 23 burden of proof is and who has the burden of proof. I
12:36 24 think it would be appropriate for me to comment on that
12:36 25 during my argument.

12:36 1 And, finally, of course, Your Honor, it explains
12:36 2 to them that the arguments are not law.

12:36 3 THE COURT: Mr. Bogle, this paragraph also
12:36 4 mentions long-term control, care, and treatment. I
12:36 5 thought you didn't want the issue of treatment to be
12:36 6 before the court.

12:36 7 MR. BOGLE: Well, the statute requires -- and this
12:36 8 is something we have to prove through our expert --
12:36 9 that they have to be committed for long-term control,
12:36 10 care, and treatment in a secure facility. The details
12:36 11 of the treatment is what I'm trying to keep out.
12:36 12 Asking what kind of treatment, how long the treatment
12:36 13 is, what they talk about, how many sessions they have a
12:36 14 week, things like that. And it's in your jury charge.
12:36 15 One of the things we have to prove that they have to be
12:36 16 committed for long-term control, care, and treatment at
12:37 17 a secure facility.

12:37 18 MS. GOOD: Your Honor, just to add that these
12:37 19 legislative findings are not facts that the jury has to
12:37 20 determine, nor do they aid the jury in determining a
12:37 21 specific set of the law that they need to determine as
12:37 22 to whether or not Mr. Beam is a sexually violent
12:37 23 predator, so we'd ask that you not allow him --

12:37 24 THE COURT: I'm going to grant the respondent's
12:37 25 motion.

12:37 1 Mr. Bogle, do not read that initial paragraph.

12:37 2 MR. BOGLE: Okay, Your Honor. Thank you.

12:37 3 MS. GOOD: Next, Your Honor --

12:37 4 MR. BOGLE: Could I have it back?

12:37 5 THE COURT: Yes, sir.

12:37 6 MS. GOOD: We are also asking at this time to
12:37 7 prohibit the State's doctor from mentioning any
12:37 8 polygraph exam, Your Honor. As part of her
12:37 9 examination, she conducted a polygraph exam of
12:37 10 Mr. Beam. As the court knows; it's the law that these
12:37 11 are not allowed in court due to the inconsistencies
12:37 12 between polygraphs, that they cannot be determined
12:37 13 whether they're actually truthful or not. So we would
12:38 14 ask that she not be allowed to mention the polygraph
12:38 15 exam.

12:38 16 THE COURT: Mr. Bogle.

12:38 17 MR. BOGLE: We're agreed on that. I mean, it's a
12:38 18 tool they use. It's a useful tool that they use along
12:38 19 with a bunch of other tools, but I think in the context
12:38 20 of the psychological evaluation, it might be permitted.
12:38 21 But because of the long-standing rulings on polygraph,
12:38 22 I think it's safer not to bring it up. And I advised
12:38 23 my witness I will not be asking her about that.

12:38 24 THE COURT: So ordered.

12:38 25 MS. GOOD: We would also ask, Your Honor, that his

12:38 1 witness not be allowed to mention any charges that were
12:38 2 dismissed for my client. He does have several charges
12:38 3 that he was convicted of. However, specifically in
12:38 4 2008, he had a burglary second and an assault with
12:38 5 intent to commit criminal sexual conduct. These
12:38 6 charges were completely nonprossed, not part of any
12:38 7 plea agreement or anything of that nature. I do
12:38 8 believe that they would be prejudicial based on this
12:38 9 type of case, and as well as, Your Honor, they were not
12:38 10 convictions. They were merely just an arrest, and that
12:38 11 they were ultimately dismissed.

12:39 12 MR. BOGLE: Dr. Gomez will testify -- I've got a
12:39 13 memo of law on this subject, Your Honor, which I can
12:39 14 pass up if you would like.

12:39 15 THE COURT: Yes, sir.

12:39 16 MR. BOGLE: Dr. Gomez, the State's expert, will
12:39 17 testify how it is necessary, in order to analyze this
12:39 18 guy and something typically done by experts in her
12:39 19 field, to look at not just convicted crimes but crimes
12:39 20 that don't result in a conviction.

12:39 21 In the Matter of the Care and Treatment of Ettel,
12:39 22 which is a 2008 case in the court of appeals, there
12:39 23 Dr. Crawford properly testified about his prior sexual
12:39 24 conviction as well as a nonsexual murder conviction.
12:39 25 And she also testified about offenses that did not

12:39 1 result in convictions. And these were relevant because
12:39 2 Dr. Crawford relied upon them in evaluating Ettel's
12:39 3 need. I'm reading from page two of my report.

12:39 4 And also -- let's see. In the Matter of the Care
12:40 5 and Treatment of Harvey, which was a supreme court case
12:40 6 in 2003, there was also testimony about other crimes.
12:40 7 But the main thing about nonconvictions comes out of
12:40 8 the Ettel case, Your Honor. And we would submit it's
12:40 9 part of the science and part of the scoring on the
12:40 10 Static-99R, which is an actuarial assessment you will
12:40 11 hear testimony about from both witnesses.

12:40 12 Part of the scoring is to look at crimes that
12:40 13 didn't result in convictions and examine the underlying
12:40 14 details. What you're looking for is some kind of
12:40 15 pattern of behavior here and whether or not the
12:40 16 respondent can control these issues. So it's the kind
12:40 17 of thing they testify about. It meets the definition
12:40 18 under the *Cutro* case. It's a type of evidence relied
12:40 19 upon by experts in the particular field. And she will
12:40 20 testify that that is the case.

12:40 21 THE COURT: All right. Specifically, what were
12:41 22 the offenses that were -- what were the charges that
12:41 23 were nonprossed?

12:41 24 MR. BOGLE: Well, the big one we're talking about
12:41 25 is an assault with intent to commit criminal sexual

12:41 1 conduct. Arrest that was noncrossed.

12:41 2 MS. GOOD: He was arrested for burglary, second
12:41 3 assault with intent to commit CSC, and malicious injury
12:41 4 to personal property. They were all out of the same
12:41 5 batch from 2000. Those were the ones that we're asking
12:41 6 they're not to be mentioned.

12:41 7 MR. BOGLE: I'll ask her up front on the witness
12:41 8 stand, "Did these crimes result in convictions?" She
12:41 9 will say no. I'll then ask her, "Is it important to
12:41 10 evaluate him to include information like this?" And
12:41 11 she will explain to the court why it's something they
12:41 12 did.

12:41 13 THE COURT: I want to read these cases. I'll do
12:41 14 that over lunch.

12:41 15 MR. BOGLE: Thank you, Your Honor.

12:41 16 THE COURT: All right. Anything further?

12:41 17 MS. GOOD: I don't know if you want to deal with
12:41 18 the indictment.

12:41 19 MR. BOGLE: Yeah. Let's do that now.

12:41 20 MS. GOOD: Your Honor, as part of the State's
12:41 21 burden of proof, they always have to show that there is
12:41 22 a conviction. We obviously don't dispute there were
12:42 23 two convictions for CSC with a minor first. They do
12:42 24 enter the sentencing sheets. We have no problem with
12:42 25 the sentencing sheets being entered. However, I

12:42 1 believe Mr. Bogle wants to enter the indictments and
12:42 2 warrants. We would ask the indictments and warrants
12:42 3 not be introduced along with the sentencing sheets as
12:42 4 they just have to prove that he was convicted of the
12:42 5 CSC. It says on the sentencing sheet he was convicted
12:42 6 of a CSC with a minor first. The indictments and
12:42 7 warrants just add extra prejudice to the jury as to the
12:42 8 past acts of Mr. Beam.

12:42 9 MR. BOGLE: One of the things we have to prove is
12:42 10 that he's been convicted of a sexually violent offense.
12:42 11 And during Dr. Gomez's testimony, she will identify
12:42 12 these documents as proof of a sexually violent
12:42 13 conviction. What they consist of is the sentencing
12:42 14 sheet, the indictment, and the arrest warrants.

12:42 15 Your Honor, I don't mind pulling the warrants
12:42 16 because warrants are a lot easier to get than
12:42 17 indictments. But the indictments and sentencing sheet
12:42 18 are part and parcel the same. Of course, as Your Honor
12:42 19 knows from cases of this nature, to make her diagnosis,
12:43 20 she's got to explain to the jury what the underlying
12:43 21 facts and details were. So all of that is going to be
12:43 22 gotten into anyway. I would think that actually the
12:43 23 face sheet of the indictment wouldn't make that much
12:43 24 difference, but we think of the indictment and the
12:43 25 sentencing sheet as being the conviction, and they are

12:43 1 certified copies out here from the clerk's office.

12:43 2 THE COURT: Well, the expert is going to use that.
12:43 3 I'm going to overrule your motion on the issue of the
12:43 4 indictment.

12:43 5 Mr. Bogle, you pull the warrant, and I'll allow
12:43 6 the indictment to go in.

12:43 7 MS. GOOD: Finally, Your Honor, I would ask that
12:43 8 the State not be allowed to mention Mr. Beam in a
12:43 9 contempt of court regarding the second evaluation on
12:43 10 this case.

12:43 11 Kind of give a little background. He was
12:43 12 initially evaluated by Dr. Kimberly Harrison, who was
12:43 13 appointed by the court after a probable cause hearing.
12:43 14 Ultimately, she found him not to be a sexually violent
12:43 15 predator.

12:43 16 At that time, the attorney general's office, under
12:44 17 the statute, asked for a second opinion, who is
12:44 18 Dr. Gomez. At one point I believe Mr. Beam was being
12:44 19 evaluated by a Dr. Mulbry. Ultimately, he didn't
12:44 20 cooperate, did not go back after meeting with him the
12:44 21 first or second time. Then ultimately Dr. Gomez came
12:44 22 onto the case.

12:44 23 In that period of time he was found in contempt of
12:44 24 court for not cooperating, and he would be allowed to
12:44 25 purge himself of the contempt by ultimately cooperating

12:44 1 with the State's doctor, Dr. Gomez.

12:44 2 We'd ask that it not be brought into court he was
12:44 3 held in contempt for not cooperating with Dr. Gomez.

12:44 4 MR. BOGLE: The timeline -- as you know, we filed
12:44 5 the case in 2012. Dr. Harrison's report came out in
12:44 6 February 13th of 2013. We then, the same day, notified
12:44 7 his attorney at the time, Elizabeth Wiegel, we would be
12:44 8 seeking a second opinion.

12:45 9 Dr. Mulbry, who was with the sexual behaviors lab
12:45 10 at MUSC, was assigned by the director of that lab to
12:45 11 conduct the evaluation, and Beam was transported there
12:45 12 on April 22, 2013.

12:45 13 The problem was after some initial testing, he
12:45 14 wouldn't talk to anybody so he came back to the jail.
12:45 15 The second time they took him down there was May 15,
12:45 16 2013, and he wouldn't leave the jail. So we filed a
12:45 17 motion to compel the evaluation. It was heard in front
12:45 18 of Judge Gibbons. Judge Gibbons did not find him in
12:45 19 contempt at that time but ordered him to cooperate with
12:45 20 the evaluation or be subject to it.

12:45 21 He was taken back to MUSC on December 3rd of '13.
12:45 22 He did not cooperate. We filed a second motion. A
12:45 23 hearing was held on January 7, 2014. Judge John Hayes
12:45 24 found him in contempt and stopped all the statutory
12:45 25 time limits. And he just sat in jail. In November of

12:45 1 2014, we got a letter from Mr. Beam saying he was
12:45 2 willing to cooperate, then the case proceeded from
12:45 3 there. By then Dr. Mulbry had left MUSC, and the case
12:46 4 was reassigned to Dr. Gomez, who at that time was with
12:46 5 the same lab.

12:46 6 Right now the only way I can think it might come
12:46 7 up, he signed consent forms to be evaluated. And he
12:46 8 signed them on at least two or three separate days,
12:46 9 once when Mulbry was about to see him and once when
12:46 10 Gomez was about to see him. That might come up in her
12:46 11 testimony.

12:46 12 Certainly, if the respondent takes the stand,
12:46 13 under cross-examination as to whether or not he was
12:46 14 held in contempt by the court for not agreeing to be
12:46 15 evaluated, I think that's fair game. So it kind of
12:46 16 depends on when it might come up, Your Honor.

12:46 17 THE COURT: Well, I'm going to deny your motion.
12:46 18 If he takes the stand, I think that's proper
12:46 19 impeachment. And also the course of treatment and
12:46 20 course of evaluation will come up in the expert's
12:46 21 testimony so I'm going to deny your motion on that.

12:46 22 MS. GOOD: Thank you, Your Honor.

12:46 23 MR. BOGLE: Thank you.

12:46 24 That's it, Your Honor.

12:46 25 THE COURT: All right. We'll break and reconvene

12:47 1 at 2 o'clock.

12:47 2 MR. BOGLE: Thank you, Your Honor.

12:47 3 (WHEREUPON, lunch recess was taken from
02:01 4 12:47 p.m. to 2:01 p.m.)

02:01 5 THE COURT: Anything from either party before we
02:01 6 bring our jury back in?

02:01 7 MR. BOGLE: Nothing from the State, Your Honor.

02:01 8 MS. GOOD: No, sir.

02:01 9 THE COURT: The jury has sent a note that
02:01 10 Mr. Sartor, which is Juror Number 226, is the foreman.

02:01 11 (WHEREUPON, State's Exhibit Number 1 was marked
02:02 12 for identification.)

02:02 13 (WHEREUPON, the jury entered open court at
02:02 14 2:02 p.m.)

02:03 15 THE COURT: Ladies and gentlemen, I hope everyone
02:03 16 had a good lunch.

02:03 17 Mr. Foreman, you will sit where you're seated
02:03 18 right now, on the end whenever you're in the courtroom.

02:03 19 Madam Alternate, that's your designated seat.

02:03 20 Everyone else can sit wherever they want to, but
02:03 21 these two have to be there.

02:03 22 We're ready for opening statements?

02:03 23 MR. BOGLE: Yes, your Honor.

02:03 24 THE COURT: Ladies and gentlemen, we're ready to
02:03 25 proceed with opening statements.

02:03 1 MR. BOGLE: Thank you, Your Honor. May it please
02:03 2 the court. Ms. Good. My name is Jim Bogle. Again,
02:03 3 I'm with the attorney general's office out of Columbia.
02:03 4 People sometimes wonder when they hear about these
02:03 5 cases why the solicitor or the county attorney or
02:03 6 somebody here in Union might be doing them instead of
02:03 7 us. And the reason is when they wrote this law back in
02:03 8 1998, they identified our office to do these cases
02:03 9 statewide. So what you've got is you've got me and a
02:03 10 guy named Cam Morrow back at the office. He and I have
02:04 11 the state divided in half. I've got the 16th Circuit.
02:04 12 That brings me up here.

02:04 13 I'd first like to thank you for your service.
02:04 14 It's a pretty day outside. Wonderful weather. A lot
02:04 15 of things going on these days. But you're here because
02:04 16 you're representing yourself. You're also representing
02:04 17 Union County, and you're representing Mr. Beam behind
02:04 18 me.

02:04 19 Now, when you told your friends and neighbors you
02:04 20 were going to the court of common pleas to see what
02:04 21 would happen, most people -- court of common pleas is
02:04 22 where we are now is civil court. General sessions is
02:04 23 criminal. And you might have thought, I'm going to be
02:04 24 hearing a case involving an auto accident or maybe
02:04 25 medical malpractice or something like that, and this is

02:04 1 way different.

02:04 2 In 1998 the General Assembly passed a law called
02:04 3 the Sexually Violent Predator Act. And what they did
02:04 4 was -- what this law does is if a person has been
02:04 5 convicted of a sexually violent offense, and there's 16
02:04 6 of them listed in the statute, and Mr. Beam has been
02:04 7 convicted of two: Criminal sexual conduct with a minor
02:04 8 in the first degree involving young children.

02:04 9 If you have been convicted of one of those crimes
02:05 10 and you go to prison, at the end of your prison term
02:05 11 your case is reviewed, and it goes through a number of
02:05 12 steps. Then it comes to court like it is today.

02:05 13 And what we have to do is the burden is on the
02:05 14 State of South Carolina, the State's witnesses, my
02:05 15 side. The burden is on us to prove to you beyond a
02:05 16 reasonable doubt that Melvin Beam is a sexually violent
02:05 17 predator.

02:05 18 Now, the judge will explain to you later on in
02:05 19 more detail what that burden of proof means beyond a
02:05 20 reasonable doubt. In my feeling it's if you have -- if
02:05 21 you're firmly convinced that we have met our burden of
02:05 22 proof, you are obligated to find a verdict for the
02:05 23 State.

02:05 24 On the other hand, if you don't have that firm,
02:05 25 convincing feeling about it, then you're obligated to

02:05 1 find a verdict for Mr. Beam and say he's not a sexually
02:05 2 violent predator.

02:05 3 The law says a sexually violent predator is
02:05 4 someone convicted of one of those offenses, like I said
02:05 5 a minute ago, but also they have to be diagnosed with a
02:05 6 mental abnormality or a personality disorder that makes
02:05 7 them likely to commit the same types of crimes again
02:06 8 unless they're confined for long-term control, care,
02:06 9 and treatment.

02:06 10 So, basically, this is a civil commitment process.
02:06 11 In this case the court ordered Dr. Kimberly Harrison --
02:06 12 she's sitting behind me. She was originally with the
02:06 13 Department of Mental Health, and she did the initial
02:06 14 evaluation of Mr. Beam. And after her evaluation, she
02:06 15 says he did not meet the criteria and should not be
02:06 16 civilly committed.

02:06 17 Now, the statute allows the State, if it wants
02:06 18 to -- we rarely do, but sometimes we do -- to get a
02:06 19 second opinion. And we did. We sent the case to a
02:06 20 laboratory in Charleston. We have done this before.
02:06 21 And they assigned eventually Dr. Gomez, who is also
02:06 22 sitting over there.

02:06 23 Dr. Gomez also did an evaluation of Mr. Beam, and
02:06 24 she came back saying that, yes, he does meet the
02:06 25 criteria. She did extra things. She looked for what

02:06 1 we call more data points about Mr. Beam and came back
02:06 2 with a recommendation that he was, in fact, he did meet
02:06 3 the criteria to be committed for long-term control,
02:06 4 care, and treatment. And so what we have is a jury
02:07 5 trial in front of you to decide who has the evidence to
02:07 6 show that to you.

02:07 7 Now, in most cases in court, witnesses can't
02:07 8 testify about opinions. They can testify to what
02:07 9 things they see, things they hear. Like I heard the
02:07 10 car crash. I saw the gun go off. I saw the light turn
02:07 11 red. Things like that. They can't give opinions. But
02:07 12 there can be special circumstances. If a witness has
02:07 13 the training and the education in a particular field
02:07 14 that will help you, the jury, the ultimate finders of
02:07 15 the facts, to decide something, that witness can be
02:07 16 declared an expert witness by the court and allowed to
02:07 17 give opinions.

02:07 18 And what you will hear from today, I believe, will
02:07 19 be the expert testimony of Dr. Gomez followed by expert
02:07 20 testimony of Dr. Harrison. So you're going to hear
02:07 21 people give opinions about Mr. Beam.

02:07 22 All we can ask you to do is listen to the
02:07 23 testimony, look at the exhibits that come in, use your
02:07 24 common sense. And the question before you is going to
02:07 25 be: Can the State prove beyond a reasonable doubt that

02:08 1 Melvin Beam has been convicted of a sexually violent
02:08 2 crime -- and there's two of them -- and that he has the
02:08 3 mental abnormality. It's called pedophilic disorder.
02:08 4 Pedophilia. Sexually attracted to young children,
02:08 5 prepuberty children. He has that. No question about
02:08 6 that. Both experts have assigned that diagnosis. The
02:08 7 question is, is that diagnosis at such a level that he
02:08 8 cannot control his actions and he needs to be committed
02:08 9 to a secure place for treatment. That's what the case
02:08 10 is. Thank you again.

02:08 11 Your Honor.

02:08 12 THE COURT: Ms. Good.

02:08 13 MS. GOOD: Thank you, Your Honor.

02:08 14 Last week, I don't know if anybody was watching.

02:08 15 I know I did. It took everything I could to stay
02:08 16 awake. But history was made when the Cubs won the
02:08 17 World Series after 108 years. A lot of people said
02:08 18 this would never happen. Nothing like this. We would
02:08 19 never see it in our lifetime.

02:08 20 However, the management of the Cubs over the past
02:09 21 years created a team, and they looked at the team and
02:09 22 the predictability of it and said, you know what, this
02:09 23 is going to be a good team. That is what we're trying
02:09 24 to do.

02:09 25 And, ladies and gentlemen, based on their evidence

02:09 1 and their data, this team came together and they won a
02:09 2 World Series. I don't know if anybody has ever seen
02:09 3 the movie Money Ball. It's based on Billy Dean. He
02:09 4 was the manager of the operations for the Oakland A's
02:09 5 back in the '80s. And he created this baseball team.
02:09 6 He looked at statistics to predict what the future
02:09 7 would hold and whether this team could win a World
02:09 8 Series. I look at my notes because I want to get it
02:09 9 right. But he had this quote. It says, "The math
02:09 10 works. Over the course of the season, there's some
02:09 11 predictability to baseball. When you play 162 games,
02:09 12 you eliminate a lot of random outcomes. There's so
02:09 13 much data that you can predict. Individual players'
02:09 14 performances and also the odds that certain strategies
02:09 15 will pay off."

02:10 16 This case, ladies and gentlemen, you look at it
02:10 17 the same way as Billy Dean looked at baseball in
02:10 18 creating the team. This is all about the
02:10 19 predictability of whether Mr. Beam will reoffend in a
02:10 20 sexual nature.

02:10 21 It's no secret that he has sexually violent crimes
02:10 22 in his past. Nobody is standing here saying this
02:10 23 didn't happen. He was convicted of it. He pled guilty
02:10 24 to them and received five years based upon the
02:10 25 recommendation by the solicitor in this county, State

02:10 1 of South Carolina, and the judge gave him five years.
02:10 2 He has done that time, and now we're here to determine
02:10 3 whether in the future he will predictably reoffend
02:10 4 sexually.

02:10 5 You're going to hear, as Mr. Bogle just told you,
02:10 6 that beyond a reasonable doubt the State has to prove
02:10 7 to you that he is going to reoffend or do something to
02:10 8 somebody else beyond a reasonable doubt. Firmly
02:10 9 convinced he's going to do something.

02:10 10 They're going to put up Dr. Gomez who you will
02:10 11 hear is the second doctor who evaluated him after the
02:10 12 first doctor appointed by the court found him not to be
02:11 13 a sexually violent predator based on her opinion. Pay
02:11 14 attention to the statistics of the tests that are used.
02:11 15 There's certain tests that are used to look at the
02:11 16 statistics to predict, give percentages as to whether
02:11 17 somebody will reoffend.

02:11 18 In this case you're going to hear there is a
02:11 19 difference between the doctors as to him being a four;
02:11 20 however, you're going to hear Dr. Gomez say he is a two
02:11 21 on a scale of 12, and Dr. Harrison will say he's a one
02:11 22 on a scale of 12 to reoffend. 12 being the highest,
02:11 23 negative three being the lowest.

02:11 24 At the end we're going to come back and ask you to
02:11 25 look at those statistics, look at all the evidence

02:11 1 that's presented to you and find him not to be a
02:11 2 sexually violent predator. Thank you.

02:11 3 THE COURT: All right.

02:11 4 Mr. Bogle, call your first witness.

02:11 5 MR. BOGLE: Thank you, Your Honor. May it please
02:11 6 the court. We call Dr. Ana Gomez.

02:11 7 ANA GOMEZ, M.D.,

02:11 8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

02:12 9 DIRECT EXAMINATION

02:12 10 BY MR. BOGLE:

02:12 11 Q Good afternoon, Dr. Gomez.

02:12 12 A Good afternoon.

02:12 13 Q Would you please, for the record, give your full
02:12 14 name.

02:12 15 A Ana Gomez.

02:12 16 Q And where do you live right now?

02:12 17 A I live in Tampa or near Tampa, Florida.

02:12 18 Q Okay. Back when you were handed this particular
02:12 19 case, where were you living at the time?

02:12 20 A I lived in Charleston, South Carolina.

02:12 21 Q What is your occupation?

02:12 22 A I'm a psychiatrist.

02:12 23 Q And what is your current occupation? Who are you
02:13 24 working for, and what do you do in the state of
02:13 25 Florida?

02:13 1 A Currently, I'm volunteering faculty at the
02:13 2 University of South Florida. I work at a private
02:13 3 nonprofit where I treat people on an inpatient
02:13 4 psychiatric unit. I also work in the psychiatric
02:13 5 emergency room, and I treat criminal defendants who are
02:13 6 found incompetent to stand trial.

02:13 7 Q What degrees do you possess?

02:13 8 A I have a bachelor's degree in psychology. I have
02:13 9 a medical degree from Loma Linda University School of
02:13 10 Medicine.

02:13 11 Q Have you had -- now, back when you got handed this
02:13 12 case, back in 2013 or so, or '14, what was your job in
02:13 13 South Carolina back then?

