

23300

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

IN THE MATTER OF THE CARE AND
TREATMENT OF DAVID A. WARD,

APPELLANT

APPELLATE CASE NO 2016-001151

RECORD ON APPEAL

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ORIGINAL
No Respondent's Brief Filed
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TRANSCRIPT OF RECORD

TRIAL DAY 1 - 03/21/16

(Whereupon, the proceeding was commenced at 10:54 a.m.)

THE COURT: All right. Ladies and gentlemen of the jury panel, we've got another set of questions that are directly related to the -- the case we will -- we will be starting. And the same -- the same rules apply that if you want to respond to a question but want to do so privately with me, then I'll certainly give you that opportunity. In addition, as I told you a little while ago, there will be some questions that I will instruct you not to respond in front of everybody but talk with me privately, if you need to respond to the particular question.

Now, this case that will be tried starting today, it is a civil case. But it is -- it -- it's related to a criminal matter as well, so we kind of consider this to be a hybrid-type -- type of case. The case is *in the Matter of the Care and Treatment of David Allen Ward, Jr.*, who is the gentleman seated in the middle on that table. It's a 2015 case, File No. 395.

And the -- the matter before the Court is for the jury to make a determination under the requirements of the law whether or not Mr. Ward is a sexually violent predator. And we'll get into the case a lot more, as far as what that

1 is all about. But basically, by law a person who has been
2 convicted of a sexually violent offense and suffers from a
3 mental abnormality or personality disorder, making the
4 person likely to engage in acts of sexual violence, that
5 will be the determination that the jury will have to make.
6 And that is what this case is about in a really tight
7 nutshell. I realize I haven't given you much information,
8 but the lawyers will when we engage in opening arguments
9 and as we go through this case.

10 Is anyone on the jury panel related by blood or
11 marriage, either now or formerly, to David Allen Ward, Jr.?
12 If so, please stand.

13 (Whereupon, no potential juror stood.)

14 THE COURT: Anyone on the jury panel have or have had
15 a close, personal, or social relationship with David Allen
16 Ward, Jr.?

17 (Whereupon, no potential juror stood.)

18 THE COURT: Now, I'm going to provide you with a list
19 of the possible or potential witnesses in this case, those
20 being Amy C. Swan and Marie Gehle. And that's spelled G-e-
21 h-l-e. Anyone on the jury panel related by blood or
22 marriage, either now or formerly, to those two individuals
23 I've just named or anyone on the jury panel have a close,
24 personal, or social relationship, either now or formerly,
25 with those two individuals? If so, please stand.

1 (Whereupon, no potential juror stood.)

2 THE COURT: Okay. Now -- all right. At this time I'm
3 going to allow the attorneys to introduce themselves and
4 where they -- where they work and things of that nature.
5 I'll tell you we got two excellent attorneys who will be
6 involved in the trial of this case. Mr. Morrow, I'll turn
7 it over to you first.

8 MR. MORROW: Hi. My name is Cam Morrow, and I work
9 for the South Carolina Attorney General's Office. Also
10 used to work at the solicitor's office in the eighth
11 circuit for David Stumbo for two years.

12 THE COURT: Okay. All right. And from the defense?

13 MR. NASROLLAHI: Thank you. Ladies and gentlemen of
14 the jury, I'm Joshua Nasrollahi. I'm an attorney out of
15 Greenwood, South Carolina. And I'm here representing Mr.
16 David Ward today. With me and assisting is my paralegal,
17 Emily Burdette. Thank you for -- for your service.

18 THE COURT: Any member of the jury panel ever been
19 represented by any of the attorneys involved in this case
20 or anyone in their respective offices or law firms?

21 (Whereupon, no potential juror stood.)

22 THE COURT: Anyone on the jury panel related by blood
23 or marriage, either now or formerly, or anyone on the jury
24 panel have or have had a close, personal, or social
25 relationship with any of the attorneys involved in this

1 case or anyone in their respective offices or law firms?
2 If so, please stand.

3 (Whereupon, a potential juror stood.)

4 THE COURT: Okay. All right. Yes, ma'am. For the
5 record, state your name, please, and number.

6 POTENTIAL JUROR: Vanessa Stumbo, 134.

7 THE COURT: Okay.

8 POTENTIAL JUROR: And I know both of them.

9 THE COURT: Okay.

10 POTENTIAL JUROR: Both the attorneys.

11 THE COURT: I -- I understand. Thank you. Anybody
12 else?

13 (Whereupon, no potential juror stood.)

14 THE COURT: While I understand that you know very
15 little about this case, I have to ask you the question:
16 Has any member of the jury panel already formed or
17 expressed any opinion about any issue or matter involved in
18 this case?

19 (Whereupon, no potential juror stood.)

20 THE COURT: All right. Now, I have some additional
21 questions for you. I've already asked the -- the jury
22 panel if anybody on the panel either related by blood or
23 marriage to Mr. Ward, either now or formerly, or have had
24 or currently have a personal or social relationship with
25 Mr. Ward. I will ask you further concerning Mr. Ward:

1 Does anyone on the jury panel have any prior knowledge
2 concerning anything related to Mr. Ward, anything in his
3 background or history? If so, please stand.

4 (Whereupon, no potential juror stood.)

5 THE COURT: Okay. Now, the next three questions -- no
6 -- the next -- yeah -- the next four questions, if you need
7 to respond, do not stand, but just keep a good mental note
8 of the question and your response and I'll speak with you
9 privately. Okay?

10 Number 1: Any member of the jury panel or any of your
11 close, personal friends or relatives ever been the victim
12 of a sexual assault? That's the first question.

13 Second question: Any member of the jury panel or any
14 of your close, personal friends or any of your relatives
15 ever been charged with or convicted of a sexual offense?

16 Third question -- no -- yeah. Third question: Has
17 any member of the jury panel or any of your close, personal
18 friends or any of your relatives ever been subject to civil
19 commitment proceedings or been voluntarily or involuntarily
20 civilly committed, that all being with respect to the
21 Department of Mental Health?

22 And the fourth question is: Any member of the jury
23 panel believe that if a person has any risk whatsoever of
24 being reconvicted of a crime, even if that risk is less
25 than 1 percent, then that person is a risk to the

1 community?

2 All right. Those are four questions that I -- if you
3 needed to respond, I want to speak with you privately in
4 just a moment.

5 Now, continuing, any member of the jury panel have any
6 training or experience in the following fields:
7 psychiatry, psychology, or the law? If so, please stand.

8 (Whereupon, one potential juror stood.)

9 THE BAILIFF: Got one, Your Honor.

10 THE COURT: Okay. Yes, ma'am. Your name and number?

11 POTENTIAL JUROR: Kathleen Cheeseman. I don't know
12 what my number is.

13 THE COURT: Okay. And your name?

14 POTENTIAL JUROR: Kathleen Cheeseman.

15 THE COURT: Okay.

16 POTENTIAL JUROR: I'm a paralegal.

17 THE COURT: Okay. All right. Very good. Thank you,
18 ma'am.

19 POTENTIAL JUROR: Uh-huh.

20 THE COURT: Has any member of the jury panel ever been
21 involved in a prison ministry, prison-outreach program, or
22 any other program involving contact with incarcerated
23 individuals? If so, please stand.

24 (Whereupon, no potential juror stood.)

25 THE COURT: Is there any member of the jury panel

1 aware of any bias or prejudice towards either the State of
2 South Carolina or Mr. Ward?

3 (Whereupon, no potential juror stood.)

4 THE COURT: Is there any member of the jury panel know
5 of any reason whatsoever why he or she should not serve as
6 a juror in this case with particular emphasis being placed
7 on your ability to be fair and to be impartial to both
8 sides in this case? If so, please stand.

9 (Whereupon, no potential juror stood.)

10 THE COURT: Okay. All right. Now, if -- if any of
11 you wanted to respond to any of the questions but was
12 reluctant to, or those four questions where I instructed
13 you not to respond in front of everybody, or if there's any
14 other concern or issue that you need the Court's awareness
15 of, then I will ask that a similar line be formed in the
16 aisle and you can come down and speak with me privately.
17 Okay? Okay.

18 (Off the record briefly.)

19 THE BAILIFF: Juror No. 74, Your Honor.

20 THE COURT: Okay.

21 (Off the record briefly.)

22 (Whereupon, the potential juror came forward.)

23 THE COURT: Yes, ma'am.

24 POTENTIAL JUROR: Myself, my sister, and mother are
25 all victims of sexual assault.

1 THE COURT: Okay. All right. Would that prevent you
2 from being fair and impartial to ---

3 POTENTIAL JUROR: I don't ---

4 THE COURT: --- both sides?

5 POTENTIAL JUROR: --- know.

6 THE COURT: Okay. All right. If you -- if -- if you
7 can't say ---

8 POTENTIAL JUROR: I honestly don't know.

9 THE COURT: Right. Okay. And I'm going to excuse you
10 from this case.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Okay? All right. Thank you, ma'am. Just
13 stay with us because I'm going to give a -- kind of a final
14 instruction, so just stay with us, okay?

15 (Whereupon, the potential juror came forward.)

16 THE BAILIFF: Juror No. 44.

17 POTENTIAL JUROR: Well, Your Honor -- 43.

18 THE BAILIFF: 43. I'm sorry.

19 POTENTIAL JUROR: Hi, Your Honor.

20 THE COURT: Hi.

21 POTENTIAL JUROR: I have to disclose. My father's
22 been in the system all his life. He's schizophrenic. I
23 could be biased in certain situations. I just wanted to
24 disclose that to you.

25 THE COURT: Okay. Your father, did you say?

1 POTENTIAL JUROR: Yeah. My ---

2 THE COURT: Okay.

3 POTENTIAL JUROR: --- father.

4 THE COURT: Your father has been -- is -- is he in an
5 institution?

6 POTENTIAL JUROR: He is not anymore.

7 THE COURT: Okay.

8 POTENTIAL JUROR: He's actually ---

9 THE COURT: Is that ---

10 POTENTIAL JUROR: --- passed away.

11 THE COURT: Oh, okay. But he was diagnosed sometime
12 in the past with schizophrenia?

13 POTENTIAL JUROR: Uh-huh.

14 THE COURT: Okay. And you think that would prevent
15 you from being fair and impartial to both sides?

16 POTENTIAL JUROR: I think it could be.

17 THE COURT: Okay. All right. You'll be excused. But
18 just stay with us because I got some final instructions for
19 the panel, okay?

20 POTENTIAL JUROR: Okay.

21 THE COURT: Okay.

22 THE BAILIFF: Juror No. 21, Your Honor.

23 THE COURT: Okay.

24 (Whereupon, the potential juror came forward.)

25 THE COURT: Yes, ma'am.

1 POTENTIAL JUROR: I was sexually molested as a child.

2 THE COURT: Okay. All right. And that make you have
3 difficulties being fair and impartial to both sides?

4 POTENTIAL JUROR: (Nodded head up and down.)

5 THE COURT: Okay. All right.

6 THE COURT REPORTER: Ma'am, I need a -- a verbal
7 response.

8 POTENTIAL JUROR: Yes.

9 THE COURT: Okay. You'll be excused. But stay with
10 us because I have some final instructions for the panel,
11 Okay? Thank you, ma'am.

12 THE BAILIFF: Juror No. 99.

13 (Whereupon, the potential juror came forward.)

14 THE COURT: Yes, ma'am.

15 POTENTIAL JUROR: I was sexually assaulted.

16 THE COURT: Okay.

17 POTENTIAL JUROR: And I don't know that I can do this.

18 THE COURT: Okay. You -- you're going to have some
19 difficulties with it?

20 POTENTIAL JUROR: Yeah.

21 THE COURT: Okay. All right. I'm going to excuse
22 you.

23 POTENTIAL JUROR: Okay.

24 THE COURT: Stay with us because I have some final
25 instructions for the panel, okay?

1 POTENTIAL JUROR: Okay.

2 THE COURT: All right.

3 POTENTIAL JUROR: Thank you.

4 THE BAILIFF: Juror No. 137.

5 (Whereupon, the potential juror came forward.)

6 THE COURT: Yes, ma'am.

7 POTENTIAL JUROR: I was molested at the age of 7 by a
8 45-year-old man. It was ---

9 THE COURT: Okay.

10 POTENTIAL JUROR: It was -- came to court in this
11 office.

12 THE COURT: Okay. All right. Would that make it
13 difficult for you to be fair and impartial?

14 POTENTIAL JUROR: Only if it's a child.

15 THE COURT: Okay. All right. Okay. Let me -- let me
16 confer with the lawyers one second. Just stay right there.

17 (Off the record briefly.)

18 THE COURT: All right. You're excused. But just stay
19 with us because I have some final instructions for the
20 panel, okay? Thank you, ma'am.

21 THE BAILIFF: Juror No. 70.

22 (Whereupon, the potential juror came forward.)

23 THE COURT: Yes, sir.

24 POTENTIAL JUROR: I have a question about working side
25 by side with the inmates. I drove a truck inside and

1 outside the gate. I've worked at the P.I. at Tyger River
2 with the inmates.

3 THE COURT: Okay. All right. So what company do you
4 work for?

5 POTENTIAL JUROR: I did work for Anderson Hardwood.

6 THE COURT: Okay. All right. Okay. You can still be

7 ---

8 POTENTIAL JUROR: I just ---

9 THE COURT: --- fair and ---

10 POTENTIAL JUROR: --- wanted to ---

11 THE COURT: --- impartial?

12 POTENTIAL JUROR: --- let you know, you know.

13 THE COURT: You -- you can still ---

14 POTENTIAL JUROR: Yes.

15 THE COURT: --- be fair and ---

16 POTENTIAL JUROR: Yes.

17 THE COURT: --- impartial? Very good.

18 POTENTIAL JUROR: Yes, sir.

19 THE COURT: Thank you for letting me know. You can
20 stay ---

21 POTENTIAL JUROR: All right.

22 THE COURT: --- with us. Okay.

23 THE BAILIFF: Juror No. 88, Your Honor.

24 (Whereupon, the potential juror came forward.)

25 THE COURT: Yes, ma'am.

1 POTENTIAL JUROR: Yes. It's about the sexual part. I
2 was molested as child by my dad. And my ---
3 THE COURT: All right.
4 POTENTIAL JUROR: --- dad was charged.
5 THE COURT: Okay. All right. Would that make it
6 difficult for you to be fair and impartial?
7 POTENTIAL JUROR: I don't -- yeah. Because I don't
8 -- I ---
9 THE COURT: Okay.
10 POTENTIAL JUROR: --- already ---
11 THE COURT: Okay.
12 POTENTIAL JUROR: --- made a judgment.
13 THE COURT: All right.
14 POTENTIAL JUROR: So I don't ---
15 THE COURT: Okay. All right. You'll be excused. But
16 just stay with us because I have some final instructions.
17 But you'll be excused from this.
18 POTENTIAL JUROR: Okay.
19 THE COURT: Okay. Thank you, ma'am. Wait a minute.
20 I've got one more.
21 THE BAILIFF: Juror 17, Your Honor.
22 THE COURT: Okay.
23 (Whereupon, the potential juror came forward.)
24 THE COURT: Yes, ma'am.
25 POTENTIAL JUROR: I didn't know if I just needed to

1 let you know. I still think I could do it fair and
2 impartial, but I did have a friend get raped at a party one
3 night.

4 THE COURT: Okay. You have a friend that what, now?

5 POTENTIAL JUROR: She got raped at a party one night.

6 THE COURT: Okay. You have ---

7 POTENTIAL JUROR: And I ---

8 THE COURT: --- a friend ---

9 POTENTIAL JUROR: --- I can ---

10 THE COURT: --- who was ---

11 POTENTIAL JUROR: Uh-huh.

12 THE COURT: Okay. Okay. Who was ---

13 POTENTIAL JUROR: Uh-huh.

14 THE COURT: --- raped.

15 POTENTIAL JUROR: Yeah.

16 THE COURT: But even with that ---

17 POTENTIAL JUROR: Uh-huh.

18 THE COURT: --- you can still be fair and impartial to
19 both sides?

20 POTENTIAL JUROR: I do. I just didn't know if I
21 needed ---

22 THE COURT: Well ---

23 POTENTIAL JUROR: --- to let you know.

24 THE COURT: Well, thank you for letting me know. You
25 can ---

1 POTENTIAL JUROR: You're welcome.

2 THE COURT: --- stay with us. Thank you.

3 POTENTIAL JUROR: Okay.

4 THE COURT: Okay. All right. All right. Does the
5 state have any objections or exceptions to the Court's voir
6 dire or any additional voir dire questions?

7 MR. MORROW: Nothing from the state, Your Honor.

8 THE COURT: Okay. Defense?

9 MR. NASROLLAHI: Nothing from the defense.

10 THE COURT: Is that none from the defense?

11 MR. NASROLLAHI: Nothing from the defense ---

12 THE COURT: Okay.

13 MR. NASROLLAHI: --- Your Honor.

14 THE COURT: Got you. Thank you.

15 MR. NASROLLAHI: Excuse me.

16 THE COURT: Okay. Thank you very much. All right.
17 Madam Clerk, if you will proceed with preparation of the
18 jury list. Everybody be at ease for just a few moments.

19 (Off the record from 11:10 a.m. until 11:25 a.m.)

20 THE COURT: Okay. I believe the attorneys are ready.
21 Madam Clerk?

22 DEPUTY CLERK OF COURT: Okay. Plaintiff, what's your
23 first strike?

24 MR. MORROW: One.

25 DEPUTY CLERK OF COURT: Defense?

1 MR. NASROLLAHI: Three.

2 DEPUTY CLERK OF COURT: Plaintiff?

3 MR. MORROW: Ten.

4 DEPUTY CLERK OF COURT: Defense?

5 MR. NASROLLAHI: Eleven.

6 DEPUTY CLERK OF COURT: Plaintiff?

7 MR. MORROW: Twelve.

8 DEPUTY CLERK OF COURT: Defense?

9 MR. NASROLLAHI: Fifteen.

10 DEPUTY CLERK OF COURT: Plaintiff?

11 MR. MORROW: Sixteen.

12 DEPUTY CLERK OF COURT: Defense?

13 MR. NASROLLAHI: Seventeen.

14 DEPUTY CLERK OF COURT: Okay. One alternate from 21
15 through 23.

16 DEPUTY CLERK OF COURT: Plaintiff?

17 MR. MORROW: Twenty-one.

18 DEPUTY CLERK OF COURT: Defense?

19 MR. NASROLLAHI: Twenty-three.

20 DEPUTY CLERK OF COURT: Okay. The plaintiff chose --
21 struck 32 ---

22 (Whereupon, the clerk of court and deputy clerk of
23 court conferred.)

24 DEPUTY CLERK OF COURT: Plaintiff struck No. 1, No.
25 10, No. 12, No. 16, and the alternate, No. 21.

1 MR. MORROW: That's correct.

2 DEPUTY CLERK OF COURT: Okay. Defense struck No. 3,
3 No. 11, No. 15, No. 17, alternate, 23.

4 MR. NASROLLAHI: Correct.

5 DEPUTY CLERK OF COURT: Okay. Can I have the
6 following come up to the jury box: Stacy D. Jones, No. 71;
7 Toney E. Pulley, No. 117; Micheal Sullivan, 135; Brittany
8 M. Kelley, 73; Frankie Anderson, No. 1; Gail Ferguson, No.
9 50; Larry Penland, 111; Nathaniel B. Senn, Jr., No. 128;
10 Reo Hoots, No. 65; Phillip Wilson, No. 145; Pamela Mills,
11 No. 101; Sonya Fowler, No. 52; and Tony Medlin, No. 97.

12 (Whereupon, the jurors came forward and were seated in
13 the jury box.)

14 THE COURT: Mr. -- Mr. Medlin is the alternate.

15 (Off the record briefly.)

16 THE BAILIFF: All jurors present, Your Honor.

17 THE COURT: Okay. Thank you, Mr. Bolt. Ladies and
18 gentlemen, what I want you to do is to go back to the jury
19 room. That'll give you an opportunity to get to know one
20 another for a minute or two. And -- and also, it'll get
21 you familiar with the surroundings that you will spend some
22 time in today and -- and probably some tomorrow.

23 You're going to hear me say what I'm -- I'm planning
24 to tell you, you're going to hear me say this throughout
25 the whole proceeding, is don't begin any discussions about

1 this case among yourselves until I tell you it is time to
2 begin your deliberations. Even though you know very little
3 about this case, you may have made some observations about
4 whatever. And I don't want you to engage in anything
5 whatsoever related about this case, among yourselves and in
6 -- when -- when you go home in the evenings or evening time
7 or a lunch break or things of that matter.

8 So go back to the jury room. We'll get you back out
9 shortly with further instructions on when we are going to
10 start the trial of this case. Okay?

11 THE BAILIFF: Y'all follow me.

12 (Whereupon, the jury exited the courtroom at 11:30
13 a.m.)

14 THE COURT: Okay. All right. Ladies and gentlemen of
15 the jury panel, as I indicated at the -- at the outset, it
16 -- it appears from all indications that this will be the
17 only trial -- the only business this week. So -- but I
18 don't want to -- other than the ones I've already indicated
19 are excused from the trial of this case, I don't want to
20 excuse the panel completely until we make sure that the
21 other case that we had on the docket is not going to go
22 forward.

23 So what I need for you to do is to call in. You've
24 been provided on a -- on your card a call-in number. And
25 want I want you to do is call that number after six o'clock

1 this evening, okay? And chances are the instruction on
2 that recording will be that you are excused for the
3 remainder of the week. But again, I don't want to excuse
4 you now until I make -- or until I know for certain that
5 the other matter that was on the docket is not going to go
6 forward.

7 If -- if some of you are disappointed that you were
8 not selected, I can understand that because some of you may
9 say, "Oh, boy, I'm relieved that I'm not selected on the
10 jury."

11 Let me explain a couple things to you. Serving on a
12 jury, many consider to be the second-highest responsibility
13 that we all have, second only to serving in the military.
14 So it is a very high and a very important civic
15 responsibility that we, as Americans, enjoy.

16 And two, it's been my experience that -- that people
17 serving on a jury, while maybe they were very reluctant to
18 be picked on a jury and were somewhat apprehensive about
19 sitting on a jury, generally, they will say that they were
20 glad that they were chosen because it was a -- a good
21 experience, and educational experience, and something that
22 they enjoyed, at least to the extent of enjoying the
23 process, not -- not enjoying having to make some very, very
24 difficult decisions.

25 So I hope that if I don't see you back in this

1 courtroom, that sometime in the future you'll have an
2 opportunity to -- to be selected to -- to sit on a jury,
3 whether it's a criminal case or a civil case. And I -- I
4 hope you will have that opportunity. So call back in after
5 six o'clock this evening and hope you have a great -- great
6 afternoon. You are free to go.

7 (Whereupon, the unselected portion of the jury panel
8 exited the courtroom at 11:33 a.m.)

9 (Off the record from 11:33 a.m. until 11:36 a.m.)

10 THE COURT: All right. Would you bring the jury out,
11 please.

12 (Off the record briefly.)

13 (Whereupon, the jury entered the courtroom at 11:37
14 a.m.)

15 THE BAILIFF: All jurors present, Your Honor.

16 THE COURT: Okay. Thank you, Mr. Bolt. Ladies and
17 gentlemen, what we're going to do, we're going to take a
18 little longer lunch break than we normally allow juries to
19 take. We've got -- I've got some pretrial matters that I
20 need to take up with the -- with the lawyers. And then, I
21 have something else that I've worked in before we start
22 trial of the case.

23 So I'm going to excuse you until 2:30. So hopefully,
24 at 2:30 we'll be -- we'll be ready to get started with the
25 case. Be prompt in -- in getting here. Allow yourselves

1 enough time to take care of anything that maybe is
2 unexpected that happens over the lunch break.

3 Because if you're -- you know, if you're late getting
4 here, then we can't -- we can't do anything. We can't get
5 started. So just allow yourself enough time. Mr. Bolt
6 will instruct you about how to get to the jury room when
7 you come back after lunch.

8 Again, anybody that you come into contact with -- not
9 only just yourselves, but anybody that you come into
10 contact with, do not talk about this case or anything
11 related about this case. If you're going to be out in
12 public over lunch break, keep your juror button on. And
13 the reason why I say that is let -- for example, let's say
14 you decide you want to eat lunch at Palmetto Fine Foods and
15 maybe one of the lawyers or court staff or whatever eats
16 lunch there as well. They don't recognize you as being on
17 the jury and there may be some discussions about the case.
18 You overhear it, and then that just creates an issue for
19 us. So if you have your button out in public, then, you
20 know, everybody will know that you're -- you're a juror so
21 they're -- they're careful about what -- what they say.

22 Now, if you go home, if you want to wear your button
23 while you're at home, that's fine, but you don't have to.
24 But just be sure to bring it back when you get back here at
25 2:30. So when you come back, I'll -- I'll discuss with you

1 about the -- the foreman of the jury, who I select, and
2 we'll go through that and we'll get started with the case.

3 So have a great lunch. See you back at 2:30, okay?

4 (Whereupon, the jury exited the courtroom at 11:40
5 a.m.)

6 THE COURT: Okay. We're going to take about a 10/15-
7 minute break before we start pretrial matters ---

8 MR. NASROLLAHI: Thank you, Judge.

9 THE COURT: --- okay?

10 (Off the record from 11:40 a.m. until 11:58 a.m.)

11 THE COURT: Okay, gentlemen. I understand we have
12 some -- some pretrial matters that we need to discuss. I
13 think both sides, maybe, has ---

14 MR. MORROW: Your Honor, I have a motion in limine
15 that we filed that essentially -- the -- our -- what we're
16 asking for is that we -- the Court prohibit any reference
17 to the details of any future treatment the respondent might
18 receive at the Sexual Violent Predator Unit. Reason we're
19 asking for -- for this is it's -- it's not relevant to --
20 to what we're here today to decide.

21 What we're here today to decide is whether or not he
22 is a sexually violent predator under the statute. And what
23 we're required to prove is that he's been convicted of at
24 least one sexually violent offense and that he has a mental
25 abnormality or personality disorder that -- that makes him

1 likely to commit future acts of sexual violence.

2 The Court held in *Kansas v. Hendricks* that -- that --
3 that it would be of little value to require treatment as a
4 precondition for civil confinement of the dangerously
5 insane when no acceptable treatment exists. To conclude
6 otherwise would obligate a state to release certain
7 confined individuals who are both mentally ill and
8 dangerous simply because they could not be treated for
9 their afflictions.

10 Basically -- and also, neither of our witnesses here
11 today are actively involved in the treatment at the
12 Sexually Violent Predator Treatment Unit. Neither Dr. Swan
13 nor Dr. Gehle is involved in the treatment at the unit.

14 THE COURT: Okay. Mr. Nasrollahi?

15 MR. NASROLLAHI: Well, Judge, I mean, I -- I'm going
16 to ask the Court to -- to look at it from the way that
17 makes most sense. The attorney general has read you the
18 definition of what a sexually violent predator is, but he's
19 left out the tail end of that definition. And a sexually
20 violent predator -- and I'm -- I'm -- I may leave out a
21 couple -- a little bit of the verbiage, but I think I'm
22 going to get most of it out -- is a person who has been
23 convicted of a sexually violent crime who suffers from a
24 mental abnormality and because of this mental abnormality
25 they are likely to reoffend unless they are committed, or

1 confined -- I believe the language of the statute is
2 confined -- to a secure facility for long-term control,
3 treatment, and care.

4 So my issue here is -- before we get to keeping out
5 any issue of treatment, is I don't know how the state is
6 not going to open the door to this issue. They've got to
7 have their expert get on the stand and say that he is, you
8 know, according to cases like *Luckabaugh*, he presents a
9 menace or a danger to society unless he's confined.

10 I believe that with that kind of testimony, I am -- I
11 am within my rights in defending my client to ask whether
12 there are any less-restrictive -- less-restrictive means of
13 treating him or keeping him from recidivating. And -- and
14 she can say "yes" or "no" and we can take it from there.

15 But my thing is if -- if there are less-restrictive
16 means, we get to compare that to what he would otherwise
17 receive at DMH. And it's my -- and it's my reading of the
18 state's motion that it's -- it's tacitly acknowledged that
19 Mr. Ward, if confined and committed, would not receive
20 treatment. I mean, maybe he -- he -- he'll disagree with
21 me -- the attorney general will disagree with me with my --
22 the way I read his motion. But if -- if that's the case,
23 then, you know, we'd have a due process challenge under
24 that under *Hendricks*.