02:13 14 A At that time I worked at MUSC. I was a full-time
02:13 15 instructor in the department of psychiatry. And I was
02:13 16 also helping direct the fellowship program that trains
02:13 17 psychiatrists to do this kind of work that I'm doing
02:14 18 right now.

02:14 19 Q Have you had any specialized training in the field
02:14 20 of psychiatry beyond your medical degree?

02:14 21 A Yes. I did a psychiatry residency. That's a
02:14 22 four-year program. I did two years at the University
02:14 23 of Louisville in Kentucky. I did two years, my last
02:14 24 two years, at Loma Linda University.

02:14 25 Q What states are you licensed to practice

02:14 1 psychiatry in?

02:14 2 A I am licensed in South Carolina, California, and
02:14 3 Florida.

02:14 4 Q Basically, what is the study of psychiatry?

02:14 5 A Psychiatry is the study of illnesses that affect
02:14 6 the mind.

02:14 7 Q And when you say the word "forensic psychiatry,"
02:14 8 use the word "forensic" along with it, what are we
02:14 9 saying there? What does that mean?

02:14 10 A Forensic psychiatry is the study of mental illness
02:14 11 as it relates to and intersects with issues that have
02:14 12 to do with the law. And frequently it will require an
02:14 13 expert opinion on a question that has to do with both
02:14 14 issues of mental illness and the law.

02:15 15 Q Is there something called board certified in
02:15 16 forensic psychiatry?

02:15 17 A Yes.

02:15 18 Q Are you board certified in forensic psychiatry?

02:15 19 A Yes, I am.

02:15 20 Q What steps do you have to go through to get board
02:15 21 certified?

02:15 22 A So after finishing residency, which is four years,
02:15 23 you have to sit for the general psychiatry board
02:15 24 examination. And you also have to do one extra year of
02:15 25 subspecialty training -- it's called a fellowship -- in

02:15 1 forensic psychiatry. And then you have to sit for that
02:15 2 specialized board exam.

02:15 3 Q Now, Doctor, how long have you been board
02:15 4 certified in psychiatry, forensic psychiatry?

02:15 5 A Forensic psychiatry, since October 2013.

02:15 6 Q How much of your practice is dedicated to that
02:15 7 field?

02:15 8 A Currently 20 percent.

02:15 9 Q Okay. And back when you were working at MUSC at
02:15 10 the time you evaluated Mr. Beam, how much of your
02:15 11 practice was dedicated to that field then?

02:15 12 A 80 percent at that time.

02:15 13 Q Does your work as a forensic psychiatrist have you
02:16 14 conducting psychiatric evaluations of people? And I'm
02:16 15 talking about your career now and your career back when
02:16 16 you were working at MUSC.

02:16 17 A Yes.

02:16 18 Q What types of evaluations have you conducted?
02:16 19 What categories?

02:16 20 A Okay. So I would conceptualize this as falling
02:16 21 into two different categories. One category has to do
02:16 22 with criminal evaluations. These are things like
02:16 23 competency to stand trial, criminal responsibility,
02:16 24 which is frequently known as an insanity evaluation.
02:16 25 I've also done mitigation evaluations for sentencing.

02:16 1 The other category I would call civil. These are
02:16 2 things like fitness for duty, conservatorship and
02:16 3 guardianship evaluations, and also psychosexual or
02:16 4 sexual behaviors evaluations.

02:16 5 Q When you say "psychosexual behavioral
02:16 6 evaluations," what are you talking about there?

02:16 7 A Those are evaluations that look specifically at
02:17 8 whether an individual has a mental illness that is
02:17 9 related to deviant or unhealthy sexual interests.

02:17 10 Q And when you were working at MUSC and also now,
02:17 11 how many evaluations have you done under South
02:17 12 Carolina's sexually violent predator law?

02:17 13 A I've done five.

02:17 14 Q Have you ever been hired by defense counsel to
02:17 15 conduct psychiatric evaluations and testify about them
02:17 16 in court?

02:17 17 A Yes.

02:17 18 Q What types of cases would those have been?

02:17 19 A So I would just like to clarify that most of the
02:17 20 work I did at MUSC was court ordered where neither side
02:17 21 was retaining anybody. It was ordered by the court.

02:17 22 So to answer the question, I have been retained
02:17 23 about ten times by defense counsel. The type of
02:17 24 evaluations were competency to stand trial evaluations,
02:17 25 insanity evaluations, and mitigation evaluations.

02:17 1 Q Now, have you previously been recognized by courts
02:18 2 and testified as an expert witness in the fields of
02:18 3 psychiatry as well as forensic psychiatry?

02:18 4 A Yes.

02:18 5 Q Where would that have been and about how many
02:18 6 times?

02:18 7 A In California, I've testified about three to five
02:18 8 times, approximately 15 times in South Carolina, and
02:18 9 approximately 15 times in Florida.

02:18 10 MR. BOGLE: Your Honor, at this time I'd like to
02:18 11 ask the court to recognize Dr. Ana Gomez as an expert
02:18 12 witness in the fields of psychiatry and forensic
02:18 13 psychiatry.

02:18 14 THE COURT: Any objection?

02:18 15 MS. GOOD: No objection.

02:18 16 THE COURT: All right. The witness would be
02:18 17 admitted as an expert in psychiatry and forensic
02:18 18 psychiatry.

02:18 19 MR. BOGLE: Thank you.

02:18 20 Q Now, Dr. Gomez, how did you get involved in this
02:18 21 case involving Melvin Beam?

02:18 22 A At the time I was working at MUSC, and I was
02:18 23 assigned the case.

02:18 24 Q Had another psychiatrist or expert had the case at
02:18 25 that particular location prior to you?

02:18 1 A Yes.

02:18 2 Q Why did it get referred from that person to you?

02:18 3 A Well, the initial evaluation started in 2013. And

02:19 4 towards the end of that year, Mr. Beam no longer wanted

02:19 5 to participate in the evaluation. And it took

02:19 6 approximately another year to restart the whole thing.

02:19 7 And by then that evaluator was not doing those kinds of

02:19 8 cases. I don't think he was actually even working

02:19 9 there anymore so it had to be reassigned to somebody.

02:19 10 Q Okay. Now, were you or your office paid a fee by

02:19 11 our office to conduct this evaluation?

02:19 12 A I'm paid a salary. I'm not sure how the contract

02:19 13 works between the attorney generals and MUSC.

02:19 14 Q So at the time you evaluated Mr. Beam at our

02:19 15 request, the State's request, you were a salaried

02:19 16 employee at the lab in Charleston; is that right?

02:19 17 A Yes.

02:19 18 Q And would you have been paid any differently

02:19 19 depending on how your evaluation came out?

02:19 20 A No. In fact, I would have been paid the same if I

02:19 21 hadn't done this evaluation and just been given a

02:20 22 different one to do.

02:20 23 Q Can you please describe for the jury the protocol

02:20 24 you used in doing this type of evaluation of Mr. Beam?

02:20 25 A So the protocol that I used or that I followed was

02:20 1 established by the sexual behaviors clinic and lab at
02:20 2 MUSC, and they use a three-prong approach. And this is
02:20 3 based on the advice of experts in the field and
02:20 4 professional organizations.

02:20 5 So the three prongs are information gathering. So
02:20 6 this is things like reviewing records and reviewing the
02:20 7 client and reviewing relevant other people that may be
02:20 8 available for this particular case.

02:20 9 The second prong is testing. This involves things
02:20 10 like questionnaires, assessments, et cetera. The third
02:20 11 prong is physiology. So this is measuring arousal
02:20 12 response to stimulus. Sometimes it includes blood
02:20 13 work. It just sort of depends on the individual
02:20 14 evaluation needs.

02:20 15 Q Okay. Now, this particular case or in cases of
02:21 16 this nature, is there more than one person that assists
02:21 17 in the evaluation you did, perhaps perform some of the
02:21 18 tests you did or things like that?

02:21 19 A Yes.

02:21 20 Q Is it common for experts such as yourself to rely
02:21 21 upon testing done by others in working on an evaluation
02:21 22 like this?

02:21 23 A Yes.

02:21 24 Q Okay. Now, as part of this evaluation process,
02:21 25 did you meet with and interview Melvin Beam?

02:21 1 A Yes, I did.

02:21 2 Q Is the man you met and interviewed present in the
02:21 3 courtroom today?

02:21 4 A Yes.

02:21 5 Q Would you point him out for the jury.

02:21 6 A He is sitting next to Attorney Good.

02:21 7 Q Thank you.

02:21 8 Now, how long and how many times did you meet with
02:21 9 Melvin Beam?

02:21 10 A I saw Mr. Beam three different times for a total
02:21 11 of seven hours and two minutes.

02:21 12 Q Did he sign at some point a consent form that you
02:21 13 furnished him to do the -- to submit to this
02:21 14 evaluation?

02:21 15 A Yes. Every time somebody comes in. Sometimes
02:21 16 they come in only for the testing and we don't
02:22 17 interview them that day. It doesn't matter. Every
02:22 18 time they come in, regardless of what the purpose is
02:22 19 that day, they have to sign a consent form or review
02:22 20 the one that they already signed.

02:22 21 Q Did that happen here?

02:22 22 A Yes.

02:22 23 Q Now, regarding in addition to meeting with
02:22 24 Mr. Beam and the other things we're going to talk
02:22 25 about, did you also receive a file of information to

02:22 1 look at and read about Mr. Beam?

02:22 2 A Yes.

02:22 3 Q What type of information was in that file,
02:22 4 briefly? What type of stuff are we talking about?

02:22 5 A So there were records like criminal justice-type
02:22 6 records talking about the various offenses and the rap
02:22 7 sheet. There were records from the South Carolina
02:22 8 Department of Corrections. There were records from the
02:22 9 Department of Social Services. And there were records
02:22 10 from the Children's Advocacy Center of Spartanburg.

02:22 11 Q Now, in this particular case, did you also have
02:22 12 access to police records, the underlying investigations
02:22 13 of the two crimes we're going to talk about?

02:22 14 A Yes.

02:22 15 Q And at some point in your evaluation, did you
02:22 16 request additional records regarding one of the
02:23 17 victims?

02:23 18 A Yes, I did.

02:23 19 Q Why was that?

02:23 20 A Actually, I requested additional records regarding
02:23 21 both of the victims. It was because there was extra
02:23 22 information that I had seen in some of the
02:23 23 documentation and then also some information that had
02:23 24 come up while I was interviewing Mr. Beam, and so I
02:23 25 found sort of some rabbit holes, if you will, that I

02:23 1 wanted to kind of chase down.

02:23 2 Q And as a result of this request, was our office
02:23 3 able to provide you a lot of detailed records on at
02:23 4 least one of the victims?

02:23 5 A Yes.

02:23 6 Q Now, is the information you looked at, the written
02:23 7 stuff you looked at, is this the kind of documents and
02:23 8 information that's typically and reasonably relied upon
02:23 9 by other experts in your field?

02:23 10 A Yes.

02:23 11 Q And did you rely upon this information that you
02:23 12 told us about a minute ago and your evaluation of
02:23 13 Mr. Beam along with the testing you did, did you rely
02:23 14 upon all of this stuff in forming an opinion about him
02:24 15 which you're going to testify about today?

02:24 16 A Yes.

02:24 17 Q Now, can you explain to the jury how a person's
02:24 18 past sexual offense behavior relates to future sexual
02:24 19 offense behavior?

02:24 20 A Past sexual offense behavior can relate to future
02:24 21 sexual offense behavior if the behavior is due to a
02:24 22 mental illness and depending on whether there's been
02:24 23 adequate treatment for that.

02:24 24 Q Now, based upon your interview of Mr. Beam, the
02:24 25 records you looked at, all the documents and stuff like

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Ana Gomez, M.D. - Direct Examination

02:24 1 that, has Mr. Beam been convicted of sexually violent
02:24 2 offenses?

02:24 3 A Yes.

02:24 4 MR. BOGLE: If I may I approach, Your Honor.

02:24 5 THE COURT: Yes, sir.

02:24 6 BY MR. BOGLE:

02:24 7 Q I'd like to hand you a certified copy, State's
02:24 8 Exhibit 1, the indictment and sentencing sheet from
02:24 9 2009-GS-44-125 State vs. Melvin Beam, a conviction for
02:24 10 criminal sexual conduct with a minor in the first
02:24 11 degree. State's Exhibit 1.

02:24 12 Is that a document that you looked at as part of
02:24 13 your evaluation?

02:24 14 A Yes.

02:25 15 Q And I'd like to hand you a copy of State's
02:25 16 Exhibit 2, another indictment and sentencing sheet on
02:25 17 Mr. Beam, 2009-GS-44-1270 is the number, also
02:25 18 indictment for criminal sexual conduct with a minor in
02:25 19 the first degree.

02:25 20 Is this a document you looked at in the course of
02:25 21 your investigation?

02:25 22 A Yes.

02:25 23 Q Is the crime of criminal sexual conduct in the
02:25 24 first degree a sexually violent offense under South
02:25 25 Carolina law?

02:25 1 A Yes, it is.

02:25 2 Q What was the date of sentencing in these

02:25 3 particular indictments? In the lower right-hand

02:25 4 corner.

02:25 5 A October 14, 2009.

02:25 6 Q Was he sentenced to both of them on the same day?

02:25 7 A Yes.

02:25 8 Q Were these guilty pleas or were they trials, can

02:25 9 you tell?

02:25 10 A These were guilty pleas.

02:25 11 Q Okay. Now, I'd like you to talk about the

02:25 12 victims. First one, in number 125, victim's name

02:25 13 starts with a C. What is the information -- let me ask

02:25 14 you this. Is it -- you reviewed these documents as

02:26 15 part of your preparation for your evaluation of

02:26 16 Mr. Beam; is that correct?

02:26 17 A Yes.

02:26 18 Q And these are the type of things looked at and

02:26 19 considered by experts in your field, correct?

02:26 20 A Yes.

02:26 21 Q Why is it necessary to look at the underlying

02:26 22 details behind the offense?

02:26 23 A So you have to look at the details because you're

02:26 24 trying to figure out what's leading to this behavior.

02:26 25 And related to that is the risk of it recurring so you

02:26 1 really have to get into the weeds.

02:26 2 Q So would you please describe to the jury the

02:26 3 underlying details. We'll start with number one, which

02:26 4 is Indictment Number 125, victim whose name starts with

02:26 5 a C.

02:26 6 A Okay. So according to records that I received --

02:26 7 these were police records -- the victim at the time was

02:26 8 about nine years old. Both victims are Mr. Beam's

02:26 9 daughters. The child that I'm talking about now is the

02:26 10 older daughter. So she was nine years old, and

02:27 11 Mr. Beam at the time was 35 years old.

02:27 12 There are records from the Children's Advocacy

02:27 13 Center which shift the age a little bit. Her age, ten

02:27 14 to 13. You sort of get the gist as to the child's age

02:27 15 range.

02:27 16 According to those records, he engaged in

02:27 17 intercourse with the child. This includes

02:27 18 vaginal-penile sex and holding her against her will.

02:27 19 The records from Children's Advocacy Center from

02:27 20 Spartanburg indicate that she told them that he touched

02:27 21 her all over from her breasts on down, performed oral

02:27 22 sex on her, wanted her to do the same for him, which

02:27 23 she refused, and he threatened her.

02:27 24 The arrest warrant says that she suffered damage

02:27 25 such that she's unable to conceive. I was -- I

02:27 1 attempted to obtain information to confirm or deny
02:27 2 that, and I wasn't able to find that.

02:28 3 So that's the first one.

02:28 4 Q So this is the victim whose name starts with C on
02:28 5 State's Exhibit 1, the indictment ending in the number
02:28 6 125?

02:28 7 A Correct.

02:28 8 Q What about the second indictment ending in the
02:28 9 number 1270, victim J?

02:28 10 A Okay.

02:28 11 Q Who was that victim, and what did you find out
02:28 12 about the underlying details?

02:28 13 A So this was the younger daughter. She was three
02:28 14 to 11 years old during the time of the actions, which
02:28 15 would have placed Mr. Beam from the age of 32 to 40.
02:28 16 Again, the Child Advocacy Center records stretch her
02:28 17 age from three to 13 or 14. Again, you can sort of get
02:28 18 the gist.

02:28 19 And so what she reported to the Children's
02:28 20 Advocacy Center was penile-oral penetration, fingers in
02:28 21 the vagina, fingers in the anus, and performing --
02:28 22 Mr. Beam performing oral sex on her, ejaculating in her
02:29 23 mouth. That was when she was younger. That's what was
02:29 24 written in the documents. And then when she was about
02:29 25 nine, there was also penile-vaginal penetration,

1 penile-anal penetration. Some incidents were described
2 as punishment for her.

3 She also noted that she had seen Mr. Beam abuse
4 her older sister. She had been able to witness this
5 through like a crack in the door, and she saw him
6 vaginally and anally penetrate her until she was
7 bleeding and crying. She also said that she saw them
8 performing oral sex on each other and said that
9 sometimes Mr. Beam tried to have sex with both of them
10 as a threesome.

11 She also said that he threatened to kill her,
12 threatened to kill her sister, and threatened to kill
13 their mother.

14 Q Now, these are the underlying details around these
15 crimes. Did you interview Mr. Beam about what
16 happened? What's his response to you that you found
17 significant about these crimes?

18 A Okay. So I asked him first about the older
19 daughter, and he said that he had gotten a 16-year-old
20 girl pregnant while he was married, and his wife turned
21 his two daughters against him after that and talked
22 them into making false statements.

23 I asked him what would have been the motivation
24 for the older daughter to do that, and he said it was
25 because his older daughter and the 16-year-old who

02:30 1 became pregnant were friends. I asked him about the
02:30 2 younger daughter. Do you want me to go into that?

02:31 3 Q Yeah, go into that in some more detail about the
02:31 4 older daughter.

02:31 5 A That's all I have about the older one.

02:31 6 Q What about the younger daughter, then? What did
02:31 7 he say about that when you talked to him?

02:31 8 A Regarding the younger daughter, he said that it
02:31 9 never happened, that she faked the whole thing, that
02:31 10 she had seen a movie by T.D. Jakes which depicted a
02:31 11 little girl that had clothing soiled by blood after
02:31 12 being molested, and that had been the catalyst where
02:31 13 she pulled the story from.

02:31 14 When I asked him what would motivate her to do
02:31 15 that, he said, "She's a mama's girl." At that time I
02:31 16 had records from DSS indicating that this younger
02:31 17 daughter had been hospitalized in a mental health
02:31 18 facility because of posttraumatic stress disorder
02:31 19 sometimes referred to as PTSD, and the records indicate
02:32 20 it was the result of severe sexual abuse. So I asked
02:32 21 him about that, and he opined -- his opinion was that
02:32 22 she had PTSD because she had sex at a young age and
02:32 23 said that all of this was made up.

02:32 24 So what I did at that point was request, if I
02:32 25 could, get further records about the treatment that the

02:32 1 younger daughter had had just to kind of get more
02:32 2 information about what she was dealing with. And the
02:32 3 attorney general's office was able to locate those
02:32 4 records. And those were also indicating the same
02:32 5 thing, that she had extreme PTSD symptoms related to
02:32 6 sexual abuse.

02:32 7 MS. GOOD: Your Honor, I'm going to object to
02:32 8 anything after the sexual offenses that he pled guilty
02:33 9 to as to the state of mind of the victim --

02:33 10 THE COURT: Mr. Bailiff, would you take our jury
02:33 11 to the jury room, please.

02:33 12 (WHEREUPON, the jury exited open court at
02:33 13 2:33 p.m.)

02:33 14 THE COURT: Okay. State your objection.

02:33 15 MS. GOOD: Thank you, Your Honor.

02:33 16 I'm going to object at this point to the victim --
02:33 17 any of the victims' therapy or state of mind or
02:33 18 diagnoses afterwards. It doesn't have anything to do
02:33 19 with the crimes he was convicted of or how the crimes
02:33 20 occurred. It goes to state of mind of somebody who's
02:34 21 not relevant here. And, anyway, it's prejudicial to
02:34 22 the jury. It's not probative. It's not probative in
02:34 23 any way whatsoever.

02:34 24 THE COURT: Mr. Bogle.

02:34 25 MR. BOGLE: The case law talks about experts

02:34 1 testifying about the underlying details to justify
02:34 2 their diagnosis. What we're getting into right here is
02:34 3 the rabbit hole she referred to earlier.

02:34 4 She's talking to Mr. Beam, trying to find out if
02:34 5 he's taking any responsibility for those things, which
02:34 6 he's not. And he blames it on, on this one girl,
02:34 7 "Well, the reason she has this PTSD is because she's
02:34 8 having sex at a young age." Well, it turns out, the
02:34 9 reason she's having PTSD is because her father is
02:34 10 having sex with her at a very young age. That's what
02:34 11 we're getting into.

02:34 12 Mr. Beam says certain things. She's trying to
02:34 13 track it down. In order to do that, she contacts us to
02:34 14 get the underlying psychological records of the
02:34 15 daughter, trying to find out what's going on to see if
02:34 16 what he's saying is true or not. It has a lot of
02:34 17 bearing on his credibility and her opinion.

02:34 18 So that's why we think it's admissible. Again,
02:34 19 it's the rabbit hole she was chasing. He telling her
02:35 20 one thing. "Oh, she's this way because she had sex at
02:35 21 a young age." She looks at the records and finds out
02:35 22 she's that way because she has sex with her father.

02:35 23 MS. GOOD: But either way, her mental state
02:35 24 afterwards is not relevant as to the underlying facts
02:35 25 of what occurred during the sexual offenses. It just

02:35 1 goes to prejudice the jury that she's traumatized and
02:35 2 has PTSD and is never going to recover. That's not
02:35 3 relevant whatsoever to the pattern they're trying to
02:35 4 show.

02:35 5 THE COURT: I am going to allow you to question
02:35 6 the witness on the corroboration that she's been able
02:35 7 to -- I used the wrong word there -- the investigation
02:35 8 she's done based on the statements of the respondent
02:35 9 but limit it to questions regarding statements that the
02:35 10 respondent has made and what steps she took to
02:35 11 investigate those statements.

02:35 12 We don't need to turn this into a trial about the
02:35 13 treatment of the children.

02:36 14 MR. BOGLE: Yes, sir.

02:36 15 (WHEREUPON, the jury entered open court at
02:37 16 2:36 p.m.)

02:37 17 THE COURT: Mr. Bogle, proceed.

02:37 18 MR. BOGLE: Thank you, Your Honor.

02:37 19 Q Doctor, let me back up a second.

02:37 20 You were talking earlier -- you testified earlier
02:37 21 about certain things Mr. Beam said to you. And the
02:37 22 issue of PTSD or posttraumatic disorder of this
02:37 23 daughter came up. How did he explain the reason for
02:37 24 that?

02:37 25 A He said that it was because she got pregnant at

02:37 1 such an early age.

02:37 2 Q Okay. And then I think you testified that you
02:37 3 wanted to get some additional records on her; is that
02:37 4 right?

02:37 5 A Yes.

02:37 6 Q Why did you want additional records on this little
02:37 7 girl?

02:37 8 A His statement was unlikely to be the cause of her
02:37 9 PTSD, so I wanted to have information about that just,
02:37 10 you know, to see does he know what he's talking about,
02:37 11 does he know what's going on with his daughter, does he
02:38 12 acknowledge his involvement in what she developed, if
02:38 13 that's really what happened.

02:38 14 Q And as a result of this desire for knowledge by
02:38 15 you, what did you request our office to try and find
02:38 16 for you?

02:38 17 A Further mental health treatment records for that
02:38 18 child.

02:38 19 Q Okay. This is the child with the name beginning
02:38 20 with J, I believe?

02:38 21 A Yes.

02:38 22 Q And were these documents obtained by our office
02:38 23 and provided to you?

02:38 24 A Yes.

02:38 25 Q What did they help you with, if they helped you at

02:38 1 all regarding the statements he had been giving you and
02:38 2 how this fits into your opinion as to whether or not
02:38 3 he's a sexually violent predator?

02:38 4 A It clarified my suspicion that she did not have
02:38 5 PTSD from getting pregnant at a young age but related
02:38 6 to the events of abuse by her father that I delineated.

02:38 7 Q And how does this relate to the things he's
02:38 8 telling you? In the bigger picture here, what does
02:39 9 this new information tell you about what he's telling
02:39 10 you?

02:39 11 A He -- he doesn't accept his role in that, and he
02:39 12 said it never happened, so there's a complete denial of
02:39 13 being involved in any -- any such deviant behavior that
02:39 14 he was convicted of. So I make a note of this in terms
02:39 15 of truthfulness as we continue the evaluation, honesty.
02:39 16 So it's something that I keep in the back of my mind as
02:39 17 we continue gathering the big picture.

02:39 18 Q Is he accepting any responsibility for what he
02:39 19 pleaded guilty to?

02:39 20 A Not as far as I can tell.

02:39 21 Q Okay. By "pleaded guilty to," do both State's
02:39 22 Exhibit 1, the sentencing sheet, and State's Exhibit 2,
02:39 23 the sentencing sheet there, do they indicate that he
02:39 24 pleaded guilty to these crimes?

02:39 25 A Yes.

02:40 1 Q Now, in the course of your evaluation of a case
02:40 2 like this, is it necessary to look for any other
02:40 3 sexually related crimes where there was a charge but
02:40 4 perhaps not a conviction?

02:40 5 A Yes.

02:40 6 Q Why is that necessary in your field?

02:40 7 A Okay. So you're looking for a pattern of
02:40 8 behavior. Is there violence. Are there other charges
02:40 9 that have a violent component. It can also be relevant
02:40 10 for scoring an instrument that will come up called the
02:40 11 Static-99, and it can also be relevant for diagnosis as
02:40 12 well.

02:40 13 Q Is this, this examination of other sexual-type
02:40 14 charges which did not result in convictions, is this
02:40 15 something that is typically and reasonably done by
02:40 16 experts in your field?

02:40 17 A Yes.

02:40 18 Q Okay. And this particular case, was there another
02:40 19 sexually related crime Mr. Beam was charged of but was
02:40 20 later dismissed?

02:41 21 A Yes.

02:41 22 Q What was the crime we're talking about?

02:41 23 A Assault with intent to commit criminal sexual
02:41 24 conduct.

02:41 25 Q Was that charge later dismissed?

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02:41 1 A Yes.

02:41 2 Q Who was the alleged victim in that case?

02:41 3 A It was -- this is a little tricky. She was
02:41 4 married to his wife's brother. So it's like a
02:41 5 sister-in-law of sorts. We would probably say
02:41 6 sister-in-law.

02:41 7 Q And did you find some underlying details involving
02:41 8 this crime or this crime that he was not convicted of,
02:41 9 did you find some underlying details you found helpful
02:41 10 to your evaluation?

02:41 11 MS. GOOD: Your Honor, at this time I would object
02:41 12 on prior motions.

02:41 13 THE COURT: Overruled.

02:41 14 BY MR. BOGLE:

02:41 15 Q Did you find some underlying details involving
02:41 16 this particular crime that you found assisted you in
02:41 17 your evaluation?

02:41 18 A Yes.

02:41 19 Q What were they?

02:41 20 A So this involved being at this lady's house. She
02:42 21 was 27 years old at the time. And she brought charges
02:42 22 against him because she said that he asked her for sex.
02:42 23 She said no. Struggled with her, forced her on the
02:42 24 couch, and she continued to refuse. He took off his
02:42 25 pants and her three layers of clothing and tried to

02:42 1 penetrate her. She said no. And then he stopped

02:42 2 because he said he wasn't going to fight.

02:42 3 Q Okay. What factors do you see in this particular

02:42 4 charge which, again, he wasn't convicted of and the

02:42 5 ones he was convicted of? What similarities or

02:42 6 parallels are you looking for? What do you find there?

02:42 7 A So there's force, there's making someone do

02:42 8 something they don't want to do, it's of a sexual

02:42 9 nature, not responding when no is the answer

02:42 10 repeatedly. So at this point in the evaluation, I have

02:43 11 to consider other types of diagnoses. Just because

02:43 12 somebody has one diagnosis doesn't mean they can't have

02:43 13 others. So I'm looking for, in addition to other

02:43 14 things, you know, is there another -- is something else

02:43 15 going on here? Is this like a sadism thing, "I enjoy

02:43 16 making other people suffer," et cetera. So at this

02:43 17 point I'm still working on ruling out other things.

02:43 18 Q Were there any other crimes he was charged with,

02:43 19 convicted of or not convicted of, either one, that you

02:43 20 found necessary to develop your evaluation of him?

02:43 21 A So he did have other convictions. Again, looking

02:43 22 as to whether there's violence in there or not, looking

02:43 23 for a pattern. And it's also a requirement of the

02:43 24 Static which is coming up again as an assessment tool

02:43 25 that you look and count how many prior sentencing dates

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02:43 1 somebody has.

02:43 2 Q Now, you've talked with us already about what

02:44 3 Mr. Beam told you about State's Exhibit 1 and State's

02:44 4 Exhibit 2.

02:44 5 What about the assault with intent to commit

02:44 6 sexual conduct on the sister-in-law? What did he have

02:44 7 to say about that that you found relevant to your

02:44 8 investigation?

02:44 9 A So it's pretty similar. He said it didn't happen.

02:44 10 That, actually, this lady, this woman, had been trying

02:44 11 to have sex with him and was sort of winking at him and

02:44 12 blowing kisses at him. And I asked why would she --

02:44 13 you know, why would she accuse you of this stuff, and

02:44 14 he said that she had been asking him for like some

02:44 15 money, like 20, \$40 or so and he wouldn't give it to

02:44 16 her. And she had told him he was going to pay for

02:44 17 this.

02:44 18 Q Okay. Is there any other information you gathered

02:44 19 from Mr. Beam, aside from the testing we'll talk about

02:44 20 in a few minutes, things he told that you would like to

02:44 21 share with the jury you haven't already covered?

02:44 22 A Not off the top of my head.

02:45 23 Q Okay. Now, during my opening argument, I

02:45 24 mentioned to the jury that Dr. Kimberly Harrison also

02:45 25 evaluated Mr. Beam prior to you. Who is Dr. Harrison

02:45 1 and how did she get involved in this case?

02:45 2 A At that time she was working at the Department of
02:45 3 Mental Health. She was an evaluator, and she was
02:45 4 appointed by the court to evaluate Mr. Beam.

02:45 5 Q Now, did she produce a written report, a written
02:45 6 evaluation report just like yours only this one from
02:45 7 her, about Mr. Beam?

02:45 8 A Yes.

02:45 9 Q Why was it important for you to look at her report
02:45 10 on Mr. Beam?

02:45 11 A She did a similar type of evaluation so it's
02:45 12 relevant to see what her results and findings were as
02:45 13 well. Also looking for is there consistency between
02:45 14 what, you know, she was told and I was told or is there
02:45 15 lack of consistency.

02:45 16 Q Okay. We'll come back to that in a few minutes.

02:45 17 Let me talk about testing. Were assessments and
02:46 18 testing also done of Mr. Beam?

02:46 19 A Yes.

02:46 20 Q Now, I'm going to start with one called the
02:46 21 Conners Continuous Performance Test or CPT II, okay.

02:46 22 Is these -- before I do, though, why did you perform or
02:46 23 have performed these various assessments and tests?

02:46 24 A Okay. So you remember earlier when I was asked
02:46 25 about the protocol that was followed to do this

02:46 1 evaluation, I mentioned there's this three-prong
02:46 2 approach that has been recommended by experts in the
02:46 3 field. So the assessment measures like the tests and
02:46 4 the questionnaires and whatnot. That's that second
02:46 5 prong. And then it also includes the third prong which
02:46 6 is physiologic measurement of arousal. So that's what
02:46 7 these measures are attempting to do is hit the second
02:46 8 and third prong of information gathering.

02:46 9 Q And are these assessments and testing and things
02:46 10 that were done on Mr. Beam, are they also part of the
02:46 11 basis of your opinion?

02:46 12 A Yes.

02:47 13 Q What are you trying to do here? You didn't just
02:47 14 run a Static on him, you didn't just score him on the
02:47 15 Static-99R. You had all this other stuff done. What
02:47 16 are you looking for? What's the purpose of all that?

02:47 17 A So it's getting as much information as you can
02:47 18 from different angles. And so it's looking at more
02:47 19 data points, more sources of information.

02:47 20 Q Let's talk about the CPT II or the Conners II.
02:47 21 First off, can you explain to the jury what that is and
02:47 22 how it works.

02:47 23 A Okay. So this is done on the computer. It's
02:47 24 looking at measuring impulsivity and attention.
02:47 25 Impulsivity can be related to sexual offending. And so

02:47 1 it's frequently -- it's actually the test that's done
02:47 2 first. We have had people come through who have such
02:47 3 attention problems that they actually can't do the rest
02:47 4 of the assessments, so we do that at the outset.

02:47 5 Q Okay. And what did you learn from this
02:48 6 assessment?

02:48 7 A Okay. So he actually took this one twice. It
02:48 8 kind of showed a 50/50 chance basically as to whether
02:48 9 there was a problem with attention on the first
02:48 10 go-round. And because there had been other assessments
02:48 11 that he had done which showed concern for
02:48 12 dissimulation, the lab decided to just do it again
02:48 13 because it's pretty easy to do.

02:48 14 Q You said the word "dissimulation." What does that
02:48 15 mean?

02:48 16 A Not being forthright, maybe trying to cover up
02:48 17 things, not being transparent.

02:48 18 Q Okay. Now, what did you learn from the Conners?

02:48 19 A So the repeat was pretty similar, kind of a 50/50
02:48 20 chance of him having an attention problem. As we -- as
02:48 21 he did the other assessments and we did the evaluation
02:48 22 and whatnot, that really didn't surface as a problem
02:48 23 for him.

02:48 24 Q Now, the next test I've got on the list here is
02:49 25 something called the SASSI-3. What does that stand for

02:49 1 and what is it called?

02:49 2 A It's the Substance Abuse Subtle Screening
02:49 3 Inventory.

02:49 4 Q Okay. And can you explain what that is and how it
02:49 5 works for the jury.

02:49 6 A Basically, you answer questions about substance
02:49 7 abuse.

02:49 8 Q And is that important in an evaluation like this?

02:49 9 A Yes, it's important. Substance abuse can be
02:49 10 related to sexual offending especially if a person is
02:49 11 actively using or withdrawing from a substance.

02:49 12 Q What did you learn from this assessment?

02:49 13 A Okay. This one was also done twice. The first
02:49 14 one in 2013. There was concern of random responding
02:49 15 and that the results may not be valid. So it was
02:49 16 repeated. And at that time, when he repeated it, he
02:49 17 did not respond randomly, and there was a high
02:50 18 probability that he has a moderate to severe substance
02:50 19 disorder.

02:50 20 Q In the discussions that the girls made to the
02:50 21 police, the records you reviewed, did substance abuse,
02:50 22 alcohol, drugs or like that, ever come up in those
02:50 23 reports, those interviews?

02:50 24 A Yes. I know at least one of them said that he
02:50 25 used different drugs. She couldn't say which ones they

02:50 1 were because she wasn't sure.

02:50 2 Q Okay. The next thing is called the Personal

02:50 3 Assessment Inventory, the PAI. Could you please

02:50 4 explain to the jury what that is and how it works.

02:50 5 A Okay. So this one, you answer questions about

02:50 6 yourself, your personality, your world views.

02:50 7 Essentially measures personality or character traits.

02:51 8 Also looks for pathology such as depression, anxiety,

02:51 9 psychotic disorder. And there is a scale which factors

02:51 10 in whether people are trying to look better than they

02:51 11 are or look worse than they are.

02:51 12 Q Why is it important for this test to be

02:51 13 administered in a case like this?

02:51 14 A So it's, again, another angle, another way of

02:51 15 gathering information, looking for consistency, seeing

02:51 16 if maybe something has come up that didn't come up

02:51 17 during the interview.

02:51 18 Q Did this one also have to be given twice?

02:51 19 A Yes.

02:51 20 Q And what was the result? What did you learn about

02:51 21 Mr. Beam from this assessment, the PAI?

02:51 22 A Okay. So this one, there was some concern as well

02:51 23 that he wasn't forthright, so some caution about the

02:51 24 findings in general. There was a tendency to portray

02:51 25 himself without faults and hesitant to identify

02:51 1 shortcomings. There were not any indications of a mood
02:52 2 disorder like depression or anxiety or psychotic
02:52 3 disorder or personality disorder.

02:52 4 This instrument also flagged problem areas to
02:52 5 include alcohol. It also noted that he had a positive
02:52 6 self-esteem and optimistic outlook and self-confidence
02:52 7 and that he sees little reason to alter his behavior.

02:52 8 Q What was that last part, little reason to?

02:52 9 A Alter his behavior.

02:52 10 Q So what did you learn from this that helped you
02:52 11 about Mr. Beam?

02:52 12 A So there is a pattern about the way, the approach
02:52 13 to taking these instruments. They're flagging for
02:52 14 concern of not being forthright, not being honest,
02:52 15 portraying oneself as having no faults. So -- so it's
02:52 16 sort of hard to know what's real, you know, when are
02:53 17 you telling truth and when are you not.

02:53 18 Q Okay. The next thing I see is AASI, Abel
02:53 19 Assessment for something. Can you tell us what that
02:53 20 is, what that acronym stands for.

02:53 21 A Yeah. Abel Assessment for Sexual Interests,
02:53 22 frequently just referred to as the Abel.

02:53 23 Q Doctor, has there been some controversy in your
02:53 24 field about the usability of the Abel Assessment?

02:53 25 A Yes.

02:53 1 Q In a nutshell, what type of controversy are we
02:53 2 talking about?

02:53 3 A So Dr. Abel developed the test. He's still living
02:53 4 and working, as far as I know, and he has not revealed
02:53 5 his data such that someone else could come in and
02:53 6 reproduce it and see if they get the same results. And
02:53 7 so people don't like that. They want to be able to
02:53 8 reproduce the way he does it and get the same result
02:53 9 that he gets, but he won't provide the data because it
02:54 10 is proprietary to him.

02:54 11 Q But despite that, is it being used by people in
02:54 12 your field, by some psychiatrists or psychologists in
02:54 13 your field?

02:54 14 A Yes.

02:54 15 Q Why did you use it here?

02:54 16 A So this assessment measures sexual interests and
02:54 17 collects information about abusive and sexual problem
02:54 18 behaviors so it's very relevant for the type of
02:54 19 evaluation that's being done.

02:54 20 Q What did you learn from that assessment?

02:54 21 A Okay. So this one was also done twice because of
02:54 22 a high score on what's called the social desirability
02:54 23 scale. Again, unwilling to admit to common
02:54 24 shortcomings even that most people would be willing to
02:54 25 admit to. When it was repeated, that flagged again.

02:54 1 That's that social desirability score that I talked
02:54 2 about.

02:54 3 I want to talk about two other scores. There is a
02:55 4 cognitive distortion score.

02:55 5 Q What does that mean, the word, "cognitive
02:55 6 distortion"? What does that mean in plain English?

02:55 7 A So this is looking at, these items look at
02:55 8 justifications that people who abuse children may use.
02:55 9 And so the higher the score, the more the use of such a
02:55 10 distortion.

02:55 11 For Mr. Beam, his score was low. So indicating he
02:55 12 doesn't have those distortions.

02:55 13 Q And how does that affect -- him having a low score
02:55 14 on that particular part of this, how does that affect
02:55 15 where we're going here, your evaluation?

02:55 16 A So that's a good indicator for him in terms of
02:55 17 treatment. I think it's hard to treat people who have
02:55 18 sexual interests in children and they have these
02:55 19 distortions like the child came on to me, the child
02:55 20 asked me for it, they sat this way or looked this way
02:56 21 at me, they were instigating. That's harder to deal
02:56 22 with. So that wasn't present.

02:56 23 I talked about the social desirability score which
02:56 24 was still high. And then the visual reaction portion.
02:56 25 This is a part that collects sexual interest data

02:56 1 that's beyond the awareness of the person taking the
02:56 2 assessment. And there it showed that he had sexual
02:56 3 interest in adult and adolescent females which is
02:56 4 considered normal for this assessment measure.

02:56 5 Q Was there any changing of his answers regarding
02:56 6 his sexual fantasies or anything like that that caught
02:56 7 your attention?

02:56 8 A He did -- there was a scale where he was asked
02:56 9 about sexual fantasies. One of them was having sexual
02:56 10 affairs outside of primary relationship. And so when I
02:57 11 asked him about that in a follow-up interview, he
02:57 12 changed his answer to say that he didn't have or hadn't
02:57 13 had those fantasies. That was one change. I didn't
02:57 14 give too much weight to that.

02:57 15 Q Now, in this particular case, the Abel test or the
02:57 16 AASI test, what's the bottom line here? What did you
02:57 17 learn from that that you could apply to this
02:57 18 evaluation?

02:57 19 A Okay. So this assessment is similar to the other
02:57 20 ones -- I'm sorry to repeat myself -- where you have to
02:57 21 take what it says with some consideration that he may
02:57 22 not have been totally forthcoming in how he portrayed
02:57 23 himself. So the cognitive distortion score is low,
02:57 24 which is good for him. The visual reaction portion was
02:58 25 also good for him, so to speak, again, keeping in mind

02:58 1 that was not -- it didn't seem like he was fully
02:58 2 forthcoming.

02:58 3 Q Now, as far as the third prong of the protocol you
02:58 4 talked about a minute ago, that includes a
02:58 5 physiological assessment. Did you have something
02:58 6 called a PPG run on Mr. Beam?

02:58 7 A Yes.

02:58 8 Q What is that -- could you please tell the jury
02:58 9 what the letters PPG stand for and how it works, what
02:58 10 it is.

02:58 11 A Okay. It stands for penile plethysmograph. And
02:58 12 the purpose is to measure sexual arousal. Basically,
02:58 13 there is a gauge that's placed around the penis, and
02:58 14 there are gauges that monitor skin, monitor breathing,
02:58 15 monitor movements. And the person is shown a variety
02:58 16 of different sexual scenarios to see if they become
02:58 17 sexually aroused to any of the scenarios.

02:58 18 Q Now, on that particular examination, did that give
02:58 19 you anything, a valid profile, a not valid profile?
02:59 20 What did you get out of this particular test or this
02:59 21 particular assessment?

02:59 22 A This test was actually invalid.

02:59 23 Q What does that mean?

02:59 24 A There was concern that he was -- basically, it
02:59 25 means there was a concern that he was trying to throw

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02:59 1 the test based on moving during times that he had been
02:59 2 asked not to move and breathing in irregular patterns
02:59 3 without having like an illness to correlate for why
02:59 4 that would happen. So this one was actually not
02:59 5 repeated. It was only done during the 2013 evaluation.
02:59 6 Because of the dissimulation on this measure and then
02:59 7 the dissimulation on all the other measures, it didn't
03:00 8 seem to be relevant to repeat. And this is kind of a
03:00 9 process.

03:00 10 Q There is another thing called the Hare, H-a-r-e.
03:00 11 Can you explain to the jury what that is, what it
03:00 12 stands for, and how it works.

03:00 13 A So the Hare Psychopathy Checklist is a screening
03:00 14 measure. Basically, you're looking at whether someone
03:00 15 has traits of psychopathy. You might have heard of
03:00 16 psychopaths, sociopaths, that kind of thing.

03:00 17 So for Mr. Beam, there is a recommended cutoff
03:00 18 score. He didn't meet that. If he would have met it,
03:00 19 we would have done a full assessment. If he didn't
03:00 20 meet it, he can be considered to not have traits of
03:00 21 psychopathy.

03:00 22 Q Finally, there is something called the Static-99R.
03:00 23 Can you please tell the jury what the Static-99R is.

03:00 24 A Okay. So this is a tool that takes a variety of
03:00 25 risk factors that have been shown by research to be

03:00 1 related to reoffending sexually. And it considers
03:01 2 those variables and then places the person in a risk
03:01 3 group or category. It can't tell you for that specific
03:01 4 individual what their individual risk of reoffending
03:01 5 is.

03:01 6 So if you want to think about this like if you go
03:01 7 to your primary care doctor and they start asking you
03:01 8 questions about your family history and how you eat and
03:01 9 if you're overweight and if you drink alcohol or ever
03:01 10 had a heart attack, they're looking at risk factors.
03:01 11 Maybe they're concerned about heart disease for you.
03:01 12 And they're trying to see what risk group you might
03:01 13 fall into. So it's the same kind of idea as that.

03:01 14 Q Is the Static-99R based upon studies of thousands
03:01 15 of sex offenders from multiple countries?

03:01 16 A Yes.

03:01 17 Q Okay. And what's the lowest score you can get
03:01 18 from the Static-99 R? When you a score a person,
03:01 19 what's the bottom end?

03:01 20 A Negative three.

03:01 21 Q And what's the top end?

03:01 22 A 12.

03:02 23 Q Okay. Based on his assessment, what score did you
03:02 24 score him on on the Static-99R?

03:02 25 A He came out with a score of two.

03:02 1 Q And what is a two as far as where it relates to
03:02 2 the predictability that they have for this particular
03:02 3 scoring system?

03:02 4 A Okay. So this is the low to moderate risk
03:02 5 category or group. That's what that score corresponds
03:02 6 to.

03:02 7 Q Okay. Does it also tell you a percentage, some
03:02 8 kind of percentages as to what his chances of
03:02 9 reoffending are, say, five years out or ten years out?
03:02 10 Does it go into that as well?

03:02 11 A Right. So for that group, again, there's
03:02 12 reoffending rates that are calculated at five years
03:02 13 out, 12.2. And then at ten years out, it's 19.7.

03:02 14 Q Is there another way to look at those numbers,
03:02 15 that he scored better than or worse than a certain
03:03 16 percentage of the people in the group, in the study?

03:03 17 A Okay. So out of 100, 40 people would have scored
03:03 18 lower, 18 would have had the same, and 43 would have
03:03 19 scored higher.

03:03 20 Q So the two percentages you gave us were
03:03 21 12.something and what, 15.something? Was that the
03:03 22 second one?

03:03 23 A 12.2 and 19.7.

03:03 24 Q 19.7, okay. Now, you mentioned a minute ago that
03:03 25 to get that number, they're looking at some kind of

03:03 1 group. What type of group are we looking at here to
03:03 2 get those types of estimates or numbers?

03:03 3 A This is the high risk/need sample.

03:03 4 Q What does that mean in plain English, high
03:03 5 risk/need sample? What kind of people are these?

03:04 6 A I don't remember what the instrument calls the
03:04 7 high risk high need people. There's various groups,
03:04 8 and they don't give you specific steps to follow. They
03:04 9 actually want you to think and put the individual into
03:04 10 the group that best matches the samples that they are
03:04 11 giving you.

03:04 12 Q Is that what you do?

03:04 13 A Yes. So that's what was done for the -- and I can
03:04 14 give you what the reasoning is.

03:04 15 Q Why did Mr. Beam best fit that group for
03:04 16 calculating his chance of reoffending?

03:04 17 A Okay. So he was put in that group based on his
03:04 18 selection to be evaluated for commitment under the
03:04 19 sexually violent predator laws because of having the
03:04 20 diagnosis of pedophilic disorder. Because of sexual
03:05 21 offending behavior history, he was placed in that
03:05 22 group.

03:05 23 Q Now, did Mr. Beam, while he was in prison,
03:05 24 participate in any kind of sex offender treatment
03:05 25 offered at the time when he was there by the Department

03:05 1 of Corrections?

03:05 2 A Yes.

03:05 3 Q Okay. Did he complete it.

03:05 4 A Yes.

03:05 5 Q Now, what have you learned about -- does the
03:05 6 Department of Corrections still offer sex offender
03:05 7 treatment?

03:05 8 A Yes.

03:05 9 Q Have you learned anything about the type he took,
03:05 10 the differences between the type he took back then and
03:05 11 the type that's offered now?

03:05 12 A Yes.

03:05 13 Q What have you learned about -- you learned -- are
03:05 14 there differences between the two?

03:05 15 A Yes.

03:05 16 Q Based upon your evaluation, what are the
03:05 17 differences between the two programs?

03:05 18 A So when I looked into this, the program that he
03:05 19 took was described as a general education group that
03:05 20 was not structured and wasn't specific to pedophilic
03:05 21 disorder or any other disorder of sexual interest, and
03:06 22 that the program he completed, which was 12 weeks, was
03:06 23 not the six to eight-month expanded full-blown, if you
03:06 24 will, program that it became.

03:06 25 Q So right now it's a six to eight-month program?

03:06 1 A As far as I know.

03:06 2 Q Did you talk to him about whether or not he
03:06 3 thought he needed sex offender treatment on the
03:06 4 outside?

03:06 5 Or let me ask you this. Did you talk to him about
03:06 6 whether or not he thought he still needed sex offender
03:06 7 treatment?

03:06 8 A Yes, I did.

03:06 9 Q What did he say?

03:06 10 A He said, "No. I did the 12-week program."

03:06 11 Q So that's it for him? As far as he's concerned?

03:06 12 A Yes.

03:06 13 Q Okay. If this jury were to find him not to be a
03:06 14 sexually violent predator and he were to be released,
03:06 15 does he think he needs outpatient sex offender
03:06 16 treatment somewhere?

03:07 17 A I don't think so.

03:07 18 Q Now, based on the tests that were done, the
03:07 19 documents you looked at, the extra records you looked
03:07 20 at regarding one of the girls, the assessments that
03:07 21 were done, everything you talked about so far today, do
03:07 22 you have an opinion to a reasonable degree of medical
03:07 23 certainty as to whether Mr. Beam has a diagnosis of a
03:07 24 mental abnormality or a personality disorder?

03:07 25 A Yes.

03:07 1 Q What is it?

03:07 2 A Pedophilic disorder nonexclusive type sexually
03:07 3 attracted to females.