25 Taking a moment to address -- address *Hendricks* here,

1 if you look at *Hendricks*, *Hendricks* is the first case from
2 the United States Supreme Court that found SVP commitment
3 under various -- or under the Kansas -- under the Kansas
4 statute to be constitutional. And they found it -- that
5 because they said civil commitments have always been done
6 so long as we're talking about a person that has mental
7 abnormality that -- that causes them to be a risk to
8 society.

9 The Kansas statute in question did not have the exact
10 same language as the South Carolina statute. In fact, in
11 -- in *Hendricks*, you can -- you can actually read the
12 Kansas statute in question. And it doesn't have that last
13 part for long -- confirmed -- confined to a secure facility
14 for long-term control, treatment, and care.

15 That's an element that they have to prove, that --
16 that last part, here in South Carolina. I don't know if
17 it's unique to our statute, but it's not anything that is
18 found in the Kansas statute. And it's not anything that is
19 found in the *Hendricks* opinion.

20 I -- I agree, proving treatment is not a -- is not a
21 burden that's on the state. But again, they have to prove
22 that the public is not safe unless he is confined to a
23 facility. They get an expert on the stand. We're allowed
24 to challenge the -- the expert's saying that.

25 And that's going to necessarily involve a comparison

1 between the treatment that he could receive at a -- a
2 facility in Charleston, Columbia, Charlotte, here in
3 Laurens, as opposed to what he would receive if confined to
4 the Department of Mental Health.

5 THE COURT: But -- but the issue, as -- as I see it,
6 as far as the -- second element, is confinement. While the
7 -- the element does go further and say confinement for
8 purposes of care, treatment, etc., etc., the -- the -- the
9 key is confinement. And I think what Mr. Morrow wants kept
10 out is for there to be a discussion concerning the type of
11 treatment.

12 Now, if you're wanting to get into, Well, Dr. Swan --
13 you know, least-restrictive alternative short of
14 confinement ---

15 MR. NASROLLAHI: Right.

16 THE COURT: --- that's what you're wanting to get in.
17 That doesn't fit within the -- the element under the
18 statute.

19 MR. NASROLLAHI: The -- well ---

20 THE COURT: Not ---

21 MR. NASROLLAHI: --- actually, it does. Because the
22 statute requires the state to show that he is a -- a menace
23 and danger to the public unless he is confined. So what
24 we're going to have is we're going to have an expert who's
25 going to get on the stand. And she's going to go down the

1 actuarial table, saying what kind of a risk he is and, you
2 know, talk about how that -- that risk makes him a danger
3 to the public; he needs to be confined.

4 THE COURT: Okay.

5 MR. NASROLLAHI: I think if that's the case, I'm
6 entitled to ask her, Well, are there least-restrictive
7 means of treating him, outside of a confined facility, that
8 will reduce that recidivism. And there are.

9 THE COURT: Okay. All right.

10 MR. MORROW: Your Honor, what we're essentially asking
11 is we're not -- and first of all, we're not saying that
12 he's not going to get treatment at the unit. That's not in
13 all -- any way what was I was trying to say, you know, in
14 this motion. What I'm -- I'm trying -- what I was trying
15 to say is that neither one of these experts who are here
16 today have any control over the treatment that is given at
17 the unit or have any role in the treatment that is given at
18 the unit. So they can't possibly speak to how he would --
19 what kind of treatment he would receive, what the -- the
20 program entails there, what -- the details of any treatment
21 he would receive, when the meetings would be, that kind of
22 thing.

23 As far as the -- the least-restrictive alternatives, I
24 have -- I have no problem with -- with -- with Mr.
25 Nasrollahi asking her about a -- a less-restrictive

1 alternative, as long as it's within her knowledge as an
2 expert that something would -- like that would exist. I
3 mean, I -- that's -- what I'm trying to get at is the --
4 keep him from going into is the -- the details of treatment
5 at the facility itself. It's just not . . .

6 MR. NASROLLAHI: And -- and the point that I'm trying
7 to get at is if I ask, you know, I mean -- and based on
8 what he's saying, if they have no clue what kind of
9 treatment he's going to get, that goes directly to that
10 element, especially if we have an expert that's going to
11 respond, there are least -- there are less-restrictive
12 means of treating him and -- and significantly decreasing
13 his rate of recidivism or the risk of recidivism -- excuse
14 me -- and the -- but we have no clue what he's going to get
15 if he's confined. I mean, I think that goes to -- that
16 goes to the weight of their testimony.

17 We have -- like, we're here saying that he needs -- or
18 I'm here, saying that he needs to be confined for treatment
19 and care. I have no clue what kind of treatment or care
20 he's going to get, if any.

21 THE COURT: Well, I mean, if Dr. -- if Dr. Swan says I
22 -- you know, she doesn't know what kind of treatment is
23 being -- will be offered, then, I mean, I don't see why
24 that can't be asked. If she's going to say "I don't know,"
25 then that gives you an argument to say, you know, this

1 expert doesn't, you know -- isn't a good expert.

2 Now, is it your intentions with your expert to -- to
3 get into a discussion of the -- of -- of the treatment that
4 he either would receive or would not receive while being
5 confined with the Department of Mental Health?

6 MR. NASROLLAHI: It -- it really -- that really
7 honestly depends on how Dr. Swan's testimony pans out. I
8 mean, if it's -- if she does -- I mean, this is how I would
9 foresee it coming up: If the state's witness says there
10 are -- there -- you know, for example, there are no less-
11 restrictive means, you know, available.

12 THE COURT: And I think Mr. Morrow doesn't have a
13 problem with that.

14 MR. NASROLLAHI: Right. And I don't ---

15 THE COURT: But that ---

16 MR. NASROLLAHI: --- I mean, I -- I don't ---

17 THE COURT: --- question ---

18 MR. NASROLLAHI: --- think that would be a reasonable
19 objection if he did. But let me -- let me -- let me couch
20 it this way: If she says that, you know, in my -- in my
21 expert opinion, yes, there are less-restrictive means of
22 treating him in the street. And it can be as simple as:
23 All right. Here are the psychotherapy; make sure he has
24 the GPS monitor on; he meets with a probation agent several
25 times a week; yadda, yadda, yadda. These are the best --

1 you know, according to the Department of Justice, these are
2 the best ways of dropping recidivism rates. Okay. Let's
3 say that's what she says.

4 Okay? What does she mean by confined and for
5 treatment? When she says he needs to be confined, "Dr.
6 Swan, what does that mean?" When you and -- when you're
7 sitting here, telling this jury, in your expert opinion,
8 this man needs to be confined for treatment, I think it's a
9 valid question to ask her what does she mean by treatment?

10 And so if that expert is saying that, I think I'm
11 allowed to bring my own expert or the -- the attorney
12 general's or the court appointed expert in to say that's
13 not something that he would receive.

14 THE COURT: Would it -- would it be better, before I
15 make a definitive ruling on this issue, is -- is wait to
16 hear Dr. Swan on direct and then -- let's revisit this
17 before you engage in any cross and we may have -- we may
18 not -- it may not help us a bit. But then again, it may
19 give us a little bit better handle on -- on what to do.

20 MR. NASROLLAHI: (Nodded head up and down.)

21 THE COURT: Mr. Nasrollahi's shaking his head -- head
22 yes. You agree with that, Mr. Morrow?

23 MR. MORROW: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. MORROW: That would be fine.

1 THE COURT: Well, let -- let's do that. And -- and
2 maybe we can be in a little bit better position to
3 approach.

4 MR. NASROLLAHI: Thank you, Judge.

5 THE COURT: Any other motions, Mr. Morrow, other than
6 that one?

7 MR. MORROW: No, sir, Your Honor.

8 THE COURT: Okay. All right. Now ---

9 MR. NASROLLAHI: Well ---

10 THE COURT: --- Mr. Nasrollahi, you have a -- an
11 issue?

12 MR. NASROLLAHI: I mean, I'm -- I'm addressing his
13 memorandum regarding the details of criminal sexual acts
14 should not be limited to race and -- I don't know if that
15 -- that was a motion that he had or ---

16 MR. MORROW: It's just a memorandum of -- of law that
17 we provided the Court. The *Ettel* case in South Carolina,
18 as well as the *Corley* case, have stated definitively that
19 if the details of the crimes are -- are -- the details of
20 the crimes are relevant and they're part of an expert's
21 opinion and that testimony about the underlying facts of --
22 of those crimes is -- is directly relevant to whether or
23 not he's a sexually violent predator and her opinion about
24 whether he's not -- he's a sexually violent predator.

25 And also, in --, for instance, *in the Matter and Care*

1 *and Treatment of Ettel*, Your Honor, the Court -- there were
2 several offenses that were -- Mr. -- Mr. Ettel had prior
3 sexual offenses, as well as prior nonsexual murder offenses
4 and some offenses that did not result in convictions. The
5 Court heard -- held that those -- the details of those
6 offenses were directly relevant to the sexually-violent-
7 predator matter and that because they establish a pattern
8 of behavior, which is part of the basis of her opinion, for
9 Dr. -- it was Dr. Schwartz-Watts' opinion in *Ettel*.

10 THE COURT: All right.

11 MR. NASROLLAHI: And -- and my response kind of is --
12 is -- I have a motion in limine that kind of responds to
13 what his motion is, so I'm just going to straight into my
14 motion.

15 THE COURT: Right.

16 MR. NASROLLAHI: It is our position that nothing from
17 the incident reports, warrants, or other hearsay testimony
18 should be presented by any expert in this case. The rules
19 specifically prohibit that. They say that -- and -- and to
20 be clear on what we're arguing here, we're -- we're not
21 saying that any of these experts can't use inadmissible
22 evidence or information to reach an opinion in this case.
23 But the case law is -- is abundantly clear that you can't
24 use an expert to backdoor hearsay information.

25 *Ettel* is -- just addressees whether the -- the

1 probative value of this information outweighs the
2 prejudicial impact. I haven't had a chance to read *Corley*,
3 but I -- I did read what -- the -- the *Harvey* case, which
4 supports our position in this case.

5 In fact, if you -- if you look this up on Weslaw, if
6 you look up the rule regarding the, you know, inadmissible-
7 evidence basis for an expert's opinion and you look at the
8 citing cases, the top cases there say you cannot use an
9 expert to introduce hearsay information. None of these --
10 none of these experts that are -- that are sitting out in
11 the -- the antechamber out here have firsthand knowledge of
12 anything. All they have is the -- and -- and they're going
13 to testify to this. They have a packet that's provided to
14 them by the attorney general. They review it, and they
15 interview the potential committee.

16 All right. So they don't have firsthand knowledge.
17 And again, we're not saying that they can't use whatever
18 information was provided to them from the attorney
19 general's office to form an opinion. It's just -- the --
20 the -- the regular practice in these SVP cases is to put an
21 expert on the stand, hand them an incident report or a
22 warrant or -- or what have you, and they just read these
23 details that they don't have firsthand knowledge about.

24 THE COURT: Right.

25 MR. NASROLLAHI: And, you know, we're also dealing

1 with, you know, a -- you know, we're -- we're -- we're all
2 postconviction on this. So we can't really challenge
3 anything that they're saying. And by that point there's no
4 point in challenging what they're saying, because the jury
5 has already heard [sic] this evidence that shouldn't have
6 come in, in the first place.

7 THE COURT: All right. Right. And, you know, the --
8 the -- that is a -- a -- such a slippery slope, if you
9 will. And -- and I've had this come up a lot and, you
10 know, how -- to -- to what extent can an expert testify as
11 to information relied upon in their -- reaching their
12 ultimate decision in the case or ultimate opinion. You
13 know, I -- to what extent can they relay that information
14 out to the -- to the jury is always a -- a -- a -- kind of
15 a difficult situation.

16 I think, first, Mr. Morrow, what specifically -- I --
17 I know you -- kind of in general terms in your memorandum,
18 you kind of indicated as far as what you wanted to be
19 brought out. Can you just outline for me what -- what it
20 is that you want to have brought out through your expert
21 ---

22 MR. MORROW: That ---

23 THE COURT: --- that ---

24 MR. MORROW: --- the ---

25 THE COURT: --- Mr. Nasrollahi ---

1 MR. MORROW: My -- my expert will testify to the --
2 his -- his prior criminal record, his prior convictions
3 that he has that are sexually violent and -- and other
4 convictions which are sexual in nature. Specifically, he
5 has two ABHAN convictions that are -- that, in the
6 indictments, states that they are indecent -- they -- the
7 reason they are ABHAN conviction is that he took indecent
8 liberties with a -- with a woman.

9 The -- the child in that case is of a similar age as
10 the child in the -- in his -- his current -- in his last
11 sexually-violent-predator offense. And we -- and our
12 expert is of the opinion that that establishes a pattern of
13 behavior that indicates that he cannot control ---

14 THE COURT: Okay.

15 MR. MORROW: --- his pedophilia.

16 THE COURT: All right. Let me just stop you, now.
17 All right. We've got two prior convictions for ABHAN that
18 were of a sexual-type nature.

19 MR. MORROW: That's correct ---

20 THE COURT: Okay.

21 MR. MORROW: --- Your Honor.

22 THE COURT: And then, what else?

23 MR. MORROW: And we have a "criminal sexual conduct in
24 the third degree" conviction here in Laurens.

25 MR. NASROLLAHI: That's his index conviction.

1 MR. MORROW: That would be the -- the sexually violent

2 ---

3 MR. NASROLLAHI: Yeah.

4 MR. MORROW: --- conviction.

5 THE COURT: Okay. All right. And ---

6 MR. NASROLLAHI: Right.

7 THE COURT: --- what you're wanting to -- to bring out
8 that in all three cases, the -- the age of the victim were
9 all similar?

10 MR. MORROW: They were all similar ages. And they --
11 it was similar circumstances.

12 MR. NASROLLAHI: Which, I mean, that's all hearsay.

13 THE COURT: And ---

14 MR. MORROW: Your Honor ---

15 THE COURT: --- when you say circumstances, the -- the
16 manner in which the offense took place or how it took
17 place, is that ---

18 MR. MORROW: It's correct, Your Honor.

19 THE COURT: Okay. All right. All right. Any other
20 offenses?

21 MR. MORROW: No, Your Honor. Those ---

22 THE COURT: Okay. All right. Okay. So, Mr.

23 Nasrollahi, you object to going beyond the fact that he was
24 convicted of two ABHAN with sexual involvement; and then,
25 of course, the -- this CSC-third, which is the sexually

1 violent act. You object to going beyond that? The -- the
2 -- the existence of the convictions, you -- you don't have
3 a problem with, but going ---

4 MR. NASROLLAHI: Yeah.

5 THE COURT: --- on, anything further?

6 MR. NASROLLAHI: I -- and if he -- if he stands up
7 here and introduces a sentencing sheet saying that this
8 was, you know, the day that he pled to these charges, I
9 have -- I have -- in good faith, I cannot make ---

10 THE COURT: Sure.

11 MR. NASROLLAHI: --- an objection to that. But, you
12 know, they're -- they're wanting to introduce the
13 indictment. You -- there is no rule ---

14 THE COURT: Okay.

15 MR. NASROLLAHI: --- that allows ---

16 THE COURT: All right.

17 MR. NASROLLAHI: --- the indictment to be introduced.
18 And if we do introduce it, it needs to be sanitized. The
19 warrant -- the warrants -- it -- I mean, the main bulk of a
20 warrant is a sworn affidavit. We don't have that
21 individual here testifying in court.

22 THE COURT: Right.

23 MR. NASROLLAHI: It's hearsay. The incident reports
24 are what their review of the file tells them about the ages
25 of the victims and all that. That's -- that's all hearsay.

1 That's a backdoor way of getting in hearsay information.

2 THE COURT: Right.

3 MR. NASROLLAHI: Now, if she wants to get on the stand
4 and say "in my opinion, you know, that this is -- that, you
5 know, based on reviewing his file, I believe that he is --
6 he is a -- he has paraphilia -- specifically, pedophilia,
7 nonexclusive type -- based on the DSM-V because of X, Y,
8 and Z, and based on my review, I believe that this is all
9 satisfied here," I've got no objection to that.

10 I don't think I'm going to be able to bring up a
11 hearsay objection that's going to hamstring Mr. Morrow's
12 ability to have an expert testify or have his expert
13 testify about whether Mr. Ward suffers from a mental
14 abnormality. I wish I could, but I can't. It's just when
15 we start getting into the deeper guts of all ---

16 THE COURT: Okay.

17 MR. NASROLLAHI: --- this, we're getting into either
18 direct quoting of hearsay from warrants, incident ---

19 THE COURT: Okay.

20 MR. NASROLLAHI: --- reports, and all that, or we're
21 backdooring it. Like, because ---

22 THE COURT: Yeah.

23 MR. NASROLLAHI: --- if she -- if she says on the
24 stand, for example, "Well, he had a prior conviction with a
25 child of the same age," that's backdoor hearsay.

1 THE COURT: Right. Okay. All right. Mr. Morrow, you
2 intend to get this information in by way of an indictment?

3 MR. MORROW: I have ---

4 THE COURT: What -- what ---

5 MR. MORROW: --- I have the -- the -- for the sexual
6 -- the sexual offense, I intend to -- to introduce the
7 indictment. For the nonsexual offenses, I was going to
8 elicit testimony from my expert about the fact that she
9 reviewed his file; that these convictions were in there;
10 the facts of those convictions, based on the -- the
11 documentation she had to review; and why they -- those had
12 an impact on her opinion and why they were part of the
13 basis of her opinion.

14 THE COURT: Okay. All right.

15 MR. MORROW: And the *Corley* -- I -- I will point out,
16 the *Corley* case actually states that indictments outlining
17 details underlying defendant's "assault and battery of a
18 high and aggravated nature" conviction and criminal-sexual-
19 conduct convictions were relevant to the issue of whether
20 the defendant was likely to engage in acts of sexual
21 violence again.

22 THE COURT: Okay. All right.

23 MR. NASROLLAHI: It's relevant ---

24 THE COURT: Well, I think what I need to do is read
25 these cases. And I think, Mr. Nasrollahi, you indicated

1 that you maybe needed to read ---

2 MR. NASROLLAHI: Correct.

3 THE COURT: --- at least one case you had not -- was
4 not familiar with. So -- so let me do that. And then I
5 can -- I can issue my ruling before we -- we start back.

6 Is there any other issues, Mr. Nasrollahi, concerning
7 what you anticipate the state is going to try to do?

8 MR. NASROLLAHI: We're going to -- it's not anything
9 -- I -- I know they're going to -- we're going to have a
10 *Frye* challenge for the -- his expert's use of a particular
11 actuary test.

12 THE COURT: Okay.

13 MR. NASROLLAHI: We can -- we can address that when
14 that comes up.

15 THE COURT: Okay. All right.

16 MR. NASROLLAHI: I mean, if -- if they start getting
17 into it before foundation's been laid and we've had a
18 chance to challenge her under *Frye* ---

19 THE COURT: Okay.

20 MR. NASROLLAHI: --- I'll make my objections then.
21 And then, I guess, there's just the voir dire of their
22 expert. That's the only other things that I have ---

23 THE COURT: Okay.

24 MR. NASROLLAHI: --- planned.

25 THE COURT: All right. Okay. Well, let me -- over

1 lunch break, I'll -- I'll read these cases and then we can
2 -- we can deal with it when we -- we start back. Okay?

3 All right. So, Mr. Morrow, you be back here at 2 for
4 the *Bradley* matter?

5 MR. MORROW: That's correct, Your Honor.

6 THE COURT: Okay. All right. And then we'll start
7 this back at 2:30.

8 (Whereupon, a recess was taken by the Court between
9 12:21 p.m. and 2:23 p.m.)

10 THE COURT: Okay. We're back on the record in the
11 Ward case. And I took under advisement the pretrial
12 objection from defense concerning details of the prior
13 offenses. Anything else that needs to be put on the record
14 concerning that issue before I make a ruling? I'll -- Mr.
15 Morrow?

16 MR. MORROW: Nothing from the state ---

17 THE COURT: Okay.

18 MR. MORROW: --- Your Honor.

19 THE COURT: All right. Mr. Nasrollahi?

20 MR. NASROLLAHI: And, Judge, just to put this on the
21 record -- because prior to the -- the last motion we had, I
22 didn't have a chance to review all the -- the cases.

23 THE COURT: Sure.

24 MR. NASROLLAHI: I -- I'm sure Your Honor has. From
25 my reading, again, the -- the *Ettel* case and the *Corley*

1 case both are addressing the issues of relevancy. And both
2 the Court of Appeals and the South Carolina Supreme Court
3 go through the statute and detail things: for example, the
4 definition of an SVP; the types of documents that -- that,
5 under the statute, a psychologist is entitled to look at
6 and consider when making an evaluation; the -- the types of
7 information that evaluators typically rely on when making
8 these evaluations.

9 But both of those cases were decided under a
10 probative-versus-prejudicial paradigm. The motion that
11 we're making here is not based on relevancy grounds. I
12 think, based on *Ettel* and *Corley*, that settled issues. We
13 don't really have a leg to stand on that a prior conviction
14 or the facts of a prior conviction -- well, let me back up
15 so I don't mislead the Court.

16 We're not saying the evidence of the prior conviction,
17 if submitted in the proper format, it's inadmissible. But
18 we're talking about the facts underlying the allegations.
19 But I think, going back to even the state's reliance on the
20 case of -- of *Harvey*, the Supreme Court found it was
21 reversible error to introduce this hearsay evidence through
22 an expert.

23 And I'm -- I -- I -- I just had it pulled up, but my
24 Internet connection keeps going out so it -- it' signs me
25 out of Westlaw. But I -- I'd ask the Court to look at the

1 South Carolina Supreme Court's decision in -- in *State v.*
2 *Kromah*, where they say that absolutely, a -- an expert can
3 -- if it's typical and necessary for an expert to rely on
4 certain kind of information, they're entitled to rely on
5 that to inform their opinion, regardless of whether that
6 evidence is -- is admissible or inadmissible in court.

7 However, the Supreme Court goes on to say you can't --
8 just because they can do that doesn't mean you
9 automatically get to introduce hearsay evidence. Let's
10 take into consideration, just as an example, it's my
11 understanding -- and they've -- they've sent me copies of
12 the indictments, the 2002/2003 indictments, even the
13 indictments for the CSC-first that my client was originally
14 arrested on. I mean, these -- these are unsworn
15 allegations. They don't go to the proof that he was
16 convicted. I believe that the best evidence of that -- and
17 the -- the attorney general has it -- are the sentencing
18 sheets.

19 I believe any information that like that is hearsay.
20 And it's -- I would object to any direct or indirect
21 positing of that or -- or -- or proffering of any kind of
22 hearsay allegations.

23 THE COURT: Okay. All right. Well, let me take -- of
24 course, I'm very familiar, as you guys are, with *Kromah*.
25 Let me -- let me just see -- read *Kromah* as it relates to

1 this particular issue.

2 MR. NASROLLAHI: And, Judge, I had the cite pulled up.
3 And like I said, my internet bumped out. And I think it's
4 page 338. I don't know which volume that -- that's in.

5 THE COURT: We can find it.

6 (Off the record from 2:27 p.m. until 2:55 p.m.)

7 THE COURT: Okay. While *State v. Kromah* and a few
8 other cases pretty much stand for the proposition that just
9 because an expert relies on some evidence that's -- that's
10 not -- or information that's not in evidence, it doesn't
11 necessarily mean that the expert can testify to or quote
12 what that information is.

13 But we came across a -- an interesting case, *Jones v.*
14 *Doe*, 372 S.C. 53, which says that the expert may testify to
15 evidence even though it is inadmissible under the hearsay
16 rule. But allowing the evidence to be received for this
17 purpose does not mean it is admitted for its truth. It is
18 received only for the limited purpose of informing the jury
19 of the basis of the expert's opinion and, therefore, does
20 not constitute a true hearsay exception.

21 And interesting enough, *Doe* -- *Jones v. Doe* was cited
22 in an SVP case, unpublished, but cited in, *in the Care and*
23 *Treatment of Hargrove*, H-a-r-g-r-o-v-e. It's a -- a 2009
24 Westlaw, 9528763, again, unpublished opinion with no
25 precedential value. But I think it is important that --

1 that it did cite the -- to the *Jones v. Doe* case.

2 So -- and even though I recognize that the *Corley* case
3 and the *Ettel* -- E-t-t-e-l -- case did not deal with
4 hearsay -- with the hearsay issue, I recognize that. But
5 I'm going to allow the specifics relied upon by the state's
6 expert, the specifics of those prior offenses, to come --
7 to come in with the limiting instruction or curative
8 instruction from the Court to the jury that it's not
9 offered for the truth of the matter asserted, but only to
10 give the jury some information as to what the expert relied
11 on.

12 MR. NASROLLAHI: If I could ask the Court a -- a
13 question: Considering how this testimony is going to be
14 presented, what I'm hearing is that the -- the -- the
15 experts will be permitted to testify to the -- the
16 information they read in the packet the attorney general
17 gave them ---

18 THE COURT: Right.

19 MR. NASROLLAHI: --- to basically give a diagnosis in
20 this case. But the Court is going to instruct the jury
21 that that information is not -- I'm -- I'm ---

22 THE COURT: That information alone is -- is -- is not
23 offered for the truth of the matter asserted. It's just
24 offered -- it's being brought to the -- to the jury's
25 awareness that this is something that this expert relied

1 on: for example, the age of the case in one of the ABHAN
2 cases or the circumstances upon which the ABHAN took place
3 in one of those prior cases, as it relates to the facts
4 behind the CSC-third.

5 And I -- I recognize that we got to be very careful on
6 how I frame and word this curative instruction. But the
7 way I'm reading the *Jones* and the -- even *Kromah* and those
8 other cases does not necessarily say in every case it's
9 excluded because of hearsay. It's just -- it's not always
10 allowable in every case, the way I read *Kromah* and *Scully*
11 and some of the others. So I ---

12 MR. NASROLLAHI: And my only ---

13 THE COURT: --- I don't know if I'm addressing your
14 question or not.

15 MR. NASROLLAHI: Well, I mean, I -- and just -- just
16 for the record, my only hesitancy with even such a curative
17 instruction is we're going to have an expert on the stand
18 who's going to be qualified in diagnosing mental
19 abnormalities, just for this instance, what we're talking
20 about. And she is going to testify that, you know, based
21 on this information I read that one of the victims was 10
22 back in 2002 and 2003 and -- or -- I'm sorry -- 11. And
23 then in 2013, the other victim was 11. And we're going to
24 tell the jury that, you know, that's just the basis of
25 where they got the information; that's not presented for

1 the -- I just don't know how the jury is going to reconcile
2 the fact that the expert relied on it to come up with a --
3 a diagnosis but they can't consider it for the truth of the
4 matter asserted -- or maybe I'm misunderstanding the
5 Court's -- how the instruction is going to go forward.

6 THE COURT: Well, you want to -- you want to weigh in
7 on this? Have -- have I muddied the water ---

8 MR. MORROW: I ---

9 THE COURT: --- further?

10 MR. MORROW: No, Your Honor. The -- essentially, what
11 we're going to be offering is -- is the -- we're going to
12 be offering the -- the indictment and -- and sentencing
13 sheet for his CSC-third as part -- as part of, you know,
14 our -- meeting our requirement for ---

15 THE COURT: Sure.

16 MR. MORROW: -- that he was convicted of a sexually
17 violent offense. As far as the underlying facts in that
18 case, yes, we're offering that -- we are offering that on
19 the basis of this is the reason why Dr. Swan has come down
20 with her diagnosis of pedophilia and explains her diagnosis
21 of it. We're not offering it to -- to say that these are
22 the -- the true and indeed facts of this -- this case.

23 THE COURT: Okay.

24 MR. NASROLLAHI: But again, I -- I mean, maybe I -- I
25 just -- I -- maybe I don't understand the curative

1 instruction. It's just I'm -- I'm -- for me, sitting here,
2 I -- it's hard for -- to reconcile an expert that says,
3 "Well, I looked at this indictment from 2002 and it alleges
4 that he -- he committed this act with a 10-year-old." And
5 then, once that information comes in, either before or
6 after, the -- there's a curative instruction, saying she's
7 just relied on that to get her -- her -- to make her
8 diagnosis, but it's not being introduced for the truth of
9 the matter asserted.

10 I just -- I don't know how that doesn't go back with
11 the -- I -- I don't -- that -- it confuses me. So I'm --
12 I'm wondering how a jury would not be confused by that.
13 And I'm not trying to be argumentative with the Court ---

14 THE COURT: Oh, I know ---

15 MR. NASROLLAHI: --- Your Honor.

16 THE COURT: --- you're not. No. No, you're -- you're
17 not at all. I don't take it to be argumentative.

18 MR. NASROLLAHI: And, Judge, not to -- not to confuse
19 -- I'm just -- I'm reading Doe. And -- never mind. I
20 withdraw my statement. Yeah.