03:07 4 Q Now, is that a mental abnormal or a personality
03:07 5 disorder?

03:07 6 A Mental abnormality.

03:07 7 Q That's what he's got.

03:07 8 Now, when you say "pedophilic disorder," explain
03:07 9 those three things: Pedophilic disorder, sexually
03:07 10 attracted to females, nonexclusive. What do those
03:07 11 three things mean?

03:07 12 A So pedophilic disorder is the sexual interest
03:07 13 where the person is attracted to young children,
03:07 14 children who have not yet gone through puberty.
03:07 15 Sexually attracted to females means there's only
03:08 16 evidence of sexual attraction to females. And
03:08 17 nonexclusive means they're also attracted to adults.
03:08 18 It's not only children.

03:08 19 Q Now, do you an also have an opinion, again to a
03:08 20 reasonable degree of medical certainty, as to whether
03:08 21 or not this pedophilic disorder diagnosis affects
03:08 22 Mr. Beam's emotional or volitional capacity so that he
03:08 23 is predisposed to commit sexually violent offenses in
03:08 24 the future?

03:08 25 A Yes.

03:08 1 Q What is that opinion?

03:08 2 A I believe that it does inhibit his volitional
03:08 3 capacity to control his urges.

03:08 4 Q And we use the word "volitional capacity." What
03:08 5 are we saying in plain English?

03:08 6 A Basically, the ability to control yourself. So
03:08 7 what we're talking about here is a sexual urge that
03:08 8 leads to, if acted on, a child becoming a victim.

03:08 9 Q Okay. Do you also have an opinion, again to a
03:08 10 reasonable degree of medical certainty, as to whether
03:08 11 Mr. Beam, given this situation, has the propensity to
03:08 12 be dangerous and to commit future sexually violent
03:09 13 offenses?

03:09 14 A Yes.

03:09 15 Q It's your opinion he does?

03:09 16 A Yes.

03:09 17 Q Okay. Do you have an opinion, again to a
03:09 18 reasonable degree of medical certainty, as to whether
03:09 19 this propensity to commit future sexually violent
03:09 20 offenses is of such a degree that it poses a menace to
03:09 21 the health and safety of others?

03:09 22 A Yes.

03:09 23 Q Is that your opinion, yes?

03:09 24 A Yes.

03:09 25 Q And why is that?

03:09 1 A Well, there is evidence that he's had difficulty
03:09 2 controlling this. He molested and raped both of his
03:09 3 daughters for a period of years. One of them for a
03:09 4 period of years. And that shows continued trouble
03:09 5 controlling behavior over a period of years. And that
03:09 6 there does not seem to be any intervening useful
03:09 7 treatment so far.

03:09 8 Q Do you also have an opinion, again to a reasonable
03:09 9 degree of medical certainty, as to whether Melvin Beam
03:09 10 has serious difficulty in controlling his propensities
03:09 11 to be dangerous?

03:09 12 A Yes.

03:10 13 Q What is that opinion?

03:10 14 A That he has difficulty controlling his propensity
03:10 15 to be dangerous.

03:10 16 Q And why is this?

03:10 17 A Basically, based on what I just said. And there
03:10 18 is this pattern of doing this for years and years. He
03:10 19 has this disorder. It's hard to manage. How are you
03:10 20 going to manage it?

03:10 21 Q Is the mental abnormality of pedophilic disorder,
03:10 22 the thing he has, is this curable? Can be made to go
03:10 23 away?

03:10 24 A There is some debate in the community about that.
03:10 25 Generally, the answer is it's not curable but

03:10 1 manageable.

03:10 2 Q Okay. Now, do you also have an opinion, again to
03:10 3 a reasonable degree of medical certainty, as to whether
03:10 4 this diagnosis and the fact that he has acted on it the
03:10 5 way you described makes Melvin Beam likely to engage in
03:10 6 acts of sexual violence if he's not confined in a
03:10 7 facility for long-term control, care, and treatment?

03:10 8 A Yes, I believe he does.

03:10 9 Q You think he should be confined for long-term
03:10 10 control, care, and treatment?

03:10 11 A Yes.

03:11 12 Q And do you also have an opinion, again to a
03:11 13 reasonable degree of medical certainty, as to whether
03:11 14 Melvin Beam meets the legal criteria for this jury to
03:11 15 find him to be a sexually violent predator at this
03:11 16 time?

03:11 17 A Yes.

03:11 18 Q Now, regarding Dr. Harrison's opinion, did
03:11 19 Dr. Harrison also render a diagnosis of Melvin Beam?

03:11 20 A Yes.

03:11 21 Q What was her diagnosis?

03:11 22 A She diagnosed the same thing.

03:11 23 Q Okay. That's pedophilic attracted to females
03:11 24 nonexclusive, right?

03:11 25 A Correct.

03:11 1 Q Now, what was her ultimate opinion on whether or
03:11 2 not she believed or she opined that Melvin Beam is a
03:11 3 sexually violent predator and should be committed for
03:11 4 treatment?

03:11 5 MS. GOOD: Objection, Your Honor. I think that's
03:11 6 up to Dr. Harrison to testify to what her opinion is.

03:11 7 THE COURT: Mr. Bailiff, would you take our jury
03:11 8 to the jury room, please.

03:11 9 (WHEREUPON; the jury exited open court at
03:12 10 3:11 p.m.)

03:12 11 THE COURT: State your objection.

03:12 12 MS. GOOD: Yes, your Honor. Object to Dr. Gomez
03:12 13 saying what the opinion of Dr. Harrison may or may not
03:12 14 be at this point. Your Honor, she's going to testify,
03:12 15 and it's nothing that Dr. Gomez relied upon, obviously.
03:12 16 She has a different opinion than Dr. Harrison so it's
03:12 17 not an evaluation that she relied upon to get to her
03:12 18 own opinion.

03:12 19 THE COURT: Well, each doctor has a copy of the
03:12 20 other's report.

03:13 21 MR. BOGLE: Yes, your Honor. And she's already
03:13 22 testified earlier in her direct who Dr. Harrison was,
03:13 23 what her involvement was, and how she rendered an
03:13 24 opinion. And I said, "We'll come back to that later."
03:13 25 And now I'm laying the predicate question to ask her

03:13 1 why it is she differs with Dr. Harrison, which I'm sure
03:13 2 Dr. Harrison will do when she takes the stand.

03:13 3 THE COURT: I'll allow each attorney to ask the
03:13 4 expert why they differ with the other expert.

03:13 5 Ms. Good, I'll allow you to do the same with your
03:13 6 expert. She's familiar with this lady's opinion, and
03:13 7 she can explain her opinion. I'll allow each side to
03:13 8 do that.

03:13 9 MS. GOOD: Thank you, Your Honor.

03:13 10 THE COURT: While I've got y'all here without the
03:13 11 jury, I neglected to put on the record and the question
03:13 12 came up. Ms. Good, you had objected to prior acts that
03:13 13 did not result in a conviction. I read the case law,
03:13 14 specifically the Ettel case. I overruled the objection
03:13 15 for the record, but I wanted to put that on the record
03:14 16 because I wanted to come back to it and we just never
03:14 17 did that right after lunch. I wanted to put that on
03:14 18 the record.

03:14 19 MR. BOGLE: Thank you, Your Honor.

03:14 20 MS. GOOD: Thank you.

03:14 21 THE COURT: Bring our jury back in.

03:15 22 (WHEREUPON, the jury entered open court at
03:15 23 3:15 p.m.)

03:15 24 THE COURT: Mr. Bogle.

03:15 25 MR. BOGLE: Thank you, Your Honor. May it please

03:15 1 the court.

03:15 2 Q I think we're at the point now, I had asked you

03:15 3 what Dr. Harrison's diagnosis of Melvin Beam was. You

03:15 4 said it was the same as yours; is that right?

03:15 5 A Correct.

03:15 6 Q Okay. Now, again, who is she and how did she get

03:15 7 involved in the case?

03:15 8 A So at the time she was working for DMH, and she

03:15 9 was appointed by the court to conduct an evaluation.

03:15 10 Q And what was her ultimate opinion on whether or

03:15 11 not Melvin Beam should be committed as a sexually

03:16 12 violent predator?

03:16 13 A Her opinion was that he should not be committed.

03:16 14 Q Now, it's apparent from your testimony that you

03:16 15 disagree with that. What led you to a different

03:16 16 conclusion than Dr. Harrison?

03:16 17 A So I can't speak for her and the things that she

03:16 18 found. I can just say that there is a lack of

03:16 19 treatment. There is a clear disorder of sexual

03:16 20 interest. There is a lack of treatment. I'm not aware

03:16 21 of skills that he can use to prevent him from doing

03:16 22 this again. Sexual interest doesn't just go away.

03:16 23 It's here. Suddenly you're interested in children and

03:16 24 then you're not. You're interested in adults and then

03:16 25 suddenly you're interested in children. That's just

03:16 1 not how it works.

03:16 2 Also prevention strategies that he told me were

03:16 3 unrealistic, just sort of denying, "I'm not interested

03:16 4 in sex in general." So those are the things that I

03:17 5 considered as well as, you know, the assessments and

03:17 6 all that other that I talked about.

03:17 7 Q Did you find any of her conclusions not supported

03:17 8 by the reasoning she used in her report?

03:17 9 A Not necessarily. I mean, I think she has her

03:17 10 reasons and her reasoning as outlined in her report.

03:17 11 Q She also ran the Static -- she scored Mr. Beam on

03:17 12 the Static-99R, did she not?

03:17 13 A Yes.

03:17 14 Q And she came up with a score of one?

03:17 15 A Yes.

03:17 16 Q Do you know why yours differed from hers?

03:17 17 A I didn't see her score sheet so I can only guess.

03:17 18 Q Okay. Leave it alone.

03:17 19 Did you -- did she run any of the other data

03:17 20 points, the other testing, the other assessments that

03:17 21 you did regarding Mr. Beam?

03:17 22 A No.

03:17 23 Q Okay. If released, if he's released, who would be

03:18 24 at danger?

03:18 25 MS. GOOD: Objection, Your Honor.

03:18 1 THE COURT: Rephrase the question, Mr. Bogle.

03:18 2 MR. BOGLE: Okay.

03:18 3 Q If Mr. Beam is released, is there a reasonable
03:18 4 chance, based on your opinion to a reasonable degree of
03:18 5 medical certainty, that he would commit sexually
03:18 6 violent offenses again?

03:18 7 A Yes.

03:18 8 Q And based upon what you have seen before, what
03:18 9 type of victims would be his victims? What class of
03:18 10 people would be his most likely victims?

03:18 11 MS. GOOD: Objection, Your Honor. It's still
03:18 12 speculative as to --

03:18 13 THE COURT: It's in line with the testimony.
03:18 14 Overruled.

03:18 15 BY MR. BOGLE:

03:18 16 Q Most likely what category of people would be his
03:18 17 most likely victims?

03:18 18 A Children.

03:18 19 Q Is there any probation on his sentencing sheets?
03:18 20 Did you see any evidence of a probationary sentence in
03:18 21 addition to the time that he got?

03:18 22 A No.

03:18 23 Q Okay. Do you know of anything, Doctor, other than
03:18 24 this commitment process to the Department of Mental
03:18 25 Health that can get him the sex offender treatment that

03:19 1 he needs?

03:19 2 A No.

03:19 3 Q Thank you.

03:19 4 Doctor, please answer any questions that the court
03:19 5 may have or counsel may have.

03:19 6 THE COURT: All right.

03:19 7 Ms. Good, your witness.

03:19 8 MS. GOOD: Thank you.

03:19 9 CROSS-EXAMINATION

03:19 10 BY MS. GOOD:

03:19 11 Q Afternoon, Dr. Gomez.

03:19 12 A Good afternoon.

03:19 13 Q I want to go back first to how often you do this.
03:19 14 Am I wrong in that I heard you have done five sexually
03:19 15 violent predator evaluations?

03:19 16 A No. That's right.

03:19 17 Q So you have only done five?

03:19 18 A I have done five.

03:19 19 Q And that's over the course of how many years?

03:19 20 A I'd say two years.

03:19 21 Q Okay. And regarding -- you said you were employed
03:19 22 by MUSC at the time, and they have a contract with the
03:19 23 attorney general's office to complete any second
03:19 24 opinions they may have?

03:19 25 A They have something -- I'm not into the details of

03:20 1 that because it doesn't involve me directly.

03:20 2 Q So you're not aware of how much money the attorney

03:20 3 general's office paid MUSC to do this evaluation?

03:20 4 A I have a guess.

03:20 5 Q Don't guess. If you don't know, you don't know.

03:20 6 But you're aware the attorney general's office paid

03:20 7 MUSC to do this evaluation?

03:20 8 A Yes. Yes.

03:20 9 Q I'll go first to the sentencing sheets.

03:20 10 MS. GOOD: May I approach, Your Honor?

03:20 11 THE COURT: Yes, ma'am.

03:20 12 MS. GOOD: Thank you.

03:20 13 Q On the sentencing sheets, can you tell the jury

03:20 14 whether there was a recommendation by the State of

03:20 15 South Carolina, the solicitor's office, when it came to

03:20 16 this plea?

03:20 17 MR. BOGLE: Objection; relevancy.

03:20 18 MS. GOOD: It's on the sentencing sheet, Your

03:20 19 Honor.

03:20 20 THE COURT: Overruled.

03:20 21 THE WITNESS: There is recommendation by the

03:20 22 State. I think it says CCP of five years.

03:20 23 BY MS. GOOD:

03:20 24 Q A cap of five years?

03:20 25 A Oh, cap. Sorry.

03:20 1 Q That's all right. So it was a cap of five years?

03:21 2 A Yes.

03:21 3 Q And did the State recommend probation as part of

03:21 4 that?

03:21 5 A I --

03:21 6 Q Do you see anywhere on there?

03:21 7 A I don't believe so.

03:21 8 Q And as a result of him being convicted of those

03:21 9 two crimes, he's required to be on the sex offender

03:21 10 registry, right?

03:21 11 A Yes.

03:21 12 Q And that's given out to everybody in the state.

03:21 13 It's put on SLED's website that he's a sex offender?

03:21 14 A It's on public record for people to look up.

03:21 15 Q And as a sex offender, he's required to register,

03:21 16 correct?

03:21 17 A Yes.

03:21 18 Q So people know where he is at all times?

03:21 19 A Yes.

03:21 20 Q Before I get to the tests, I'm going to get to the

03:21 21 victims in this case. You spoke about them a little

03:21 22 bit.

03:21 23 Regarding the nine-year-old, which is the older

03:21 24 daughter, you indicated you were trying to find

03:21 25 information, but you couldn't find a lot of information

03:21 1 as to her medical condition, correct? For example, you
03:22 2 thought that she was not able to conceive in any way,
03:22 3 correct?
03:22 4 A Yeah, based on what the arrest warrant was saying.
03:22 5 Q Are you aware that she has a seven-year-old child
03:22 6 now?
03:22 7 A No, I'm not.
03:22 8 Q So that would show that that portion of =your I
03:22 9 guess what you were trying to look for was not true,
03:22 10 correct? Not saying that you said it was true, but
03:22 11 that was something that you looked at that turns out
03:22 12 was not true?
03:22 13 A Correct.
03:22 14 Q In addition, as to the younger daughter with
03:22 15 regards to this PTSD issue and whether it was as to
03:22 16 something Mr. Beam had done or to another child, she
03:22 17 actually did give birth at 13 years old, correct?
03:22 18 A Yes.
03:22 19 Q And it was not Mr. Beam's child. It was from
03:22 20 somebody else?
03:22 21 A Correct.
03:22 22 Q Regarding these 2000 charges, you used the 2000
03:22 23 charge of sexual assault against the 27-year-old, the
03:22 24 sister-in-law, I guess, as part your evaluation. And
03:23 25 you relied on that as part of the pattern, correct?

03:23 1 A It's -- so when we do these evaluations, we look
03:23 2 at everything, so.

03:23 3 Q Okay. So you relied on that?

03:23 4 A I looked at it. I don't know what you mean by
03:23 5 relied on it. I looked at it.

03:23 6 Q Well, you used that as one of your points in the
03:23 7 Static-99, correct?

03:23 8 A Yes.

03:23 9 Q So you did rely on that, even though it was
03:23 10 dismissed and it was never found to be guilty of that
03:23 11 or anything?

03:23 12 A Correct.

03:23 13 Q Okay. And you said you also looked at the notes
03:23 14 regarding that, like the criminal history. You looked
03:23 15 at any criminal incident reports to get background on
03:23 16 these victims, correct, and the facts surrounding the
03:23 17 case?

03:23 18 A Yes.

03:23 19 Q Wasn't it also noted as part of that that Mr. Beam
03:23 20 was found later that day wearing different clothes than
03:23 21 what the victim said he was dressed in, indicating that
03:23 22 could potentially have been a reason it was dismissed?

03:23 23 A I believe it said it was dismissed because the
03:23 24 victim asked for it to be dismissed.

03:23 25 Q So the victim didn't even want to go forward with

03:23 1 it?

03:23 2 A That's what I -- yeah. That's what I have.

03:24 3 Q And I want to go ahead and get to the tests. And

03:24 4 I'll hit on some of these other things with the tests.

03:24 5 But the first one that you conducted was the

03:24 6 Conners Continuous Performance. And you indicate on

03:24 7 that one that it was no problem for him, correct? It

03:24 8 didn't seem that he had an attention problem in any

03:24 9 way?

03:24 10 A Correct.

03:24 11 Q And that's normal for most people who do that

03:24 12 test?

03:24 13 A Yes.

03:24 14 Q Then you conducted the substance abuse inventory.

03:24 15 And that basically has to do with drinking, correct?

03:24 16 A It has to do with substance abuse.

03:24 17 Q What would substance abuse be considered?

03:24 18 A Drug and alcohol.

03:24 19 Q And most of your information that you have is just

03:24 20 as to drinking, correct?

03:24 21 A Yes.

03:24 22 Q And you also indicated that the results may not be

03:24 23 valid on the first time he did that test, correct?

03:24 24 A Yes.

03:24 25 Q And then you moved on to the Personality

03:24 1 Assessment Inventory. And you indicated in your report
03:25 2 that there's no evidence that he was trying to present
03:25 3 as more negative than he is in reality, correct?
03:25 4 A Correct.
03:25 5 Q And there was no indications of clinical
03:25 6 psychopathology?
03:25 7 A As measured by the inventory, yes.
03:25 8 Q So that one was fairly normal, correct?
03:25 9 A I'm not sure what you mean by "fairly normal."
03:25 10 Q Well, you said there were no indications of a
03:25 11 personality disorder, any psychotic disorders, or
03:25 12 anything of that nature, correct?
03:25 13 A So I agree with that.
03:25 14 Q And his level of stress was consistent with a
03:25 15 typical adult, correct?
03:25 16 A Correct.
03:25 17 Q Okay. And then the Abel Assessment. You stated
03:25 18 this one is very controversial for your field because
03:25 19 nobody knows how it's been peer reviewed, correct?
03:25 20 A Yes.
03:25 21 Q And it's important for you to do a test for it to
03:25 22 be peer reviewed so you know a test is actually
03:25 23 accurate or not, correct?
03:25 24 A Generally, yes.
03:25 25 Q But in this case, you have no idea if it's been

03:25 1 peer reviewed, if the test is accurate. You're just
03:25 2 going with what this one doctor says even though nobody
03:26 3 knows what his data is based upon, correct?
03:26 4 A His lab knows what his data is based upon, but
03:26 5 nobody outside of it.
03:26 6 Q Right. So when you do this test, you have no idea
03:26 7 what data this is based on, whether it is actually
03:26 8 accurate or not?
03:26 9 A It's not -- yeah. We can't reproduce that. Yeah.
03:26 10 Q And so based on this report, he could have been
03:26 11 higher, he could have been lower. You have no idea
03:26 12 where he would have really fallen if we had the actual
03:26 13 data to show where he would be, correct?
03:26 14 A Possibly.
03:26 15 Q But say it is a valid test even though nobody
03:26 16 knows. His cognitive distortion score was
03:26 17 nonproblematic, right?
03:26 18 A Correct.
03:26 19 Q So that means it's normal, I guess, for a normal
03:26 20 adult? What does nonproblematic mean?
03:26 21 A So that means that he does not have those
03:26 22 distortions that people have -- that sometimes people
03:26 23 have when they abuse children like the children coming
03:27 24 on to them, it was the children's fault. That means he
03:27 25 scored lowest on that scale.

03:27 1 Q And then the second part, the probability of past
03:27 2 child sexual abuse and behavior from males, that was
03:27 3 questionable to you because of his social desirability
03:27 4 score, correct, so you can't even tell if that's an
03:27 5 accurate result or not?

03:27 6 A Correct.

03:27 7 Q And then, finally, you said it showed he has
03:27 8 sexual interest in adult and adolescent females which
03:27 9 is considered normal for an adult on this type of test?

03:27 10 A Correct.

03:27 11 Q So any male that would walk in that would take
03:27 12 this test, a normal male would do the same way we did
03:27 13 on that?

03:27 14 A In terms of that portion, yes.

03:27 15 Q That portion, okay.

03:27 16 Regarding the PPG exam, which is the one where he
03:27 17 is hooked up to a machine with his penis. In that one,
03:27 18 you said there was a concern he was trying to throw the
03:27 19 test; however, there's different ways that this test
03:27 20 cannot be done appropriately considering anxiety,
03:28 21 medication, erectile dysfunction, lack of stimuli.

03:28 22 Many, many different things, correct?

03:28 23 A Yes.

03:28 24 Q So you have no idea why this test couldn't get any
03:28 25 results, correct?

03:28 1 A I would disagree with that. I think those points
03:28 2 were all addressed by the examiner who reviewed the
03:28 3 PPG.

03:28 4 Q However, Mr. Beam did report he has an anxiety
03:28 5 disorder, correct?

03:28 6 A There is no evidence to corroborate that. He
03:28 7 didn't -- I would have to see that. What page are you
03:28 8 on?

03:28 9 Q Page 19.

03:28 10 A Oh, yes. There was no evidence of him ever having
03:28 11 an anxiety disorder, being treated for such, and he
03:28 12 didn't disclose that.

03:28 13 Q But in any event, taking the PPG, he did not -- I
03:28 14 guess, how do you determine -- what does this PPG test
03:28 15 do? How do you determine if he's aroused by something
03:28 16 or not? Explain that to the jury.

03:28 17 A It's based on the measurements.

03:28 18 Q What kind of measurements? I don't think we went
03:28 19 through this with the jury.

03:28 20 A So there is a gauge on his penis. There is a
03:29 21 gauge on the skin, breathing, body movements. And, so,
03:29 22 essentially, the individual, if they're aroused enough
03:29 23 to obtain an erection, that can be measured.

03:29 24 Q And in this case, he didn't get an erection to
03:29 25 anything, correct?

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03:29 1 A He did not get an erection. The test was not
03:29 2 valid.

03:29 3 Q But he did not get an erection? For how many
03:29 4 hours was he on the test?

03:29 5 A I would have to look. I don't know.

03:29 6 Q Do you have your notes to look? Approximately
03:29 7 three hours?

03:29 8 A I don't know.

03:29 9 Q Get to the Static-99. Explain to the jury a
03:29 10 little bit more, when you do the Static-99, it's a
03:29 11 scale of negative three to 12, correct?

03:29 12 A Yes.

03:29 13 Q And there's different, I guess, things you look at
03:29 14 to determine whether he gets a point or not?

03:29 15 A Correct.

03:29 16 Q And in this case he was a two out of 12, correct?

03:29 17 A Yes.

03:29 18 Q What is considered in the high range? It's six to
03:30 19 12, correct?

03:30 20 A I think so.

03:30 21 Q And then the moderate high range is four to five?

03:30 22 A I think so.

03:30 23 Q And then the low to moderate is two to three, and
03:30 24 then zero to one is low?

03:30 25 A I think so.

03:30 1 Q You think so or you know?

03:30 2 A I'd have to look. Again, I didn't run these
03:30 3 measures, so I'd have to look at the notes. That
03:30 4 sounds familiar, like what I recall.

03:30 5 Q Okay. So you don't know how the Static-99 scale
03:30 6 works, what the different ranges are, and you conducted
03:30 7 the test?

03:30 8 A So, again, the assessments are done by personnel
03:30 9 in the lab.

03:30 10 Q Right. So you didn't do the Static-99?

03:30 11 A I didn't do it. The director of the lab and I sat
03:30 12 together, and he did it.

03:30 13 Q Okay. So you're not aware of how to necessarily
03:30 14 conduct a Static-99 then?

03:30 15 A I actually am because I have had the training
03:30 16 since then.

03:30 17 Q So at the time, you did not have the training to
03:30 18 even do a Static-99?

03:30 19 A Correct.

03:30 20 Q Okay. So just to go through the points for the
03:31 21 Static-99, what are the different ways you can get a
03:31 22 point? One way is by your age, correct?

03:31 23 A Yes.

03:31 24 Q Did he get a point for his age?

03:31 25 A I'd have to look at the scoring sheet. I have it

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03:31 1 with me.

03:31 2 Q Can you please get it for me.

03:31 3 A Yeah.

03:31 4 Q Thank you.

03:31 5 A Okay.

03:31 6 Q What are the different ways he could get a point?

03:31 7 I want to know exactly which ones you gave him points

03:31 8 on, which ones you gave him zeros on.

03:32 9 A Okay. Actually, I could have done that from the

03:32 10 report.

03:32 11 Q Okay.

03:32 12 A So on the age, he got a negative one.

03:32 13 Q Okay.

03:32 14 A On prior sex offenses, he got a one.

03:32 15 Q And that's based on the one that was dismissed

03:32 16 with the 27-year-old?

03:32 17 A Yes, because this says "prior charge." That was a

03:32 18 prior charge.

03:32 19 Q Okay.

03:32 20 A Okay. Prior sentencing dates.

03:32 21 Q Okay. And his prior sentencing dates, those are

03:32 22 all DUIs, minor trespassings, things of that nature,

03:32 23 correct?

03:32 24 A Yes.

03:32 25 Q So nothing that would be of concern to you

03:32 1 regarding violence, correct?

03:32 2 A It's a respecer as noted on the Static-99.

03:33 3 Q But they're small DUI, trespassing, driving under

03:33 4 suspension, correct, that you used for those?

03:33 5 A Let me look back just to make sure. That does

03:33 6 sound familiar though. Yes.

03:33 7 Q Okay. And then what was the other point?

03:33 8 A The unrelated victim.

03:33 9 Q Which is the same thing as the prior sex offense

03:33 10 point?

03:33 11 A The charge, yes.

03:33 12 Q And which ones did he get a zero on?

03:33 13 A Number two.

03:33 14 Q Which is what?

03:33 15 A If he's ever lived with a lover for at least two

03:33 16 years.

03:33 17 Q Which he had because he was married for 20,

03:33 18 correct?

03:33 19 A Correct.

03:33 20 And index nonsexual violence.

03:33 21 Q What is that?

03:33 22 A So he had no other charges when he was -- I'm

03:33 23 sorry, he had no other convictions with the criminal

03:34 24 sexual conduct with the minor charges. It was just

03:34 25 those. So he would get a zero.

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03:34 1 Q Okay.

03:34 2 A Prior nonsexual violence, any convictions.

03:34 3 Q Which he had none of those, correct?

03:34 4 A Correct.

03:34 5 Convictions for noncontact sex offenses.

03:34 6 Q He had none of those, correct?

03:34 7 A He had none of those.

03:34 8 Stranger victims, zero. Male victim, zero.

03:34 9 Q Okay. And you gave him -- you came up with a two,

03:34 10 or, I guess, whoever did the Static-99 came up with a

03:34 11 two?

03:34 12 A Right.

03:34 13 Q And based on a two in your report, 78 percent of

03:34 14 the people do not reoffend within five years, correct?

03:34 15 A Yes.

03:34 16 Q And 80 percent do not reoffend within ten years,

03:34 17 correct?

03:35 18 A Correct.

03:35 19 Q Are you aware that last month the Static-99 was

03:35 20 advised and there are now new recidivism rates?

03:35 21 A No.

03:35 22 Q So you're not aware now at a two, only five

03:35 23 percent reoffend within five years?

03:35 24 A No, I'm not aware of that.

03:35 25 Q And if this was done at today's date with a

03:35 1 Static-99, you would use those numbers, correct,
03:35 2 instead of the numbers at the time?
03:35 3 A Yeah. When you do the assessment, you have to use
03:35 4 the latest version that's out.
03:35 5 Q So the latest version, I guess you said you're not
03:35 6 aware, but they could have possibly changed since you
03:35 7 did this?
03:35 8 A Correct.
03:35 9 Q Okay. And something else that's important to look
03:35 10 at when you do these evaluations is disciplinaries in
03:35 11 prison, correct?
03:35 12 A Sure.
03:35 13 Q And why is that important?
03:35 14 A Well, if they're in prison, you want to see how
03:35 15 they're behaving there. And you can get information
03:35 16 about, you know, all sorts of things. Just depends on
03:35 17 the individual and what's -- what information you get.
03:35 18 Q And in this case, there were no disciplinaries
03:36 19 other than one marijuana use that was -- that stood out
03:36 20 for Mr. Beam, correct?
03:36 21 A Correct.
03:36 22 Q And since he's been in Union County, are you aware
03:36 23 of any disciplinaries that he's had there?
03:36 24 A I -- I don't think so.
03:36 25 MS. GOOD: Beg the court's indulgence.

03:36 1 No other questions, Your Honor.

03:36 2 MR. BOGLE: Very briefly.

03:36 3 REDIRECT EXAMINATION

03:36 4 BY MR. BOGLE:

03:36 5 Q Regarding your training on the Static-99, you said
03:36 6 that when this assessment was scored, you were sitting
03:36 7 with somebody else, the director, perhaps, and you and
03:36 8 he worked together scoring the guide, and he was
03:37 9 writing numbers down; is that right?

03:37 10 A Yes.

03:37 11 Q Okay. Have you been trained on the Static-99R, in
03:37 12 filling it out, since then?

03:37 13 A Yes.

03:37 14 Q How recent?

03:37 15 A I believe it was 2015.

03:37 16 Q Okay. And are you aware of any changes in the
03:37 17 numbers, the predictability numbers, based on your
03:37 18 training as recently as last year?

03:37 19 A As of my training, no.

03:37 20 Q Okay. Now, regarding the charge, the fact that
03:37 21 the unconvicted charge, does the Static have a place
03:37 22 for charges to go, where he gets a point for those?
03:37 23 This is the assault with intent to commit sexual
03:37 24 conduct on the sister-in-law.

03:37 25 A Yes.

03:37 1 Q Does that figure in?

03:37 2 A Yes.

03:37 3 Q Now, all of these tests, some of these tests help
03:37 4 Mr. Beam, do they not?

03:37 5 A Sure. I guess you could say that it way.

03:37 6 Q And some are neutral.

03:37 7 And regarding the PPG, the result there being not
03:37 8 valid, but what was the information you got from the
03:38 9 tester, the person that gave the test and evaluated the
03:38 10 results?

03:38 11 A I'm sorry. Can you say that again?

03:38 12 Q What was the information you got from the people
03:38 13 that gave the test and evaluated the results about his
03:38 14 cooperation or taking the PPG?

03:38 15 A They were concerned that based on his movements
03:38 16 and irregular breathing when he had been asked to not
03:38 17 do that, that he was trying to essentially throw the
03:38 18 test, if you will.

03:38 19 Q And when you're hooked up to the PPG or hook
03:38 20 yourself up to it, there's sensors that detect all that
03:38 21 stuff, aren't there?

03:38 22 A Yes.

03:38 23 Q Okay. Thank you, Doctor.

03:38 24 That's all.

03:38 25 THE COURT: Anything further from this witness?

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03:38 1 MS. GOOD: No, sir.

03:38 2 THE COURT: Any objection to this witness being
03:38 3 excused?

03:38 4 MR. BOGLE: No, your Honor.

03:38 5 THE COURT: Thank you, Doctor. You are excused.

03:39 6 We're going to take a short break and begin the
03:39 7 next witness.

03:39 8 MR. BOGLE: Your Honor, at this time --

03:39 9 THE COURT: Can I see counsel?

03:39 10 Mr. Bailiff, if you will take our jury out.

03:39 11 (WHEREUPON, the jury exited open court at
03:39 12 3:39 p.m.)

03:39 13 (WHEREUPON, a bench conference was held off the
03:40 14 record.)

03:40 15 MR. BOGLE: Your Honor, at this time, we'll
03:40 16 formally -- and I'll do it in front of the jury when
03:40 17 they come back in -- formally move to introduce into
03:40 18 evidence the certified copies of the two convictions,
03:40 19 Exhibit 1 and Exhibit 2.

03:40 20 The next thing is we're resting our case at this
03:40 21 point. I'd like to do it in front of the jury. But as
03:40 22 far as time frames and what you have to hear, this will
03:40 23 be our case.

03:40 24 THE COURT: The State has rested.

03:40 25 First of all, any objection to his exhibits?

03:40 1 MS. GOOD: No, sir. Other than the prior
03:40 2 objection.

03:40 3 THE COURT: Right. That's so noted for the
03:41 4 record.

03:41 5 State's Exhibit 1 and 2 will be admitted.

03:41 6 (WHEREUPON, State's Exhibit Numbers 1 and 2 were
03:41 7 admitted into evidence.)

03:41 8 MS. GOOD: Your Honor, at this time I would make a
03:41 9 motion for a directed verdict based on the fact the
03:41 10 only witness the State has provided is Dr. Ana Gomez.
03:41 11 Based on her testimony, Your Honor, she finds my client
03:41 12 to be in the low rate of a scale of 12, a two on that.

03:41 13 In addition, Your Honor, there are other tests
03:41 14 that she used that are not even peer reviewed. We
03:41 15 don't believe they have met their burden. It's
03:41 16 obviously not beyond a reasonable doubt now, but even
03:41 17 in the light most favorable to the State, we don't
03:41 18 believe they have met their burden. We'd ask the court
03:41 19 for a directed verdict.

03:41 20 MR. BOGLE: Looking at the evidence in the light
03:41 21 most favorable to the State using the proper directed
03:41 22 verdict format, Your Honor, I think the State has
03:41 23 established enough of the case to go to the jury at
03:41 24 this point in time. We have established the commission
03:41 25 of the sexually violent crime.

03:41 1 Also the fact that he has a mental abnormality,
03:41 2 that is going to be established not only by this
03:42 3 witness, but both doctors say that. Whether or not he
03:42 4 is likely to reoffend, that's a question for the jury.
03:42 5 I think we have gotten as far as we need to.

03:42 6 THE COURT: I believe, based on the testimony,
03:42 7 there has been sufficient evidence put in the record to
03:42 8 make this a jury question; therefore, I will deny your
03:42 9 motion.

03:42 10 MS. GOOD: Thank you, Your Honor.

03:42 11 THE COURT: Let's take a short break and we'll
03:42 12 proceed with the respondent's case.

03:42 13 (WHEREUPON, a recess was taken from 3:42 p.m. to
03:55 14 3:55 p.m.)

03:55 15 THE COURT: Anything before we bring our jury in?

03:55 16 MR. BOGLE: No, your Honor.

03:55 17 MS. GOOD: No, sir.

03:55 18 THE COURT: Mr. Bailiff, if you will get our jury
03:55 19 for us, please, sir.

03:56 20 (WHEREUPON, the jury entered open court at
03:56 21 3:56 p.m.)

03:56 22 MR. BOGLE: Your Honor, may it please the court.
03:56 23 At this time the State would move to introduce into
03:56 24 evidence formally State's Exhibit 1 and 2, the two
03:56 25 indictments that she testified about earlier.

03:56 1 MS. GOOD: No objection.

03:56 2 THE COURT: State's 1 and 2 are admitted.

03:56 3 MR. BOGLE: Thank you, Your Honor.

03:56 4 At this time, the State would rest.

03:57 5 MS. GOOD: Thank you, Your Honor.

03:57 6 At this time, the respondent would call Raymond

03:57 7 Valles.

03:57 8 **RAYMOND VALLES,**

03:57 9 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

03:57 10 **DIRECT EXAMINATION**

03:57 11 **BY MS. GOOD:**

03:57 12 Q State your name for the record, please.

03:57 13 A Raymond Valles.

03:57 14 Q Mr. Valles, where are you currently employed?

03:57 15 A Union County jail.

03:57 16 Q How long have you been employed there?

03:57 17 A 1996.

03:57 18 Q So that's 20 years?

03:57 19 A About 20 years.

03:57 20 Q And at the Union County jail, what are your

03:57 21 duties?

03:57 22 A I take care of the inmates, feed them, look after

03:57 23 their daily needs, basically.

03:57 24 Q And approximately how many guards or deputies do

03:57 25 you have that work at the jail?

03:57 1 A We have four shifts, 16.

03:58 2 Q And is it fair to say that you kind of oversee all

03:58 3 this and the inmates?

03:58 4 A Pardon me?

03:58 5 Q As your duties at the jail, do you kind of oversee

03:58 6 all the inmates?

03:58 7 A Yes, ma'am.

03:58 8 Q And do you know Melvin Beam?

03:58 9 A Yes, I do.

03:58 10 Q How do you know Melvin Beam?

03:58 11 A He's one of my inmates at the jail.

03:58 12 Q How long has he been at the jail with you?

03:58 13 A I think he's been there going on three years,

03:58 14 four.

03:58 15 Q And in those three years, have you ever had any

03:58 16 problems with Mr. Beam?

03:58 17 A Never.

03:58 18 Q Have you ever had any disciplinaries?

03:58 19 A Never.

03:58 20 Q Has he followed all the rules that the jail has

03:58 21 set out for him?

03:58 22 A Yes, ma'am.

03:58 23 Q Has he always been polite to the other guards and

03:58 24 to you?

03:58 25 A Yes, ma'am.

03:58 1 Q Has he ever caused a problem with any of the other
03:58 2 inmates?

03:58 3 A No, ma'am.

03:58 4 MS. GOOD: No further questions, Your Honor.

03:58 5 CROSS-EXAMINATION

03:58 6 BY MR. BOGLE:

03:58 7 Q Mr. Valles, Mr. Beam has been at the jail since
03:58 8 about, what, 2013?

03:58 9 A Yes, sir.

03:58 10 Q Are you involved in transporting him anywhere or
03:59 11 having it done?

03:59 12 A I think I've transported him one time.

03:59 13 Q Are you aware that back on May 15th of 2013 he was
03:59 14 supposed to be transported to MUSC for an evaluation
03:59 15 and had he refused to leave the jail?

03:59 16 A Yes, sir, I'm aware of that.

03:59 17 MR. BOGLE: Thank you, sir. That's all.

03:59 18 THE COURT: Any objection to this witness being
03:59 19 excused?

03:59 20 MR. BOGLE: No.

03:59 21 MS. GOOD: No, Your Honor.

03:59 22 THE COURT: Thank you, sir. You are excused.

03:59 23 MS. GOOD: Respondent calls Dr. Kimberly Harrison.

03:59 24 KIMBERLY HARRISON, Ph.D.,

03:59 25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. GOOD:

Q Dr. Harrison, where are you currently employed?

A I am in private practice in Austin, Texas.

Q And how long have you been in private practice in Austin?

A Since February of 2014.

Q And what do you do there? What kind of private practice do you have?

A My practice focuses on forensic psychological evaluation. So I conduct psychological evaluations for the courts in Texas. Primarily within the county of Travis County, which is where Austin, Texas is located.

Q And tell the jury a little bit about your educational background.

A I have a bachelor's degree in psychology, a master's degree in psychology, and a Ph.D. or a doctorate of philosophy in clinical psychology.

Q When did you get your doctorate?

A 2007.

Q And do you have any specialized training when it comes to forensic psychology?

A Yes. My -- the graduate program that I attended has a concentration in forensic clinical psychology, so most of my research projects as well as my clinical

04:01 1 practical experience took place in jails or prisons or
04:01 2 forensic psychiatric hospitals. I completed my
04:01 3 internship at Atascadero State Hospital in California,
04:01 4 which is a maximum security forensic hospital in
04:01 5 Central California. I also completed a postdoctoral
04:01 6 fellowship in clinical forensic psychology in
04:01 7 Minnesota.

04:01 8 Q And where are you currently licensed to practice?

04:01 9 A I'm licensed in Texas and in South Carolina.

04:01 10 Q And are you board certified?

04:01 11 A No.

04:01 12 Q And explain to the jury a little bit, what is
04:01 13 psychiatry.

04:01 14 A Psychology --

04:01 15 Q Psychology, I'm sorry.

04:01 16 A That's okay. Psychology is the study of human
04:01 17 behavior, thoughts, and emotions to also include mental
04:02 18 disorders.

04:02 19 Q And what is forensic psychology?

04:02 20 A Forensic psychology is the application of those
04:02 21 psychological principles to legal questions. So if the
04:02 22 court has a question that maybe involves whether or not
04:02 23 somebody has a psychological disorder or a question
04:02 24 about their behavior or their risk for certain types of
04:02 25 behavior in the future, that's where a forensic

04:02 1 psychologist may be helpful to the court.

04:02 2 Q And where were you working prior to Texas?

04:02 3 A I was in Columbia, South Carolina. I was employed
04:02 4 by the Department of Mental Health Forensic Evaluation
04:02 5 Service.

04:02 6 Q And what were you doing in that capacity?

04:02 7 A My job title was chief psychologist. And in that
04:02 8 capacity, I conducted psychological evaluations for the
04:02 9 courts to include competency to stand trial
04:02 10 evaluations, criminal responsibility or sometimes
04:02 11 called sanity evaluations, as well as evaluations
04:03 12 having to do with the Sexually Violent Predator Act.

04:03 13 Q And specifically as to the Sexually Violent
04:03 14 Predator Act, approximately how many evaluations have
04:03 15 you done?

04:03 16 A All total, I've done about 130 evaluations under
04:03 17 the Sexually Violent Predator Act. 24 of those were
04:03 18 precommitment evaluations. So what we're here for
04:03 19 today would be considered a precommitment evaluation.
04:03 20 24 of those, and then 108 annual review evaluations.

04:03 21 Q And that's actual annual reviews of people who
04:03 22 have been considered to be sexually violent predators,
04:03 23 correct?

04:03 24 A The annual reviews are for individuals who are
04:03 25 already in the program who have been committed to the

04:03 1 program. And by statute, they're evaluated every year
04:03 2 to update the court on their status.

04:03 3 Q And have you ever testified in court before
04:03 4 regarding your credentials?

04:03 5 A Yes, I have.

04:03 6 Q Approximately how many times?

04:03 7 A I've testified in the courts of, I believe, four
04:04 8 states 56 times.

04:04 9 MS. GOOD: At this time, Your Honor, I'd move to
04:04 10 introduce Dr. Harrison as an expert in forensic
04:04 11 psychology.

04:04 12 THE COURT: Any objection?

04:04 13 MR. BOGLE: Dr. Harrison -- may I?

04:04 14 THE COURT: Yes.

04:04 15 VOIR DIRE EXAMINATION

04:04 16 BY MR. BOGLE:

04:04 17 Q Have you been recognized as an expert witness in
04:04 18 South Carolina in the circuit courts?

04:04 19 A Yes, I have.

04:04 20 Q In this field?

04:04 21 A Yes, I have.

04:04 22 MR. BOGLE: No objection.

04:04 23 THE COURT: The doctor will be admitted as an
04:04 24 expert in forensic psychology without objection.

04:04 25 BY MS. GOOD:

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Kimberly Harrison, Ph.D. - Voir Dire Examination

04:04 1 Q And, specifically as to this case, how did you get
04:04 2 involved with this case?

04:04 3 A At the time, I was still employed by the forensic
04:04 4 evaluation service at the Department of Mental Health.
04:04 5 And one of my job duties was to conduct these
04:04 6 precommitment evaluations, and so I was appointed by
04:04 7 the court to conduct this evaluation.

04:04 8 Q And you were the first person to conduct an
04:04 9 evaluation on Mr. Beam for the court, correct?

04:04 10 A Yes.

04:04 11 Q In order to conduct your evaluation, what protocol
04:04 12 do you use?

04:04 13 A So first I gather as much information that I can
04:05 14 about the case. We usually get a packet of information
04:05 15 from the attorney general's office that includes
04:05 16 information about the offenses that the individual was
04:05 17 convicted of as well as their criminal history record,
04:05 18 other legal records that might be pertinent, if the
04:05 19 person has been a client of DMH before. Try to get
04:05 20 those records. So gathering records first, and then I
04:05 21 have a face-to-face interview with the individual. And
04:05 22 then if any other information comes up during the
04:05 23 evaluation where I might need to request those records,
04:05 24 I do that. And then I compile all the information
04:05 25 together and produce a report.

04:05 1 Q Is it important to you when compiling this
04:05 2 information and getting the diagnosis to look at
04:05 3 certain things such as sex offender treatment,
04:05 4 disciplinary records, things of that nature?

04:06 5 A Yes.

04:06 6 Q Why is it important to look at those?

04:06 7 A Well, we're trying to come up with, first of all,
04:06 8 a diagnosis. Does this individual meet criteria for
04:06 9 any type of mental health diagnosis. With all of that,
04:06 10 historical information is very important. And then
04:06 11 we're also looking at the person's risk of sexual
04:06 12 offending in the future. So, again, that historical
04:06 13 information can help us provide some prediction of
04:06 14 future behavior and is helpful for scoring instruments
04:06 15 like the Static-99 which was previously discussed.

04:06 16 Q In this case, did you look to see if Mr. Beam had
04:06 17 any sex offender treatment?

04:06 18 A I did, yes.

04:06 19 Q And explain to the jury what treatment he had.

04:06 20 A From my understanding, he participated in a
04:06 21 12-week treatment program with the Department of
04:06 22 Corrections.

04:06 23 Q And he successfully completed that program?

04:06 24 A Yes, he did.

04:06 25 Q And did you also look to see whether he had any

04:06 1 disciplinaries while in the Department of Corrections

04:07 2 serving his time?

04:07 3 A Yes, I did.

04:07 4 Q And did he have any?

04:07 5 A Yes, he had one.

04:07 6 Q What was that one for?

04:07 7 A He was what they call institutionally convicted of
04:07 8 use/possession of narcotics/marijuana.

04:07 9 Q And when you're conducting an evaluation to

04:07 10 determine if somebody is a sexually violent predator,

04:07 11 what type of disciplinaries do you look at that would

04:07 12 be significant to help determine whether one would be a

04:07 13 sexually violent predator?

04:07 14 A Well, the reason that disciplinary infractions can

04:07 15 be important is one of the diagnoses that I'm

04:07 16 considering that's often at the sort of top of the list

04:07 17 along with diagnoses like pedophilia is antisocial

04:07 18 personality disorder. So does this person have a

04:07 19 chronic long-standing history of breaking rules,

04:07 20 getting in trouble with the law, getting arrested for a

04:07 21 variety of offenses, showing irresponsibility,

04:08 22 recklessness, impulsivity. And so if someone confined

04:08 23 in a secure environment, such as a prison, where they

04:08 24 theoretically have limited access to things that they

04:08 25 could get in trouble with, and yet I've seen

04:08 1 individuals have disciplinary sheets multiple pages
04:08 2 long of all the rules they break in prison. And so
04:08 3 that can be an indication of antisocial personality
04:08 4 disorder.

04:08 5 Q You didn't see any of that in this case, correct?

04:08 6 A No, I did not.

04:08 7 Q And explain to the jury, I guess, how you got your
04:08 8 information and how you helped evaluate Mr. Beam when
04:08 9 it came to his interview and putting that together with
04:08 10 the information that you received to come to a
04:08 11 Static-99 score.

04:08 12 A So about the Static-99 score, so the Static-99 is
04:08 13 considered an actuarial risk assessment instrument.
04:08 14 And what that means is it's kind of the same type of
04:08 15 instrument that would be used if you were going in to
04:09 16 get health insurance or life insurance. So it's not an
04:09 17 interview. It's not questions I necessarily ask of the
04:09 18 individual. It's all based on their history.

04:09 19 So, for example, if you're trying to get, say,
04:09 20 life insurance and they're going to ask you questions
04:09 21 about are you a smoker, have you ever been a smoker,
04:09 22 what's your family history of heart disease, other
04:09 23 questions like that, how much alcohol do you drink, how
04:09 24 much do you exercise. And so all of that information
04:09 25 goes into, essentially, a chart. And based on

04:09 1 thousands and thousands of people who they have data
04:09 2 on, they can provide some prediction of how high risk
04:09 3 you are or what your life expectancy might be. It's
04:09 4 the same kind of idea that goes into the Static-99
04:09 5 instrument. So we know based on large scale studies of
04:09 6 sex offenders which variables or which items can
04:09 7 predict who will reoffend sexually in the future.

04:10 8 And so I gathered that information both from the
04:10 9 records that were available to me, demographic
04:10 10 information about Mr. Beam, and then the interview is
04:10 11 used to clarify some of the questions I might have had.

04:10 12 Q And these records were provided to you by the
04:10 13 attorney general's office, correct?

04:10 14 A I believe most of them did come from the attorney
04:10 15 general's office, yes.

04:10 16 Q And after review of all those records and his past
04:10 17 offenses as well as the interview, you conducted a
04:10 18 Static-99?

04:10 19 A Yes.

04:10 20 Q And did you actually conduct it or someone else
04:10 21 conduct it?

04:10 22 A No, I did it.

04:10 23 Q And have you had training in Static-99?

04:10 24 A Yes.

04:10 25 Q When was your training? When was your first

04:10 1 training in Static-99?

04:10 2 A I know I participated in a training during my
04:10 3 postdoctoral fellowship year which would have been in
04:10 4 2007 or 2008. This was a measure that we used
04:10 5 regularly during my employment at the Department of
04:11 6 Mental Health so we would often collaborate on it or
04:11 7 review. We're always up to date on the articles that
04:11 8 came out and new information about it.