21 THE COURT: It's in 4 and 5 keynotes. Well, I -- I --
22 I guess maybe what I need to make sure of is your -- your
23 objection, Mr. Nasrollahi, is the -- the -- the facts
24 behind the two ABHANS, correct?

25 MR. NASROLLAHI: Correct, Your Honor.

1 THE COURT: You -- you're not objecting to Mr. Morrow
2 getting into the facts of the -- the -- the -- the key
3 offense, the sexually violent offense, which he's serving
4 time for. It's the facts of the two ABHANS to make that
5 comparison with the CSC case.

6 MR. NASROLLAHI: Well, let me -- let me rephrase my
7 response, then. My -- I -- I have an objection to talking
8 about the facts underlying any of those offenses unless
9 there's a witness here with personal knowledge. I'm not
10 objecting to -- the introduction, under the rules, of
11 evidence of a conviction.

12 I think that the best way -- I mean, if you were to
13 ask me what the best way of handling it would be, how to
14 handle this -- you know, you have -- Doctor, you've
15 reviewed these documents. Yes. And based on the -- the
16 review of this document, what is your diagnosis and -- and
17 things like that. My only thing is it's -- I can't get
18 into -- I -- I'm not going to argue that it's not
19 prejudicial. I'm just -- it -- there's no one here with
20 personal knowledge to substantiate any of the allegations
21 underlying a 14-year-old case.

22 MR. MORROW: And, Your Honor, in order to come up with
23 a diagnosis of pedophilia ---

24 THE COURT: Right.

25 MR. MORROW: --- I -- I have to -- the doctor has to

1 be able to show where he has had sexual attraction to minor
2 -- to minors under the age of -- you know, for a certain
3 amount of time. If she can't talk about how old the victim
4 was or the gender of the victim ---

5 THE COURT: Right.

6 MR. MORROW: --- right, then -- then she can't talk
7 about how she came to her diagnosis.

8 THE COURT: Right. And -- and -- and -- and I agree.
9 And I think -- again, I think Corley certainly allows for
10 that. Mr. Nasrollahi's point that Corley did not deal with
11 a hearsay objection, I think, has some merit to it. And
12 that's what I'm trying to do, is -- is work around that --
13 still allow it to come in, but work around that in some
14 fashion.

15 MR. MORROW: Well, you could offer a curative
16 instruction, Your Honor, if -- if -- if I may, that -- that
17 -- that -- that Dr. Swan is offering the facts of this --
18 facts of this testimony to explain the basis of her opinion
19 and her diagnosis of -- of pedophilic disorder. It's not
20 being offered for any other purpose.

21 MR. NASROLLAHI: And that -- and to me, hearing that,
22 that just -- that sounds like the Court is saying that it's
23 being offered for the truth of the matter asserted. And
24 again, maybe ---

25 THE COURT: Okay.

1 MR. NASROLLAHI: --- I'm trying to reinvent the wheel.
2 And I -- I'd -- I ---

3 THE COURT: Well, no. I -- I -- I think how I'm going
4 to do it, I'm going to deny your motion, okay? And -- and
5 I think what I will do is wait till I hear the doctor's
6 complete testimony and then fashion -- if -- if I still
7 feel the same way, fashion the curative instruction in a
8 way that I think best fits the -- the testimony.

9 MR. NASROLLAHI: Do you think it'd be a good idea
10 maybe to proffer her now -- proffer her testimony now?

11 THE COURT: Mr. Morrow, of course, you -- you know
12 what Dr. Swan's going to testify to. Can we proffer just
13 the part that deals with this issue and ---

14 MR. MORROW: I would be -- I would be fine with that,
15 Your Honor.

16 MR. NASROLLAHI: Yeah.

17 THE COURT: Okay. And ---

18 MR. NASROLLAHI: Just to, I guess, get a flavor of
19 what we're looking at.

20 THE COURT: Okay. Let -- let -- let me just -- kind
21 of time purposes, too, let -- let me see the lawyers up
22 here just a minute.

23 MR. NASROLLAHI: Yes, Your Honor.

24 (Whereupon, a bench conference was held off the record
25 outside the presence of the jury.)

1 (Off the record briefly.)

2 THE COURT: Okay. So back on the record. Here --
3 here's our -- our plan, is we're going to go ahead and
4 bring the jury out, go ahead and get them sworn, get a -- a
5 foreperson picked, do a preliminary charge, and lawyers do
6 their opening. And then, time remaining this afternoon,
7 then we'll deal with whatever we need to deal with and
8 then, of course, pick back up in the -- in the morning,
9 probably about 10. So that's -- that's kind of our -- our
10 plan.

11 All right. Mr. Bolt, if you will bring the -- the
12 jury out, please, sir.

13 THE BAILIFF: Yes, sir.

14 (Off the record briefly.)

15 (Whereupon, the jury entered the courtroom at 3:12
16 p.m.)

17 THE BAILIFF: All present, Your Honor.

18 THE COURT: All right. Thank you, Mr. Bolt. Ladies
19 and gentlemen, we -- you were back there about 40 minutes.
20 I told you to be prompt, and then I made you sit back there
21 for about 40 minutes. I -- I tell juries -- and I say this
22 sincerely. A lot of times when -- when the -- when the
23 jury's just sitting back in the jury room, we are working.
24 We're not just standing around, chatting. We are working.

25 And when I have very good lawyers, like I do in this

--1 case, they -- good lawyers will typically work the judge
2 pretty hard. So we've had some pretrial issues that we've
3 had to deal with. We haven't finished that yet.

4 But what we wanted to do is go ahead and bring you
5 out. I'm going to give you kind of a preliminary charge,
6 kind of a -- a little instruction on what we're going to be
7 doing, and the lawyers will make their opening statements
8 or arguments to you. And then I'm going to go ahead and --
9 and break -- y'all -- or release y'all for the day. And
10 then we'll continue to work on some other pretrial issues.

11 But we have two things we have to do, housekeeping
12 matters. And the first one is to have the trial jury sworn
13 in. So madam clerk, if you would swear the trial jury in,
14 please.

15 (Whereupon, the jury was duly sworn at 3:14 p.m.)

16 THE COURT: Okay. The second matter that we need to
17 deal with is appointing a foreperson of the jury. Now, if
18 it is a man, it's a foreman; if it is a lady, forelady.
19 And I'm -- I'm confident that all 13 of you would make
20 excellent forepersons of the jury. However, I can only
21 have just one.

22 And let me explain to you the role of the foreperson
23 of the jury. And they wear several hats. One, I need a
24 spokesperson that will communicate, if necessary, between
25 the jury and the Court. If an issue arises or -- or some

1 matter that needs to be dealt with by the Court, then I
2 need someone to serve as the spokesperson.

3 Secondly, I need someone to make sure that all my
4 instructions are -- are followed. For example, don't begin
5 any discussion about this case among yourselves until I
6 instruct you to begin your deliberations. There will be a
7 couple other instructions. So I need someone to -- to --
8 to -- to make sure that -- of course, all of you are under
9 that responsibility to make sure instructions are followed,
10 but especially the foreperson.

11 And thirdly, when I do tell you to begin your
12 deliberations in order to reach a verdict in this case,
13 then I need someone to organize the -- the deliberations,
14 your discussions in -- in reaching a unanimous verdict in
15 this case.

16 And again, like I said, I'm -- I'm confident that all
17 13 of you would make excellent forepersons, but I can only
18 have one. And, Mr. Senn, I'm going to appoint you as the
19 foreperson. If you will always maintain this front seat
20 right here on the front. And the alternate, I believe Mr.
21 Medlin, you the alternate?

22 ALTERNATE JUROR: Yes, sir.

23 THE COURT: You'll always maintain your seat there.
24 The rest of you can sit wherever you like, as far as those
25 seats right there. A lot of juries I've -- I've had, they

1 like to sit in the same seat, kind of like at church. You
2 sit in the same pew.

3 So you -- you can do that and maintain the same seat
4 throughout, or you can mix it up. That's going to be up to
5 you. But the -- the foreman and the alternate, they --
6 they maintain the same seat throughout. Okay?

7 And let me explain to you about the -- about the
8 alternate. Your role in this is -- is very, very
9 important. Even though I don't anticipate this case going
10 very long, a lot of times somebody on the 12 -- somebody
11 has an emergency at home. Somebody, you know, gets sick or
12 -- and has to be excused by the Court, and I need someone
13 to fill their shoes, someone who has listened to all of the
14 testimony and evidence up to that point. So your role is
15 -- is very important, sir.

16 All right, ladies and gentlemen. We're going to start
17 the trial of the case *in the Matter of* -- *in the Matter of*
18 *the Care and Treatment of David Allen Ward, Jr.*

19 I want to tell you that this trial -- trial will
20 probably be different from what you might expect. You
21 know, many people don't have the opportunity to -- to
22 attend actual court sessions, as you are doing now. And
23 you -- you may think, from watching television or movies or
24 reading books, that trials are always full of high drama,
25 intense action, and riveting circumstances.

1 While all of these things may be true at times, this
2 trial is not for entertainment. It is a fundamental part
3 of our democracy, a search for the truth, in an effort to
4 make sure that justice is done between the parties before
5 the Court. Searching for the truth, making sure that
6 justice is done is often slow, deliberate, and repetitive,
7 the opposite of what you may have seen on television or
8 seen in movies or read in books.

9 This courtroom is a place of honor, dedicated to the
10 protection and preservation of citizens' rights through
11 what many have called to be the greatest justice system
12 ever created. And I'm very confident that is true.

13 The attorneys appearing before you are advocates for
14 the parties they represent. But first and foremost, they
15 are officers of the Court, sworn to uphold the integrity
16 and fairness of our judicial system and to help you in the
17 search for the truth. You should expect them to be
18 professional, competent, and ethical in the representation
19 of their clients' interests. And remember that you have
20 taken an oath to try this case and reach a fair and just
21 verdict and therefore you are expected to be professional,
22 reasonable, and ethical as well.

23 Let me thank you for accepting this very, very
24 important responsibility of jury service and for your
25 contribution today to our justice system.

1 Now, what I'm saying and will say is just meant to
2 serve as an introduction to the trial of this case. These
3 remarks are not the charge on the law. So I will instruct
4 you on the law at the end of the trial before you retire to
5 decide this case. But I want to explain a little bit of
6 the procedure that we will follow so you can better
7 understand what is happening.

8 First of all, you're not permitted to take any notes.
9 What does that mean? That means you'll have to be very
10 attentive, clear-minded throughout this entire process.
11 Don't let your minds wander -- or wander as -- as the
12 testimony is taken and evidence is -- is -- is -- is put
13 in. So be very clear and be sure to get some good rest
14 tonight and -- and, if this goes into Wednesday, even
15 tomorrow night as well.

16 You've been selected to -- as fair and impartial
17 jurors whose purpose is to find and determine the facts.
18 You are the sole judge of the facts. If, at any time, I
19 make any comment regarding the facts, you must disregard
20 that comment. You are to determine the facts from the
21 testimony you hear and any other evidence that is
22 presented. You should not be influenced by an opinions or
23 statements you may have heard outside this courtroom. It
24 is especially important that you are to perform your duty
25 of determining the facts diligently, conscientiously,

1 because ordinarily, there's no way to correct an erroneous
2 determination of facts by a jury. When you comply with
3 your oath to impartially determine the facts of this case,
4 you will have fulfilled your duty as jurors and no one will
5 have the right to criticize your verdict, whatever your
6 verdict may be.

7 On the other hand, and with equal emphasis, the same
8 law that makes you the sole judge of the facts makes me the
9 sole judge of the law. The law as given by the Court is
10 the only law that you may consider. You must accept and
11 follow it, even though you may disagree with it. I cannot
12 tell you what the facts are, and you cannot disagree with
13 me about what the law is or should be.

14 Your job is to take the law as I give it you and apply
15 it to the facts as you find them from the testimony of the
16 witnesses and any other evidence that is presented. After
17 doing that, you will render your verdict, a true and just
18 verdict under the solemn oath that you just took as jurors.

19 And once again, until I advise you to begin your
20 deliberations, you must not discuss this case with anyone,
21 including your fellow jurors, friends, family members,
22 anyone that you may come into contact with.

23 And with equal importance, you are prohibited from
24 doing any independent research in anything related to this
25 case. We all recognize that we have ready access to a

1 world of information because of the Internet. And it may
2 be tempting for you to go home at night and try to get on
3 the Internet and try to figure out something about this
4 case. Please, please do not. Because your verdict must be
5 based 100 percent on what is presented in this courtroom.
6 So if you feel the urge to do some independent research
7 into this case, please do not do that.

8 Mr. Foreman, ladies and gentlemen of the jury, it's
9 very important for you to keep an open mind and not decide
10 any issue in this case until all of the evidence has been
11 presented, the parties have made their closing arguments,
12 and I have instructed you on the law in this case.

13 Now, from time to time, one of the lawyers may say,
14 "Judge, I have an objection or I have a matter of law for
15 the Court." And we will try to -- to resolve that
16 particular issue that's being raised by one of the lawyers
17 by discussing it at what we call sidebar, where they'll
18 come up or I'll go over to the side and talk with them.

19 Sometimes we can't. Sometimes we have to excuse you
20 from the -- from the courtroom to your jury room in order
21 for us to discuss the particular issue on the -- on the
22 record. And there's several reasons for that. But one of
23 the main reasons is that it may -- in my trying to resolve
24 that issue, may require me to discuss the facts with the
25 lawyers. And I don't want to discuss the facts in your

1 presence because, again, you and you alone are the sole
2 judge of the facts in this case.

3 Now, ladies and gentlemen, we typically -- I try to
4 not go any longer than like an hour and a half at a time
5 before we take a break. I do that for everyone's benefit,
6 but especially for -- for my court reporter, because she's
7 taking down everything that's being done and being said.
8 And so I -- I'll try to not go past an hour and a half.

9 If, at any time, that you need to take a break and you
10 can't wait for me to say we're taking a break, all you have
11 to is raise your hand. Okay? We want to try to keep y'all
12 as comfortable as we possibly can.)

13 All right. With all that said, any exceptions or
14 objections from the state as to the Court's preliminary
15 charge?

16 MR. MORROW: Nothing from the state, Your Honor.

17 THE COURT: And from the defense?

18 MR. NASROLLAHI: None, Your Honor.

19 THE COURT: Okay. Thank you very much. The lawyers
20 will make their opening statements or arguments to you.
21 Please give them your undivided attention.

22 Okay, Mr. Morrow. You may proceed, sir.

23 OPENING STATEMENT BY MR. MORROW

24 MR. MORROW: Good afternoon, ladies and gentlemen. My
25 name is Cam Morrow, and I work for the attorney general's

1 office and the State of South Carolina.

2 And you might be wondering to yourself, Why am I here?
3 Why isn't someone more local handling this case? Why isn't
4 the local solicitor's office handling this case?

5 And the answer to that question is simple. When --
6 when the South Carolina General Assembly decided to enact
7 this law, the South Carolina Sexually Violent Predator Act,
8 the assigned the Office of the Attorney General to
9 prosecute -- to handle all of these cases.

10 Now, the -- the case today has been brought under the
11 South Carolina Sexually Violent Predator Act. We are here
12 because the state is seeking to civilly commit Mr. David
13 Allen Ward, Jr., to the South Carolina Department of Mental
14 Health for treatment.

15 Now, you might ask yourself, What is a sexually
16 violent predator? About 16 years ago, the South Carolina
17 General Assembly addressed that very question. They had --
18 they passed the South Carolina Sexually Violent Predator
19 Act with two thoughts in mind: first, that there are
20 certain individuals in our state that suffer from mental
21 abnormalities or personality disorders that make them
22 likely to commit acts of sexual violence; and that these
23 individuals need treatment in a secure facility to protect
24 the public during the treatment process because they are
25 extremely dangerous individuals.

1 Now, the state contends that Mr. Ward is one of those
2 individuals that -- that the General Assembly had in mind
3 when they passed the South Carolina Sexually Violent
4 Predator Act. To prove that Mr. Ward is a sexually violent
5 predator, the state must prove two elements to you. First,
6 they prove -- they have to prove that David Allen Ward,
7 Jr., was convicted of at least one sexually violent
8 offense.

9 Mr. Ward has been convicted of a sexually violent
10 offense. And I don't think that he's going to dispute
11 that.

12 David Allen Ward -- second -- the second element that
13 we have to prove is that David Allen Ward suffers from a
14 mental abnormality or personality disorder that makes him
15 likely to commit acts of sexual violence in the future and
16 that if -- if he's not confined to a secure facility for
17 his long-term care, control, and treatment.

18 Now, Mr. -- you'll hear from the state's expert, Dr.
19 Amy Swan. And she has diagnosed Mr. Ward with pedophilic
20 disorder. And you can -- you will hear testimony from the
21 state's expert and from other experts in this case from
22 which you can decide whether Mr. Ward lacks control over
23 that pedophilic disorder and whether he's likely to commit
24 acts of sexual violence in the future.

25 Now, Dr. Amy Swan is a psychologist who's testified in

1 over a hundred sexually violent predator -- or sexual
2 predator cases. You will -- Dr. Swan will tell you that
3 Mr. Ward suffers from a relevant mental abnormality known
4 as pedophilic disorder and, based on her thorough
5 evaluation of the facts, she believes that Mr. Ward is
6 likely to commit another act of sexual violence.

7 You will also hear from Dr. Marie Gehle. Now, Dr.
8 Gehle works for the state. She works for the South
9 Carolina Department of Mental Health. And any time a
10 petition is filed under this act for the state, she is
11 appointed by the Court to review the file and issue an
12 opinion. If she issues an opinion that he is -- should not
13 be committed, the state is entitled to get a -- an
14 additional expert to -- for a second opinion. If she had
15 issued an opinion saying that Mr. Ward needed to be
16 committed, he would be entitled to a second -- for --
17 expert for a second opinion.

18 We don't do it at -- we don't seek a second opinion in
19 every case. But in this case, we decided to. So the
20 question that you're going to be asked today to answer is:
21 After comparing the two experts that will testify in this
22 case, comparing their credibility and their thoroughness,
23 whether Mr. Ward suffers from mental abnormality or
24 personality disorder that makes him likely to commit
25 further acts of sexual violence if he's not confined to a

1 secure facility at the Department of Mental Health for
2 control, care, and treatment. In other words, is Mr. Ward
3 safe to be out in the community on his own and not commit
4 another act of sexual violence ever again?

5 Now, the burden of proof in this case is on the state.
6 And we must prove our case beyond a reasonable doubt. Even
7 though this case is a civil case and not a criminal case,
8 we still have to prove our case beyond a reasonable doubt.
9 And that's a higher burden than most civil cases.

10 But keep in mind, that's -- keep in mind that beyond a
11 reasonable doubt is not all doubt. It's not any doubt.
12 It's beyond a reasonable doubt.

13 Later, the judge will tell you what that means. And
14 he'll explain to you that beyond -- proof beyond a
15 reasonable doubt is proof that leaves you firmly convinced.

16 These cases, by their very nature, have disturbing
17 facts. But what I ask you to do in this case is listen to
18 the evidence -- not just the state's evidence, all the
19 evidence. And after you listen to the evidence, I believe
20 the verdict that you should render will become clear: that
21 David Allen Ward is a sexually violent predator and should
22 be committed to the South Carolina Department of Mental
23 Health for long-term care, control, and treatment. Thank
24 you.

25 THE COURT: Thank you, Mr. Morrow. Mr. Nasrollahi,

1 you ready, sir?

2 MR. NASROLLAHI: May it please the Court.

3 OPENING STATEMENT BY MR. NASROLLAHI

4 MR. NASROLLAHI: Ladies and gentlemen, the
5 presentation of facts in this case are going to be very,
6 very straightforward. And when I say that, I mean that it
7 is going to be very crude. It is going to be very blunt.

8 Because I -- some of you came in this morning, and you
9 were summoned for jury duty. And you thought -- you know,
10 you heard -- when we first came in here, you heard it
11 announced that we were here for a civil term of court. And
12 you probably thought we were here to -- for a car accident
13 or maybe something -- you know, somebody's cow got out of a
14 gate. You know, okay. I'll -- I'll -- I'll be home by
15 five o'clock to go see my family, and some guy that didn't
16 stop in time for a stop sign will get some insurance money.

17 And then, as we started to roll through jury
18 selection, you heard Judge Hocker say why we were here.
19 And I -- I was sitting there. I had my chair turned
20 around. I was looking at you and the -- the demeanor of
21 the entire pool changed when he said that we were here for
22 a sexually-violent-predator commitment.

23 That's going to entail the discussion of certain facts
24 that are going to be difficult to swallow. And it's going
25 to entail the use of some terms that, frankly, nobody uses

1 in polite company. We've already encountered some of them.
2 We've -- when Mr. Morrow got up here and they said that
3 they were going to call Dr. Swan to the stand, we're going
4 to encounter terms like pedophilia. We are going to talk
5 about prior convictions. It's going to be a difficult
6 case.

7 But it's going to be straightforward. And at the end
8 of the day -- and I'm going to try and keep this as brief
9 as possible, because I know you guys have been back there
10 waiting. At the end of the day, this jury is going to have
11 to deliberate and reach a unanimous decision as to whether
12 Mr. David Allen Ward is a sexually violent predator.

13 And the -- when I say straightforward again, that's
14 because, like Mr. Morrow said, we agree on a lot of the
15 facts here. We're -- we're not going to dispute a prior
16 conviction. That's going to come out. This isn't like a
17 criminal case, where we're talking about, you know, the
18 alleged suspect, the alleged -- we're talking about a
19 conviction. We're -- we're talking about something that
20 has happened; it's not in dispute.

21 We agree that there's a -- the statute in South
22 Carolina. And we agree that the definition under that
23 statute of a sexually violent predator is an individual who
24 has been previously convicted of a sexually violent crime
25 who suffers from a mental abnormality that will make it

1 likely for that person to reoffend unless they are confined
2 to a secure facility for long-term control, treatment, and
3 care. And the reason why I kind of chopped it up, I was --
4 as I was walking down here is because those are going to be
5 the elements that the State of South Carolina has to prove.

6 To give you a little bit of background -- and I'll --
7 and I'll wrap up soon, because I know I'm getting a little
8 long-winded here. He was initially flagged, Mr. Ward, for
9 these proceedings. And like Mr. Morrow indicated, Dr.
10 Gehle, who's sitting -- seating out in the gallery,
11 evaluated him. She's a psychologist with the Department of
12 Mental Health.

13 Okay. She reviewed documents. She spoke with Mr.
14 Ward. And she came up with a diagnosis -- or lack of a
15 diagnosis, actually -- and came to an opinion as to whether
16 Mr. Ward satisfied that definition that I just broke down.
17 And she said no, he didn't.

18 So -- and -- and like Mr. Morrow said, they went and
19 got a second opinion. And that's going to be their first
20 witness on the stand. And we're going to hear about her
21 opinion. And her opinion, of course, is yes, he does
22 qualify. You -- you already knew that. We wouldn't be
23 there if there wasn't a conflict.

24 So when this case wraps up, you guys are going to have
25 to decide essentially which expert you believe. It's

1 really as simple as that. And the presentation of the
2 facts behind that are going to be straightforward.

3 And I say all that so that you understand that even as
4 simple and straightforward as this is going to be, it's
5 going to be difficult. And it's going to -- it's going to
6 require listening to some difficult testimony. I'm not
7 going to shy away from that.

8 And it's going to involve going back there and
9 rendering, like the judge said, a true and just verdict,
10 based on the evidence, based on the split opinions and
11 which opinion you give more value to and whether all 12 of
12 you can agree beyond a reasonable doubt that Mr. David
13 Allen Ward is a sexually violent predator. And after the
14 conclusion of the evidence in this case, that
15 straightforward evidence that I've been talking about,
16 that's not going to happen. There is no reasonable doubt.
17 Thank you.

18 THE COURT: Thank you, Mr. Nasrollahi. Ladies and
19 gentlemen, as I told you, I'm going to go ahead and let you
20 leave for the day. And we're going to start back at ten
21 o'clock in the morning. So be back prompt. Hopefully,
22 we'll -- we'll get our stuff done to where we can get you
23 in here at 10 and proceed with testimony in the case.

24 I'll remind you once again, don't begin any
25 discussions about this case, among yourselves or anybody

1 you come into contact with. You may have some family
2 members or friends that want to quiz you pretty good about
3 what -- what we've done so far. Just tell them the judge
4 has -- has instructed all of us that we can't talk about
5 the case and leave it at that. Put the -- put the blame on
6 me, okay?

7 And we'll see you back at ten o'clock in the morning.
8 And get a good night's rest. Have a great afternoon.

9 (Whereupon, the jury exited the courtroom at 3:37
10 p.m.)

11 THE COURT: Okay. Y'all want to take just a five-
12 minute break before we proffer some testimony?

13 MR. NASROLLAHI: Yes, Your Honor.

14 MR. MORROW: That'd be great, Your Honor.

15 THE COURT: Okay.

16 (Off the record from 3:37 p.m. until 3:46 p.m.)

17 THE COURT: Okay, gentlemen. I believe what we're
18 going to do is, Mr. Morrow, you're going to proffer some of
19 Dr. Swan's testimony, which we can deal with whatever Frye
20 objections that Mr. Nasrollahi has and also see if he can
21 help in any way and give me some guidance on dealing with
22 the curative instruction.

23 So, Mr. Morrow, I'm -- you may proceed.

24 MR. MORROW: Yes, Your Honor. The state would call
25 Dr. Amy Swan to the stand.

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1 THE COURT: Okay.

2 (Whereupon, the witness came forward.)

3 MR. NASROLLAHI: And, Judge, I -- I imagine, for
4 proffer purposes, she's going to be qualified as a -- as an
5 expert by the time this goes in front of the jury, so I
6 don't -- I mean, in the interests of time, I don't think
7 he's going to need to do any of that, if that was what was
8 expected. If he just ---

9 THE COURT: Right.

10 MR. NASROLLAHI: --- if he just wants to get into the
11 meat of it, I'm fine with that.

12 THE COURT: Yeah. I -- I think that's what -- just
13 get into the -- the meat of it and certainly not going to
14 cover all her testimony. We can do qualifications when she
15 testifies for the jury tomorrow.

16 (Off the record briefly.)

17 AMY SWAN, having been first duly sworn, testified
18 as follows:

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. MORROW:

22 Q Dr. Swan, let's skip -- skip ahead a little bit. As
23 part of your evaluation, did you meet with the -- and
24 interview David Allen Ward?

25 A I did.

1 Q Okay. Is he in the courtroom today?

2 A Yes, he is.

3 Q Okay. Dr. Swan, you have mentioned -- you mentioned
4 you received a lot of documentation to review and to reach
5 your opinion on these matters. What type of information
6 did you receive to aid you in conducting your evaluation?

7 A I received arrest reports. I received indictments. I
8 received investigative reports. I received the SCDC
9 records. I received records from SLED. And I received
10 victim statements.

11 Q Okay. Is this is the type of information that is
12 typically and reasonably relied on -- upon by other experts
13 in your field?

14 A Yes, it is.

15 Q All right. Okay. Let's talk about the evaluation
16 process. How do you conduct an evaluation? What do you
17 do?

18 A I initially get a referral. And I'm asked if I'm
19 willing to accept that referral. And if I say yes, then
20 the referring party sends me all the documents they have
21 with regard to the case. And that typically includes all
22 the documents that I just stated.

23 And then I make an arrangement to go out to the
24 facility where the individual is currently housed. And I
25 interview him about everything that happened from the day

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1 he was born until the day I'm seeing him. And that usually
2 includes his early history, his parents' place of origin,
3 his education, occupational history, legal history, medical
4 history, substance abuse history, sexual history, and legal
5 history.

6 Q All right. Dr. Swan, did you -- is that -- is that
7 the procedure you used to evaluate Mr. Ward?

8 A Yes, it is.

9 Q And did you find that Mr. Ward met the criteria for
10 commitment as a sexually violent predator?

11 A I did.

12 Q Okay. How many victims was convicted for?

13 A He had two victims.

14 Q Okay. Can you briefly tell us about the victims'
15 accounts of those offenses?

16 A Yes.

17 THE COURT: Are -- are we dealing with the CSC charge?

18 MR. MORROW: We're going to -- this would be the --
19 we're going to start with the assault and battery ---

20 THE COURT: Okay.

21 MR. MORROW: --- of a high and aggravated nature
22 charge, the ---

23 THE COURT: Okay.

24 MR. MORROW: --- first two charges, go in
25 chronological order.

1 THE COURT: Okay. Very good.

2 A The first victim was Mr. Ward's stepsister. And she
3 reported that when she was 6 years old, Mr. Ward came to
4 live with them. And she said that he started touching her
5 on her breasts and that he would put his hand on her
6 peepee. She said that when he -- when she was 8 years old,
7 that he started teaching her how he wanted her to kiss him.

8 And she said, "He would kiss me and put his tongue in
9 my mouth. David would touch my peepee and my breasts. He
10 started putting his weenie in my butt and he started
11 putting his weenie in my peepee. David put his mouth on my
12 peepee and had me put my mouth on his weenie.

13 "David left the house and went to live with his sister
14 for a while. When he came back, he started kissing me and
15 putting his weenie in my peepee and putting his weenie in
16 my butt again. My mom would be at work most of the time
17 when this happened.

18 "When David moved out, he took me to his place and he
19 put his weenie in my peepee. He did that a lot. The last
20 time David did something to me, he took me to his place.
21 He took me into his room, and he kissed me. He touched my
22 breasts, and he put his weenie in my peepee and in my butt.
23 He put his mouth on my peepee and had me put my mouth on
24 his weenie. After I put my mouth on his weenie, I had to
25 go drink a lot of water because it was nasty. I didn't say

1 anything to my mom because David told me if I told anyone,
2 I would go to jail."

3 She said that this occurred between April of 1998 and
4 May of 2002. And she said that he had anal, oral, and
5 vaginal sex with her a lot.

6 Q And during your interview and evaluation with Mr.
7 Ward, what did Mr. Ward say -- say about his -- about this
8 crime?

9 A Mr. Ward said, "I do not remember doing any of that."
10 He indicated that his -- that the victim said that his
11 father was actually doing that. He said, "The only thing
12 she said about me was I kissed her on the cheek."

13 He said he was young and he just wanted to get out of
14 jail so he took the plea. If he had known what she was
15 actually saying about him, he would've fought it harder.
16 He said that he did give her baths frequently.

17 When I asked him how a 6-year-old would be able to
18 provide such detailed accounts of sexual acts, he said,
19 "All of us would wrestle around. If I touched her, it was
20 by accident. If you're wrestling with anybody, it happens
21 and you're not even thinking about it."

22 Q Dr. Swan, was Mr. Ward ultimately convicted for these
23 offenses?

24 A Yes, he was.

25 Q And what was he convicted of?

1 A He was convicted of assault and battery -- two -- two
2 -- two counts of assault and battery of a high and
3 aggravated nature.

4 Q Dr. Swan, let's move on. We're going to talk about
5 the -- were there any -- was -- was there a sexual -- was
6 there sexual violent -- violent conviction in his criminal
7 history?

8 A Yes, there was.

9 Q Okay. And could you briefly give me the victim's
10 account of that case?

11 A Yes. This occurred -- the victim stated it occurred
12 between September of 2012 and November of 2012. And she
13 stated that -- well, the abuse was revealed when she was at
14 a friend's house and was touching the friend
15 inappropriately. And at that time she was asked where she
16 learned that. And she indicated that Mr. Ward had been
17 touching her.

18 She said that these incidents happened at least nine
19 times. And she said that her uncle, Mr. Ward, touched her
20 on her breasts and vagina, although she referred to him as
21 her uncle, he is not actually related to her.

22 She said that she did not want Mr. Ward to touch her
23 and she did not like it when he -- she -- when he touched
24 her but that he touched her breasts more than one time with
25 his hand. And when she asked him to stop, he didn't say

1 anything but he kept on doing it.

2 She said that he touched her on her vagina one time.
3 She said she was sitting on her chair in Mr. Ward's living
4 room when he touched her on the vagina. And she said it
5 felt weird when he did that. And she said that he told her
6 that if she told her mother about the touching, he would do
7 something. And she said he told her repeatedly not to tell
8 her mother.

9 Q Okay. Dr. Swan, I'm going to -- I'm going to show you
10 what's been -- what's been ---

11 (Whereupon, Mr. Morrow and Mr. Nasrollahi conferred.)

12 MR. MORROW: I'm going to premark these as Court's
13 Exhibits 1 and 2.

14 (Off the record briefly.)

15 (Whereupon, Court's Exhibits 1 and 2 were marked for
16 identification.)

17 Q Dr. Swan, ---

18 MR. MORROW: Your Honor, may I ---

19 Q I'm going to show you a document that I believe you've
20 had a chance to review. I'd like for you to take a moment
21 to look at that document and identify it for me, if you
22 can.

23 MR. MORROW: Your Honor, may I approach ---

24 THE COURT: Sure.

25 MR. MORROW: --- the witness?

1 THE COURT: Yes.

2 Q Dr. Swan, can you identify that document for the
3 Court?

4 A Yes. This is the sentencing sheet with regard to his
5 sexually violent conviction.

6 Q And that -- that conviction was for what crime?

7 A Criminal sexual conduct in the third degree.

8 Q And, Dr. Swan, is there anything on that document to
9 indicate its authenticity?

10 A Yes. There's the court seal.

11 Q And, Dr. Swan, did you have a chance to review that
12 document as part of your evaluation?

13 A Yes, I did. I relied on this for my opinion.

14 Q Okay. And it's part of the basis of your opinion?

15 A Yes, it is.

16 Q And other experts in your field usually rely on such
17 documents as part of the basis of their opinion?

18 A Yes, they do.

19 Q Okay.

20 MR. MORROW: At this time, Your Honor, the state would
21 move to admit Court's Exhibit 1 into -- into evidence.

22 THE COURT: Okay. All right. Well, it ---

23 MR. NASROLLAHI: For ---

24 THE COURT: --- it's for purposes ---

25 MR. MORROW: For purposes ---

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1 THE COURT: --- of this proffer.---

2 MR. MORROW: --- of this ---

3 THE COURT: --- yeah.

4 MR. MORROW: --- proffer. Yeah.

5 THE COURT: Yeah.

6 MR. NASROLLAHI: State's 1? Okay.

7 THE COURT: And it'll be remarked when -- when we --
8 when it's before the jury as State's 1 or however you want
9 to characterize your side.

10 MR. NASROLLAHI: I mean, we can -- no. That's fine.
11 Don't worry about it.

12 Q Dr. Swan, I'm going to -- I'm going to show you
13 another document. I would like you to take a moment to
14 review the document and tell me if you recognize the
15 document.

16 MR. MORROW: Your Honor, may I approach?

17 THE COURT: Sure.

18 Q Dr. Swan ---

19 A Yes.

20 Q --- have you seen that document before?

21 A Yes, I did. It was included in my materials. This is
22 an indictment for criminal sexual conduct with a minor in
23 the third degree.

24 Q Is there anything on that document to indicate its
25 authenticity?

1 A Yes. There is the court seal.

2 Q Okay. Is -- did you use that document as part of the
3 basis of your expert opinion in this case?

4 A Yes, I did. This is one of the documents I relied on.

5 Q And is it common practice in -- in your field to --
6 for an expert such as yourself to -- to reasonably rely on
7 such a document when ---

8 A Yes.

9 Q --- rendering an opinion?

10 MR. MORROW: At this time the state would move, for
11 the purpose of this proffer, Court's Exhibit 2.

12 THE COURT: Okay.

13 Q Now, Dr. Swan, given us the -- what did Mr. Ward have
14 to say when you spoke with him about this crime?

15 A With regard to this crime, he said that he may have
16 unintentionally bumped Minor . He said that on one
17 occasion, he got off the couch and he bumped her as he
18 passed to get into the bathroom. When I suggested that in
19 view of his past history his story didn't seem plausible,
20 he said that his apartment was so small that it was hard
21 for two people to be in the living room without touching
22 each other.

23 And he said that at times he's -- that he and the
24 children would be watching a movie on his computer and he
25 would put his arm around whichever child he happened to be

1 babysitting for. He said that if he reached over to get
2 his drink, he might've touched her. He said that any
3 contact he had with her was accidental.

4 Q Now, Dr. Swan, was there any other information about
5 Mr. Ward that caused you concern?

6 A There was. I questioned Mr. Ward about common myths
7 addressed by sex offenders. And he provided responses that
8 caused me concern.

9 Q What -- I mean, you ---

10 MR. MORROW: Your Honor, that -- that's pretty much
11 the -- the -- we can continue on.

12 Q Dr. Swan, can you -- can you define sexual -- what is
13 sexual deviance?

14 A Sexual deviance, or the mental abnormality that we're
15 looking at, involves sexual behaviors that are considered
16 abnormal. They're considered abnormal because they're
17 either statistically rare; that is, most people don't want
18 to engage in them. Or they have a high probability of
19 inflicting harm on the victim or the person.

20 Q Okay. Dr. Swan, based on your interview and your
21 testing with Mr. Ward, did you determine whether Mr. Ward
22 has a mental abnormality or personality disorder?

23 A I did. I diagnosed him with pedophilic disorder,
24 sexually attracted to females, nonexclusive type.

25 Q Can you tell us a little bit about pedophilic

1 disorder, what that is?

2 A Yes. The technical definition states that over a
3 period of approximately six months, the person must have
4 sexual fantasies, urges, or behaviors involving
5 prepubescent children, which they define as typically under
6 the age of 13.

7 Q And, Dr. Swan, what evidence in this case led you to
8 that -- or what information led you to that diagnosis?

9 A Mr. Ward was convicted of sexually assaulting two
10 girls. He sexually abused the first one over a period of
11 years, between 1998 and 2002. The acts involved oral,
12 anal, and vaginal sex, as -- along with fondling. He
13 sexually assaulted the second girl for approximately two
14 months in 2012. And those acts involved fondling.

15 Q Dr. Swan, could you briefly tell me what a risk factor
16 is?

17 A A risk factor is anything that increases the
18 likelihood that an individual will commit another sexual
19 offense.

20 Q And what -- are -- what are the types of risk factors?

21 A There are static and dynamic.

22 Q What is a static risk factor?

23 A A static risk factor is a risk factor that doesn't
24 change over time.

25 Q Uh-huh.

1 A For example, deviant sexual preferences. If you have
2 a desire for deviant sex at 17, you'll still have it at 70.
3 The only thing that changes is that the time you spend
4 fantasizing about deviant fantasies and masturbating to
5 those deviant fantasies diminishes.

6 Q And what is -- does Mr. Ward have static risk -- risk
7 factors?

8 A He does.

9 Q What are they?

10 A Well, the static risk factor is a sexual preference
11 for prepubescent females.

12 Q Okay. He has -- what -- what is a -- you -- you
13 mentioned there was a second type of risk factor called a
14 dynamic risk factor?

15 A Uh-huh.

16 Q What is that?

17 A The dynamic risk factors are factors that can change.
18 These are the things that we target in treatment to lower
19 an individual's risk.

20 Q And in your evaluation of Mr. Ward, did you identify
21 any dynamic risk factors?

22 A I did.

23 Q And what are those?

24 A The first one, as I said, the risk factor -- the first
25 dynamic risk factor was emotional congruence with children.

1 And this refers to the feeling like our relationships with
2 children are more emotionally satisfying than with adults.
3 They find children easier to relate to than adults. And
4 they believe that children understand them better.

5 Specifically, Mr. Ward had one relationship with an
6 adult female. He said that he preferred only having sex
7 once a year, whereas with children he had multiple contacts
8 over the course of many years with them, which seems to
9 indicate that those relationships are more satisfying.

10 Q Okay. Dr. Swan, why are these risk factors
11 significant?

12 A The risk factors are significant because we only use
13 risk factors that are identified in the research. So these
14 are the ones that actually increase or decrease a person's
15 risk. And these form the basis for the actuarial
16 instruments that we use.

17 Q And then, did you -- first, what is an actuarial
18 instrument? What is that?

19 A An actuarial instrument is a risk-assessment
20 instrument that we know is derived from the research. It's
21 a statistical formula that we use to estimate the risk that
22 a sex offender will commit another sexual crime.

23 Q Okay. And could you give the Court an example of an
24 actuarial assessment or give an example of what that is?

25 A The one that I used was the Static-99.

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1 Q Okay. And what did that instrument -- the Static-99
2 indicate regarding Mr. Ward's risk to be reconvicted of
3 another sexual crime?

4 A His risk is in the moderate-high range. And that
5 would be the -- any -- the -- the scores range from zero --
6 or -- I'm sorry -- minus 3 to 12. Anything over a 6 is
7 high risk, so the 5 would be moderate-high.

8 Q Dr. Swan, is the Static-99R typically and reasonably
9 relied upon by other experts in your field?

10 A Yes.

11 Q And did you solely base you opinion on either the
12 Static-99R or the dynamic risk factors?

13 A No.

14 Q Okay. Would it professionally acceptable to do so?

15 A No.

16 Q Okay. Did ---

17 MR. NASROLLAHI: Did she say "yes" or "no"?

18 THE WITNESS: No.

19 MR. NASROLLAHI: Was that a "yes" or "no"?

20 MR. MORROW: No.

21 MR. NASROLLAHI: Okay.

22 THE COURT: Okay.

23 Q Did Mr. Ward have sex-offender treatment while in the
24 South Carolina Department of Corrections?

25 A He did not. He specifically declined to receive that

1 treatment.

2 Q Is it common for experts in your field to rely upon an
3 individual's criminal history in order to reach an opinion
4 in a sexual event -- sexually-violent-predator case?

5 A Yes.

6 Q Why did you rely on information regarding Mr. Ward's
7 criminal history in reaching your opinion in this matter?

8 A The criminal history is the best indicator that we
9 have of a person's -- it factors into their risk because if
10 they've been arrested and convicted of a sexual crime and
11 then they commit another crime, then it attests to the
12 strength of their drive for deviant sex and their
13 difficulty controlling it.

14 Q And, Dr. Swan, can you explain how an individual's
15 past sexual behavior relates to their future sexual-offense
16 behavior?

17 A Yes. If -- if they've -- as I said, if they've been
18 arrested and convicted of a sexual crime and they go to
19 prison and then they get out and they do it again, then it
20 indicates that they are still engaging in deviant sex and
21 that they have difficulty controlling it.

22 Q Dr. Swan, again, you mentioned earlier, at the time of
23 your interview with him, had Mr. Ward been convicted of a
24 sexually violent offense?

25 A Yes.

1 Q And what were those charges?

2 A The -- the sexually violent offense was criminal
3 sexual conduct in the third degree.

4 Q Okay. All right. And now, you mentioned also that he
5 had additional convictions. What -- what were those
6 convictions?

7 A He had two convictions for assault and battery of a
8 high and aggravated nature that involved sexually motivated
9 crimes.

10 Q Okay. And, Dr. Swan, are you offering a -- an opinion
11 solely based on Mr. Ward's criminal history?

12 A No.

13 Q Would it be professionally acceptable to do so?

14 A No.

15 Q And, Dr. Swan, back to your interview with Mr. Ward,
16 to your knowledge, has Mr. Ward taken any responsibility
17 for his sexual offenses?

18 A None.

19 Q Based on your examination of Mr. Ward, the review of
20 his records, and all the facts we've been discussing, did
21 you render an opinion to a reasonable degree of
22 psychological certainty as to whether Mr. Ward has a mental
23 abnormality or personality disorder?

24 A I did.

25 Q And what was that opinion?

1 A I believe he has pedophilic disorder, sexually
2 attracted to females, nonexclusive type.

3 Q Is that a -- considered a relevant mental abnormality
4 amongst experts such as yourself who conduct mental health
5 evaluations on sexually violent predators?

6 A Yes, it is.

7 Q Is pedophilia curable?

8 A No. We can't cure it. As I said, if you have
9 pedophilic disorder at 17, you'll still have it at 70. But
10 what we can do is teach individuals strategies so that they
11 don't continue to act out on those deviant impulses.

12 Q Okay.

13 A It's important to note that the person has to be
14 motivated to change. And some people aren't.

15 Q And, Dr. Swan, do you have an opinion as to whether
16 Mr. Ward's pedophilic disorder causes him serious
17 difficulty in controlling his behavior?

18 A Yes, it does.

19 Q Do you have an opinion as to -- with -- whether Mr.
20 Ward has the propensity to commit future sexually violent
21 crimes?

22 A Yes.

23 Q Do you have a -- an opinion whether Mr. Ward's
24 pedophilia makes him likely to engage in acts of sexual
25 violence if he's not committed and confined to a secure

1 facility for long-term control, care, and treatment?

2 A Yes. I believe he does.

3 Q Dr. Swan, do you have as to whether Mr. Ward meets the
4 legal criteria to be found to be a sexually violent
5 predator at this time?

6 A Yes.

7 Q Are all of these opinions based on a reasonable degree
8 of psychological certainty?

9 A Yes.

10 Q Okay.

11 THE COURT: All right. Mr. Nasrollahi, any cross-
12 examination as it relates to the limited purpose for this
13 proffer ---

14 MR. NASROLLAHI: Right.

15 THE COURT: --- testimony?

16 MR. NASROLLAHI: I'm just -- I'm going to start with
17 the -- the hearsay questions, which should ---

18 THE COURT: Right.

19 MR. NASROLLAHI: --- be very brief. And then I'm
20 going to go into my *Frye* challenge or ---

21 THE COURT: Okay.

22 MR. NASROLLAHI: --- well, I guess calling it a *Frye*
23 challenge is misleading, but you understand what I mean.

24 THE COURT: Right.

25 MR. NASROLLAHI: Okay.

CROSS-EXAMINATION

BY MR. NASROLLAHI:

Q Dr. Swan, just to be clear: Your determination of a diagnosis in this case and your determination of his risk of recidivism are -- are separate and distinct inquiries?

A Can you say that again? I think I missed that.

Q Your -- your -- your determination, your diagnosis of Mr. Ward being a pedophile ---

A Yes.

Q Okay. That is separate and distinct from your determination of his risk of recidivism?

A Yes, it is.

Q Okay. So it -- just so I'm clear on what we're talking about ---

A Yes.

Q --- you found him to be a pedophile, but that's not -- they -- there may be overlapping facts that you're using to find that he was a pedophile that may have gone into your finding of his potential -- his potential of recidivism, correct?

A Well, that's correct. But just because he has pedophilic disorder doesn't mean that he's at sufficient risk to qualify as a sexually violent predator. It's individual in each case.

Q Right. Well, I -- what I -- what I'm saying is it

1 doesn't necessary follow I find him to be a pedophile;
2 therefore, 15 percent chance of recidivism?

3 A Oh, no.

4 Q You -- you understand what I'm saying?

5 A Absolutely.

6 Q Okay. And you went into the -- the -- the -- I'm
7 sorry.

8 MR. NASROLLAHI: I keep calling you the solicitor.

9 Q The attorney general went into all the documents that
10 you reviewed in order to prepare for your evaluation ---

11 A Yes.

12 Q --- of Mr. Ward?

13 And that's essentially what you listed as Appendix 1

14 ---

15 A Yes.

16 Q --- in your report?

17 A Yes.

18 Q All those documents?

19 A Yes.

20 Q Okay. Can you -- there are one, two -- 33 itemized
21 entries on this. And you can -- you can hold onto that.

22 That's fine.

23 A Okay.

24 Q Do you -- do you -- you agree with that? There's 33
25 entries on your itemized?

- 1 A Let me just -- I guess I'm going to have ---
- 2 Q Here ---
- 3 A --- to agree ---
- 4 Q --- look at ---
- 5 A --- because ---
- 6 Q --- you can ---
- 7 A --- I've got ---
- 8 Q --- look at mine.
- 9 A --- the wrong page.
- 10 Q For -- for proffer purposes, let's ---
- 11 A Yes.
- 12 Q --- just look at that one.
- 13 A Thirty ---
- 14 Q Thirty-four is your interview with Mr. ---
- 15 A That's ---
- 16 Q --- Ward?
- 17 A --- correct.
- 18 Q Okay. But Items 1 through 33, these are -- these are
- 19 documents that you reviewed in preparation, correct?
- 20 A That's correct.
- 21 Q Okay. Which of these documents did Mr. Ward prepare?
- 22 A Mr. Ward did not prepare any of those.
- 23 Q Okay. Which of these documents did you prepare?
- 24 A I prepared the report.
- 25 Q Okay. I mean, of the 1 through 33, which ones did you

1 prepare?

2 A I did not prepare any ---

3 Q Okay.

4 A --- of those.

5 Q Where -- and these various documents -- let me pick
6 one as an example -- Child's Place Forensic Interview
7 Summary Report -- was that -- who -- who was that authored
8 by?

9 A That was authored by the Child's Place forensic report
10 -- they do the forensic interviewing of ---

11 Q I ---

12 A --- children who've been alleged ---

13 Q I -- I understand the ---

14 A Yeah.

15 Q --- the Child's Place part. But who is the specific
16 author? Was it one person? several persons? Do -- do you
17 recall?

18 A I don't recall. But I can find out pretty ---

19 Q Well ---

20 A --- quickly.

21 Q --- okay. That's fine.

22 A Yeah.

23 Q Let me just -- because we're -- I think we're
24 crunching ---

25 A Typically ---

1 Q --- low on ---

2 A --- the person that does the ---

3 Q I got you.

4 A --- interview writes the report.

5 Q I understand. And that report is based on the
6 interviewer's conversation with the victim?

7 A That's correct.

8 Q Okay. And that summary is a statement of what the
9 child told the interviewer based on the interviewer's
10 interaction with the child?

11 A That's correct.

12 Q For example, using the RATAC method or whatever child

13 ---

14 A Yes.

15 Q --- interviewing method?

16 A Yes.

17 Q Okay. So there's kind of a mix of who -- what
18 particular voice is being used in that summary, correct?

19 A Yes.

20 Q It's -- it's the author who wrote the report. You
21 know, I'd use a name here if I could. But it's the author
22 who wrote the report summarizing what the child told the
23 author, correct?

24 A Yes.

25 Q Okay. So that's -- there -- we've kind of got some

1 embedded secondhand statements in that?

2 A Right.

3 Q And almost same thing with the incident reports in
4 this case?

5 A That's correct.

6 Q And then -- and I'm not just talking about just the --
7 the two ABHANS; I'm also talking about the most recent CSC-
8 third?

9 A That's correct.

10 Q Okay. So we've got, you know, the -- this particular
11 officer talked to another officer; this is what that
12 officer told them?

13 A That's correct.

14 Q And/or the victim talked to this officer; that officer
15 conveyed this information to me?

16 A That's correct.

17 Q So in some instances when you're -- when -- when Mr.
18 Morrow was asking you about your diagnosis and the
19 information that you were using to come to this diagnosis,
20 you are relaying, in some instances, second- and thirdhand
21 information; fair ---

22 A Yes.

23 Q --- to say?

24 Okay. And the indictment? What is an indictment?

25 A It's a legal document.

1 Q What kind of legal document?

2 A It typically comes from the -- the grand jury, and
3 they determine whether to press charges against a
4 particular individual if there's sufficient evidence to --
5 for -- for those ---

6 Q Correct.

7 A --- charges.

8 Q Okay. And an -- or -- or I -- before -- you
9 understand what it means to have a indictment true-billed,
10 yes?

11 A Yes.

12 Q Okay. And before that indictment is true-billed, do
13 you understand who it's prepared by?

14 A It is usually prepared by the solicitor.

15 Q Okay. And then -- and it's a safe assumption to say
16 that the Greenville indictments were prepared by a
17 Greenville solicitor?

18 A That's correct.

19 Q Okay. And the indictment is -- is a double-sided
20 document?

21 A I'm not sure what you mean.

22 Q Okay.

23 A Oh.

24 Q There's a front and a back ---

25 A Oh.

1 Q --- to it.

2 A Yes.

3 Q Okay. And on -- that's -- I -- sometimes I get that
4 mixed up myself. And on -- on the front it's just the
5 generic information: the indictment number, when it was
6 true-billed, all that stuff. Nothing really -- except for
7 the charge of the case and who -- who the -- the defendant
8 is, it doesn't really contain that much information?

9 A That's correct.

10 Q The flip side is where the State of South Carolina,
11 acting through the solicitor, writes a summary of the
12 events and the legal theory under which it believes that
13 that particular defendant has violated the law?

14 A That's correct.

15 Q And right underneath it has the -- the -- either the
16 solicitor or the assistant solicitor's signature?

17 A That's correct.

18 Q Okay. And what that means is the solicitor is
19 presenting that document -- to your knowledge, that the
20 solicitor is presenting that set of facts under that legal
21 theory to the grand jury for a finding of probable cause?

22 A That's correct.

23 Q Okay. And then, the grand jury either true-bills or
24 no-bills it?

25 A That's correct.

1 Q Okay. So at the very least, the document that you
2 read with the information there was a statement from the
3 solicitor's office?

4 A Yes.

5 Q Okay. And that statement was more likely than not
6 based on your -- I'm -- I'm sure this is not the first time
7 you've sat on the stand or dealt with a case like this.
8 Based on your experience in doing all this, that indictment
9 was drafted probably after to speaking to officers, reading
10 incident reports, you know, even probably reading a
11 confession or something from a defendant, correct?

12 A That's correct.

13 Q Okay. So embedded in that, we're talking about
14 second- and thirdhand information?

15 A Possibly. Yes.

16 Q Okay. Quite possibly?

17 A Yes.

18 Q Okay. So up until Item No. 34, interview with Mr.
19 Ward, all the information you had was secondhand, at the
20 very least?

21 A Yes.

22 Q Okay. Where you didn't call the -- the victim from
23 the Greenville ABHAN case?

24 A I did not.

25 Q Did not interview her, her parents ---

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1 A I did not.

2 Q --- any of the -- okay. And same -- likewise with the
3 -- with the victim in the Laurens County case?

4 A That's correct.

5 Q And I'm not -- don't take that as that's what you
6 should've done; you didn't do it. But that you didn't do
7 that, just for clarification?

8 A That's correct. I ---

9 Q Okay.

10 A --- did not.

11 Q So by the -- and -- and you reviewed all this
12 information before speaking with Mr. Ward?

13 A Yes, I did.

14 Q Okay. And -- and I think you probably answered a
15 question similar to this with Mr. Morrow. You hadn't come
16 to any conclusions prior to meeting with Mr. Ward, had ---

17 A I had not.

18 Q --- had you?

19 Okay. And it was at -- you were going to wait till
20 after your interview with him ---

21 A That's correct.

22 Q --- before you made a diagnosis?

23 A Oh, yes.

24 Q Okay. So how much did the information you received --
25 how much did that impact your ultimate diagnosis after

1 discussing -- or I -- discussing is probably not the right
2 word -- after evaluating Mr. Ward?

3 A Well, those provide as -- are some of the sources of
4 information, but I don't arrive at that conclusion until I
5 interviewed the individual myself.

6 Q Right. And there -- and -- and just like I asked you
7 a second ago, if -- you -- you would never have diagnosed
8 him as -- as being a -- a pedophile without first -- with
9 only reading those documents, correct?

10 A No. I don't arrive at any diagnosis ---

11 Q That's for -- and -- and you said ---

12 A Because ---

13 Q --- I -- I -- I believe ---

14 A --- but ---

15 Q --- you said it was -- it was not sound medical
16 practice or clinical practice to just read this information
17 and come up with a diagnosis without talking to him?

18 A That's correct. Because not all child molesters are
19 pedophiles.

20 Q I understand. I understand. And would you -- simply
21 meeting with Mr. Ward, without reviewing any of those
22 documents beforehand, would you have come up with a
23 diagnosis then, based on you -- the -- the interview you
24 had with him?

25 A Well, if I didn't have access to any -- any of those

1 documents ---

2 Q Correct.

3 A --- it's unlikely that I would've come up with a
4 diagnosis.

5 Q But ---

6 A But each one is a part of the evaluation. And I don't
7 -- I can't arrive at a conclusion ---

8 Q Exactly.

9 A --- without both.

10 Q Exactly. So what you're saying here is these
11 documents, which, I mean, I don't think we're -- you and I
12 are having a dispute here. These documents with second-
13 and thirdhand information were necessary to your opinion
14 here?

15 A They are necessary to my ---

16 Q All right.

17 A --- opinion.

18 Q But at the exact same time, how necessary is it, in
19 your opinion, to express this second- and hand -- thirdhand
20 information? Let me -- let me -- that was a bad question.
21 Let me ask you this way: If you were going to make a
22 diagnosis for Mr. Ward, would it be necessary to express
23 the secondhand information?

24 A Well, in my view, it is because I have to indicate the
25 basis for my diagnosis. And ---

1 Q Right.

2 A --- unless I discuss the particular acts and the age
3 of the victim and the ---

4 Q Uh-huh.

5 A --- the circumstances, I don't think it's -- that the
6 jury can understand why I made the diagnosis.

7 Q Okay. So tell me what exactly you would need to -- to
8 repeat from this information in order to express your
9 diagnosis?