04:11 9 Q So you had been doing it for approximately five
04:11 10 years before you had evaluated Mr. Beam?

04:11 11 A Yes, because I evaluated him in 2013, so yeah,
04:11 12 five or six years.

04:11 13 Q And based on your training with the Static-99 and
04:11 14 the information that you received, what score did you
04:11 15 give Mr. Beam?

04:11 16 A My score was a one.

04:11 17 Q And explain to the jury the scale of the
04:11 18 Static-99, the different ranges.

04:11 19 A So the score can range from negative three all the
04:11 20 way up to a 12. 12 would mean the person is at highest
04:11 21 risk or is in the group that is at highest risk to
04:11 22 commit another sexually violent offense in the future.
04:11 23 Negative three meaning they would be in the group
04:11 24 that's at the lowest risk.

04:11 25 So Mr. Beam scored a one, which is considered low

04:12 1 moderate or low risk. There's new data that just
04:12 2 recently came out last month. And according to the new
04:12 3 data that just came out, a score of one puts him in a
04:12 4 group of offenders with a 3.9 percent chance to
04:12 5 reoffend sexually in the next five years.
04:12 6 Q So approximately 96 percent do not reoffend within
04:12 7 the next five years?
04:12 8 A That's correct.
04:12 9 Q And what about the next ten years?
04:12 10 A The new data does not include the next ten years.
04:12 11 It only includes the five, and I'm not sure why that
04:12 12 is.
04:12 13 Q And you say these came out last month?
04:12 14 A Yes.
04:12 15 Q You're aware of those because you kept up in your
04:12 16 training regarding sexually violent predator cases and
04:12 17 Static-99?
04:12 18 A Yes. Specifically because I knew I was going to
04:12 19 be coming here so I wanted to make sure everything was
04:12 20 up to date.
04:12 21 Q And based on the new numbers that came out, if,
04:12 22 based on Dr. Gomez's score of a two, what would the
04:12 23 recidivism rate be in the next five years?
04:13 24 A I don't have the chart in front of me actually.
04:13 25 Q Would it help to refresh your memory if I showed

04:13 1 you a chart?

04:13 2 A Yes.

04:13 3 So a score of two with these new data points would
04:13 4 be in a risk group of 5.6 percent.

04:13 5 Q So approximately 95 percent do not reoffend if
04:13 6 they have a two?

04:13 7 A That's correct.

04:13 8 Q And how did you come up -- I guess what are the
04:13 9 different things you look at to determine the point
04:13 10 system for Static-99?

04:13 11 A So it's a list of variables including their age.
04:13 12 We know from research that people who are older have a
04:13 13 lower risk of reoffending. So people that are younger
04:13 14 tend to have a higher risk. So Mr. Beam, I believe, is
04:13 15 currently 51 years old which gives him, actually,
04:13 16 negative one score for that.

04:13 17 Some other items are if he's ever been convicted
04:14 18 of a noncontact sex offense. So noncontact sex offense
04:14 19 would be something like indecent exposure or viewing
04:14 20 child pornography, something like that. Having victims
04:14 21 that are unrelated.

04:14 22 Q I'm going to stop you real quick. As to the
04:14 23 noncontact sexual offenses, did he receive a point on
04:14 24 those?

04:14 25 A No.

04:14 1 Q Because he did not have any?

04:14 2 A Correct.

04:14 3 Q What was the next point you look for?

04:14 4 A Having any unrelated victims.

04:14 5 Q Okay. In this case did you give him a point for
04:14 6 that?

04:14 7 A I did not.

04:14 8 Q And why is that?

04:14 9 A So the any unrelated victims can come from any
04:14 10 source of information that's deemed credible. So the
04:14 11 individual doesn't even have to be convicted of an
04:14 12 offense to get a point on that.

04:14 13 In Mr. Beam's case, he had that one offense that
04:14 14 was discussed previously where he was charged with
04:14 15 assault with intent to commit criminal sexual conduct,
04:14 16 and the charge was dropped. So it wasn't even that he
04:15 17 went to trial and was found not guilty because in those
04:15 18 cases I may have still given a point for having an
04:15 19 unrelated victim, depending on the strength of the
04:15 20 evidence. It wasn't that the case was dropped for some
04:15 21 sort of technicality. From the records I reviewed, the
04:15 22 case was dropped because the victim specifically
04:15 23 requested that the charge be dropped. So in that case
04:15 24 I didn't feel like I could give him a point for having
04:15 25 an unrelated victim for that particular offense since

04:15 1 it was the victim that withdrew the charges. So he did
04:15 2 not get a point for that. And getting a point would
04:15 3 increase your risk.

04:15 4 Q Go ahead with the other points.

04:15 5 A Some of the other points are having a stranger
04:15 6 victim, which he did not have. Having a male victim.
04:15 7 We know from large studies that individuals who have
04:15 8 male victims are at higher risk of reoffending in the
04:15 9 future. Mr. Beam does not have any male victims so he
04:16 10 did not get a point for that one.

04:16 11 Q Is there any other ones?

04:16 12 A The only ones -- let's see. He had four or more
04:16 13 prior sentencing dates. He did get a point for that,
04:16 14 and that was for prior offenses including DWI, driving
04:16 15 under suspension, possession of marijuana, trespassing.

04:16 16 Q Okay. And based on your evaluation, you say you
04:16 17 gave him a one; is that correct?

04:16 18 A That's right.

04:16 19 Q And what range does that put him in on the scale?

04:16 20 A That would be considered in the low to low
04:16 21 moderate range.

04:16 22 Q And what are the different ranges?

04:16 23 A So anything less than one is considered low. I'm
04:16 24 sorry, anything less than -- zero or less is considered
04:17 25 low; one to two is low moderate; three to four is

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04:17 1 moderate high; and then five or above is considered
04:17 2 high.

04:17 3 Q You said he fell in the low to moderate. And
04:17 4 based on your score, it's the low end of the low to
04:17 5 moderate, correct?

04:17 6 A Right.

04:17 7 Q You heard Dr. Gomez testify earlier as to other
04:17 8 tests that she conducted on him. Did you conduct any
04:17 9 other tests on Mr. Beam?

04:17 10 A I did not.

04:17 11 Q And why not?

04:17 12 A So the Static-99 we know from years of research is
04:17 13 the most valid measure and has the best predictability
04:17 14 for predicting risk of sexually violent offenders in
04:17 15 the future. There's no other measure that's going to
04:17 16 sort of add validity to it. We conduct the clinical
04:17 17 interview, look at all the other historical information
04:17 18 to get a good picture of the person, to see if there
04:18 19 are any other variables that may lead to a different
04:18 20 opinion than what the Static-99 leads us to, but
04:18 21 studies have shown over and over again that Static-99
04:18 22 any other and measures like it are the single best
04:18 23 predictor of sexual offense risk in the future.

04:18 24 Other measures just aren't really relevant. It's
04:18 25 sort of like if you go to your doctor because you're

04:18 1 having heart pain and they take an x-ray of your foot.
04:18 2 Maybe they will find something interesting there, maybe
04:18 3 find you have arthritis in your ankle that you didn't
04:18 4 know about, but that's probably not going to help
04:18 5 answer any questions about the heart pains that you're
04:18 6 having. So there's just -- there's not a lot of
04:18 7 relevance to doing all these other measures.

04:18 8 Q And specifically as to the Abel Assessment, the
04:18 9 AASI, can you explain why that one is not used widely
04:18 10 in your field?

04:18 11 A Yes. That one is specifically not used by the
04:19 12 Department of Mental Health. And, frankly, from my
04:19 13 research, it's recommended not to be used in these
04:19 14 types of evaluations because the methods that the test
04:19 15 was developed is sort of shrouded in mystery which
04:19 16 is -- kind of the basis of research 101 is that you
04:19 17 have to make your findings public so that other
04:19 18 scientists or researchers in the field can try to
04:19 19 reproduce your studies. And so based on that shaky
04:19 20 foundation, a lot of psychologists in the field choose
04:19 21 not to use the Abel system.

04:19 22 Q And based on everything that you did, your
04:19 23 evaluation, your interview with Mr. Beam, review of all
04:19 24 the records, the Static-99, did you come to a decision,
04:19 25 a diagnosis to a reasonable degree of medical certainty

04:19 1 regarding Mr. Beam?

04:19 2 A Yes.

04:19 3 Q And what was that?

04:19 4 A I diagnosed Mr. Beam with pedophilia sexually
04:20 5 attracted to females nonexclusive type.

04:20 6 Q What does that mean?

04:20 7 A Pedophilia basically just means that Mr. Beam is
04:20 8 sexually attracted to prepubescent children. In his
04:20 9 case, the specifier sexually attracted to females means
04:20 10 that he is sexually attracted to girls. And
04:20 11 nonexclusive type means that he is not only attracted
04:20 12 to prepubescent girls, that he also has a history of
04:20 13 sexual involvement with adult women.

04:20 14 Q And that's the same diagnosis that Dr. Gomez came
04:20 15 up with based on your review?

04:20 16 A That's correct.

04:20 17 Q And despite the fact that he has this diagnosis,
04:20 18 to a reasonable degree of medical certainty, do you
04:20 19 find that Mr. Beam is a sexually violent predator?

04:20 20 A No, I do not.

04:20 21 Q Why is that?

04:20 22 MR. BOGLE: Objection, Your Honor. The way -- the
04:20 23 phrasing of the question to a medical certainty. She's
04:20 24 not an MD. She's a psychologist.

04:20 25 MS. GOOD: To a psychological certainty.

04:20 1 THE COURT: Rephrase your question.

04:20 2 BY MS. GOOD:

04:20 3 Q To a reasonable degree of psychological certainty,

04:21 4 would you consider Mr. Beam, based on your evaluation

04:21 5 of him and the interview and everything that you did to

04:21 6 create your opinion, do you consider him to be likely

04:21 7 to reoffend as a sexually violent predator?

04:21 8 A No, I do not.

04:21 9 Q And why is that?

04:21 10 A My opinion is based on, in large part, on the

04:21 11 Static-99 which, again, is the sort of best validated

04:21 12 measure for this specific purpose. He scored quite low

04:21 13 on the Static-99. He doesn't seem to have extraneous

04:21 14 risk factors not accounted for by the Static-99 that

04:21 15 might increase his risk. Given his age, given the fact

04:21 16 that his victims were related to him, were females,

04:21 17 these are all factors that tend to say he would likely

04:21 18 not reoffend again.

04:21 19 Q And you just stated about extraneous risk factors

04:22 20 that you look for that would make him reoffend but that

04:22 21 he did not possess. What would those factors be?

04:22 22 A It could be like antisocial personality disorder

04:22 23 which I had mentioned earlier. It could be significant

04:22 24 impulsivity, inability to regulate his behavior across

04:22 25 a variety of life areas. Those would be some examples.

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04:22 1 Q But based on everything that you've done to a
04:22 2 reasonable degree of psychological certainty, you do
04:22 3 not find him to be a sexually violent predator?

04:22 4 A That's correct.

04:22 5 MS. GOOD: No further questions, Your Honor.

04:22 6 THE COURT: All right.

04:22 7 Mr. Bogle, your witness.

04:22 8 MR. BOGLE: Yes, sir. Thank you, Doctor -- or
04:22 9 thank you, Judge.

04:22 10 CROSS-EXAMINATION

04:22 11 BY MR. BOGLE:

04:22 12 Q And, Doctor, thank you for coming back on this
04:22 13 one.

04:22 14 A You're welcome.

04:22 15 Q Just a couple of things.

04:22 16 So in this particular case, now, in preparation
04:22 17 for testimony, you read Dr. Gomez's 25-page report,
04:23 18 right?

04:23 19 A Yes, I did.

04:23 20 Q And so you have the same diagnosis that Dr. Gomez
04:23 21 came up with, right?

04:23 22 A That's correct.

04:23 23 Q And the DSM-5, that's the diagnostic guide that
04:23 24 psychiatrists and psychologists use of all mental
04:23 25 illnesses, correct?

04:23 1 A Correct.

04:23 2 Q And the DSM-5 defines pedophilic disorder, it
04:23 3 requires at least six months' worth of activity,
04:23 4 correct?

04:23 5 A Correct.

04:23 6 Q And it's called recurrent intense sexually
04:23 7 arousing fantasies, sexual urges or behaviors involving
04:23 8 sexual activity with a prepubescent child or children.
04:23 9 And they define it as under age 13, right?

04:23 10 A Yes. Generally age 13, depending on when the
04:23 11 child comes into puberty, but yes.

04:23 12 Q Right. And in this case we have two victims. The
04:23 13 conduct on one seems to have started at age nine and
04:23 14 goes to perhaps 13. The conduct on the other seems to
04:24 15 start at age three and goes to either 11 or 13
04:24 16 depending on what you read?

04:24 17 A Correct.

04:24 18 Q So these were little girls?

04:24 19 A Correct.

04:24 20 Q No question about that.

04:24 21 A Correct.

04:24 22 Q And he would have had to have been sexually
04:24 23 aroused by little girls to have that diagnosis?

04:24 24 A Correct.

04:24 25 Q Okay. And, now, have you attended many guilty

04:24 1 pleas in court during your work as a forensic

04:24 2 psychologist?

04:24 3 A No. Actually, I have not.

04:24 4 Q Well, are you generally familiar with the process

04:24 5 that happens at a guilty plea since you're a forensic

04:24 6 psychologist, how -- let me ask you this. Are you

04:24 7 familiar with, as part of a guilty plea, the judge has

04:24 8 to ask the defendant a series of questions to make sure

04:24 9 he's freely and voluntarily pleading guilty, not being

04:24 10 forced to or tricked into it, things like that, right?

04:24 11 A That's my understanding, yes.

04:24 12 Q At the same time, once the judge finishes doing

04:24 13 that and decides the guy is freely and voluntarily

04:24 14 pleading, he then turns to the prosecutor and says,

04:24 15 "Tell me what happened. Give me a factual basis for

04:25 16 the plea," right?

04:25 17 A That's my understanding.

04:25 18 Q Because you can't plead guilty to something that

04:25 19 didn't happen, right?

04:25 20 A Correct.

04:25 21 Q So the prosecutor has to give the facts of the

04:25 22 case, the things the guy is pleading guilty to. And

04:25 23 the judge turns back to the guy and says, "You heard

04:25 24 that. Is that what you did?" Is that, essentially,

04:25 25 your understanding?

04:25 1 A That is my understanding.

04:25 2 Q So in this case, for this guilty plea to happen on

04:25 3 Melvin Beam, all these steps would have had to have

04:25 4 happened, right?

04:25 5 A I believe so.

04:25 6 Q Okay. Which means he would have had to have

04:25 7 admitted in front of the judge that, "Yeah, I did that

04:25 8 with these little girls," right?

04:25 9 You've got to tell me yes or no.

04:25 10 A I didn't know if there was a question there.

04:25 11 Q Well, does that mean that he would have had to

04:25 12 have admitted in front of the judge during his guilty

04:25 13 plea that, "Yeah, I did these things to these little

04:25 14 girls"?

04:25 15 A I believe so, yes.

04:25 16 Q And now he denies it, denied to you?

04:25 17 A Yes, he did.

04:25 18 Q Denied to her, Dr. Gomez?

04:25 19 A I believe so, yes.

04:26 20 Q Now, at some point as you were reading, did the

04:26 21 issue of the posttraumatic stress disorder, did you

04:26 22 read those records of the existence of it for one of

04:26 23 the daughters?

04:26 24 A No, I did not.

04:26 25 Q Did you have any reason to ask for -- ask us to

04:26 1 get the detailed mental health records of that girl?

04:26 2 A I believe there was some controversy about that
04:26 3 within the Department of Mental Health.

04:26 4 Q But you didn't ever review anything like that,
04:26 5 right?

04:26 6 A It was our policy not to request victim records.

04:26 7 Q Okay. But you're aware from hearing her testimony
04:26 8 that Dr. Gomez did?

04:26 9 A Yes.

04:26 10 Q Didn't talk to the victim but requested the
04:26 11 records?

04:26 12 A That's my understanding.

04:26 13 Q Because he's telling her, "Well, she has PTSD
04:26 14 because she had sex at a young age," when the reality
04:26 15 is she has PTSD because her daddy did these things to
04:26 16 her, right?

04:26 17 A According to Dr. Gomez's report, yes.

04:26 18 Q You didn't explore that rabbit hole yourself?

04:26 19 A Again, it was DMH's policy not to request victim
04:27 20 records. He had been convicted of the crimes, so to me
04:27 21 that was he was guilty of it.

04:27 22 Q So the Children's Advocacy Center that does the
04:27 23 forensic evaluation of a victim, y'all never asked for
04:27 24 those?

04:27 25 A No. We had the advocacy center's records, yes.

04:27 1 These were, I believe, referring to further records.

04:27 2 Q Okay. And the evidence and the information we had
04:27 3 showed both oral and penile penetration sex on both
04:27 4 girls, right?

04:27 5 A That's my understanding, yes.

04:27 6 Q When it comes to estimating or giving a
04:27 7 probability or likelihood of his offending in the
04:27 8 future, I guess I'm wondering how you rationalize the
04:27 9 likelihood of him doing it again with the fact that he
04:27 10 denies having done to it to begin with.

04:27 11 A Well, research has actually shown that denial in
04:27 12 and of itself is not a risk factor for further
04:28 13 reoffending.

04:28 14 Q So failure to accept responsibility for the harm
04:28 15 you did is not a risk factor?

04:28 16 A Not according to research studies.

04:28 17 Q Okay.

04:28 18 You talked about trying to find something where
04:28 19 you could maybe look for evidence of an antisocial
04:28 20 personality disorder. And that didn't exist here,
04:28 21 right? There wasn't enough information to get that,
04:28 22 was there?

04:28 23 A He did not meet criteria for it, correct.

04:28 24 Q Now, it's not required that he have a personality
04:28 25 disorder under the statute, is it?

04:28 1 A No. It's mental abnormality or personality
04:28 2 disorder.

04:28 3 Q There's no question he's got the mental
04:28 4 abnormality. That's the pedophilic disorder you talked
04:28 5 about earlier?

04:28 6 A Correct.

04:28 7 Q Okay. Did you yourself look into how the sexual
04:28 8 treatment at the prison has evolved from a 12-week
04:28 9 program to like a six to eight-month program, much more
04:28 10 detailed? Did you look into that?

04:29 11 A I'm not sure. And I'm not sure if that evolved
04:29 12 after I left the Department of Mental Health. I just
04:29 13 knew that he completed the 12-week program.

04:29 14 Q So in the report, I think your six-page report, it
04:29 15 mentions that he did the 12-week program, right?

04:29 16 A Yes.

04:29 17 Q Did you reach out to anybody who runs the program
04:29 18 now to find out has it changed, how has it changed?

04:29 19 A I guess I didn't see how that would be relevant to
04:29 20 Mr. Beam's case because he's no longer in the
04:29 21 Department of Corrections.

04:29 22 Q Well, what if it changed while he was still there?

04:29 23 A Again, I had the treatment records that discuss
04:29 24 the areas that they covered in treatment. And so he
04:29 25 completed the 12-week program is the information that I

04:29 1 have.

04:29 2 Q Now, on the Static-99R, you gave him a score of

04:29 3 one?

04:29 4 A That's correct.

04:29 5 Q And we have heard testimony how Dr. Gomez came up

04:29 6 with a two. Does it seem to be the case that you did

04:30 7 not count anything for the assault with intent to

04:30 8 commit criminal sexual conduct on the sister-in-law?

04:30 9 Is that where the difference is?

04:30 10 A Well, there was one item where it counted, and

04:30 11 that was on the previous charges. I did count it on

04:30 12 that because he was charged with that.

04:30 13 Q Okay.

04:30 14 A The difference was on the question about does he

04:30 15 have any unrelated victims. And you can even argue

04:30 16 that her being a sister-in-law, there's some

04:30 17 subjectivity about whether or not that's an unrelated

04:30 18 victim.

04:30 19 Q So you made a subjective decision to not count

04:30 20 that because the unrelated victim issue?

04:30 21 A That's correct. And because she withdrew the

04:30 22 charge.

04:30 23 Q So you made a comment that -- on your report it

04:30 24 says you interviewed Mr. Beam for an hour and

04:30 25 20 minutes; is that right?

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04:30 1 A That's correct.

04:30 2 Q You mentioned the fact that, something about --

04:30 3 maybe I didn't hear this right. I'll see if I can

04:31 4 narrow it down. The two victims he committed the

04:31 5 sexual acts on were his daughters?

04:31 6 A That's correct.

04:31 7 Q No question about that?

04:31 8 A Right.

04:31 9 Q Is that somehow less of a risk factor than opposed

04:31 10 to it being two girls who weren't his daughters?

04:31 11 A According to the Static-99 and according to large

04:31 12 scale research on sex offenders, we know people who go

04:31 13 outside their family to find victims are more likely to

04:31 14 have future sex offenses.

04:31 15 Q So --

04:31 16 A That that is a risk factor for having unrelated

04:31 17 victims or stranger victims.

04:31 18 Q I understand that, but are you essentially giving

04:31 19 him a free ride because it was his kids?

04:31 20 A Giving him a free ride?

04:31 21 Q Well, I'm thinking of the trauma. The trust that

04:31 22 a child has in their parents goes without bounds. And

04:31 23 for him to do it to his kids, isn't that just as bad as

04:31 24 him doing it to somebody he's not related to?

04:31 25 A Well, my -- no. My opinion is not to denigrate or

04:32 1 diminish anything that these victims have gone through.

04:32 2 The purpose of this evaluation is to predict his risk

04:32 3 in the future.

04:32 4 Q Okay.

04:32 5 A And I'm relying -- I'm basing my opinion on years

04:32 6 and years of research studies on thousands of sex

04:32 7 offenders.

04:32 8 Q Okay. Now, the tests that were run, the only

04:32 9 tests or scoring you did was the Static-99R, right?

04:32 10 A That's correct.

04:32 11 Q And Dr. Gomez, in her report, also scored him on

04:32 12 the Static-99R and got a different number than you did,

04:32 13 but she did use that instrument?

04:32 14 A Yes. Or someone in her lab did, yes.

04:32 15 Q Then as far as the other testing, the CPT, the

04:32 16 Conners, the substance abuse, the personality

04:32 17 inventory, the Abel, the PPG, the Hare, those were not

04:32 18 done by you?

04:32 19 A Correct. They're either invalid tests or

04:32 20 irrelevant tests to this question.

04:32 21 Q Well, in your opinion they're irrelevant, right?

04:33 22 A And in the opinion of most of the DMH examiners as

04:33 23 well.

04:33 24 Q Isn't it true that DMH, at the time you were

04:33 25 there, owned a PPG machine?

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04:33 1 A That they used for their treatment program.

04:33 2 Q Okay. Isn't it true that DMH, in precommitment
04:33 3 cases, depending on who was doing it, would sometimes
04:33 4 send the guy down to Dr. William Burke in Summerville
04:33 5 to run a PPG?

04:33 6 A I believe that's happened before. That might have
04:33 7 been before my time there.

04:33 8 Q Still happens, doesn't it?

04:33 9 A I'm not there anymore.

04:33 10 Q Okay.

04:33 11 MR. BOGLE: A moment, Your Honor.

04:33 12 Thank you, Doctor.

04:33 13 Nothing further, Judge.

04:33 14 REDIRECT EXAMINATION

04:33 15 BY MS. GOOD:

04:33 16 Q Regarding the fact that Mr. Beam denies this
04:33 17 occurred at this point, that plays nothing into the
04:33 18 research, correct?

04:33 19 A That's correct.

04:33 20 Q And also in line with the research, the fact that
04:34 21 whether somebody denies or accepts responsibility does
04:34 22 not predict reoffending?

04:34 23 A That's correct.

04:34 24 Q And regarding the sex offender treatment for
04:34 25 Mr. Beam, he completed what was asked of him, correct?

04:34 1 A Yes.

04:34 2 Q And as far as you're aware, nobody else ever asked

04:34 3 him to complete any other sex offender treatment while

04:34 4 in SCDC?

04:34 5 A That's my understanding.

04:34 6 Q And your understanding at the time was the only

04:34 7 program was that 12-week program?

04:34 8 A I believe so, yes.

04:34 9 Q In regard to the victims' therapy records, does

04:34 10 the victims' reactions to how something happened

04:34 11 afterwards play into your evaluation of Mr. Beam?

04:34 12 A For this specific purpose about predicting his

04:34 13 likelihood of sexual reoffending -- and, again, I had

04:34 14 the records from the Child Advocacy Center. So

04:34 15 immediately after the abuse and the assault was

04:34 16 discovered, I had the interviews of the children so

04:35 17 that they could explain what had happened, I carefully

04:35 18 reviewed all of that information, took their accounts

04:35 19 into consideration, the types of abuse, how long it had

04:35 20 gone on, et cetera, et cetera. As a matter of

04:35 21 practice, DMH does not request the children's later

04:35 22 treatment records. It's an invasion of privacy that

04:35 23 doesn't really add anything to these evaluations that's

04:35 24 based in any sort of research.