10 A Well, I need to say exactly what the victim said
11 happened to her.

12 Q Okay. It wasn't enough that he has previous
13 convictions?

14 A Not at all.

15 Q Okay. And it wasn't enough -- the -- the name of the
16 actual convictions?

17 A No.

18 Q Okay. It's -- it's what that victim actually told
19 you?

20 A Yes.

21 Q Okay. So there is -- I lost myself in that question,
22 so I'm not even going to ask you.

23 MR. NASROLLAHI: Let me -- and those -- those would be
24 my proffer questions on the -- or my cross on the issue of
25 the hearsay information.

1 THE COURT: Okay.

2 Q Let's talk about the Static-99R.

3 A Yes.

4 Q I believe you use a different term. What term did you
5 use to describe that test?

6 A An actuarial.

7 Q An actuarial. But it -- the specific ---

8 A It's a risk-assessment instrument.

9 Q Exactly.

10 A Yes.

11 Q And the test we're talking about is the -- the Static-
12 99R ---

13 A That's correct.

14 Q Can I steal that paper back from you? I don't know if
15 I took it back or not. It may be on the ---

16 A I think you ---

17 Q --- very bottom.

18 A I'm trying to -- let me ---

19 Q The Appendix ---

20 A --- I don't think ---

21 Q --- 1?

22 A You must've taken ---

23 Q I did ---

24 A --- that back.

25 Q --- take it back. I apologize. I accused you.

1 The specific test that you gave Mr. Ward is -- is
2 called a -- it's a Static-99R?

3 A Yes.

4 Q R stands for revised?

5 A Yes.

6 Q And it's -- like you said, it's an actuarial test?

7 A That is.

8 Q And I believe that the way it's usually conveyed to a
9 jury is to use the analogy of an insurance company?

10 A That's correct.

11 Q And what an insurance company does is they have a
12 table where, based on certain characteristics, we can match
13 you up to this group; this group has this much risk?

14 A Yes.

15 Q It's virtually the same concept ---

16 A Yes.

17 Q --- if we were to distill ---

18 A Yes, it is.

19 Q --- bit more?

20 What is the history of this test?

21 A The history of the test is that in about 1996, Karl
22 Hanson, who's a researcher in Canada, began studying sex
23 offenders. And I believe that there were approximately
24 30,000 people in that initial study.

25 Q Correct.

1 A And beginning in 1998, he began refining it and using
2 that information to come up with an actuarial as an
3 instrument ---

4 Q Right.

5 A --- to assess risk in -- that a ---

6 Q Right.

7 A --- sex offender, once convicted, would go on to
8 commit another sexual crime or would be arrested or
9 convicted again.

10 Q Well, his original theory was: We have these sex
11 offenders; they're going out; some of them are coming back
12 in; is there ---

13 A Yes.

14 Q --- any way that we can come -- we can create a table
15 or create some sort of mechanism or instrument by which we
16 can determine, before these people get out, who we're going
17 see again?

18 A Well, I think that -- yeah. Because they were using
19 the table to determine what level of services the
20 individuals ---

21 Q Right.

22 A --- needed so that the ones that carried more risk
23 would get more intense services.

24 Q Exactly. And the exact same -- and so he developed a
25 test prior to the -- the original Static-99?

1 A Yes.

2 Q And another psychologist in England, working with the
3 corrections department there, came up with a test also?

4 A That's correct.

5 Q Okay. And ---

6 A Well, they -- they merged two ---

7 Q And then he ---

8 A --- tests to ---

9 Q --- merged ---

10 A --- come up with ---

11 Q --- the two tests together and ---

12 A Yes.

13 Q --- we got the Static-99?

14 A Yes.

15 Q And so -- just because I'm going to -- I'm going to
16 speed this up. Just tell me where I'm getting my
17 information wrong, because I'm not a psychologist. I think
18 it's pretty clear from that already. What have -- the
19 original -- well, the -- the test works this way: It's a
20 static test, right?

21 A Yes.

22 Q Meaning that the results of the test really shouldn't
23 change, except for, you know, big events in your life such
24 as age, convictions?

25 A Typically, the only way you get a different score is

- 1 by either getting older or ---
- 2 Q Right.
- 3 A --- accruing another sexual charge.
- 4 Q Exactly. So the -- the point I'm trying to get at is
- 5 if Mr. Ward took this test on a Monday and he wasn't
- 6 feeling well and took it again on a Wednesday when he was
- 7 feeling better, he's not going to get a different score
- 8 unless he somehow aged ten years in that -- those couple of
- 9 days ---
- 10 A Well, he ---
- 11 Q --- correct?
- 12 A --- wouldn't take the test. It would be ---
- 13 Q If it was ---
- 14 A --- scored ---
- 15 Q --- administered ---
- 16 A Yes.
- 17 Q Right. What I -- what I -- the -- the point is, you
- 18 know, there's ---
- 19 A His score ---
- 20 Q --- not ---
- 21 A --- is not going ---
- 22 Q --- there shouldn't be ---
- 23 A --- to change.
- 24 Q Exactly.
- 25 A Right.

1 Q And then, it -- it asks -- the test takes into
2 consideration -- you use a -- you use a coding form. And
3 you ---

4 A Yes.

5 Q --- go down and you take into consideration certain
6 information.

7 A Yes.

8 Q And that provides you with a score?

9 A Yes.

10 Q And based on that score, you compare it to a group of
11 offenders?

12 A He -- it will -- it will tell us that he has
13 characteristics similar to a group of offenders who
14 reoffended at this particular ---

15 Q Right.

16 A --- rate.

17 Q Right. And so what basically -- in -- in the case of
18 Mr. Ward, he scored a 5 ---

19 A That's correct.

20 Q --- right?

21 And moderate to high risk? What that means is that
22 his information is comparable to these offenders in this
23 group who also scored a 5?

24 A That's correct.

25 Q Okay. And based on what you've submitted -- and I

1 believe it comes directly from the workbook -- his risk is
2 15 percent or -- in the neighborhood of 15 percent? I
3 can't remember exactly ---

4 A Right.

5 Q --- what I'm talking about.

6 Okay. And in 1999 the original version of this test,
7 what kind of groups did we have?

8 A In 1999 there was only one group.

9 Q One group?

10 A Uh-huh.

11 Q And ---

12 A When it was revised in 2009, they came up with four
13 groups based on the new research. And recently, when the
14 new research was done, it was published January of 2015.
15 And now we have two groups.

16 Q Two groups.

17 A Yes.

18 Q Okay. But in 1999 there was one group?

19 A That's correct.

20 Q And there were -- there were different questions, but
21 we're getting ahead of ourselves. But you got a score and
22 it compared you to this group?

23 A That's correct.

24 Q Okay. And one of the criticisms about how the score
25 was tabulated was it didn't take into consideration age? I

1 think it -- the question was ---

2 A That's right.

3 Q --- you were -- you were either under 25 or you're
4 over 25?

5 A That's correct. Insufficiently took into
6 consideration ---

7 Q That's right.

8 A --- age. And we know that age is a factor that ---

9 Q Right.

10 A --- can diminish risk for a sexual reoffense.

11 Q Right. And to take a step back again, this test is
12 built off of several studies?

13 A Oh, yes.

14 Q Well, numerous studies ---

15 A Yes.

16 Q --- I guess would be a ---

17 A And it's ---

18 Q --- better ---

19 A --- been cross-validated about 65 times.

20 Q Okay. We'll get to that in just a second. But it was
21 originally based on studies -- these studies weren't
22 performed by Hanson or the -- the gentleman in -- in
23 England? They -- these were actually -- they -- they
24 pulled studies from other individuals?

25 A Well, a -- a meta-analysis, which is -- the Static-99R

- 1 ---
- 2 Q Right.
- 3 A --- is based on, is a study of studies.
- 4 Q Right. And -- but those studies came from countries
- 5 like Canada, England ---
- 6 A Yes.
- 7 Q --- back in -- but not the United States?
- 8 A Not back in 1999.
- 9 Q Right. Okay. And that information -- one of the
- 10 other criticisms was that a lot of these studies were based
- 11 on very old information?
- 12 A That's correct.
- 13 Q From the '70s and the '80s?
- 14 A That's correct.
- 15 Q And since then, you know, we've gotten not only better
- 16 at treatment and diagnosis, we've gotten better at offender
- 17 services?
- 18 A Right.
- 19 Q Okay.
- 20 A And that's why the norms were revised to ---
- 21 Q Exactly.
- 22 A --- incorporate all that.
- 23 Q Exactly. But in 1999 the risk was kind of higher ---
- 24 A It was ---
- 25 Q --- than it was ---

1 A --- higher.

2 Q --- today -- significantly higher?

3 A Yes. But what we found, in addition to better
4 research, is that we found that crime is diminishing and
5 that includes ---

6 Q Right.

7 A --- sexual crime.

8 Q Right. But my point is: In 1999 -- if Mr. Ward were
9 to have taken this test in 1999, a 5 would mean something
10 completely different than it does today?

11 A That's true.

12 Q In fact, probably most people, using the revised
13 version, wouldn't stand by that test?

14 A No.

15 Q Okay.

16 A That's right.

17 Q In 2002 they came out with a new test or they -- they
18 -- it was the Static-2002, but that didn't really catch on?

19 A Yeah.

20 Q Okay. But ever since the publication of the 1999
21 test, a lot of researchers were -- aside from the criticism
22 about the -- the age factor, there were a lot of criticisms
23 about the -- basically the antiquity of the numbers ---

24 A That's ---

25 Q --- that's the ---

1 A --- correct.

2 Q --- studies?

3 And at the exact time, like -- like in 2003, there
4 were big studies that came out that said that recidivism is
5 going down?

6 A That's correct.

7 Q And so that was kind of the impetus for the
8 researchers here to come back and say we need to probably
9 revise these groups?

10 A That's correct.

11 Q And so in 2009 they came out with the Static-99R. And
12 again, R is for revised?

13 A Yes.

14 Q Okay. And that -- instead of having one group that
15 they're compared to, there were four groups?

16 A That's correct.

17 Q And I'm -- I'm going to miss one. It was -- was it
18 routine, nonroutine, preselected ---

19 A For treatment need ---

20 Q Is that ---

21 A --- and preselected for high-risk/high-need.

22 Q I can -- I could never repeat that. I could -- it's
23 just in one ear and out the other.

24 But those rates were still higher?

25 A That's correct. Than the recent revision.

1 Q Right. And so in -- in 2009, when the very -- when
2 that -- when this first iteration of the Static-99R came
3 out, if Mr. Ward were to have taken that test, his risk
4 factor would be higher?

5 A That's correct.

6 Q Okay. And that's because all along, researchers are
7 doing their due diligence, correct?

8 A That's correct.

9 Q Okay. And again -- and why I asked you earlier, if
10 this was something from Hansen -- and I -- I can't remember
11 his -- it's, like, Karlson in England who is the other
12 gentleman? I can't remember -- it's -- it's not ---

13 A I'm drawing ---

14 Q --- important.

15 A --- a blank on that too.

16 Q Yeah. I -- I know it's a guy -- he worked with His
17 Majesty's Prison.

18 A Right.

19 Q But they are not the ones out ---

20 A Thornton.

21 Q --- there -- I'm sorry?

22 A David -- David Thornton.

23 Q That's right. That's absolutely right. Thank you.

24 But the reason I asked you that earlier is they're not
25 the ones out there producing the studies?

1 A Well, they have their own studies. But ---

2 Q Uh-huh.

3 A --- in fact, the -- but they always include studies
4 that have been done by other people.

5 Q Correct. But what -- but their information and the --
6 the way they've -- they've divvied up the groups are based
7 on other people's studies? They're -- they're ---

8 A That's correct.

9 Q --- primarily -- they're primarily focused on
10 developing the Static-99 to fine-tuning it?

11 A That's correct.

12 Q Okay. That -- and that's why I asked whether they
13 were actually performing the studies.

14 But since 2009, again, there have been numerous
15 revisions?

16 A Well, just one revision since 2009.

17 Q When was that?

18 A It was done at the end of -- or around 2014 -- the end
19 of '13 and part of '14. And then it was actually, like,
20 published in -- January of 2015.

21 Q Uh-huh. And the information that they have -- I mean,
22 have they revised the tables -- I guess, is my question --
23 since ---

24 A In 2015. Yes.

25 Q Okay.

1 A Because now we only have the two groups.

2 Q Okay. And that's routine and -- I forget ---

3 A High-risk/high-need.

4 Q Okay. And how many individuals were placed in the --
5 in -- in the original studies, how many people were in the
6 original group, the -- the routine group?

7 A Well, the original study had 10,086 people that they
8 selected to -- to make the Static-99R. I'm not sure how
9 many are in this normative group that -- that where they
10 revised it. But ---

11 Q Right.

12 A --- it came from many countries.

13 Q Right. About 6,000 ---

14 A Possibly.

15 Q --- individuals ---

16 A Yeah.

17 Q --- in the -- in the two groups?

18 But one group, again, is the -- the high-risk?

19 A That's correct.

20 Q And they've been kind of taken out?

21 A What do you mean, taken out?

22 Q They're not -- they're -- it's not one group; it's two
23 groups, right?

24 A Well, it's two groups. Yeah.

25 Q Okay.

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- 1 A The ---
- 2 Q And ---
- 3 A --- routine and ---
- 4 Q --- so ---
- 5 A --- the high-risk.
- 6 Q --- for example, when -- when we -- we make the
- 7 statements -- all right; he's got a 15 percent chance that
- 8 he might reoffend; you know, the -- the typical response to
- 9 that will be: Well, no. We got to look at where he falls
- 10 in his score. He got an 85, which means that a -- a large
- 11 number of the offenders are below that number, correct?
- 12 A Well, you -- there are three risk -- three risk
- 13 categories. One is the percentile rank. His is ---
- 14 Q Uh-huh.
- 15 A --- in the 88.7 percentile rank.
- 16 Q Right.
- 17 A He's -- there's also a relative risk. He's 2.7 times
- 18 higher than the average offender. And then ---
- 19 Q Right.
- 20 A --- you have the absolute risk, which is the -- the 15
- 21 percent.
- 22 Q Correct. But looking at his percentile, his
- 23 percentile is based on the group that he's in?
- 24 A That's correct.
- 25 Q Okay. So if we were to merge the two groups, which

1 I'm not advocating that we do that, his percentile would
2 probably drop significantly also?

3 A I'm not sure about that.

4 Q Okay. If we were to lump in nearly a third more -- 30
5 percent more high-risk individuals into this group and then
6 do a percentile ranking on it, somebody that was previously
7 closer to the top would -- would come down?

8 A Possibly.

9 Q They would ---

10 A If you ---

11 Q --- not ---

12 A --- include the ---

13 Q The high ---

14 A --- high-risk ---

15 Q --- risk group ---

16 A --- people ---

17 Q --- would have ---

18 A --- in there ---

19 Q --- a higher score ---

20 A Because I -- I've scored him ---

21 THE COURT: Okay.

22 A --- out in ---

23 THE COURT: Well, let ---

24 A --- the routine ---

25 THE COURT: --- let me just ---

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1 A --- group.

2 THE COURT: You -- you -- y'all are talking over each
3 other ---

4 THE WITNESS: Sorry.

5 THE COURT: --- considerably. And I've been waiting
6 for my court reporter to -- to dart her eyes ---

7 MR. NASROLLAHI: Yeah.

8 THE COURT: --- at me. So y'all be careful and not
9 talk over each other.

10 THE WITNESS: Okay.

11 MR. NASROLLAHI: Okay.

12 Q But going back to my -- we've kind of gone off on a
13 tangent, and that's my fault. But the percentile -- I
14 mean, not the percentile -- the -- the risk rates are going
15 down?

16 A That's correct.

17 Q As a -- as recently as 2013, recidivism is --
18 according to the Department of Justice ---

19 A That's correct.

20 Q --- recidivism in South Carolina is down?

21 A That's correct.

22 Q So these -- these tables are more likely than not
23 going to be revised?

24 A Not anytime soon because they were just revised ---

25 Q Uh-huh.

1 A --- in 2000 -- the results were published in 2015.

2 Q Right. So in another six years, we'll have lower
3 risks?

4 A Well, potentially.

5 Q Right. Now, will any of the underlying information
6 taken from the individuals change?

7 A I'm not sure what you're talking about.

8 Q Is -- and I know I'm asking you to -- to look into the
9 future. But his age, the -- you know, previous history
10 with the lover, prior convictions, prior sexual
11 convictions, that information -- we're -- we're not going
12 to gather significantly different information?

13 A Not if he's incarcerated. If he's out in the
14 community, then that could potentially change.

15 Q Right.

16 A He could get married, you know, those ---

17 Q Right. Okay.

18 A --- sorts of things.

19 Q Let me -- let me -- let me put it in a better way.
20 Six years from now, we have another -- we have another
21 revision to the tables.

22 A Yes.

23 Q Okay? And his risk rate goes down.

24 A Well, potentially.

25 Q Let's say it goes down. Is any of the underlying

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1 information on this -- if he's been in -- in -- he's been
2 confined, none of this is really going to change except for
3 the age?

4 A That's correct.

5 Q Six years is going to -- I mean, he's going to lose --
6 he's going to down to zero on the point on that, because
7 he's almost 35 now.

8 A Right.

9 Q But the chances are -- his -- his risk is going to be
10 reduced?

11 A That's correct. By -- by aging, at least.

12 Q Okay. And there's a -- there's -- again, there's the
13 chance that the statistics are going to come back and the
14 -- the risk of these groups are going to down even more
15 than ---

16 A There's a ---

17 Q --- they have.

18 A --- there's a chance.

19 Q Okay.

20 MR. NASROLLAHI: That's all I have for this witness.

21 THE COURT: Okay. Anything in redirect for this
22 limited purpose?

23 MR. MORROW: If we're -- if we're talking about this
24 in the purpose of a -- of a counsel hearing, Your Honor,
25 about whether the science is reliable, whether -- whether

1 it's going to assist the trier of the fact and if the
2 expert witness is qualified, I have a few questions that
3 talk about -- with Dr. Swan.

4 THE COURT: Well, I -- I -- I think where -- where
5 defense is coming from is that they're -- they're
6 maintaining that the risk-assessment testing used by Dr.
7 Swan may not be reliable. I -- I don't think they
8 necessary are arguing the -- the other two points and -- as
9 far as allowing or disallowing expert testimony; is that
10 correct?

11 MR. NASROLLAHI: No. The -- I -- I was under the
12 impression for the whole proffer that she was going to be
13 qualified as an expert.

14 MR. MORROW: Right. Okay.

15 THE COURT: Right. But I think where you're coming
16 from is -- is the testing ---

17 MR. NASROLLAHI: The -- the -- my argument is we don't
18 know what the numbers could be years from now. They might
19 not be reliable. I think ---

20 THE COURT: Right.

21 MR. NASROLLAHI: --- she's already testified that it's
22 generally accepted -- the -- the ---

23 THE COURT: Right.

24 MR. NASROLLAHI: --- test is generally accepted. But
25 my argument is what does the future hold.

1 THE COURT: Okay. Well, let me just ask this: Dr.
2 Swan, the -- the risk-assessment-testing procedure you used
3 in -- in this case, do you believe the procedures are
4 reliable at this point in time?

5 THE WITNESS: I do. Because they've recently been
6 revised to ---

7 THE COURT: Okay.

8 THE WITNESS: --- incorporate new data. It would be a
9 number of years before they would need to be renormed.

10 THE COURT: Okay. All right. Very good. Thank you,
11 ma'am, for your -- for your proffered testimony. You can
12 step down.

13 THE WITNESS: Thank you.

14 (Whereupon, the witness exited the witness stand.)

15 MR. NASROLLAHI: And -- and to renew my earlier motion
16 based on her testimony, the -- the large bulk of it is
17 second- and thirdhand hearsay.

18 THE COURT: Right. Well, here's ---

19 MR. NASROLLAHI: I -- I ---

20 THE COURT: --- what ---

21 MR. NASROLLAHI: --- understand what she's saying
22 that, you know, consideration of this information is
23 necessary to her diagnosis. I just don't think that the
24 rules of -- and the rules of evidence certainly allow her
25 to take that into consideration. Again, there's nothing we

1 can say about that. I just don't think that the rules of
2 evidence permit second- and thirdhand hearsay.

3 THE COURT: Okay. Well, the -- the first thing -- and
4 -- and I -- it -- it appeared to me, at least Dr. Swan may
5 have been actually reading verbatim the interviews of the
6 two -- two victims. Is that correct, Mr. Morrow?

7 MR. MORROW: I'm ---

8 DR. SWAN: Yes.

9 MR. MORROW: --- paraphrasing ---

10 THE COURT: Okay. All right.

11 MR. MORROW: --- yeah.

12 THE COURT: I don't want her to -- to read the
13 interviews. Any material such as age, race -- well, I -- I
14 don't even know if race is going to be -- well, race could
15 be -- age, gender, circumstances as it relates to
16 similarities between the two offenses, a summary of that I
17 will allow. I just don't want the interviews to be read
18 verbatim.

19 But I am going to accompany that line of testimony
20 with a curative instruction, as previously indicated
21 before. But any -- any of the -- the -- the facts behind
22 the criminal charges has to be directly related to her
23 opinion as to the similarities between the two offenses.
24 But I will give a curative instruction to the jury.

25 The indictment will not be allowed into evidence. I

1 realize this is not a criminal proceeding. But the -- I
2 mean, it can be -- certainly, she can allude to the fact
3 that she reviewed the indictment. But it -- as far as it
4 coming into evidence, I'm not going to allow that.

5 I mean, it's -- it's -- you know, it's so routine in
6 criminal cases that the -- that the Court goes sometimes
7 overboard in explaining to the jury: Hey, the indictment
8 is not evidence; it's just a charging paper to get us to
9 trial. Again, realizing this is a civil proceeding, I'm
10 not going to allow the actual -- indictment document itself
11 to come in. Okay?

12 MR. NASROLLAHI: And -- well, I'll stipulate to the --
13 the sentencing sheets.

14 THE COURT: All right.

15 MR. NASROLLAHI: I mean, I know that he still has to
16 present that they were convicted. But I'm just saying as
17 far as premarking them and having them in evidence, I've
18 got no problem with that. I don't think ---

19 THE COURT: If -- if -- if he does not want the
20 stipulation and wants the sentencing sheet to come in, I'll
21 -- or are you willing to take his stipulation ---

22 MR. MORROW: I -- I don't ---

23 THE COURT: --- that ---

24 MR. MORROW: --- I don't want to stipulate ---

25 MR. NASROLLAHI: No. I mean ---

1 MR. MORROW: --- Your Honor.

2 MR. NASROLLAHI: --- for -- the -- what I -- let --
3 let's be clear on what I'm saying. I'm -- as a time saver,
4 we don't have to do this "Doctor, what is this document?
5 Well, that's the sentencing sheet. All right. I'd like to
6 have this marked."

7 We can go ahead and put it into evidence as State's 1.

8 THE COURT: Sure. Yeah. You can do that before we
9 actually start back. Sure. I understand what you're
10 saying. Okay. All right.

11 MR. NASROLLAHI: I mean, is that -- is that ---

12 MR. MORROW: No.

13 MR. NASROLLAHI: --- a problem?

14 MR. MORROW: That's not ---

15 MR. NASROLLAHI: That's ---

16 MR. MORROW: --- a problem.

17 MR. NASROLLAHI: --- does that make more sense, what
18 ---

19 MR. MORROW: Yes.

20 MR. NASROLLAHI: --- I said? Okay.

21 MR. MORROW: Yes.

22 MR. NASROLLAHI: And -- and just to the -- Your Honor
23 said she'd be allowed to testify to the circumstances that
24 were similar between the two victims?

25 THE COURT: Right.

1 MR. NASROLLAHI: Okay. Just so I was ---

2 THE COURT: But -- but coupled ---

3 MR. NASROLLAHI: Okay.

4 THE COURT: --- with a curative instruction, as we
5 previously discussed under *Jones*. But I don't -- again, I
6 want to emphasize, I don't want her to just read verbatim
7 the -- the interviews of the two -- the two victims in the
8 case. Just summarize the -- the applicable facts to show
9 similarities between the two. Okay?

10 Anything else we need to cover on the record before we
11 adjourn for this afternoon? Okay. All right. Hearing
12 none, we'll -- we'll start back on this case at 10 and
13 appreciate y'all's hard work and see you in the morning.

14 MR. NASROLLAHI: Thank you, Judge.

15 (Whereupon, the proceeding was adjourned at 4:43 p.m.)
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1 TRIAL DAY 2 - 03/22/16

2 (Whereupon, the proceeding was reconvened at 10:24 a.m.)

3 THE COURT: All right, gentlemen. Are we ready to get
4 started?

5 MR. NASROLLAHI: Ready to proceed, Your Honor.

6 MR. MORROW: Ready ---

7 THE COURT: Anything we ---

8 MR. MORROW: --- to proceed.

9 THE COURT: --- need to put on the record before I
10 bring the jury out?

11 MR. MORROW: I just would like to renew my objection
12 to not being able to admit the indictment, for the record,
13 Your Honor, respectfully.

14 THE COURT: Okay. You want to remove your objection?

15 MR. MORROW: Renew.

16 THE COURT: Renew?

17 MR. MORROW: Right.

18 THE COURT: Okay.

19 MR. MORROW: Right.

20 THE COURT: All right. All right. So noted. Thank
21 you.

22 MR. MORROW: All right.

23 THE COURT: All right. Mr. Bolt, if you'll bring the
24 jury out, please.

25 THE BAILIFF: All right.

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1 (Off the record briefly.)

2 (Whereupon, the jury entered the courtroom at 10:26
3 a.m)

4 THE BAILIFF: All jurors present, Your Honor.

5 THE COURT: All right. Thank you, Mr. Bolt. Good
6 morning, ladies and gentlemen.

7 JURORS: Good morning.

8 THE COURT: I hope you had a good, restful evening and
9 ready to get to work today. Mr. Morrow, you ready to call
10 your -- your first witness?

11 MR. MORROW: Yes, Your Honor. The state would call
12 Dr. Amy C. Swan to the stand.

13 THE COURT: Okay.

14 (Whereupon, the witness came forward.)

15 THE WITNESS: Good morning.

16 THE COURT: Good morning.

17 AMY SWAN, having been first duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. MORROW:

21 A Good morning.

22 Q Good morning. Dr. Swan, would you please state and
23 spell your name for the record?

24 A It's Amy C. Swan, and that's S-w-a-n.

25 Q And, Dr. Swan, what is your occupation?

1 A I am a forensic psychologist.

2 Q And could you briefly tell the jury what the study of
3 -- or about the study of psychology or what is the study of
4 psychology?

5 A The study of psychology involves the mind and
6 behavior.

7 Q Okay. And what is forensic psychology?

8 A Forensic psychology involves the application of
9 psychological principles to cases involved in the legal
10 system.

11 Q And, Dr. Swan, what advanced degrees do you possess?

12 A I have a doctorate in clinical psychology.

13 Q And what -- what states are you licensed to practice
14 in?

15 A I'm licensed in South Carolina, Florida, and Missouri.

16 Q And, Dr. Swan, do you have any memberships in any
17 organizations -- professional organizations?

18 A I do. I was appointed to the Board of Psychology by
19 the governor of the State of Florida. And that's the part
20 of the government that regulates the practice of
21 psychology. I served on that board for ten years. And
22 then I went on to be the chairman of the probable cause
23 committee in which we investigated all the complaints that
24 came in about psychologists not doing what they're supposed
25 to be doing. And I served in that position for five years.

1 And I just ended my term on that -- on the board about
2 maybe three weeks ago.

3 I also am a member of the American Psychological
4 Association, the Association for the Treatment of Sexual
5 Abusers, which is the largest international organization
6 devoted to the study of sex offenders. I'm a member of the
7 Florida chapter of that organization. I'm a member of the
8 International Association of Forensic Nurses and also the
9 Association of State and Provincial Psychology Boards.

10 Q And, Dr. Swan, have you ever testified in -- in court
11 as an expert witness?

12 A I have testified as an expert witness over a thousand
13 times in courts in Florida, Georgia, Iowa, Missouri, South
14 Carolina, and Florida.

15 Q And have you ever been qualified as an expert in
16 sexually-violent-predator cases?

17 A Yes. In sexually-violent-predator cases, I've been
18 qualified 212 times.

19 Q And do you have any experience working directly with
20 sex offenders?

21 A I do. I started working with sex offenders in 1989,
22 when I set up a small sex offender program at a private
23 psychiatric hospital. I continued working with them
24 between 1993 and 1995 at a community mental health center,
25 where I did therapy and evaluation of victims and

1 perpetrators of sexual abuse.