04:35 25 Q Finally, you stated you had done approximately 132

04:35 1 of these evaluations; is that correct?

04:35 2 A Yes, of all the different types of SVP
04:35 3 evaluations.

04:35 4 Q And a lot of them have to do with the annual
04:35 5 reviews of people who are actually sexually violent
04:35 6 predators, found to be by a jury sexually violent
04:35 7 predator?

04:35 8 A Correct.

04:35 9 Q And based on your experience as a forensic
04:35 10 psychologist, you find that Mr. Beam does not rise to
04:35 11 that level, correct?

04:35 12 A That's correct.

04:35 13 Q And is not considered one of the worst of the
04:35 14 worst?

04:35 15 A Correct.

04:36 16 MS. GOOD: No further questions, Your Honor.

04:36 17 MR. BOGLE: Nothing further.

04:36 18 THE COURT: Any objection to this witness being
04:36 19 excused?

04:36 20 MS. GOOD: No, sir.

04:36 21 MR. BOGLE: No, Your Honor.

04:36 22 THE COURT: Thank you, Doctor. You are excused.

04:36 23 THE WITNESS: Thank you.

04:36 24 MS. GOOD: Respondent rests, Your Honor.

04:36 25 THE COURT: All right. Ladies and gentlemen, we

04:36 1 have reached a natural stopping point. It's about
04:36 2 15 -- about 20 'til 5:00. I have to add to the clock
04:36 3 because they haven't adjusted it for daylight saving
04:36 4 time yet so I'm going to let you go home. And the next
04:36 5 stage of the trial -- each side has rested.

04:36 6 Mr. Bogle, do you anticipate having any reply
04:37 7 testimony?

04:37 8 MR. BOGLE: No, Your Honor. Thank you.

04:37 9 THE COURT: Each side has rested. The next stage
04:37 10 of the trial will be the attorneys giving closing
04:37 11 arguments to you, and I will charge you on the law.
04:37 12 That will be a lengthy process so we wouldn't attempt
04:37 13 that this late in the day. So we're going to come back
04:37 14 in the morning.

04:37 15 Let me remind you of your instructions now. Three
04:37 16 things you can't do: You can't do independent
04:37 17 research. Don't get on the Internet and try to
04:37 18 research the law or the facts or any evidence that's
04:37 19 been presented. You can't talk to third parties about
04:37 20 this case, and you can't deliberate amongst yourselves.

04:37 21 So I hope everybody has a good evening, and we
04:37 22 will reconvene at 9:30 tomorrow morning. Be in the
04:37 23 jury room by 9:30.

04:37 24 (WHEREUPON, the jury exited open court at
04:38 25 4:37 p.m.)

04:38 1 THE COURT: Anything from either side before we go
04:38 2 into recess?

04:38 3 MR. BOGLE: Nothing from the State.

04:38 4 MS. GOOD: No, sir.

04:38 5 THE COURT: We will reconvene at 9:30 tomorrow.

04:38 6 MR. BOGLE: Wait a minute before we do break.

04:38 7 MS. GOOD: At this time, Your Honor, renew all of
04:38 8 my prior objections and my directed verdict motion.

04:38 9 Based on the testimony of Dr. Harrison, I don't
04:38 10 believe in the light most favorable to the State that
04:38 11 this jury could find him to be a sexually violent
04:38 12 predator, and we would ask that you grant a directed
04:38 13 verdict.

04:38 14 THE COURT: Noted for the record. It will
04:39 15 continue to be denied.

04:39 16 (WHEREUPON, proceedings adjourned at 4:39 p.m.)

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1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Union County, South Carolina,
10 on the 7th day of November 2016.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15 January 27, 2017
16

17
18 _____
Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
19
20
21
22
23
24
25

1 State of South Carolina
2 County of Union In the Court of Common Pleas

3
4 In the Matter of the)
Care and Treatment) 2012-CP-44-00272
5 of Melvin Beam)
6) November 8, 2016
7) Transcript of Record
Volume 2 (pgs. 193-229)

8
9 B E F O R E:

10 The Honorable R. Scott Sprouse, Judge;
11 and a jury.

12
13 A P P E A R A N C E S:

14 James G. Bogle, Jr., Esquire
South Carolina Attorney General's Office
Attorney for the State of South Carolina

15 Anna Rawl Good, Esquire
16 Attorney for Respondent

17
18
19
20 Diane L. Marcengill, RPR, CRR
21 Circuit Court Reporter
22
23
24
25

In the Matter of Melvin Beam 2012-CP-44-00272 November 8, 2016

I N D E X

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E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
	None offered.		

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
09:47 3 commencing at 9:25 a.m.)

09:47 4 THE COURT: The verdict form that y'all prepared,
09:47 5 looks like it's identical to what you submitted. Two
09:47 6 options: "Yes, Melvin Beam is a sexually violent
09:47 7 predator. No, he's not a sexually violent predator."
09:47 8 And I'll instruct them to place no significance on the
09:47 9 order in which the choices are placed on the page.

09:47 10 THE COURT: Anything?

09:47 11 MR. BOGLE: Nothing we can think of.

09:47 12 MS. GOOD: No, sir.

09:47 13 THE COURT: Mr. Bailiff, if you will get our jury
09:47 14 for us, please, sir.

09:47 15 (WHEREUPON, the jury entered open court at
09:48 16 9:47 a.m.)

09:48 17 THE COURT: All right. Good morning, ladies and
09:48 18 gentlemen. I hope everyone had a good evening. You
09:48 19 knew I was going to ask you this question: Now, did
09:48 20 any third parties attempt to talk to you about the
09:48 21 case, or was there any deliberation or any independent
09:48 22 research?

09:48 23 Let the record reflect that there were no positive
09:48 24 responses.

09:48 25 Very good. We are ready to proceed with closing

09:48 1 arguments from the attorneys.

09:48 2 The way this will go is the State will go first.

09:48 3 The defense will then present their closing argument,

09:48 4 and then the State will have an opportunity to reply,

09:48 5 then I will tell you the law. And then we'll finish

09:49 6 the case up.

09:49 7 So, Mr. Bogle.

09:49 8 MR. BOGLE: Thank you, Your Honor. May it please

09:49 9 the court. Ms. Good.

09:49 10 There's two things that amaze me about this

09:49 11 country, and one is today, what's happening downstairs.

09:49 12 Every four years we come together and vote for a

09:49 13 president. Every two years for the local offices and

09:49 14 things like that. But can you imagine that, the

09:49 15 significance of casting a vote for whoever is going to

09:49 16 lead this country.

09:49 17 And in my history lesson, I remember them telling

09:49 18 us that this country, we had an election during a civil

09:49 19 war. That was just unheard of. A lot of people were

09:49 20 talking about, well, don't do it. Do it next year when

09:49 21 the war is over in two years or something like that.

09:49 22 Yet this country had an election during a civil war.

09:49 23 The second thing is 12 people, probably total

09:49 24 strangers to each other, pulled from the community here

09:49 25 to make a decision like you're making today. And to

09:50 1 me, that's amazing how the jury system we have and how
09:50 2 unique it is.

09:50 3 So you've got a duty to the State. You have got a
09:50 4 duty to Union County. You have got a duty to Mr. Beam.
09:50 5 And you're doing your job. You're here. You're doing
09:50 6 your job. And we thank you for that.

09:50 7 Now, like I mentioned earlier, in this sexually
09:50 8 violent predator case, it's kind of different from
09:50 9 anything else. The elements are that we have to prove
09:50 10 first that Melvin Beam has been convicted of a sexually
09:50 11 violent crime. And the statute has a list of those in
09:50 12 it.

09:50 13 He's been convicted of two, and you'll have them
09:50 14 back in the jury room. Criminal sexual conduct with a
09:50 15 minor in the first degree two times on both of his
09:50 16 daughters. There's the sexually violent crime. The
09:50 17 second part is does he have a mental abnormality that
09:50 18 makes him likely to reoffend. He's got the mental
09:50 19 abnormality. Everyone agrees on that. He's a
09:50 20 pedophile, what he call pedophilic disorder. He's a
09:50 21 pedophile interested in little girls. So we've got
09:51 22 that.

09:51 23 Now, the next question, though, is: Does this
09:51 24 mental abnormality cause him such issue that he has
09:51 25 difficulty controlling his behavior? And like I said

09:51 1 yesterday, most of the time, we can't call a witness to
09:51 2 give you an opinion. Witnesses can say what they saw,
09:51 3 what they heard. But in this type of case, we had two
09:51 4 qualified experts, good background people. They have
09:51 5 done this kind of work before. They knew what they
09:51 6 were doing, qualified by the judge after hearing their
09:51 7 credentials to give you opinions about this case.

09:51 8 Now, let's think about that for a minute. The
09:51 9 so-called elephant in the room. The one thing that's
09:51 10 so big, no one wants to see it. Think about it. Two
09:51 11 experts, both qualified by the court to give opinions
09:51 12 to you, look at the same stuff, saw the same guy for
09:51 13 the same reasons and came up with different opinions.

09:51 14 Now, the State has to prove its case to you beyond
09:51 15 a reasonable doubt. And the judge will explain later
09:51 16 what that means. I tend to think of it as in some
09:52 17 cases say it means being firmly convinced. Well, the
09:52 18 fact that you've got dueling experts, if you will,
09:52 19 fighting experts on the same case, isn't that by
09:52 20 definition a reasonable doubt? And I would suggest
09:52 21 you've got to get in the weeds and look a little bit
09:52 22 harder, and that's what you have to do. And that's
09:52 23 what you've done these last two days.

09:52 24 Who did the better job? Who was more thorough in
09:52 25 what they did? A lot of focus is on the tests that

09:52 1 were given. Were they necessary? Were they not
09:52 2 necessary? Is the Abel test something not respected in
09:52 3 the industry?

09:52 4 Well, Dr. Gomez's lab has a protocol. Consists of
09:52 5 interviewing the guy, the physiological testing on the
09:52 6 PPG, that penile plethysmograph, and also a battery of
09:52 7 tests she ran. And the way I look at it is this.

09:52 8 Here's where your common sense comes in. Something is
09:52 9 wrong with you. You're not sure what it is. You go
09:52 10 see your doctor. He runs one test. And there's eight
09:53 11 other tests available. Some might help you, some may
09:53 12 be relevant, some might not help you. There's eight
09:53 13 other tests available. No, he'll just run one. Be
09:53 14 happy with that. Wouldn't you feel better if there's
09:53 15 something wrong with you having a more thorough job
09:53 16 done? And I think that's what happened here.

09:53 17 Judge, Dr. Gomez ran a list of tests. Some of
09:53 18 them helped Mr. Beam, some made no difference
09:53 19 whatsoever, some of them made him look kind of bad as
09:53 20 far as what she was trying to find. But she ran them
09:53 21 all. Gave him a full battery of tests to see what's
09:53 22 out there.

09:53 23 One of them that's got a lot reliance on by the
09:53 24 defense in this case is something called the
09:53 25 Static-99R. And that was a test, a list of things,

09:53 1 unchangeable things you have done in your past like
09:53 2 your age, your marital status, how many crimes you have
09:53 3 committed, that sort of thing. And it comes up with an
09:53 4 estimate of your probability of your likelihood to
09:53 5 reoffend.

09:53 6 Now, in this case, the Static-99, we have a
09:54 7 difference that you've got to resolve. What was the
09:54 8 probability of the score he got? One doctor gave him a
09:54 9 two. One doctor gave him a one. Both of them are in
09:54 10 the low moderate risk to reoffend. And this is based
09:54 11 on thousands of sex offenders from multiple countries.

09:54 12 Now, the numbers are kind of confusing. Dr. Gomez
09:54 13 was talking about a 12.9 percent chance of reoffending
09:54 14 in five years and a 19 percent chance of reoffending in
09:54 15 ten. Dr. Harrison says no, that's not right. It's 3.9
09:54 16 in five years. And then she says something that came
09:54 17 out last month to make it even less than that. Don't
09:54 18 know about that. You'll to have decide.

09:54 19 But the key is: What did Dr. Harrison do? She
09:54 20 interviewed Mr. Beam for an hour and 20 minutes. She
09:54 21 reviewed the records, and she scored him on the Static,
09:54 22 and that's it. What did Dr. Gomez do? She interviewed
09:54 23 the man on three occasions for seven hours and some
09:54 24 change. She ran a battery of tests to see what was out
09:54 25 there, and she read the reports and the documents and

09:55 1 everything. I think what she did was what we call a
09:55 2 better job.

09:55 3 And here is where your common sense comes in. And
09:55 4 the Static, the score is low. No question about that.
09:55 5 But don't rely just on that. And that's what
09:55 6 Dr. Harrison did. Dr. Gomez looked everywhere. She
09:55 7 called them data points. More information about this
09:55 8 guy to see where he is.

09:55 9 And the key is, I think, here -- and look at the
09:55 10 tests. What results did she get? A lot of those tests
09:55 11 that she ran showed him dissimulating, maybe trying to
09:55 12 throw the test off like the PPG, maybe not being fully
09:55 13 honest with his answers, and some of them didn't make a
09:55 14 difference.

09:55 15 He had sex offender treatment in the Department of
09:55 16 Corrections. Now, I'm not faulting Mr. Beam for taking
09:55 17 the only sex offender course he did. It was 12 weeks.
09:55 18 That was all they had back then. Now it's six to
09:55 19 eight months. The question was, and this was
09:56 20 Dr. Gomez's concern: As good as it might have been
09:56 21 when he took it, was it enough for this guy? Because
09:56 22 remember, this guy spent years sexually abusing very
09:56 23 young girls, starting one of them at age three, one at
09:56 24 age nine years doing this. Then he goes to jail. He's
09:56 25 been in jail, totally away from young girls, for like

In the Matter of Melvin Beam 2012-CP-44-00272 November 8, 2016
Closing Argument by the Defense

09:56 1 several years, been sitting at the detention center
09:56 2 awaiting this trial, partly because of his own not
09:56 3 agreeing to be evaluated at one point in time. So no
09:56 4 exposure to any young girls anywhere, and now he is
09:56 5 where he is now.

09:56 6 And what Dr. Gomez's concern is nothing has
09:56 7 intervened that really could change to make this guy
09:56 8 safe to be at large. There's no realistic prevention
09:56 9 added to what he has when he gets out, what he's going
09:56 10 to do.

09:56 11 So that's what you've got. You've got a thorough
09:56 12 evaluation by Dr. Gomez, a number of tests run, not
09:56 13 relying just on the Static, not hanging her hat just on
09:56 14 one thing. I would submit to you by doing that, the
09:57 15 State of South Carolina has met its burden of proving
09:57 16 beyond a reasonable doubt that Melvin Beam is a
09:57 17 sexually violent predator.

09:57 18 Your Honor, thank you.

09:57 19 THE COURT: Ms. Good.

09:57 20 MS. GOOD: Thank you, Your Honor. Mr. Bogle.

09:57 21 Yesterday morning I woke up, went to go make
09:57 22 breakfast for my children. Went to take the milk out
09:57 23 of the refrigerator making some cereal, and I noticed
09:57 24 date on it said November 6th. And I thought I'm not
09:57 25 sure. So I opened it, I smelled a little bit, said

09:57 1 still I'm just not really sure. Last thing I want is
09:57 2 to have to pick my kids up from school for throwing up.
09:57 3 Ladies and gentlemen, that is reasonable doubt. I
09:57 4 was not firmly convinced that that milk was good. So I
09:57 5 said, you know what, I'm not going to use it. That's
09:57 6 the same thing that you have to apply in this case.
09:57 7 Mr. Bogle has to prove to you beyond a reasonable doubt
09:58 8 that you are firmly convinced that Mr. Beam is going to
09:58 9 reoffend if he is released.
09:58 10 Ladies and gentlemen, based on all the evidence
09:58 11 that's been put in front of you, the true verdict in
09:58 12 this case is that you cannot find that he's going to
09:58 13 reoffend. He is not a sexually violent predator.
09:58 14 In order for Mr. Bogle to prove this, there's many
09:58 15 things you have to look at, but the first thing is was
09:58 16 he convicted of a sexually violent offense. There's no
09:58 17 dispute there. He's been convicted of CSC with a minor
09:58 18 first degree for doing these horrible things to his
09:58 19 daughters. Were they bad? Yes. Does that make him a
09:58 20 good person? No. But that is not where you have to
09:58 21 stop. That is not what you have to look at, not his
09:58 22 past, but what's going to happen in the future.
09:58 23 And, ladies and gentlemen, if you look at these
09:58 24 sentencing sheets -- the State wants you to stop with
09:58 25 that. He keeps throwing out the terms little girls,

09:58 1 young daughters, young kids. He wants you to rely on
09:58 2 your emotions to get a verdict in this case. And
09:58 3 you're going to hear the judge when he gives you
09:59 4 instructions that you cannot rely on your emotions or
09:59 5 your sympathies. You have to look at the facts in
09:59 6 front of you.

09:59 7 And the fact is the fact that he has these two
09:59 8 convictions does not mean that he's going to reoffend.
09:59 9 I want you to look. You're going to have these back in
09:59 10 the courtroom (sic) with you, these two sentencing
09:59 11 sheets. Look closely at the sentencing sheets, ladies
09:59 12 and gentlemen. The State of South Carolina, County of
09:59 13 Union determined, you will see a recommendation by the
09:59 14 State, the cap of five years based on all these
09:59 15 horrible facts that Mr. Bogle keeps throwing out. Five
09:59 16 years was enough for him. No probation was needed.
09:59 17 This is what they thought was appropriate. Yet here we
09:59 18 are, and the State of South Carolina is saying, no,
09:59 19 that was not enough.

09:59 20 But, ladies and gentlemen, that's not what you're
09:59 21 here to do. You're here to look at predictability.
09:59 22 And the State says no probation. He's not to be on
09:59 23 probation. Nobody can look at him. But he's going to
09:59 24 be on the sex offender registry. People will know at
09:59 25 all times where he is, where he lives. He's not

10:00 1 allowed to go around schools. He's not allowed to be
10:00 2 around a playground, anything of that nature. He can't
10:00 3 work anywhere close to that. Everybody will know where
10:00 4 he works, where he registers, and where he lives.

10:00 5 So, ladies and gentlemen of the jury, what else
10:00 6 has happened in that time? He has gotten help. He got
10:00 7 sex offender treatment while in prison. He was only in
10:00 8 prison for about three and a half, four years based on
10:00 9 his time calculations. They gave him five years of
10:00 10 prison, yet during that time they asked him to do sex
10:00 11 offender treatment. And what did he do? He said,
10:00 12 okay. I'll do that for you because that's what I need
10:00 13 to do. I need to do sex offender treatment.

10:00 14 He successfully completed that treatment which
10:00 15 means he did what he was supposed to do. He didn't
10:00 16 fail out. He didn't not go to group. He didn't not go
10:00 17 to daily sessions or whatever they had at that time. I
10:00 18 don't know what that program consisted of. But he did
10:00 19 what they asked him to do, and they said, "You did
10:00 20 good. We're going to pass you because you completed
10:00 21 this like you were supposed to."

10:01 22 And, therefore, it comes down to the
10:01 23 predictability. And that plays a part in
10:01 24 predictability. And you will look at disciplinaries.
10:01 25 And I'll get to Gomez in just a minute. But

10:01 1 disciplinaries are important, as you heard Dr. Harrison
10:01 2 talk about, because it shows are you able to follow the
10:01 3 rules. Is there something that's intervened at this
10:01 4 point. One, you have the sex offender treatment that's
10:01 5 intervened, but two, he has been in a place that has
10:01 6 structure. And it's showing that over these last
10:01 7 however many years he's been able to follow the rules.
10:01 8 Because think about it, ladies and gentlemen. These
10:01 9 crimes, while he was convicted in 2009, arrested in
10:01 10 2008, if you listen to the facts, they occurred in
10:01 11 2000, which is more than almost one and a half decades
10:01 12 ago. That's a big difference from being 51 years old
10:01 13 and being 35 years old. A lot can happen in 15 to
10:01 14 16 years, ladies and gentlemen.

10:01 15 So it comes down basically to dueling experts.
10:01 16 And Mr. Bogle just said it himself. The facts that
10:01 17 there's dueling experts alone is reasonable doubt. But
10:02 18 even though that's already reasonable doubt, Mr. Bogle
10:02 19 has already said that, I'm going to go into each one of
10:02 20 them.

10:02 21 Dr. Gomez. I think it's important. You have to
10:02 22 determine, the judge will tell you, that with any
10:02 23 witness, whether it's an expert or a lay witness, any
10:02 24 witness, you have to determine the credibility and the
10:02 25 weight to give to their evidence and their testimony.

10:02 1 Dr. Gomez, you heard her testify. She has done
10:02 2 five. Only five SVP evaluations in her lifetime. And
10:02 3 think about how she testified about doing those
10:02 4 evaluations. She says she didn't even do them herself.
10:02 5 She let other people do the tests, and she took the
10:02 6 tests and looked them. She didn't know the most
10:02 7 important one that these people in this field use, the
10:02 8 Static-99, she didn't know what the different
10:02 9 categories were. When I asked her, "Well, there's low,
10:02 10 low to moderate, moderate to high, high, right?" And
10:02 11 she's like, "I'm not sure. I'd have to look." I said,
10:02 12 "What are the different points you can look at when you
10:02 13 determine a Static-99?" "Oh, I don't know. I'll have
10:02 14 to look at the sheet."

10:03 15 Ladies and gentlemen, when this evaluation
10:03 16 occurred in 2014, when she did her evaluation of him,
10:03 17 she hadn't even had training in the Static-99 at that
10:03 18 point. She says she didn't even get it until 2015, so
10:03 19 how can she determine whether the Static-99 is useful
10:03 20 or not if she never even had training in it. And she
10:03 21 didn't even know about the new statistic change that
10:03 22 came out last month. Somebody who's testifying on the
10:03 23 stand as an expert as to these tests as to whether or
10:03 24 not somebody is sexually violent predator, the most
10:03 25 important test that people in this field use, she

10:03 1 didn't even know the numbers had changed.

10:03 2 Ladies and gentlemen, Mr. Bogle has talked about
10:03 3 all these different tests, that she wanted to be
10:03 4 thorough. I want you to pay attention to what those
10:03 5 test showed. She did the Conners test about somebody's
10:03 6 attention span. Explain to me how someone's attention
10:03 7 span is relevant to them being a sexually violent
10:03 8 predator or not. Even if it is, she said there's no
10:03 9 problem, so take the Conners test out.

10:03 10 Next is the personality inventory. She testified
10:04 11 in her report that says verbatim, "No evidence that he
10:04 12 was trying present himself as more negative than he is
10:04 13 in reality. The stress level is consistent with a
10:04 14 typical adult, and there's no indications of a
10:04 15 personality disorder or psychopathy." So take that
10:04 16 test out because it shows he's normal.

10:04 17 Then go to the AASI, which is the controversial
10:04 18 test which nobody uses in that field because nobody
10:04 19 knows how the data was even brought up. But even if
10:04 20 you determine that that test is one you can use, once
10:04 21 again, she says, "His sexual interests were considered
10:04 22 biologically normal for an adult." Biologically
10:04 23 normal. So any man out there would have the same
10:04 24 results that Mr. Beam did.

10:04 25 Then you go to the PPG which she said, "Well, it

10:04 1 wasn't a valid test because we couldn't get valid
10:04 2 results." Ladies and gentlemen, she didn't even know
10:04 3 how long he had been on the PPG test. She's like, "I
10:04 4 don't even know how long he was on it." But the fact
10:04 5 is the entire time he was on it, he ever once got
10:04 6 aroused. She explained the way they have to do this
10:05 7 test. It's not something I would think anybody would
10:05 8 want to go through, having something attached to your
10:05 9 penis. However, during that time, not one time did he
10:05 10 get an erection or begin to get an erection or even be
10:05 11 aroused. So, ladies and gentlemen, there goes the PPG
10:05 12 test.

10:05 13 That brings you down to the one test, the
10:05 14 Static-99R. And that's where we have the differences.
10:05 15 And I want you to remember that we have a negative
10:05 16 three up to a 12. Mr. Beam, depending on who you look
10:05 17 at -- Dr. Gomez says a two, Dr. Harrison says a one --
10:05 18 puts him in the low to moderate range. Not in the
10:05 19 moderate, not the moderate to high, not the high range.
10:05 20 The low to moderate.

10:05 21 And based on that, ladies and gentlemen, if you
10:05 22 look at those statistics, even if you look at them
10:05 23 before they changed last month as Dr. Harrison
10:05 24 testified to, and even if you look at just Dr. Gomez
10:05 25 and not Dr. Harrison, at that point only 12 percent

10:06 1 reoffend which means 88 percent of the people who are
10:06 2 released with the same score as Mr. Beam do not
10:06 3 reoffend. 88 percent. That's way more than reasonable
10:06 4 doubt, ladies and gentlemen.

10:06 5 Then you go and it takes you to Dr. Harrison.
10:06 6 And, once again, you're looking at the credibility of
10:06 7 these two witnesses. Dr. Harrison is somebody who has
10:06 8 worked exclusively for the Department of Mental Health
10:06 9 doing SVPs, done over 130 SVP evaluations including
10:06 10 ones who have actually been considered SVPs, convicted
10:06 11 by a jury like yourself and knows what they're like,
10:06 12 knows how they act, and she found, based on her
10:06 13 evaluation, that Mr. Beam was not a sexually violent
10:06 14 predator. These are people she works with on an
10:06 15 everyday basis, ladies and gentlemen, so she knows what
10:06 16 they look like. And that was her opinion.

10:06 17 The difference you look at also, ladies and
10:06 18 gentlemen, she was the first one to evaluate him. She
10:06 19 was court appointed by the court. Not this judge, but
10:06 20 a different judge to evaluate him. She wasn't paid by
10:07 21 the State of South Carolina, to the lab to do their own
10:07 22 evaluation. She was a neutral court-appointed
10:07 23 evaluator, and she came up with the fact that he was
10:07 24 not an SVP.

10:07 25 If you look at her, the difference between the two

1 and the one was the fact that this nonrelated victim in
2 2000, ladies and gentlemen. The ones where the charges
3 were dropped. One, she was related because she was a
4 sister-in-law, and two, the charges were dismissed
5 because she requested they be dismissed. I think
6 that's relevant when you're thinking about a pattern as
7 to why would a victim who supposedly was sexually
8 assaulted would want a case dismissed? I think that's
9 something you need to consider, ladies and gentlemen.

10 But even if you look at that, with the one, only
11 three percent reoffend. Three percent, which means
12 97 percent do not reoffend. Once again, not
13 50 percent, not 40 percent, not 80 percent. 97 percent
14 with Mr. Beam's score do not reoffend. That's
15 reasonable doubt, ladies and gentlemen.

16 Basically, these convictions, they are what they
17 are. They're not going to change. There's something
18 that is despicable. They're something that don't make
19 him a good person. But the statistics, ladies and
20 gentlemen, which is what you have to look at, they are
21 what they are also.

22 And as I quoted you at the beginning about Billy
23 Beam with baseball, he said, "The math works." In this
24 case, that's what this comes down to, the math. The
25 statistics. The math works. It helps you to predict

10:08 1 the odds. The odds in this case, ladies and gentlemen,
10:08 2 are 97 percent. 97 percent don't reoffend. Those are
10:08 3 better odds than most people will get in their everyday
10:08 4 life when it comes to anything that they do.

10:08 5 Most of the time when you go to do something,
10:08 6 "Well, it's 50/50 it's going to work. I'm not sure.
10:08 7 We'll see what happens." This is 97 percent. And if
10:08 8 you're wondering, ladies and gentlemen, whether you
10:08 9 should play it on the safe side, I don't know, because
10:08 10 of what he did in the past, you just want to be on the
10:08 11 safe side, ladies and gentlemen, back to this baseball
10:09 12 analogy. The tie always goes to the runner. If you
10:09 13 have to play it on the safe side, that's reasonable
10:09 14 doubt, and the tie goes to Mr. Beam.

10:09 15 We ask you at this time, ladies and gentlemen,
10:09 16 that based on all of this information that you've been
10:09 17 given by both experts, that there is no way, the only
10:09 18 true verdict in this case is that Mr. Beam is not a
10:09 19 sexually violent predator. Thank you.

10:09 20 MR. BOGLE: Nothing in reply, Your Honor. Thank
10:09 21 you.

10:09 22 THE COURT: Okay. Ladies and gentlemen, we have
10:09 23 come to the point in the trial where I instruct you on
10:09 24 the law. My instructions will be somewhat lengthy, but
10:09 25 they will be in three parts. First will be general

10:09 1 rules that govern the jury's duties. Second will be
10:09 2 instructions on the law that you must apply, what the
10:10 3 State must prove to make its case. And, lastly, some
10:10 4 rules for your deliberations.

10:10 5 The general rules begin with your duties as
10:10 6 jurors. It is your duty to find the facts from all of
10:10 7 the evidence in the case. To those facts, you must
10:10 8 apply the law as I give it to you. You shall not be
10:10 9 concerned with what the law should be but what it is.
10:10 10 And you must not be influenced by any personal likes or
10:10 11 dislike, opinions, prejudices, or undue sympathy. That
10:10 12 means you must decide the case solely on the evidence
10:10 13 before you in accordance with the law, the very thing
10:10 14 you took an oath promising to do at the beginning of
10:10 15 the trial.

10:10 16 It is your responsibility and yours alone to
10:10 17 determine the facts of this case. I would, therefore,
10:10 18 charge you that if during the course of this trial or
10:10 19 during this charge you have been given or left with the
10:10 20 impression or feeling that I favor one side or the
10:11 21 other, I specifically instruct you to disregard that
10:11 22 impression. Under our constitution, I am not allowed
10:11 23 to have an opinion as to the facts of the case.

10:11 24 You should not be influenced by any objections or
10:11 25 the court's ruling on them. You and you alone are the

10:11 1 judges of the facts. You determine -- you determine
10:11 2 the facts by evaluating or weighing the evidence that
10:11 3 you have heard during the trial.

10:11 4 What is evidence? Evidence is the sworn testimony
10:11 5 from the witness stand or any exhibits that have been
10:11 6 entered into evidence. The statements by the attorneys
10:11 7 are not evidence. What they have said in opening
10:11 8 statements, closing arguments, and at other times is
10:11 9 intended to help you interpret the evidence, but it is
10:11 10 not evidence.

10:11 11 There are two types of evidence generally
10:11 12 presented during a trial: Direct evidence and
10:11 13 circumstantial evidence. Direct evidence is the
10:11 14 testimony of a person who claims to have actual
10:11 15 knowledge of a fact such as an eyewitness. It is
10:12 16 evidence which immediately establishes the main fact to
10:12 17 be proved.

10:12 18 Circumstantial evidence is proof of a chain of
10:12 19 facts and circumstances indicating the existence of a
10:12 20 fact. It is evidence which immediately establishes
10:12 21 collateral facts from which the main fact may be
10:12 22 inferred.

10:12 23 Circumstantial evidence is based on inference and
10:12 24 not personal knowledge or observation. It is proof
10:12 25 that does not actually establish the fact in question

1 but that asserts or describes something else from which
2 you may reasonably infer the truth of the fact or at
3 least reasonably infer an increase in the probability
4 that the fact is true.

5 For circumstantial evidence to be sufficient to
6 warrant a finding of a fact, the circumstances must
7 lead to the fact with reasonable certainty. The facts
8 and circumstances should be considered in light of
9 ordinary experience and common sense.

10 The existence of a fact cannot be based on
11 speculation, surmise, or conjecture. The law makes
12 absolutely no distinction between the weight or value
13 to be given to either direct or circumstantial
14 evidence, nor is a greater degree of certainty required
15 of circumstantial evidence than direct evidence.

16 In determining the facts, you must consider all of
17 the evidence. In doing this, you must decide which
18 testimony to believe and which testimony to disbelieve.
19 In making that decision, you may take into account a
20 number of factors which include the following: Was the
21 witness able to see or hear or know the things about
22 which the witness testified? How well was the witness
23 able to recall and describe those things? What was the
24 witness' manner while testifying? Is there some reason
25 the witness would want to give testimony that would

10:13 1 help or hurt one side or the other? Did the witness
10:13 2 have an interest in the outcome of the case or any bias
10:13 3 or prejudice concerning any party or any matter
10:13 4 involved the case? How reasonable was the witnesses'
10:13 5 testimony considered in the light of all the other
10:14 6 evidence in the case? Was the witness' testimony
10:14 7 contradicted by what the witness has said or done at
10:14 8 another time or by the testimony of other witnesses or
10:14 9 by other evidence?

10:14 10 These are some of the factors you may consider in
10:14 11 deciding whether to believe testimony. In deciding
10:14 12 credibility or believability, you may believe as much
10:14 13 or as little of each witness' testimony as you think
10:14 14 proper. You may believe all, part, or none of a
10:14 15 witness' testimony. You may believe the testimony of
10:14 16 one witness over the many or the many over the one.

10:14 17 However, you most certainly do not determine the
10:14 18 matter of credibility by simply counting up the number
10:14 19 of witnesses who may have testified on behalf of the
10:14 20 parties in this case because your sole objective is to
10:14 21 find the truth. It does not matter whether the truth
10:14 22 comes from a witness for the State or from a witness
10:14 23 from the respondent.

10:14 24 The rules of evidence ordinarily do not permit
10:14 25 witnesses to testify to opinions or conclusions. An

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Jury Charge

1 exception to this rule exists for a witness we call
2 expert witnesses. A witness who, by education and
3 experience, has become expert in some art, science, or
4 profession may give an opinion as to the subject the
5 witness claims to be an expert in and may also give the
6 reasons for that opinion.

7 You should consider any expert opinion by a
8 witness, and like any other evidence, give it the
9 weight you think it deserves. If you decide that an
10 expert witness' opinion is not based on sufficient
11 education and experience, or if you decide that the
12 reasons given in support of the opinion are not sound
13 or that the opinion is outweighed by other evidence,
14 you may disregard the opinion in its entirety.

15 An expert witness' testimony is to be given no
16 greater weight than that of other witnesses simply
17 because the witness is an expert, and you do not have
18 to accept an expert's opinion even though it is
19 uncontradicted.

20 The petitioner, the State of South Carolina, has
21 brought this case under the Sexually Violent Predator
22 Act of South Carolina. The State seeks the civil
23 commitment of the respondent for long-term control,
24 care, and treatment in a secure facility. This is not
25 a criminal proceeding seeking incarceration but a

10:16 1 proceeding seeking civil commitment.

10:16 2 The State of South Carolina alleges or claims that
10:16 3 the respondent, Melvin Beam, is a sexually violent
10:16 4 predator under the law. The respondent denies that he
10:16 5 is a sexually violent predator, and the burden of proof
10:16 6 is, therefore, on the State to prove by evidence
10:16 7 sufficient to satisfy each of you beyond a reasonable
10:16 8 doubt that the respondent is a sexually violent
10:16 9 predator.

10:16 10 If the State is unable to meet that burden of
10:16 11 proof as to one or more of the elements of this claim,
10:16 12 then the respondent would be entitled to a finding that
10:16 13 he is not a sexually violent predator.

10:16 14 This is a unique proceeding. In most civil cases,
10:16 15 the petitioner only has the burden of proving that a
10:16 16 fact is more likely true than not true such as by the
10:17 17 greater weight or preponderance of the evidence.
10:17 18 However, in this type of case, the State's burden of
10:17 19 proof must be more powerful. It must be beyond a
10:17 20 reasonable doubt.

10:17 21 In order for the State to meet its burden of proof
10:17 22 in this case, it must prove beyond a reasonable doubt
10:17 23 that the respondent is a sexually violent predator. A
10:17 24 sexually violent predator is defined under South
10:17 25 Carolina law as a person who has been convicted of a

1 sexually violent offense and who suffers from a mental
2 abnormality or personality disorder that makes that
3 person likely to engage in acts of sexual violence if
4 not confined in a secure facility for long-term
5 control, care, and treatment.

6 South Carolina law defines the term "sexually
7 violent offense" as criminal sexual conduct in the
8 first, second, or third degree; criminal sexual conduct
9 with a minor in the first or second degree; lewd act
10 upon a minor, and other offenses not pertinent to the
11 facts of this case.

12 For purposes of this case, the parties stipulate
13 that criminal sexual conduct with a minor first degree
14 is a sexually violent offense.

15 "Mental abnormality" is defined as a mental
16 condition affecting a person's emotional or volitional
17 capacity that predisposes the person to commit sexually
18 violent offenses. "Likely to engage in acts of sexual
19 violence" means the person's propensity to commit acts
20 of sexual violence is of such a degree as to pose a
21 menace to the health and safety of others.

22 Inherent in these two elements is that the State
23 must prove the requirement that the respondent's mental
24 abnormality or personality disorder causes him serious
25 difficulty in controlling his behavior. In other

10:18 1 words, the State must prove beyond a reasonable doubt
10:18 2 that the individual it seeks to commit suffers from a
10:18 3 mental illness which he cannot sufficiently control
10:18 4 without the structure and care provided by a mental
10:19 5 health facility rendering him otherwise likely to
10:19 6 commit a dangerous act.

10:19 7 What is a reasonable doubt in the law? A
10:19 8 reasonable doubt is the kind of doubt that would cause
10:19 9 a reasonable person to hesitate to act. Proof beyond a
10:19 10 reasonable doubt is proof that leaves you firmly
10:19 11 convinced that the respondent is a sexually violent
10:19 12 predator.

10:19 13 There are very few things in this world that we
10:19 14 know with absolute certainty. And in sexually violent
10:19 15 predator cases, the law does not require proof that
10:19 16 overcomes every possible doubt.

10:19 17 If, based on your consideration of the evidence,
10:19 18 you are firmly convinced that the State has met its
10:19 19 burden of proof beyond a reasonable doubt, then you
10:19 20 must make a finding that the respondent is a sexually
10:19 21 violent predator.

10:19 22 If, on the other hand, after you have considered
10:19 23 the evidence, you think there is a real probability
10:19 24 that the respondent is not a sexually violent predator,
10:19 25 then you must give the respondent the benefit of the

10:20 1 doubt and find that he is not a sexually violent
10:20 2 predator.

10:20 3 A reasonable doubt may arise from the evidence or
10:20 4 from a lack of evidence. The respondent is entitled to
10:20 5 every reasonable doubt that may arise in the case.

10:20 6 If upon any issue of fact essential to a finding
10:20 7 that the respondent is a sexually violent predator you
10:20 8 have any reasonable doubt as to how that issue should
10:20 9 be resolved, it is your duty to resolve that doubt in
10:20 10 favor of the respondent. Suspicion, however strong, is
10:20 11 not enough to sustain a finding that the respondent is
10:20 12 a sexually violent predator. The evidence presented by
10:20 13 the State must be substantial evidence that proves
10:20 14 beyond a reasonable doubt that the respondent is a
10:20 15 sexually violent predator.

10:20 16 Ladies and gentlemen, we're almost to the point
10:20 17 where I send you to the jury room to begin your
10:20 18 deliberations. This has been a long instruction on the
10:20 19 law, but I'll leave you with some final thoughts.

10:21 20 You were chosen as jurors because both sides
10:21 21 believe that you could be fair and impartial in
10:21 22 deciding this case. I instruct you to make use of your
10:21 23 life experiences, your good common sense, and your
10:21 24 sense of logic and reason in evaluating the evidence in
10:21 25 this case.

10:21 1 You are not partisans or advocates for either
10:21 2 side. You have no friends to reward nor any enemies to
10:21 3 punish. You are the judges of the facts. Your sole
10:21 4 interest is to find the truth from the evidence that
10:21 5 has been presented in this case. Be courteous with one
10:21 6 another, listen to the views of your fellow jurors,
10:21 7 take the amount of time necessary for you to thoroughly
10:21 8 evaluate the evidence. This case is important to both
10:21 9 sides, as this is their only day in court on this case.

10:21 10 Now, Mr. Foreman, I'm going to go over the verdict
10:21 11 form with you. This is a very simple verdict form. It
10:21 12 gives you two choices: "We, the Jury, unanimously
10:22 13 answer the question as follows." First choice is,
10:22 14 "Yes, Melvin Beam is a sexually violent predator."
10:22 15 Second choice is, "No, Melvin Beam is not a sexually
10:22 16 violent predator." You will check the appropriate box
10:22 17 based on the jury's decision.

10:22 18 Place no significance in the order in which the
10:22 19 choices are placed on the page. One simply had to go
10:22 20 down before the other.

10:22 21 Your verdict must be unanimous. So when you have
10:22 22 reached a unanimous verdict, Mr. Foreman, you would
10:22 23 sign it -- check the appropriate box, sign it above
10:22 24 your name as it appears on the page, and date it.

10:22 25 I'm going to have you go to the jury room now. Do

10:22 1 not begin your deliberations until I send the verdict
10:22 2 form back with the exhibits.

10:22 3 So, Mr. Bailiff, would you take our jury to the
10:22 4 jury room.

10:22 5 (WHEREUPON, the jury exited open court at
10:23 6 10:22 a.m.)

10:23 7 THE COURT: All right. Any exceptions from the
10:23 8 State?

10:23 9 MR. BOGLE: No, Your Honor. Thank you.

10:23 10 THE COURT: Any exceptions from the defense?

10:23 11 MS. GOOD: No, sir.

10:23 12 We do need to get the alternate out of there.

10:23 13 THE COURT: I want each attorney to look -- I
10:23 14 think we just have two exhibits. Make sure we have all
10:23 15 the exhibits there. And when you count the exhibits,
10:23 16 then we'll send the verdict form and the exhibits back.

10:23 17 And, Mr. Bailiff, get the alternate and bring her
10:23 18 back in.

10:23 19 Do we have them all?

10:23 20 MR. BOGLE: That's them.

10:23 21 THE COURT: Take the exhibits and the verdict
10:23 22 form. And let's get the alternate, and they can
10:23 23 proceed with their deliberations.

10:23 24 THE BAILIFF: Okay.

10:25 25 (WHEREUPON, the alternate juror entered the

10:25 1 courtroom.)

10:25 2 THE COURT: Madam Alternate, your duties are
10:25 3 concluded. If you would like to stay and see how it
10:25 4 turns out, you're welcome to. On the other hand, if
10:25 5 you have other things that you would rather be doing
10:25 6 today and you would like to leave, you are free to go.
10:25 7 I thank you for your service. Thank you for your
10:25 8 attentiveness. And this will conclude your jury
10:25 9 service for the next three years.

10:25 10 ALTERNATE JUROR: Okay. Thank you.

10:25 11 THE COURT: Now, if the magistrate or the
10:25 12 municipal judge or the federal judge gets you, I can't
10:25 13 help you. But this concludes your jury service in
10:26 14 circuit court.

10:26 15 ALTERNATE JUROR: Okay. Thank you.

10:26 16 THE COURT: Thank you, ma'am.

10:26 17 (WHEREUPON, the alternate juror left the
10:26 18 courtroom.)

10:26 19 THE COURT: We'll go off the record. I want to
10:26 20 thank the attorneys for your hard work, and each side
10:26 21 has efficiently presented your case, and that's
10:26 22 appreciated by the court.

10:26 23 MR. BOGLE: Thank you, Your Honor.

10:26 24 MS. GOOD: Thank you, Your Honor.

10:26 25 (Court in recess, pending verdict, from 10:26 a.m.)

10:48 1 until 10:46 a.m.)

10:48 2 THE COURT: I have been informed we have a

10:48 3 verdict.

10:48 4 Anything from either side before we bring our jury

10:48 5 in?

10:48 6 MR. BOGLE: No, sir.

10:48 7 MS. GOOD: No, sir.

10:48 8 THE COURT: All right. Mr. Bailiff, if you will

10:48 9 get our jury for us, please, sir.

10:48 10 (WHEREUPON, the jury entered open court at

10:49 11 10:48 a.m.)

10:49 12 THE COURT: All right. Mr. Foreman, has the jury

10:49 13 reached a verdict?

10:49 14 JURY FOREMAN: Yes, sir.

10:49 15 THE COURT: Okay. Would you hand that to the

10:49 16 bailiff, please, sir.

10:49 17 Madam Clerk, would you publish the verdict.

10:49 18 THE CLERK: In regard to the case number

10:49 19 2012-CP-44-272, in the Matter of the Care and Treatment

10:50 20 of Melvin Beam, we, the Jury, unanimously answer the

10:50 21 question as follows:

10:50 22 Yes, Melvin Beam is a sexual violent predator.

10:50 23 Ladies and gentlemen of the jury, is this the

10:50 24 verdict to which you agreed, and is it still your

10:50 25 verdict? If so, please raise your right hand.

10:50 1 All hands raised in the affirmative, Your Honor.

10:50 2 THE COURT: Anything from the State before I

10:50 3 dismiss the jury?

10:50 4 MR. BOGLE: No, Your Honor. Thank you.

10:50 5 THE COURT: Anything from the defense?

10:50 6 MS. GOOD: Poll the jury, Your Honor.

10:50 7 THE COURT: All right.

10:50 8 Madam Clerk, poll the jury, please.

10:50 9 THE CLERK: Juror Number 25, is this your verdict?

10:50 10 JUROR: Yes.

10:50 11 THE CLERK: Juror Number 188, is this your

10:50 12 verdict?

10:50 13 JUROR: Yes.

10:50 14 THE CLERK: Juror Number 287, is this your

10:50 15 verdict?

10:50 16 JUROR: Yes.

10:50 17 THE CLERK: Juror 46, is this your verdict?

10:50 18 JUROR: Yes.

10:50 19 THE CLERK: Juror 226, is this your verdict?

10:50 20 JUROR: Yes.

10:50 21 THE CLERK: Juror 117, is this your verdict?

10:50 22 JUROR: Yes.

10:51 23 THE CLERK: Juror 128, is this your verdict?

10:50 24 JUROR: Yes.

10:51 25 THE CLERK: Juror 267, is this your verdict?

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Verdict

10:50 1 JUROR: Yes.

10:51 2 THE CLERK: Juror 110, is this your verdict?

10:50 3 JUROR: Yes.

10:51 4 THE CLERK: Juror 82, is this your verdict?

10:50 5 JUROR: Yes.

10:51 6 THE CLERK: Juror 224, is this your verdict?

10:50 7 JUROR: Yes.

10:51 8 THE CLERK: And, Juror 108, is this your verdict?

10:50 9 JUROR: Yes.

10:51 10 THE COURT: Thank you, ladies and gentlemen.

10:51 11 Thank you for your service. This will satisfy your

10:51 12 jury responsibility for circuit court for the next

10:51 13 three years, so I'm going to dismiss you now. This

10:51 14 concludes your service for the week.

10:51 15 (WHEREUPON, the jury exited open court at

10:52 16 10:51 a.m.)

10:52 17 THE COURT: Anything from either party?

10:52 18 Anything from the State?

10:52 19 MR. BOGLE: No, your Honor.

10:52 20 THE COURT: Anything from the defense?

10:52 21 MS. GOOD: No, your Honor.

10:52 22 At this time I would renew all of our prior

10:52 23 motions and objections as well as ask for the court to

10:52 24 make a finding notwithstanding the verdict based on the

10:52 25 evidence that was presented that there's no way a jury

10:52 1 could have found beyond a reasonable doubt that

10:52 2 Mr. Beam is a sexually violent predator.

10:52 3 THE COURT: All right. I would deny that motion,
10:52 4 but it's noted for the record.

10:52 5 MR. BOGLE: May I approach, Your Honor?

10:52 6 THE COURT: Yes, sir.

10:52 7 MR. BOGLE: I have a proposed order.

10:53 8 THE COURT: Ms. Good, have you reviewed the
10:53 9 proposed order?

10:53 10 MS. GOOD: Yes, sir. It is the typical order.

10:53 11 THE COURT: Do you have any objections to it?

10:53 12 MS. GOOD: No.

10:53 13 THE COURT: Mr. Bogle, I'll sign the proposed
10:53 14 order.

10:53 15 We will close the record.

10:53 16 MR. BOGLE: What we'll do is I want to get that to
10:53 17 the jail. They will transport him to the mental health
10:53 18 facility in Columbia. They have to call ahead to set
10:53 19 up a time to do it and I will give them the contact
10:53 20 number for who to call.

10:53 21 THE COURT: Okay.

22 (WHEREUPON, proceedings concluded at 10:53 a.m.)

23 ***END OF REQUESTED TRANSCRIPT OF RECORD***

24

25

1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Union County, South Carolina,
10 on the 8th day of November 2016.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

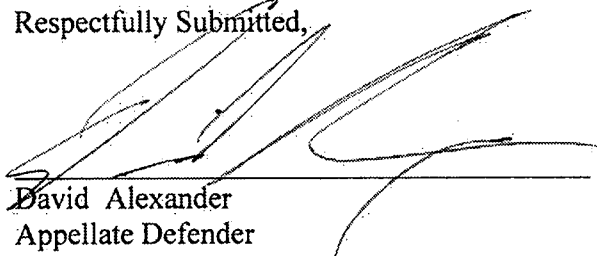
15 January 27, 2017
16

17
18 _____
Diane L. Marcengill, RPR, CRR
Circuit Court Reporter
19
20
21
22
23
24
25

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."

Respectfully Submitted,



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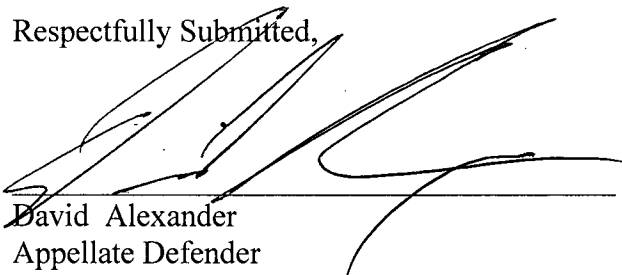
ATTORNEY FOR APPELLANT

This 7th day of August, 2017.

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."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 7th day of August, 2017.

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