2 Between 1996 and 1997, I worked with incarcerated
3 adolescent sexual offenders. Between 1997 and 1999, I did
4 evaluations on victims and perpetrators of sexual abuse
5 with Court Psychology in Florida. And in 1999 I was the
6 first psychologist hired by Florida Civil Commitment Center
7 to provide treatment to the individuals who were detained
8 under the Florida law that's very similar to the South
9 Carolina law.

10 And in the year 2000 I started doing evaluations. And
11 as I said, I've done evaluations in Iowa, South Carolina,
12 Florida, and Missouri.

13 Q Dr. Swan, how many evaluations have you done on
14 sexually violent predators?

15 A I've done 760 sexually-violent-predator evaluations.

16 Q Do you have any additional specialized training or
17 experience in the field of psychology beyond your doctorate
18 degree?

19 A I do. It's really important that you stay up on the
20 research so that you know what is -- what the research is
21 showing about sex offenders. And it's really difficult to
22 get that kind of education in your doctoral program because
23 not that many universities offered internships or
24 practicums dealing with sex offenders. So we typically get
25 it at conferences and seminars. A

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1 nd I've had 895 since my doctoral degree specifically
2 in the area of sexual offenders. And 287 of those hours
3 have been specifically aimed at assessing the risk that a
4 sex offender would be arrested or reconvicted of another
5 sexual offense after a prior conviction.

6 Q Dr. Swan, have you ever testified before on behalf of
7 people being considered for commitment to the SVP program?

8 A Yes, I have. If I determine that an individual that
9 I've evaluated does not meet criteria for commitment, then
10 I would testify on that individual's behalf at the trial.

11 Q And, Dr. Swan, have you ever testified before on
12 behalf of people actually committed to the sexually-
13 violent-predator program?

14 A I've done that as well. And if I determine that an
15 individual has benefitted sufficiently from treatment and
16 is ready for release, I testify on their behalf.

17 Q Dr. Swan, have you ever recommended somebody for
18 release from the sexually-violent-predator-treatment
19 program?

20 A I ---

21 MR. NASROLLAHI: Objection.

22 THE COURT: Okay. I've got an objection. Basis for
23 your objection?

24 MR. NASROLLAHI: Judge, matter for the -- for the
25 Court.

1 THE COURT: Okay. Just come up here just a minute.

2 (Whereupon, a bench conference was held off the record
3 in the presence of the jury, but out of the hearing of
4 the jury.)

5 THE COURT: Mr. Morrow, last question?

6 MR. MORROW: Your Honor, I'll withdraw that last ---

7 THE COURT: Okay.

8 MR. MORROW: --- question.

9 THE COURT: And the -- the objection is sustained.

10 And the jury is instructed the last -- last question and
11 last answer from this witness will be stricken from the
12 record. And you are to disregard that completely. You may
13 proceed.

14 MR. MORROW: Your Honor, at this time I ask this Court
15 -- the Court recognize Dr. Swan to be a recognized expert
16 in the field of forensic psychology and the treatment of
17 sex offenders.

18 THE COURT: Okay. All right. Mr. Nasrollahi, any
19 examination of this witness for purposes of qualifications
20 or ---

21 MR. NASROLLAHI: And -- and Mr. Morrow is saying
22 forensic psychology in the terms of assessing whether a
23 mental abnormality exists?

24 THE COURT: Right. In the assessment and evaluation
25 of ---

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1 MR. MORROW: That -- that's correct, Your Honor.

2 THE COURT: --- alleged ---

3 MR. NASROLLAHI: I just want ---

4 THE COURT: --- sexually violent predators.

5 MR. NASROLLAHI: Okay. Just for clarification of what
6 he's proffering her as a -- as an expert, it's for forensic
7 psychology; specifically, the assessment and
8 evaluation/diagnosis of possible mental abnormalities?

9 THE COURT: Right.

10 MR. NASROLLAHI: And then, what was the -- the second
11 part? Treatment or ---

12 MR. MORROW: Just the -- just the ---

13 THE COURT: Right. I ---

14 MR. MORROW: --- forensic ---

15 THE COURT: --- I don't think ---

16 MR. MORROW: --- psychology.

17 THE COURT: --- he meant to say treatment.

18 MR. NASROLLAHI: That's fine.

19 THE COURT: Okay. All right. So the Court is going
20 to find Dr. Swan an expert in the area of forensic
21 psychology as it relates to the assessment, evaluation, and
22 diagnosis of mental abnormalities as it relates to alleged
23 sexually violent predators.

24 Ladies and gentlemen of the jury, let me explain to
25 you that typically, a witness is not allowed to give

1 opinions on certain matters before the Court. A witness --
2 a lay witness typically can only testify as to what they've
3 seen or -- or heard or -- or sensed in some fashion.

4 However, there is an exception to that rule that when,
5 by virtue of training, experience, education, a person can
6 be found to be an expert in a particular field that
7 requires this specialized knowledge and training and
8 education. And -- and I have found Dr. Swan to be an
9 expert in the area that I've so stated on the record.

10 However, you can consider her testimony and her
11 opinions and -- and evaluate the same and give it whatever
12 weight that you feel like it deserves as you would do with
13 any other witness, whether it's an expert or not.

14 Mr. Morrow, you may proceed, sir.

15 Q Dr. Swan, how did you become involved in -- in this
16 case?

17 A I was retained by attorney general's office.

18 Q Okay. Were you paid to conduct your evaluation in
19 this case?

20 A Yes, I was.

21 Q And would you have been paid any differently if you
22 had not recommended commitment in this case?

23 A I would not. I receive a flat fee. And it doesn't
24 matter what my opinion is. I still receive the same
25 permanent.

1 Q And, Dr. Swan, what type of evaluation did you conduct
2 in this case?

3 A I think I evaluated Mr. Ward to determine if he met
4 this -- the criteria listed in the statute that defines a
5 sexually violent predator.

6 Q And what are the criteria for commitment as a sexually
7 violent predator?

8 A In order to be determined to be a sexually violent
9 predator, the individual must have a mental abnormality or
10 personality disorder that makes them likely to commit acts
11 of future violence if not confined in a secure facility for
12 care, control, and treatment.

13 Q All right, Dr. Swan. Let's talk about the evaluation
14 process. What -- how -- how do you go about conducting
15 your evaluation?

16 A What initially happens is that either the attorney
17 general's office or the Department of Mental Health --
18 because I work for the Department of Mental Health as well
19 -- contact me and ask me if I'm willing to receive a
20 referral. And if I indicate that I am, they send me all
21 the records that they have available about the individual
22 person. I review those records before I go out to the
23 facility or the evaluation center where I'm going to see
24 the client.

25 And at that time I do an evaluation. And after I get

1 all of the information, then I put it all together and
2 write a report.

3 Q And is that the -- the process and procedures that you
4 used in the evaluation of Mr. Ward?

5 A Yes, it is.

6 Q And did you find that Mr. Ward met the criteria for
7 commitment as a sexually violent predator?

8 A Yes, I did.

9 Q Did you receive any documentation to aid you in
10 conducting your evaluation?

11 A I did.

12 Q Okay. And from whom did you receive that
13 documentation?

14 A I got a packet of information from the attorney
15 general's office.

16 Q What type of documentation did you receive and review?

17 A In regard to Mr. Ward, I received arrest warrants,
18 indictments, court documents, police reports, records from
19 the South Carolina Department of Corrections, the South
20 Carolina Department of Law Enforcement, and victims'
21 statements.

22 Q And, Dr. Swan, from -- or -- or is this the type of
23 documentation that is typically and reasonably relied upon
24 by experts in your field?

25 A Yes, it is.

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1 Q Okay. And from that documentation that you received,
2 could you tell if Mr. Ward had ever been convicted of a
3 sexually violent offense?

4 A Yes, he has.

5 Q Okay. And what was that offense?

6 A That offense was criminal sexual conduct with a minor
7 in the third degree. And that was a conviction that he
8 incurred in 2014.

9 Q And who was the victim of that offense?

10 A The victim of that offense was a family friend.

11 Q And how old was the victim in that offense?

12 A She was 10 years old.

13 Q Okay.

14 MR. NASROLLAHI: And, of course, Judge, this is all
15 subject to my pretrial objections.

16 THE COURT: Certainly. So noted for the record, Mr.
17 Nasrollahi.

18 MR. NASROLLAHI: The -- the past two questions. I
19 know that I couldn't get off my feet in time.

20 THE COURT: That's fine.

21 Q And again, what was the nature of the sexual abuse
22 reported by the victim?

23 A Mr. -- the nature of the sexual abuse reported by the
24 victim was that Mr. Ward fondled her breasts and vagina
25 nine times between September of 2012 and November of 2012.

1 Q And you received documentation from the attorney
2 general's office concerning this offense?

3 A Yes, I did.

4 Q Okay. Dr. Swan, I'd like for you to -- to review what
5 has been marked as State's Exhibit 1 and has been admitted
6 without objection from the defense. Could you take a look
7 at that document and see if you recognize that document,
8 please.

9 MR. MORROW: May I approach, Your Honor?

10 THE COURT: You sure can.

11 A Yes. This is the sentencing sheet that tells what
12 kind of sentence he received and what the crime was that he
13 pled guilty to.

14 Q Okay, Dr. Swan. Did that document indicate how Mr.
15 Ward came to this conviction?

16 A He did. He pled guilty.

17 Q Thank you, Dr. Swan. And again, that document is
18 previously admitted without objection. What's -- what
19 sentence did Mr. Ward receive on that offense here?

20 A He got five years in the South Carolina Department of
21 Corrections.

22 Q And you mentioned that you interviewed Mr. Ward as
23 part of your evaluation; is that correct?

24 A Yes, I did.

25 Q Okay. And when you interviewed Mr. Ward, what did he

1 have to say about this crime?

2 A He denied that he ever touched the victim in a sexual
3 manner. He said that he may have bumped into her but it
4 was completely accidental and was not sexual.

5 Q So, Dr. Swan, even though Mr. Ward pled guilty to
6 criminal sexual conduct in the third degree and agreed to a
7 a sentence where he went to prison for five years or was
8 sentenced to five years, he maintains he didn't -- did
9 nothing wrong?

10 A He did.

11 Q Okay. Well, how can you diagnose somebody with
12 pedophilia if he denies doing anything wrong?

13 MR. NASROLLAHI: Judge, I'm going to -- he -- he's --
14 I don't -- I haven't heard a diagnosis yet. I know that
15 he's ---

16 THE COURT: Okay.

17 MR. NASROLLAHI: --- going to get to that, but his
18 question ---

19 THE COURT: Right.

20 MR. NASROLLAHI: --- assumes a diagnosis.

21 THE COURT: Yeah. I'm ---

22 MR. NASROLLAHI: I'd just like a foundation before we
23 get right into that.

24 THE COURT: Right. Right. I think may be putting the
25 cart before the horse a little bit there, so if you could

1 kind of back up, I'll sustain the objection.

2 Q Dr. Swan, after your evaluation of Mr. Ward, were you
3 able to come to a diagnosis?

4 A I did. I diagnosed Mr. Ward with pedophilic disorder,
5 sexually attracted to females, nonexclusive type.

6 Q And was his criminal history the sole basis of your
7 diagnosis?

8 A It was not. I assimilated the information I got from
9 Mr. Ward, along with the -- all of the documents that I
10 received from the attorney general's office, and I utilized
11 all those doctors -- all those documents in arriving at my
12 conclusion.

13 Q Dr. Swan, again, you reviewed documents related to Mr.
14 Ward's criminal history. What -- were there any other --
15 and those documents were the type typically and reasonably
16 relied upon by ---

17 A Yes.

18 Q --- other experts in your field?

19 A Yes.

20 Q In reviewing that history, were there any other
21 convictions that were relevant to your evaluation of Mr.
22 Ward?

23 A There was. He was convicted in 2003 and 2004 of
24 assault and battery of a high and aggravated nature.

25 Q And, Dr. Swan, in your review of those documents, were

1 you able to discern what the aggravating factor of that --
2 excuse me -- of an assault and battery of a high and
3 aggravated nature was?

4 A Yes. The aggravating factor was indecent liberties
5 with a female. And this involved a little girl between the
6 ages of 6 and 11. It was actually his stepsister.

7 And at -- initially when the abuse began, it was
8 kissing and fondling her breasts, vagina, and buttocks. By
9 the time she was 8 years old, it had progressed to oral,
10 anal, and vaginal sex. And the victim reported that it
11 occurred a lot.

12 Q And how did Mr. Ward receive these convictions?

13 A He pled guilty.

14 Q And when questioned about these convictions during
15 your interview, what did Mr. Ward have to say about them?

16 A He denied that he had engaged in any of those acts.
17 And when I asked him, you know, how would a 6-year-old know
18 about detailed sexual acts that she described, he said that
19 he did not know and he didn't know why she said those
20 things.

21 Q So did you point out -- you pointed out these concerns
22 to Mr. Ward; is that ---

23 A That's correct.

24 Q What was his reaction?

25 A At the time I pointed that out to Mr. Ward, he -- that

1 he was obviously attracted to children based on the
2 accounts of the victims, he looked down at his lap and he
3 didn't say much.

4 Q Dr. Swan, how is Mr. Ward's criminal history factored
5 into your evaluation into whether he meets the criteria for
6 commitment under the SVP act?

7 A Well, criminal history is important because it -- the
8 number of times that an individual has been arrested and
9 convicted for sexual crimes is a proxy for sexual deviance.
10 It tells us the strength of their drive for deviant sex,
11 for example, with children. And the way that works is
12 this: If someone has been arrested and convicted for a
13 sexual crime against a child and they receive a sentence of
14 some kind of probation/prison, a person would normally say,
15 you know, "I didn't like being on probation/I didn't like
16 going to prison, so I'm not going to do that again."

17 But for individuals who are sexually attracted to
18 children, that attraction is so strong that even though
19 they have already been arrested and convicted, they go on
20 to commit other sexual crimes that could potentially put
21 them in prison because that attraction is so strong that
22 they have difficulty controlling it.

23 Q And, Dr. Swan, again, is your opinion based solely on
24 his criminal history?

25 A It is not.

1 Q Okay. Was there any -- were there any other things
2 during Mr. Ward's interview that caused you concern?

3 A There were. One of the things that has been
4 identified in the research as being important to consider
5 in these types of evaluation is attitudes tolerant of
6 sexual assault. And so we ask the individuals about common
7 myths that are endorsed by sex offenders.

8 So I asked Mr. Ward if some children liked to sexually
9 tease him. And he said yes. Now, obviously, children
10 don't sexually tease people. So that is a distortion that
11 he has.

12 When I asked him if some children were so willing to
13 have sex that it's difficult to stay away from them, he
14 said, well, that he didn't have trouble staying away from
15 them but he knew children that started having sex when they
16 were 8 -- again, another distortion that a child could
17 consensually engage in sex at 8.

18 When I asked him if the victim was partially
19 responsible for him being convicted of this sexual crime,
20 he said that, well, he had heard that the victim is never
21 responsible for anything but he's learned that that's not
22 always true. So he did demonstrate some of these common
23 distortions that sex offenders have that excuse their
24 behavior.

25 Q And, Dr. Swan, in your review of the records that you

1 received, did it indicate whether Mr. Ward had any sex-
2 offender treatment while at the South Carolina Department
3 of Corrections?

4 A He did not receive treatment the South Carolina
5 Department of Corrections.

6 Q Was treatment offered to him?

7 A Yes, treatment was offered to him.

8 Q Did he tell you why he declined to participate in
9 treatment?

10 A He did. He said that he was offered treatment, but he
11 asked them if it would help him with the evaluation as a
12 potential sexually violent predator to help get him out of
13 that evaluation. And they said no, that he would still
14 have that evaluation anyway. And so he declined treatment
15 because he wasn't interested in getting treatment so that
16 he wouldn't commit sexual crimes against children anymore.
17 He was only interested to see if it could get him out being
18 considered as a sexually violent predator.

19 Q And, Dr. Swan, what is a mental abnormality?

20 A A mental abnormality is a mental condition affecting a
21 person's emotional or volitional capacity that predisposes
22 the person to commit sexually violent offenses.

23 Q In -- in the context of a sexually-violent-predator
24 proceeding, what kinds of mental abnormalities or
25 personality disorders are you looking for?

1 A I am looking for anything that would lead him to
2 commit future acts of sexual violence.

3 Q And based on your interview and testing, did you
4 determine whether Mr. Ward had a mental abnormality or
5 personality disorder?

6 A I did.

7 Q And what was your diagnosis?

8 A As I said, it was pedophilic disorder, sexually
9 attracted to females, nonexclusive type. And what that
10 means is when we're talking about people that are attracted
11 to children, the sexually attracted females tells that he's
12 attracted to girls. He could also be sexually attracted to
13 boys or sexually attracted to both. But for Mr. Ward, it
14 was specifically the girls. And the nonexclusive type
15 indicates whether they are exclusively attracted to
16 children or whether they also have some attraction to
17 adult, age-appropriate partners.

18 Q And so can you go into the characteristics of
19 pedophilic disorder?

20 A Yes. Pedophilic disorder is -- it must occur over a
21 period of six months. And it involves sexual fantasies,
22 urges, or behaviors involved in -- involving sexual
23 activity with prepubescent children. And typically,
24 prepubescent children refers to children under the age of
25 13, between zero and 12, who have not yet developed

2
1 secondary sexual characteristics.

2 Q Now, Dr. Swan, what information led you to that
3 diagnosis?

4 A Well, Mr. Ward has known sexual offenses against two
5 girls. One was between the ages of 6 and 11, and the other
6 was 10. So this is clearly under the age of 13.

7 And he engaged in sexual contact with these children
8 over a period of approximately 14 years because he started
9 with the one victim in '98; his most recent victim was in
10 2012. So that covers a period of 14 years. So that -- he
11 clearly meets the criteria for pedophilic disorder.

12 Q Okay. So you diagnosed him with a mental abnormality
13 and he had a sexually violent offense. How do you measure
14 risk to reoffend?

15 A Risk to reoffend is based on factors that have been
16 identified in the research. There are static factors, and
17 there are dynamic factors.

18 Q So, Dr. Swan, can you give us a little background of
19 what -- what -- what is a static risk factor?

20 A A static risk factor is a factor that doesn't change.
21 For example, this is a risk factor such as the number of
22 crimes he's committed, whether they've had a relationship
23 and lived with some form for a period of two years,
24 different things that have been identified in the research
25 that are associated with risk for another reoffense but

1 that do not change.

2 Q Dr. Swan, how does one -- a forensic psychologist and
3 other experts in your field such as yourself, how -- how do
4 you -- how do you measure static risk factors?

5 A Well, we -- first, we look at the research. And we
6 take a look at the -- the risk factors. For example,
7 sexual preference for prepubescent children is a risk
8 factor. And that is the factor that has been identified
9 most consistently in the research as being the number one,
10 most-important factor about whether someone will commit
11 another sexual crime. So that is pedophilic disorder. So
12 that's the number one factor.

13 Now, we also use a risk assessment called the Static-
14 99R to assess risk for a sexual reoffense as well. And
15 that typically covers static factors. On that instrument
16 the only thing that will change is the person's age as they
17 get older.

18 Q Now, Dr. Swan, the Static-99R that you mentioned, is
19 that an actuarial assessment?

20 A It is. It's called an actuarial-risk-assessment
21 instrument.

22 Q And how do those work?

23 A Actuarial instruments are statistical tools that we
24 use to estimate the risk that an individual who has been
25 convicted of a sexual crime will be arrested or convicted

1 for another sexual crime. And these work similarly to the
2 way the insurance tables work for car insurance. For
3 example, we know that young men under the age of 25 have a
4 greater risk for having a car accident and, therefore,
5 their premiums are higher because the insurance company
6 wants to make sure that the loss is covered.

7 In a similar way, individuals who have been arrested
8 or convicted of a sexual offense and then have reoffended
9 another time are at higher risk for a subsequent sex
10 offense. And so the measures that we institute to protect
11 the public have to be stronger for those particular types
12 of individuals.

13 Q And, Dr. Swan, is the Static-99R, the test that you
14 used on Mr. Ward -- is it the -- a type of test that is
15 typically and reasonably relied upon by other experts in
16 your field?

17 A Yes, it is. It's the most commonly used instrument in
18 sexually-violent-predator evaluations because it has the
19 most research attesting to its validity.

20 MR. NASROLLAHI: Judge, real quick, if we could
21 approach?

22 THE COURT: Sure.

23 (Whereupon, a bench conference was held off the record
24 in the presence of the jury but out of the hearing of
25 the jury.)

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1 Q Dr. Swan, how does the Static-99R measure risk?

2 A Well, the Static-99 was -- the research on it began in
3 about 1996. And they conducted studies on about 30,000
4 sexual offenders. And then they took smaller groups of
5 those sexual offenders after they identified the risk
6 factors that would lead to reoffense. And then they tested
7 it out on different groups of individuals.

8 So the first version came out in 1999. And then it
9 was revised in 2009 to update the research that underlies
10 it. And then it was updated again in January of 2015.

11 Q Okay. And why is it important that it -- to update
12 the Static-99?

13 A Well, it's important to update it because as we learn
14 more about sex offenders, we need to have all the
15 information available about the particular risk factors
16 that contribute to reoffending. We also need to update the
17 norms periodically or the estimates of reoffense. Because
18 we know that those change.

19 For example, in the United States and in all other
20 countries, we know that crimes in general have been
21 decreasing over time. And that includes sexual offenses.
22 So it wouldn't be fair to say that some guy is going to
23 reoffend at a higher rate when, in fact, sexual crimes have
24 been decreasing and his risk is lower. So that's why we
25 update them to establish the fact that they're pertinent to

1 the current crime statistics.

2 Q Now, Dr. Swan, wouldn't -- what was Mr. Ward's score
3 on the Static-99R?

4 A He scored a 5 on the Static-99. And what that means
5 is that he is in the 88.7th percentile among sex offenders.
6 And that means that out of 80 -- out of every 100 sex
7 offenders, his risk would be higher than 88.7 of them.

8 And his relative risk, as compared to just the broad
9 pool of sexual offenders, is 2.7. And what that means is
10 that he carries more risk -- it's 2.7 times more risk than
11 the average sex offender.

12 Q And, Dr. Swan, are there any deficiencies that are
13 present in the Static-99R that we know about?

14 A One of the things that we have to keep in mind with
15 the Static-99 is that it may underestimate risk. And the
16 reason it underestimates risk is because the Static-99
17 tells us if an individual be -- will be arrested or
18 convicted of a new sexual offense within 5 years or 10
19 years. But less than 10 percent of sexual crimes results
20 in a conviction -- an arrest or a conviction. So the rates
21 are inflated for individuals because of undetected sexual
22 crimes.

23 The research is also based on an individual being
24 arrested or convicted of another sexual crime in 5 years or
25 10 years. And what we want to know under the statute is

1 whether he's going to commit another sexual crime, not be
2 arrested or convicted, over the rest of his lifetime. So
3 that's an underestimate as well.

4 For example, Mr. Ward is currently 33. Risk for
5 sexual crimes doesn't diminish significantly until the age
6 of 60. And so he could still have 27 years at risk for
7 sexual crimes.

8 Q Now, Dr. Swan, was the Static-99R -- the score on that
9 instrument, was that the sole basis for your evaluation?

10 A It was not.

11 Q Okay. And -- and why not?

12 A Well, it's one piece of a comprehensive evaluation.
13 As I said, since it tends to underestimate risk, it would
14 not be wise to rely solely on the instrument without
15 considering other factors.

16 Q Dr. Swan, you also mentioned earlier that there's
17 another type of risk factor. You identified static risk
18 factors, but you also identified dynamic risk factors.

19 What -- what is a dynamic risk factor?

20 A A dynamic risk factor is a factor that can change.
21 These are the things that we target in treatment to help
22 individuals control those sexual urges. We cannot cure
23 pedophilia. If someone has pedophilic disorder at 17, they
24 will still have it at 70. The only thing that changes is
25 that the individual would be the amount of time that the

1 individual fantasizes about children and then masturbates
2 to those fantasies of children. Those tend to decrease
3 over time with aging. But we cannot cure the disorder.
4 Those impulses toward children will always be there.

5 Q And, Dr. Swan, did you specifically identify dynamic
6 risk factors in Mr. Ward's case?

7 A Yes. The risk factors that I considered for Mr. Ward
8 were emotional congruence with children. And what that
9 means is that they feel that relationships with children
10 are more satisfying than relationships with adults.

11 And the basis for my conclusion about this risk factor
12 is that Mr. Ward was married, but he said that he preferred
13 only to have sex once a year and that that was enough for
14 him. But yet he -- this relationship -- or these offenses
15 against these children continued over a period of years and
16 were quite frequent, according to the victims. So that
17 tends to indicate that these relationships were more
18 satisfying to him than the -- the marital relationship with
19 his wife.

20 Q Dr. Swan, why are these dynamic risk factors
21 important?

22 A These are important because they are a comprehensive
23 assessment of a person's risk. And there are several other
24 dynamic factors that I considered as well.

25 Q Okay. And how do the two types of risk factors,

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1 static and dynamic, relate to one another?

2 A These types of risk factors -- as I said, the static
3 risk factors are the things that don't change; they're
4 always going to be there. And the dynamic risk factors are
5 the things that are changeable. So these are the things
6 that we target to help an individual learn not to act out
7 on those impulses that are always going to be there.

8 Q And, Dr. Swan, after evaluating Mr. Ward's risk to
9 reoffend, do you have an opinion as to a reasonable degree
10 of psychological certainty as to whether Mr. Ward's mental
11 abnormality, pedophilic disorder, makes him likely to
12 engage in crimes of sexual violence if not confined to a
13 secure facility for control, care, and treatment?

14 A I do.

15 Q So again, Mr. Ward has been convicted of a sexually
16 violent offense, correct?

17 A Yes, he has.

18 Q And, Dr. Swan, do you have an opinion as to a
19 reasonable degree of psychological certainty as to whether
20 Mr. Ward suffers from a relevant mental abnormality?

21 A He does.

22 Q Okay. And, Dr. Swan, do you have an opinion -- and
23 what is that opinion again?

24 A My opinion is that he does suffer from pedophilic
25 disorder, which is a relevant mental abnormality, and that

1 it does place him at risk for a sexual-reoffense.

2 Q And, Dr. Swan, do you have an opinion as to whether
3 his pedophilic disorder causes him serious difficulty in
4 controlling his behavior?

5 A Yes, I do. And the basis for my belief that he has
6 difficulty controlling his behavior is that he has been
7 arrested and convicted of a sexual crime and he placed
8 himself in a position to live with children again, knowing
9 that he had impulses toward children, and he offended
10 against those children. So he has difficulty controlling
11 his behavior and he uses poor problem-solving because he
12 knew that he had an attraction to children and then
13 immediately started living with children to access victims
14 to offend against again.

15 Q Dr. Swan, do you have an opinion as to whether Mr.
16 Ward's pedophilic disorder makes him likely to engage in
17 acts of sexual violence if he's not confined to a secure
18 facility for long-term control, care, and treatment?

19 A I do. And I believe that his mental abnormality does
20 place him at risk to commit another sexual crime.

21 Q Thank you, Dr. Swan. Please answer any questions that
22 Mr. Nasrollahi or the Court may have for you.

23 THE COURT: Cross-examination?

24 MR. NASROLLAHI: Do we need to take a break now or
25 just go straight into cross-examination?

1 THE COURT: You -- you need a break?

2 MR. NASROLLAHI: I need a quick break. I just need to
3 run ---

4 THE COURT: Okay.

5 MR. NASROLLAHI: --- to the bathroom.

6 THE COURT: All right. Ladies and gentlemen, we're
7 going to take about a ten-minute break. Again, I remind
8 you: Do not begin any discussions among yourself about
9 this case or anything you've heard this morning. And we'll
10 -- we'll start back in just a few minutes, okay?

11 (Whereupon, the jury exited the courtroom at 11:08
12 a.m.)

13 THE COURT: Okay. We'll be in recess about ten
14 minutes.

15 MR. NASROLLAHI: Thank you, Judge.

16 (Off the record from 11:09 a.m. until 11:20 a.m.)

17 (Whereupon, Defendant's Exhibits 1 and 2 were marked
18 for identification while off the record.)

19 THE COURT: Okay. There's a document that's been
20 stipulated to as far as coming into evidence?

21 MR. NASROLLAHI: Yes, Your Honor. We have two true
22 copies of the -- I think they're -- Mr. -- the reason Mr.
23 Morrow -- and he can -- he can clarify this. The reason he
24 didn't seek to introduce these is I thought he -- I don't
25 think it was part of the -- the arguments that we made

1 yesterday that the record of conviction couldn't come in.
2 I think I -- I even said on ---

3 THE COURT: For the ---

4 MR. NASROLLAHI: --- the record ---

5 THE COURT: For the two ABHANS?

6 MR. NASROLLAHI: For the two ABHANS. I think that
7 that's -- under the rules of evidence, there's no reason
8 for his to prohibit that. So ---

9 THE COURT: Right.

10 MR. NASROLLAHI: --- and he -- I think he otherwise
11 would've moved these into evidence ---

12 THE COURT: Right. Okay.

13 MR. NASROLLAHI: But I'm just going to stipulate to
14 them ---

15 THE COURT: Sure.

16 MR. NASROLLAHI: --- again. I don't ---

17 THE COURT: And -- and ---

18 MR. NASROLLAHI: --- think he has any ---

19 THE COURT: --- that -- that -- that's ---

20 MR. MORROW: I don't have any objection to those
21 coming in.

22 (Whereupon, Defendant's Exhibits 1-2 were entered into
23 evidence.)

24 THE COURT: Right. Okay. All right. Very good. And
25 it was mentioned at sidebar concerning the *Frye* motion

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1 yesterday, where I may not have officially and clearly
2 stated that the *Frye* motion was denied, finding that the
3 testing -- the risk-assessment-testing procedures used by
4 Dr. Swan was reliable and, therefore, would come into
5 evidence. Certainly, the jury has every right to give it
6 whatever weight it believes it deserves.

7 Okay. Let's bring the jury out. We're in cross-
8 examination with this witness.

9 MR. NASROLLAHI: Thank you, Judge.

10 (Off the record briefly.)

11 (Whereupon, the jury entered the courtroom at 11:23
12 a.m.)

13 THE BAILIFF: All present, Your Honor.

14 THE COURT: Thank you, Mr. Bolt. All right. Mr.
15 Nasrollahi, you ready?

16 MR. NASROLLAHI: Yes, Your Honor.

17 I'm going to stand right over here. Maryann, if you
18 can't see the witness or you need me to move or, Cam, if
19 you need me to move, just -- just let me know. But this is
20 where I'm -- and if I get too close to you, of course, tell
21 me to back off.

22 CROSS-EXAMINATION

23 BY MR. NASROLLAHI:

24 Q You -- when you were appointed on this case, one of
25 the responsibilities you had was to conduct a -- a thorough

1 investigation?

2 A That's correct.

3 Q Okay. And in this case, you did conduct a thorough
4 investigation?

5 A That's correct.

6 Q You conducted as thorough an investigation as
7 possible?

8 A That's correct.

9 Q Okay. Left no stone unturned?

10 A Well, I can't say that I left no stone unturned. I
11 review and assimilate all the available information as
12 possible. There could be information out there that I
13 didn't have access to.

14 Q Correct. Okay. Well, let -- let's talk about that.
15 All the information that was available to you, it --
16 initially, the information that was available to you was
17 information provided to you by the attorney general's
18 office?

19 A That's correct.

20 Q Okay. And just to clarify, you didn't get anything
21 from any other source?

22 A No, I did not.

23 Q Other than the -- your evaluation and interview with
24 Mr. Ward?

25 A That's correct.

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1 Q Okay. And you -- and -- and correct me where I'm
2 getting my numbers wrong. You looked at approximately 33
3 documents? They were provided to you by the attorney
4 general's office?

5 A That's correct.

6 Q Okay. And then, finally, you interviewed Mr. Ward and
7 did your evaluation?

8 A That's correct.

9 Q And just so I'm getting my time line straight: You
10 reviewed these 33 documents before you went and Mr. -- met
11 with Mr. Ward?

12 A Yes, I did.

13 Q Okay. And -- at -- subsequent to that, did you
14 request any new documents, just for clarification of the
15 record?

16 A I believe that I requested some -- some school
17 records, but I did not receive any additional documents.

18 Q Okay. And -- and just so we're clear: A lot of the
19 documents that you -- let me -- let me -- let me take a
20 step back. Just to be clear: The statute authorizes you,
21 as an evaluator, to not only receive but to request
22 documentation necessary for your evaluation?

23 A It does. And I frequently request additional
24 documentation.

25 Q Okay. But getting back to the -- the earlier

1 question, this investigation into Mr. Ward's case was as
2 thorough and diligent as possible?

3 A That's correct.

4 Q There's -- there's nothing that -- aside from the
5 school records, there's nothing else that you thought was
6 necessary to reach the conclusions that you have?

7 A I had all the information that I needed to reach my
8 conclusions.

9 Q Okay. And another way of saying it is based on your
10 review of the information that you had in front of you,
11 there was nothing that was ambiguous, doubtful, or needed
12 any other explanation?

13 A That's correct.

14 Q Okay. And -- and what was -- if I can just ask --
15 what was the purpose of requesting the -- the school
16 records -- well, first -- let me start off by asking:
17 Whose school records did you request?

18 A Mr. Ward's.

19 Q Mr. Ward's? And ---

20 A Yes.

21 Q --- the -- the purpose of that was to find what kind
22 of information?

23 A Typically, I'm looking to see if they have any history
24 of conduct disorder as an adolescent, any behavioral
25 problems that could impact a personality disorder involving

1 criminal behavior.

2 Q Okay. And you asked the attorney general to provide
3 you those documents?

4 A That's correct.

5 Q Okay. And again, I'm -- myself, I'm trying to leave
6 no stone unturned. You didn't ask anyone else for any
7 other documentation or information?

8 A No. If I'm retained by the attorney general's office,
9 they provide all the information that I need or that I
10 request. If I'm retained by the Department of Mental
11 Health, then I request the information from them. So the
12 referring source provides all the documentation.

13 Q And just -- just so we're completely clear on this
14 again: There may be cases and where you're conducting an
15 -- an evaluation where you need more information?

16 A That is correct.

17 Q This is one such case? You -- you felt that there
18 might be more information in the school records?

19 A Yes.

20 Q But not receiving the school records, you felt that
21 probably you could move on without that?

22 A I had enough information to arrive at the conclusion
23 that I arrived at.

24 Q You -- basically, you could live without the school
25 records?

1 A That's correct.

2 Q Okay. And let's talk about your diagnosis of
3 pedophilia.

4 A Yes.

5 Q Okay. And you -- I think you testified -- I'm going
6 to try and quote you as best I can -- the previous arrest
7 and conviction for a sexual crime was necessary for your
8 diagnosis of pedophilia?

9 A Yes, I was.

10 Q Okay. And that was based on his conviction for
11 assault and battery of a high and aggravated nature?

12 A That's correct. I don't necessarily need a conviction
13 to prove that someone has pedophilic disorder. There are
14 many people with pedophilic disorder who have never been
15 arrested or convicted. But in these proceedings, I -- in
16 order to for him to meet the statutory criteria as a
17 sexually violent predator, I needed a conviction.

18 Q Okay. So in order to conclusively state as a forensic
19 psychologist who is coming to the Court as a psychologist
20 testifying in legal matters, as you testified to earlier,
21 it was necessary, in your understanding of the law, to have
22 those prior convictions -- or to at least consult the
23 record for those prior convictions?

24 A Well, it wasn't -- it's necessary to have one
25 conviction in order to -- for risk assessment, if he's got

1 one conviction and then he reoffends, then his risk
2 increases. So that first conviction was important to my
3 risk assessment of Mr. Ward.

4 Q Uh-huh. But you -- you testified again -- and I'm not
5 -- not trying to argue with you. I'm just trying to
6 understand what your testifying to. You said that his
7 criminal history is important.

8 A It is.

9 Q And this was with regard to his diagnosis?

10 A That's correct.

11 Q And he was arrested -- and arrests and convictions for
12 sexual crimes are important to that?

13 A They ---

14 Q But what ---

15 A --- are.

16 Q --- you're -- what you're saying now is that it's not
17 necessary that he be convicted?

18 A No. I said for the purposes of a sexually-violent-
19 predator case, it's really important that he be convicted
20 because otherwise we wouldn't be here if he didn't have a
21 conviction. For the purpose of diagnosing pedophilic
22 disorder, I don't have to have an arrest or a conviction.

23 Q And that -- that's my question. For the diagnosis of
24 pedophilia, you don't need a prior conviction?

25 A I don't need any -- any criminal history in order to

1 diagnose pedophilic disorder.

2 Q Okay. And you -- you just need information of --
3 regarding prior -- his acting previously ---

4 A Sexual ---

5 Q --- on ---

6 A --- interest in children.

7 Q Correct. Okay. And again, you looked at -- you
8 considered the ABHAN convictions evidence of that?

9 A Yes, I did.

10 Q Okay. And you testified that the -- the -- there --
11 well, there were two charges of ABHAN, correct?

12 A Yes, there were.

13 Q Well, actually, there -- there was one initial charge
14 for ABHAN?

15 A Right.

16 Q And again, when I say ABHAN, we mean assault and
17 battery, high and aggravated nature?

18 A Yes.

19 Q It's easier to say ABHAN?

20 A (Nodded head up and down.)

21 Q All right. There was a previous charge for ABHAN.
22 And then, he was again charged with criminal sexual conduct
23 with a minor-first. That was in 2003.

24 A That's correct.

25 Q Okay. And the basis for the first ABHAN charge was

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1 that he had fondled the breasts and vagina of a child who
2 was around 10 or 11 years old?

3 A That is correct.

4 Q Okay. And the basis for the subsequent criminal
5 sexual conduct with a minor in the first degree charge --
6 I'm just going to refer that to -- as a CSC-first ---

7 A Yes.

8 Q You understand what I'm saying when ---

9 A Yes.

10 Q --- I say that?

11 The basis for that was he had had -- he made the --
12 the child, who was between the ages of 8 and 11, perform
13 oral sex on him?

14 A That's correct.

15 Q Okay. And that he raped her?

16 A That's correct.

17 Q He sodomized her?

18 A Yes.

19 Q Repeatedly?

20 A Yes.

21 Q Over a number of years?

22 A Well, I believe that that -- the second conviction was
23 a charge that -- let me just see.

24 Q I'm -- I'm -- I -- I don't need to know ---

25 A Let me ---

1 Q --- about the conviction. I'm just asking you: The
2 basis for that ---

3 A Oh.

4 Q --- charge were allegations that he had forced the
5 child, between the ages of 8 and 11 years old, to perform
6 oral sex on him; that he raped her vaginally ---

7 A Yes.

8 Q --- and that he had also sodomized the child?

9 A That's correct.

10 Q Over a number of years?

11 A That's correct.

12 Q Repeatedly?

13 A Yes.

14 Q Okay. That -- that's a pretty brutal crime?

15 A Yes, it is.

16 Q Okay. Those are very brutal facts?

17 A That's correct.

18 Q Okay. And the ultimate convictions were for ABHAN?

19 A That's correct.

20 Q Okay. Criminal sexual conduct with a minor in the
21 first degree carried a maximum possible penalty of death in
22 2003 as a capital crime. Are you aware of that?

23 A No, I was not.

24 Q Okay. Probably one of the most heinous crimes, if
25 we're reserving the death penalty for such a crime, right?

1 A Well, I -- I ---

2 Q We don't execute people for shoplifting?

3 A Right. It's a ---

4 Q Okay.

5 A --- serious crime. Any crime against a child is a
6 serious crime.

7 Q Right. And regardless of what you call the crime,
8 those facts are significant, to say the least?

9 A Yes, they are.

10 Q In fact, calling it significant is an understatement?

11 A Yes.

12 Q I mean, the -- the -- these are probably some of the
13 most heinous things that you can say that has happened to a
14 child?

15 A Well, it's a sexually violent crime against a child.

16 Q Right. But we're not -- we're not just talking about,
17 you know, digital penetration. We're talking about sodomy?

18 A That's correct.

19 Q Okay. And repeatedly over ---

20 A That's ---

21 Q --- years?

22 A --- correct.

23 Q And a child who would undergo something like that is
24 probably going to be traumatized, correct?

25 A Yes.

1 Q Okay. And you testified earlier that you treated
2 victims of sexual assault?

3 A That's correct.

4 Q So you've seen firsthand what that could do to
5 somebody?

6 A I have.

7 Q Especially in the formative years of a child's life?

8 A I have.

9 Q Okay. And we're talking about an 8-year-old child,
10 probably prepubescent?

11 A Very likely ---

12 Q Odds are ---

13 A --- prepubescent.

14 Q --- are -- okay. And underdeveloped?

15 A That's correct.

16 Q Okay. And the -- the -- what you read in this file
17 was strong enough to convince you that these allegations
18 were true?

19 A That's correct.

20 Q Okay. Now, again, he was charged with ABHAN ---

21 A That's correct.

22 Q --- with regard to the -- the allegations of fondling
23 the child?

24 A That's correct.

25 Q Okay. And you're saying that that was a -- those --

-1 those were sexual crimes? (

2 A That's correct.

3 Q Okay. And then -- and -- and comparatively speaking
4 -- and I know that sexual crimes against children, it --
5 it's hard to -- to quantify. But comparatively speaking,
6 the allegations supporting the ABHAN, compared to the
7 criminal sexual conduct in the first degree, the second set
8 of charges were -- were far more severe, the allegations?

9 A For the second set of charges ---

10 Q Yes.

11 A --- against ---

12 Q The criminal ---

13 A --- that one ---

14 Q --- the criminal ---

15 A --- victim. Yes.

16 Q Yes. Okay. And just so we're clear: We're talking
17 about one victim?

18 A Yes..

19 Q Okay. And -- and what had happened was, I guess,
20 these new allegations had come out after the first charges?

21 A That's correct.

22 Q It wasn't that he had gotten out of jail and gone out
23 and reoffended?

24 A No. The victim had been in therapy and, in the course
25 of therapy, revealed more acts that he had perpetrated on

1 her.

2 Q Okay. And so let -- let's just talk about the first
3 charge. I'm going to show you this document. This is
4 Defense's 1. Identify for the jury what that document is.

5 A This is the sentencing sheet for the assault and
6 battery of a high and aggravated nature, the first charge
7 against this particular victim.

8 Q Correct. And let -- let -- before I keep having you
9 read off, let's -- this isn't your first time in a
10 courtroom?

11 A No, it's ---

12 Q This isn't ---

13 A --- not.

14 Q --- your first time interacting with the criminal
15 justice system ---

16 A No.

17 Q --- even though we're tangentially acting on it?

18 A Right.

19 Q Okay. And a guilty plea is where an individual comes
20 in and admits guilt?

21 A That's correct.

22 Q You've probably seen a -- several of these?

23 A Correct.

24 Q And what happens is, is the -- the -- the person who
25 is pleading guilty stands at one side of the courtroom, the

1 prosecutions stand on the other side of the courtroom, the
2 charges are read out, the -- the defendant is read his
3 rights, and he enters a guilty plea?

4 A That's correct.

5 Q Okay. The -- the prosecution reads to the judge the
6 -- the facts supporting what the -- the -- the charge that
7 he's pleading to are?

8 A That's correct.

9 Q And then the judge turns to the defendant and says,
10 "Is that true?"

11 A Yes.

12 Q Is that what happened?

13 A Yes.

14 Q Okay. And then the judge accepts his guilty plea and
15 they give a sentence?

16 A That's correct.

17 Q Okay. And there are three possible ways of handling
18 the issue of sentence. Do you know? Have you ever heard
19 of a negotiated plea?

20 A Oh, of course.

21 Q Okay. You've heard of a recommended plea?

22 A That's correct.

23 Q Okay. You've heard of a straight-up plea?

24 A Yes.

25 Q Okay. And a straight-up plea is where the defendant

1 pleads guilty and there is no deal or anything worked out
2 with the state ---

3 A Right.

4 Q --- with regard to what kind of sentence they believe
5 is appropriate?

6 A Right.

7 Q And then, what we have next is a negotiated plea?

8 A That's correct.

9 Q And if I'm walking around too much or making you
10 dizzy, I'm sorry. But a negotiated plea is where the
11 defendant standing here and the prosecution standing over
12 there have both agreed what they believe is an appropriate
13 sentence?

14 A That's correct.

15 Q Okay. And then, we finally have a recommended plea.
16 Okay? And what that means is the state of -- the -- in
17 this case, the State of South Carolina would stand right
18 over there and they would say, "Judge, X is the sentence
19 that we believe is appropriate in this case"?

20 A Yes.

21 Q And the defendant is free to say, "Judge, that's too
22 severe"? That's your understanding?

23 A Yes.

24 Q Okay. And in this case -- I'm going to hand you this
25 -- this back. And I'm going to have to look over your ---

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 177

1 A Okay.

2 Q --- shoulder so we -- I know that we're looking at the
3 same thing. What county was that in? It says right there
4 at the top-left-hand corner.

5 A This was in Greenville ---

6 Q Okay. And ---

7 A --- County.

8 Q It says right there he's pleading to assault and
9 battery -- assault and battery of a high and aggravated
10 nature?

11 A Yes.

12 Q Okay. And that's -- as far as you can tell, that's
13 Mr. Ward's signature right in the middle?

14 A Yes.

15 Q Okay. And he was sentenced to seven years in prison
16 for that ABHAN?

17 A That's correct.

18 Q Okay. So he -- he received a sentence, and then he
19 was given how many days -- he was given 239 days' credit?

20 A Yes.

21 Q So that meant that he had sat in jail for nearly a
22 year prior to entering that guilty plea?

23 A Right.

24 Q Okay. And then, what happened? He -- his suspended
25 -- his -- his prison sentence was actually suspended to

1 probation?

2 A Yes, it was.

3 Q How many years' probation was he given?

4 A Three years' probation.

5 Q Okay. And again, we're talking about -- the
6 underlying facts of this case ---

7 A Yes.

8 Q --- were that he had fondled the breasts and vagina of
9 a child?

10 A That's correct.

11 Q Okay. And this case -- just to be clear, that's --
12 that case was handled, as far as you can tell, by the
13 prosecutor's office in Greenville, the Greenville
14 solicitor's office?

15 A That's correct.

16 Q Okay. No independent, third-party attorney came in?

17 A No.

18 Q Okay. So they had the facts -- the -- some facts were
19 read to the judge?

20 A That's correct.

21 Q Okay. And just like here, there was a court reporter
22 sitting right over there, more likely than not? It
23 happened on the record?

24 A That's correct.

25 Q Okay. There's a transcript at one time of what kind

1 of facts were put on the record?

2 A I'm sure.

3 Q Okay. And he pled to this ABHAN?

4 A Yes.

5 Q Received probation?

6 A That's correct.

7 Q Okay. And there's -- the prosecutor was aware of the
8 alleged facts in this case? The judge was made aware of
9 the alleged facts in this case?

10 A Yes.

11 Q Okay. And the judge doesn't always have to go along
12 with even a negotiated plea?

13 A That's correct.

14 Q The -- the man in the black robe, at the end of the
15 day, determines what kind of a sentence ---

16 A Yes.

17 Q --- he should get?

18 Okay. So at the end of the day, the judge gave him
19 probation on this ABHAN charge?

20 A That's correct.

21 Q And he specifically wrote on there a special notation
22 on the right-hand side. What does that say?

23 A It says (as read): "Do not place on sex offender
24 caseload."

25 Q Okay. So he was not recommended for the sex-offender

1 registry?

2 A That's correct.

3 Q Okay. I'll take that back from you.

4 And then, right around the same time, he gets charged
5 with criminal sexual conduct with a minor?

6 A That's correct.

7 Q In the first degree?

8 A That's correct.

9 Q And while we're on it, let -- let's talk about the
10 different degrees. First -- CSC-first is the -- the most
11 serious charge?

12 A Yes, it is.

13 Q CSC-second is a lesser-included charge?

14 A That's correct.

15 Q Okay. It's less severe, doesn't carry nearly as heavy
16 a penalty?

17 A That's correct.

18 Q Okay. And CSC-third is at the very bottom of the
19 list; it's the less severe charge?

20 A That's correct.

21 Q It carries the -- the lesser penalty?

22 A Yes.

23 Q Okay. And so at the time these charges came up, it
24 was -- CSC-first? It was capital case?

25 A Yes.

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 181

1 Q Meaning that based on those facts, they could've
2 convicted him, they could've sent him to death row, and
3 executed him? That was a very real possibility under those
4 -- that charge?

5 A I was not aware that the death penalty was in effect
6 in 2003 for those types of crimes. But I trust that you
7 know what you're talking about.

8 Q Okay. So you don't -- there's nothing that makes you
9 disagree with that?

10 A No.

11 Q Okay. And I know you're from Fort Lauderdale. You
12 ever been to Greenville?

13 A Oh, many times.

14 Q Okay. So we're -- we're not talking about a little
15 town out in the middle of nowhere?

16 A Oh, no.

17 Q We're not -- we're not talking about -- I don't know
18 if you've ever been to Ninety-Six in -- in Greenwood where,
19 if you close your eyes, you'll pass right through the town?

20 A Yes. I've been through ---

21 Q Okay.

22 A --- there too.

23 Q They -- and -- and have you ever testified in a
24 general-sessions case, in Greenville?

25 A Yes, I have.

1 Q Yeah. So you've been up there?

2 A Yes.

3 Q And you've seen the -- they've got a fairly large
4 office?

5 A Sure.

6 Q Like it -- there's a -- it's a four-story courthouse;
7 three quarters of an entire floor is dedicated to just one
8 division of the solicitor's office?

9 A That's correct.

10 Q So they -- they're not wanting for attorneys?

11 A That's correct.

12 Q And they have a lot of investigators?

13 A I'm assuming so. I don't know about the
14 investigators.

15 Q Okay. And -- and it's safe to assume also that
16 Greenville has a police department?

17 A I think that's safe to ---

18 Q I think that ---

19 A --- assume. Yes.

20 Q And they have -- they have police officers who
21 investigate cases? That's a safe assumption?

22 A Yes.

23 Q Okay. And they would more likely than not, having
24 received these allegations, they would've investigated this
25 case?

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 183

1 A I -- well, they did. I have an investigative report.

2 Q I understand. And so they -- and -- and again, the --
3 those are the allegations that we came up with?

4 A That's correct.

5 Q Okay. And it's safe to say that, you know, there's a
6 hospital in Greenville?

7 A Yes.

8 Q And -- and more likely than not, this child was
9 referred to a physician of some sort, based on these
10 allegations?

11 A Yes.

12 Q Okay. A forensic interviewer, possibly?

13 A Yes.

14 Q There's a lot of different means of investigating this
15 conduct?

16 A That's correct.

17 Q And -- and based on your review, you believe that that
18 was done?

19 A Yes. I think I have information in the chart about
20 those evaluations.

21 Q Okay. And just so we're clear: The attorney -- this
22 -- all the information you have came from the attorney
23 general's office?

24 A That's correct.

25 Q Okay. So it's likely the prosecution had all this

1 information also?

2 A That's correct.

3 Q Okay. So I want to show you this document. Identify
4 this document. That's Defendant's ---

5 A This is ---

6 Q --- 2.

7 A --- another sentencing sheet for the second charge, a
8 -- the 2004 conviction.

9 Q Okay. So -- and that's in Greenville County also?

10 A That is.

11 Q Handled by the same office?

12 A Yes.

13 Q And just a few months apart from the first sentencing
14 sheet?

15 A That's correct.

16 Q Okay. So it's -- it's not like one hand didn't know
17 what the other hand was doing?

18 A That's correct.

19 Q Okay. So this office had an individual who had just
20 previously been convicted and placed on probation; the
21 judge specifically found do not place him on the sex-
22 offender registry?

23 A That's correct.

24 Q Okay. And then, these allegations, these far more
25 heinous allegations come out?

1 A That's ---

2 Q And ---

3 A --- correct.

4 Q Correct. And they bring this charge and what kind of
5 -- what did he plead to?

6 A He pled to assault and battery of a high and
7 aggravated nature.

8 Q Okay. So his charges went from a possible capital
9 case ---

10 A Yes.

11 Q --- to misdemeanor?

12 A I was not aware that this was a misdemeanor.

13 Q Well, I mean ---

14 MR. NASROLLAHI: Judge, can we take judicial notice
15 that in 2003 and 2004, assault and battery of a high and
16 aggravated nature was a misdemeanor?

17 MR. MORROW: No objection.

18 THE COURT: Okay.

19 A Okay.

20 Q Misdemeanor.

21 A All righty.

22 Q Okay. And so much like the first guilty plea, facts
23 were presented to the judge. We don't know what those
24 facts are.

25 A Right.

1 Q Okay. The defendant accepted responsibility for the
2 charges?

3 A That's correct.

4 Q And he was given a sentence?

5 A That's correct.

6 Q Okay. And that sentence was?

7 A Five years.

8 Q Okay. And was that suspended to probation?

9 A It was -- he was given credit for time served and the
10 balance of the sentence was suspended during probation.

11 Q Correct. So he never -- he didn't go to prison on
12 that?

13 A That's correct.

14 Q He spent a good deal of time sitting over in the
15 county jail, but he didn't go to prison on that?

16 A That's correct.

17 Q Okay. So we have a case where, you know -- and -- and
18 you received a copy of these sentencing sheets. You
19 received a copy of these -- of the incident reports
20 underlying this case. You ---

21 A Yes.

22 Q --- read it, disturbing facts. And then you hit this
23 sentencing sheet. And before we talk about that -- I mean,
24 you -- you saw this sentence sheet -- sentencing ---

25 A I did.

1 Q --- sheet before?

2 A I did.

3 Q I want you -- this ABHAN is marked as nonviolent,
4 correct?

5 A That's correct.

6 Q Okay. And on this one it's -- either two different
7 types -- well, they're -- right here it says several
8 different types of crime. These two -- these -- these
9 sentencing sheets are nearly identical in form, correct?

10 A Yes. And I think the statute determines what is
11 considered a violent crime. But from a psychological
12 perspective, any crime -- any sexual crime against a child
13 is considered a violent ---

14 Q I understand.

15 A --- offense.

16 Q But it says on both sheets -- it's -- it's statutorily
17 defined as a nonviolent crime?

18 A That's correct.

19 Q Okay. And then, if you look right here, it says the
20 charges -- and it -- it talks about what kind of charge and
21 what kind of sentence. How does it indicate what the
22 sentence was?

23 A It -- it says that it was a negotiated sentence.

24 Q And that's the second ABHAN conviction?

25 A Yes. That's ---

1 Q Negotiated?

2 A --- correct. Yes.

3 Q Meaning that this wasn't -- this wasn't Mr. Ward going
4 out and hiring a -- you know, the best attorney in town who
5 managed to -- to get the judge crying to give him a -- a --
6 a sweetheart deal. This was a deal that was worked out
7 with the prosecutor?

8 A That's correct.

9 Q Okay. And on this one -- just to be clear, this is
10 the first ABHAN -- what kind of sentence was that?

11 A That was recommended by state.

12 Q Okay. And so there's no question in your mind that at
13 all times, the prosecution had all the relevant facts?

14 A That's correct.

15 Q Okay. And the facts that you have, they're
16 secondhand?

17 A That's correct.

18 Q Okay. You didn't call and interview the victim in
19 these ABHAN cases?

20 A I do not typically call victims because it can often
21 retraumatize them to bring up the information about their
22 prior sexual abuse.

23 Q I understand. But in this case, this -- the -- the
24 alleged victim -- or the victim in this case -- let's not
25 call it alleged; it's a conviction. The victim in this

1 case would've been an adult right about now?

2 A That's correct.

3 Q I mean, we're talking about 12/14 years later?

4 A That's correct.

5 Q She's 11 at the time?

6 A That's correct.

7 Q Okay. You didn't reach out to her. And I understand
8 why you said you didn't.

9 A Yes.

10 Q You didn't reach out to her. Didn't contact family
11 members?

12 A No.

13 Q Did you reach out to talk to any of the -- the
14 investigators in this case?

15 A I did not.

16 Q Okay. You didn't reach out to any of the possible
17 prosecutors in this case?

18 A I did not.

19 Q Okay. You didn't contact anybody in Greenville -- the
20 Greenville solicitor's office to say, "Can you explain this
21 to me"?

22 A I did not.

23 Q Okay. And you didn't contact Mr. Morrow over there to
24 say, "Listen, I need you to get me some more information on
25 this"?

1 A I did not. I did express my difficulty understanding
2 some of the South Carolina sentences.

3 Q I'm sorry. Say that again.

4 A I did express my difficulty understanding some of the
5 sentencing guidelines.

6 Q What do you -- what do you mean by that?

7 A Well, just the amount of time that someone would get
8 for a particular crime.

9 Q And you expressed to Mr. Morrow you didn't understand
10 that?

11 A I did.

12 Q Okay. What didn't you understand?

13 A Well, I didn't understand how an individual could
14 commit a sexual crime and get a lighter sentence than would
15 typically be merited.

16 Q That's a good question, isn't it?

17 A It is a good question.

18 Q Okay. And your efforts to follow up on that were
19 remarks to Mr. Morrow?

20 A That's correct.

21 Q Okay. So you didn't hit this and say, "Wait a second.
22 How does somebody charged with some of the most heinous
23 crimes possible all of a sudden walk out of the jail?"
24 That didn't -- that didn't cause any red flags to go up in
25 your case?

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 191

1 A Well, I did notice that it was significantly less than
2 I would've expected. And I did speak with Mr. Morrow about
3 it. Since I work in different states, it's unusual in the
4 other states that I work in.

5 Q Is it unusual because you're not familiar with it, or
6 is it unusual because -- because of what?

7 A Well, it's unusual because in the states that I work
8 in, there's typically a substantial sentence for a sexual
9 crime.

10 Q And let's talk about South Carolina. You -- you've
11 done evaluations for individuals who've been sentenced
12 under CSC-first, correct?

13 A Oh, absolutely.

14 Q I mean, you've ---

15 A Yes.

16 Q --- you've done evaluations on individuals who have
17 spent a significant amount of time in prison?

18 A I have.

19 Q Okay. And classified as -- again, as pointed out --
20 classified as violent offenders?

21 A That's correct.

22 Q Okay. Which means they go to a violent-offenders
23 facility?

24 A That's correct.

25 Q Where they serve time with murderers and other lifers?

1 A That's correct.

2 Q Okay. So where -- that's where we put the worst of
3 the worst?

4 A That's correct.

5 Q Okay. And so you -- you have firsthand experience
6 with that?

7 A I do.

8 Q And prior to even encountering David Ward's file,
9 you'd had firsthand experience with that?

10 A I did.

11 Q And so you didn't think to investigate how this came
12 about? Maybe you're missing a piece of information?

13 A My job is not as an investigator. My job is to do an
14 evaluation and arrive at a conclusion. And certainly, the
15 sentence was less than I would've expected. But I did have
16 sufficient information to arrive at my conclusion.

17 There are often problems with child victims and that
18 result in negotiated pleas.

19 Q But you didn't know that?

20 A I don't know for sure what happened in this particular
21 case.

22 Q Exactly!

23 A No.

24 Q Okay. So you -- you worked on -- you -- did you
25 operate under the assumption that maybe the child was

1 reluctant to testify?

2 A Well, I considered that as a possibility. Maybe the
3 family didn't want the child to testify.

4 Q Okay. Or did you ---

5 A That happens.

6 Q --- operate -- what -- what was the assumption that
7 you were operating under when you hit that, you had those
8 concerns, you talked to the attorney general about them,
9 but you didn't take any further steps?

10 A Well, I noted that it was a substantially less
11 sentence than I would expect for the information. But
12 again, child victims may present problems or the family may
13 present problems. And it's offer -- often a lesser
14 sentence that I would expect for the crime.

15 Q Okay. But you would again agree with me that the
16 prosecutor at that time and the prosecutor's office today
17 probably has more information than you had?

18 A That's probably true.

19 Q That could've explained that.

20 A If the prosecutor is still there.

21 Q Well, I mean, they've got to have a file, right?

22 A That's correct.

23 Q Okay. And even if -- maybe it's destroyed today.
24 Maybe they didn't retain it.

25 A Uh-huh.

1 Q You'd still -- could benefit from calling to find out
2 where that file is?

3 A Possibly.

4 Q And let's -- let's -- there -- another assumption you
5 could've taken is maybe these allegations weren't true.

6 A Well, it's always a possibility. But I don't believe
7 that that's the case.

8 Q Okay.

9 A I -- I -- I cannot say the reason that this was pled
10 down in the way it was. I don't have enough information to
11 say why that occurred.

12 Q But you have enough information to conclude that what
13 was said is true?

14 A I believe that the victim accounts were -- they gave
15 very specific, detailed accounts of sexual acts that gave
16 sensory experiences. They gave times and places, which I
17 believed were too detailed to be fabricated.

18 Q Yeah. But those -- those could've come from any
19 source? Theoretically speaking, possibly speaking, they
20 could've come from any source other than Mr. Ward?

21 A Well, it would be difficult for a child to remember
22 all those details if the story had been fed to them.

23 Q I understand. But again, you never talked to the
24 victim?

25 A I -- I did not.

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 195

1 Q And you didn't talk to -- the -- you didn't talk to
2 anybody who had talked to the victim?

3 A I did not.

4 Q Okay. And chances are, people involved in this case
5 did?

6 A That's possible.

7 Q Okay. And ---

8 A Yes.

9 Q --- again -- and -- and I'm going to move on after
10 this. You felt that you had just enough information ---

11 A I felt ---

12 Q --- despite ---

13 A --- that I ---

14 Q --- these concerns?

15 A I felt that I had sufficient information to arrive at
16 my conclusion that he ---

17 Q Okay.

18 A --- has pedophilic disorder and that he is at risk for
19 committing another sexual crime.

20 Q Okay. So there's no -- no need to further
21 investigate? Let me take these back. Is ---

22 A Well ---

23 Q --- that okay?

24 A --- as I said, my job is not as an investigator. I
25 utilized the information that I have.. If I have a concern,

1 I attempt to get more information. In this case I did not
2 get any additional information.

3 Q You did not get as in you did not receive or you did
4 not request?

5 A Well, I discussed the charges with Mr. Morrow, as far
6 as that they did not seem to be an appropriate -- or a -- a
7 significant sentence for a significant crime. And that's
8 the information that I got.

9 Q Well, let me ask you your expert opinion. Would it
10 have been reasonable for an expert in your position to have
11 investigated that fact -- those set of facts further?

12 A There are times that I do. In this case I didn't
13 believe it was absolutely necessary. He had a continuing
14 pattern. He -- if he'd only had one victim and they were
15 ABHANS, then certainly, that would've caused me concern.

16 Q Uh-huh.

17 A But the fact that he has a criminal sexual conduct
18 with another victim a few years later led me to believe
19 that what the victim reported was accurate.

20 Q Okay. And then, let's jump forward to the index crime
21 here.

22 A That's correct.

23 Q Okay. And I'm going to show you again -- I'm going to
24 hand you again what the attorney general's handled --
25 handed you. What county was that conviction in?

CROSS-EXAMINATION BY MR. NASROLLAHI - AMY SWAN 197

- 1 A This was in Laurens County.
- 2 Q Okay. So he was convicted in this same courtroom?
- 3 A That's correct.
- 4 Q Okay. And he stood over here; facts were read to the
- 5 judge from the prosecutor over there?
- 6 A That's correct.
- 7 Q The judge heard all of this?
- 8 A Yes.
- 9 Q Made sure that Mr. Ward was entering a guilty plea
- 10 knowingly, freely, voluntarily, and without coercion?
- 11 A That's correct.
- 12 Q Okay. And then, once the judge was satisfied that
- 13 that was what was happening, he accepted the plea?
- 14 A That's correct.
- 15 Q Okay. And Mr. Ward was initially charged with
- 16 criminal sexual conduct in the first degree on ---
- 17 A That's correct.
- 18 Q --- this case?
- 19 A That's correct.
- 20 Q Okay. And that was pled down?
- 21 A That's correct.
- 22 Q Okay. And it was pled down to criminal sexual conduct
- 23 with a minor in the third degree?
- 24 A That's correct.
- 25 Q Okay. And again, what kind of sentence does it

1 indicate on there?

2 A Five years.

3 Q Okay. What kind of sentence was that? Was it a
4 recommendation? a negotiation?

5 A It's a negotiated sentence.

6 Q Okay. And again, negotiation means that with regard
7 to these charges, the solicitor took a -- as far as you
8 know, took a long, hard look at this case, dropped it down
9 two levels, and said that 5 years was perfectly fine?

10 A Yes, to my knowledge.

11 Q Okay. And Mr. Ward, again, admitted responsibility?

12 A He did.

13 Q And the judge thought that 5 years, based on the facts
14 that were conveyed to that judge, was a sufficient
15 sentence?

16 A That's correct.

17 Q Okay. So -- I just blanked on my question. I'm
18 sorry. Based on those two -- or three sentencing sheets
19 and no other information, you have diagnosed him with
20 pedophilia?

21 A That's not true at all. I considered every piece of
22 information in my file. It was not merely the convictions.

23 Q Okay. But you haven't come to a diagnosis of
24 pedophilia?

25 A Pedophilic disorder. I did.

1 Q Okay. And because of that you are saying that he
2 needs to be confined to a secure facility for long-term
3 control, treatment, and care?

4 A Yes, I am.

5 Q Okay. When you say he needs to be confined, what does
6 that mean?

7 A It means he needs to be placed in a facility where he
8 receives treatment and he doesn't have the option of
9 leaving at his freewill.

10 Q And when you say in a secure facility, what do you
11 mean?

12 A In a secure facility.

13 Q Okay. Well, are you talking about a -- a hospital? a
14 prison? What?

15 A Well, it's a treatment facility.

16 Q Okay. Are you -- let me take a step back. With
17 regard to -- excuse me. With regard to treatment, what
18 kind of treatment do you believe is necessary?

19 A Well, the accepted treatment for sexual offenders is
20 cognitive behavioral treatment. It teaches them how to
21 change their thinking about their sexual urges and to apply
22 a different kind of behavioral technique so that they don't
23 continue to act on their deviant sexual urges.

24 Q Okay. And -- well, how do you -- you're the doctor.
25 How do you do that?

1 A Well, it's a comprehensive treatment program that
2 extends over a period of years. And it addresses all the
3 different factors that pertain to sexual offending.

4 Q Okay. And so that involves lots of therapy?

5 A Lots of therapy.

6 Q He'd have to meet with a -- a psychologist such as
7 yourself?

8 A That's correct.

9 Q Possibly even a psychiatrist so he could get
10 medication?

11 A That's correct.

12 Q Group therapy?

13 A That's correct.

14 Q He'd have to -- I mean, very intensive?

15 A Very intensive. That's correct.

16 Q Okay. And are there possibilities for that kind of
17 treatment outside of a secure facility?

18 A Not in that intensity. The outpatient treatment is
19 not nearly as intense and not nearly as effective for
20 someone with pedophilic disorder.

21 Q Okay. So you're saying that it's impossible to treat
22 somebody outside of a confined situation?

23 A I'm not saying that it's impossible. There are
24 pedophilic individuals who have never committed a sexual
25 crime. And they have the urges; they've never acted on it.

1 And those people are typically treated in an outpatient
2 facility.

3 But we know that he has acted on it and over a period
4 of years and that he has difficulty controlling his
5 behavior because he kept doing it over and over again, even
6 though he'd been previously arrested and convicted. So the
7 intensity of an outpatient treatment would not nearly be
8 sufficient for someone like Mr. Ward.

9 Q What about medication?

10 A Well, there are medications that can help decrease the
11 impulses. Some of the antidepressant medications we use
12 and some of the -- it's Depo-Provera. It's a hormone
13 treatment to diminish those urges. But individuals
14 typically refuse to take those medications because they
15 like being attracted to children and they want to act on
16 it. And so they don't take the medication in an outpatient
17 facility.

18 Q So what about a combination of the two?

19 A That's frequently used as well. The problem is
20 compliance. It's ---

21 Q Uh-huh.

22 A People like what they do. They like the feelings that
23 they get, and they don't take medication unless they're --
24 typically they're court ordered to receive it.

25 Q Okay. And so you're saying that in order to comply,

1 he needs to be confined to a facility?

2 A I am.

3 Q And you're saying that in order to be treated -- and
4 again, we're -- we're talking about treatment, right?

5 A Yes.

6 Q That's part and parcel of what we're talking about?

7 A Yes.

8 Q He's -- as far as the criminal justice system is
9 concerned, he's had his day in court?

10 A He has.

11 Q You're not ---

12 A He's been ---

13 Q --- asking ---

14 A --- convicted ---

15 Q --- you're not ---

16 A --- twice.

17 Q --- telling this -- I'm sorry. We got -- just let me
18 -- let me answer and ---

19 A Okay.

20 Q --- I'll -- I promise you I will give you all the time
21 in the world to answer. Just let me get my question out
22 for the court reporter because she's ---

23 A Okay.

24 Q --- going to yell at me again. You did it again. But
25 no.

1 You're not asking this jury to revisit the facts of
2 these -- of these three sentencing sheets for the purpose
3 of punishment?

4 A No, I'm not. This is strictly because he needs
5 treatment so that he doesn't harm other little girls.

6 Q Okay. And another thing that -- and -- and when you
7 get onto these cases, you realize that there -- there are
8 two grave implications with these kinds of proceedings,
9 correct?

10 A This is -- yes. This is not a -- an undertaking that
11 I take lightly. Because I'm ---

12 Q Uh-huh.

13 A --- talking about someone's liberty.

14 Q Exactly.

15 A And I certainly would not recommend commitment unless
16 I thought they were a danger to the community.

17 Q And those -- those are -- the -- the two strong
18 interests right there are that we have to, you know, look
19 at protecting the community and we also have to look at
20 protecting someone's civil liberties.

21 A That's correct.

22 Q Okay. And so if somebody is unjustly confined, that's
23 a problem?

24 A That would be a big problem.

25 Q And so when you -- when you look at all this

1 documentation, you're looking at it from both?

2 A Absolutely.

3 Q Okay. And that's something that you would impress
4 upon this jury to also consider?

5 A Absolutely.

6 Q Okay. And so going back to it -- we're not talking
7 about punishment. We're talking about not only control,
8 talking about treatment?

9 A That's correct.

10 Q You're not saying that Mr. Ward is a lost cause?

11 A No. We're not asking him to reside at this facility
12 and just twiddle his thumbs. We want him to work hard so
13 that he can learn how not to sexually abuse little girls.

14 Q Okay. And what kind of -- what kind of treatment
15 would he receive?

16 A It would ---

17 Q Do you know?

18 A --- be cognitive behavioral treatment.

19 Q Okay. And you have experience working with DMH and
20 their treatment program?

21 A I do.

22 Q Okay. How often do they see a psychologist?

23 A Well, there's a psychologist on their treatment team.
24 Everyone has the psychologist on his treatment team. And
25 they typically see the psychologist periodically. They see

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1 their case managers much more frequently because they have
2 masters-level clinicians that actually do the treatment.
3 And those are the ones that they have regular, ongoing
4 contact with because they're getting assignments and
5 completing those assignments and presenting them in group.

6 Q Okay. So they're meeting with a psychologist several
7 times a week?

8 A Not a psychologist. A masters-level -- I don't think
9 that that can -- can call them psychologists. In Florida
10 they're a masters-level clinician.

11 Q Okay. And so -- but they're meeting with somebody
12 that can diagnose and treat?

13 A Absolutely.

14 Q Okay. And they're meeting with them several times a
15 week?

16 A Absolutely.

17 Q Okay. And are they meeting with them alone, or is
18 this group therapy?

19 A Typically, in group therapy. And they also meet them
20 individually to give them assignments.

21 Q Okay. And how often, to your -- are you a member of
22 any of these teams?

23 A Well, I previously provided treatment of the Florida
24 Civil Commitment Center. I have not provided treatment in
25 South Carolina. But I work -- I do my evaluations at the

1 treatment center, so I -- I'm aware of the treatment.

2 Q Okay. How are -- how'd you become aware of the
3 treatment?

4 A Because I talk with the treatment-team members on the
5 individuals when I'm doing my evaluations.

6 Q Okay. And so again, the -- what you're saying today
7 is there is nothing that he -- you're saying that he could
8 get that would -- there would be a lesser -- I'm not --
9 there -- let me back up. I'm stumbling all over my
10 question. There are not -- there's not a less restrictive
11 means of treating him?

12 A I don't believe so because he doesn't think that he
13 needs treatment. He doesn't even admit that he sexually
14 abused the children. So he's not willing to go to
15 treatment if he's denying that he ever committed a sexual
16 crime or that he has a problem with little girls.

17 Q Okay. And you -- you -- I think you testified on
18 direct that he doesn't even recognize that he has a
19 problem, that he has a -- he has a mental abnormality that
20 you've defined as pedophilia?

21 A Yes. When I evaluated him, he denied any attraction
22 to children, despite acting out against children sexually
23 for 14 years.

24 Q Okay. And so he -- he did not -- you -- in your
25 words, he denies that he has a problem?

1 A Absolutely.

2 Q Okay. And we've already -- he's already been
3 evaluated once, and that evaluator said that he didn't have
4 a problem.

5 A Well, I don't think that's what that evaluator said.

6 Q That he did not have a mental abnormality?

7 A Well, that evaluator said that if she discovered that
8 the ABHAN charges were the result of sexual charges, then
9 he would be diagnosed as pedophilic disorder.

10 Q Okay.

11 A She'd had -- she wasn't sure if those ABHAN charges
12 were for sexual offenses.

13 Q And that -- and your reading of that -- of that
14 information was that she had some concerns?

15 A Well, she said that she wasn't sure if they were for
16 sexual offenses.

17 Q Okay. But you're absolutely positive that they were?

18 A Absolutely.

19 Q Okay. Let's turn now to the -- the Static-99.

20 A Yes.

21 Q Okay. And basically -- and -- and Mr. Morrow got into
22 this. He takes a -- you administer a questionnaire?

23 A It's not a ---

24 Q You -- you receive information and you complete a -- a
25 scoring form?

1 A I complete ---

2 Q How's that?

3 A --- a scoring form. I can complete it whether I've
4 talked to the individual or not because it's based on
5 historical factors in the file.

6 Q Okay. And you arrive at a score?

7 A I do.

8 Q You arrived at a 5? How about that?

9 A I did.

10 Q Okay. And based on that 5, that places him -- it --
11 that's defined as a moderate-to-high risk?

12 A Yes, it is.

13 Q I think the -- it's 4 or a 5, you get moderate or
14 high?

15 A That's correct.

16 Q Okay. And what you do is you then take that number
17 and you compare it to other individuals in a routine sample
18 who've ---

19 A That's correct.

20 Q --- also has the same score?

21 A Yes.

22 Q Okay. And based on that tabulation, you find out how
23 much of a risk they are? Well, let me -- let me take that
24 back. Take that question back.

25 What kind of a risk other individuals in that sample

1 had presented? Is that accurate?

2 A Well, what it tells me is that -- that individuals in
3 the sample group who had the same characteristics as Mr.
4 Ward reoffended at a particular rate.

5 Q And by saying characteristics, you mean same score?

6 A Well, same score and -- yes.

7 Q Okay.

8 A Same score on the scoring sheet.

9 Q They -- and there's -- you know, again, it's -- it's
10 almost like a questionnaire. There's a different -- there
11 are a number of different ways to come to that score, No.
12 5?

13 A That's correct.

14 Q Okay. And again, this is supposed to be an objective,
15 static test?

16 A Yes, it is.

17 Q And I think you testified at the proffer that it's
18 been validated numerous times?

19 A Yes. About 65 ---

20 Q Okay.

21 A --- times.

22 Q Sixty-five times, it's been subject to peer review?

23 A Yes.

24 Q There's nothing about any of the -- the science
25 underlying it that bothers you?

1 A No. It's -- there's not. There's not anything.

2 Q There -- there's nothing that -- that gives you any
3 kind of concern with regard to reliability? You wouldn't
4 have used it if there was anything that gave you concern

5 ---

6 A That's correct.

7 Q --- for reliability? Okay.

8 A Of course, in and of itself, I wouldn't assess risk
9 based on that instrument alone. It's one part of a
10 comprehensive evaluation.

11 Q I understand. And -- and I'm just trying to get your
12 level of comfort with it. And you seem very comfortable
13 with it.

14 A Yes.

15 Q Okay. And again, this -- what it does is it compares
16 Mr. Ward with other individuals in this group?

17 A That's correct.

18 Q Okay. And it has the -- it says that -- I believe
19 that what you testified to was about they have a 15 -- that
20 out of that group of individuals scoring a 5, 15 percent of
21 them were reconvicted?

22 A No, 85 percent. It -- in the percentile ranks -- let
23 me just find my scoring.

24 Q It's, like, second to the last page.

25 A Yeah. A score of 5 means that he's in the 88.7

1 percentile. And what that means is that 85 percent of
2 sexual offenders scored below Mr. Ward's risk, so they were
3 less risky than Mr. Ward. So out of 100 people, he's more
4 risky than 85 percent of them.

5 Q Right. But in and of itself, when you say that word
6 -- he is riskier -- we don't know -- we can't really -- you
7 -- you haven't quantified that, as of right now?

8 A Well, the percentile rank is a method of quantifying
9 ---

10 Q Okay.

11 A --- risk.

12 Q And -- and you actually get to that. And what -- and
13 -- and there's ---

14 A Yes.

15 Q --- a -- when you say he's riskier -- or those
16 individuals are riskier, they have a 15 percent --
17 individuals in that group scoring a 5 have a risk of 15
18 percent -- 15.2?

19 A Well, that's the absolute risk. And there are three
20 different kinds of risk: the percentile-risk rank, the
21 relative risk, and the absolute risk. So the absolute risk
22 would be 15 percent over five years.

23 Q Uh-huh.

24 A However, we know that sex offenders continue to
25 reoffend up to 31 years after their original conviction.

1 So because the research has to come to an end at some time,
2 we only assess five years. And that's one of the reasons
3 that it -- the actuarials underestimate risk.

4 Q Uh-huh.

5 A Most sex offenders don't reoffend until at least Year
6 4.

7 Q Uh-huh. But the point I'm trying to get at -- and --
8 and clarify for me what I'm getting wrong -- is -- and you
9 -- you stated in there -- it says in five years, people
10 from the routine sample have been found to be reconvicted
11 at a rate of 15.2 percent.

12 A That's correct.

13 Q Okay. So that means 1 in 6 offenders in that group
14 ---

15 A Right.

16 Q --- will be reconvicted?

17 A Over five years.

18 Q Over five years. Now, again, to -- to clarify,
19 outside of the percentile, when we use that 15 percent,
20 when you ---

21 A Yes.

22 Q --- state that in there, you're not talking about Mr.
23 Ward's actual risk?

24 A No. It doesn't say anything about Mr. Ward. It says
25 individuals with a score of 5 that has characteristics ---

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1 Q Right.

2 A --- like Mr. Ward is presenting reoffended at a rate
3 of 15 percent in five years. But we have to keep in mind
4 that he still has at least 27 years at risk ---

5 Q Uh-huh.

6 A --- before he turns 60.

7 Q Right. And that -- and that's the same as saying
8 teenagers in red cars are going to get speeding tickets at
9 a rate of this? Like you said earlier, with the insurance
10 and the actuarial tables, we're taking known information
11 and comparing it to people in a group with the same kind of
12 information?

13 A That's correct.

14 Q Okay. And again, you're saying that he has a score of
15 5?

16 A Correct.

17 Q And individuals in that group with a score of 5 have
18 an absolute risk of 15 percent?

19 A That's correct.

20 Q Okay. So again, 1 in 6, to make that number easier?

21 A That's correct.

22 Q Okay. And again, you -- you've included the
23 percentiles in there, as -- as the main -- it seems to me,
24 the main reason why you believe that he is a risk -- and
25 just on the Static-99?

1 A Well, I don't -- the Static-99 is just one piece of
2 information. That's not the main reason for ---

3 Q No.

4 A --- that ---

5 Q I understand.

6 A --- I considered ---

7 Q That's what ---

8 A --- him to be at risk.

9 Q And that's -- that's why I asked you: Just as far as
10 the Static-99 is concerned, the percentile is what's
11 throwing you off on here, right?

12 A Well ---

13 Q On ---

14 A --- it's not ---

15 Q --- Mr. Ward?

16 A --- throwing me off. It leads me to believe that he
17 is at risk to reoffend.

18 Q Okay. And that's because other individuals who in --
19 are in that sample group -- or the two sample groups,
20 really -- have scores below the -- his?

21 A That's correct.

22 Q Okay. And what -- there are two groups, correct?

23 A Yes.

24 Q Okay. You have a sample group and -- and again, I
25 can't remember the -- I asked you about this yesterday.

1 What -- what's the second group?

2 A The second group is high-risk/high-need.

3 Q Okay. And I think we discussed this yesterday. The
4 sample group has about 4,000 individuals in it?

5 A I am not clear how much is -- how many the -- the new
6 sample group has in it, the new one that was based on
7 January 2015 update.

8 Q Right. But my -- it -- it -- the groups are split
9 into two?

10 A Yes.

11 Q Okay. They're both groups of offenders?

12 A Well, they're not split into two groups. What happens
13 is when they do the research and they're assessing the
14 estimates for reoffense, doing a statistical procedure
15 causes some of the offenders to load in one group and
16 another to load in another group. So they've given those
17 groups names. One is the routine; one is the high-
18 risk/high-need.

19 And so it's not two separate groups. They're all in
20 the same group that -- that's being evaluated. But when
21 they tease out the statistical properties, it ends up being
22 two different loadings.

23 Q Okay. Let's come back to that in just a second. And
24 you also said that there were dynamic factors ---

25 A That's correct.

1 Q --- dynamic risks involved?

2 A That's correct.

3 Q Your position is he has poor judgment -- or what is
4 it? -- impulsive lifestyle, I think is what you said.

5 A Well, I said that he had emotional congruence with
6 children. I said that he had ---

7 Q Wait a minute. Let me -- let me just ask you about
8 the -- the impulsive lifestyle.

9 A Okay.

10 Q All right. We'll get to all of them. And if you feel
11 like I've left something out, I'll -- I'll give you an
12 opportunity to put that in.

13 A Okay.

14 Q Impulsive lifestyle -- you've said that he had an
15 impulsive lifestyle because he wasn't able to hold down --
16 the longest I think he held down a job was two years and,
17 since two years is not a very long time, that led you to
18 believe he had an impulsive lifestyle.

19 A Yeah. I think I said that he had lifestyle
20 impulsivity based on the fact that he had two years minimum
21 employment. He had an unstable housing situation. He was
22 persistently moving back and forth with people. He moved
23 around without really good reason, saying that he just
24 wanted different ---

25 Q Well, hold on a -- if you -- if you need to consult

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1 with your notes, just ask me to consult with your notes.

2 A Well, I need to consult with my notes.

3 Q Okay.

4 A Okay? He moved around because he just wanted
5 different scenery. And the thing that makes this a risk
6 factor is that lifestyle impulsivity refers to low self-
7 control, chronic instability in employment and housing,
8 lack of meaningful daily routines, and irresponsible
9 decisions and no long-term goals. And this is a factor
10 that's associated with increased risk for another sexual
11 crime.

12 Q Uh-huh. And we're not talking about a very long
13 period of time, are we?

14 A A long period of time for what?

15 Q That he was unstable.

16 A Well, he worked on and off for a Waffle House. But
17 because he traveled around for -- it was an unstable
18 lifestyle. And he'd work for Waffle House and then he'd
19 quit and go to a different state. And then he'd go back
20 and -- so I determined that he had lifestyle impulsivity.

21 Q Okay. And so just to be clear: He was born in 1982?

22 A That's correct.

23 Q So around 2001/2002 he would've been just barely in
24 his 20s?

25 A That's correct.

1 Q Okay. And around that time he was picked up on the
2 first ABHAN charge?

3 A That's correct.

4 Q Okay. And he ended up spending -- let's see here --
5 what is it? -- 423 days -- or no -- I'm sorry -- yeah --
6 420 -- no -- I got it -- I got it wrong myself -- 239 days
7 in jail.

8 A That's correct.

9 Q Okay. So he was out of -- he was out of the workforce
10 for a very long time, nearly a year, at a very early age?

11 A Well, 239 days is like seven months. So that's not a
12 significant period of time to be out of the workforce. The
13 -- what I believe contributed to the lifestyle impulsivity
14 was just the fact that he was moving around with no real
15 plans, no real goals, and just living with whoever he could
16 live with.

17 Q But what I'm trying to get at is: You -- you fault
18 him for not being able to hold down a job for more than two
19 years. I'm just trying to understand the time frame in
20 which he could've held down a job.

21 A Well ---

22 Q He spent a significant amount of time between 2002 and
23 2000 -- well, let's see. This indictment is 2014. Between
24 2002 and 2013, he spent a significant amount of time in
25 jail. So that narrows down to a -- a significant period of

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1 -- or to a much smaller period of time -- time that he
2 could've been employed?

3 A Right. And then, he said that he was unemployed for
4 two full years.

5 Q Okay. Was that ---

6 A And ---

7 Q --- the -- after the first convictions or ---

8 A After the first conviction and that before he was in
9 prison, he sort of drifted around and held a job here for a
10 while and then moved on and held a job there with no clear
11 plans or goals.

12 Q Uh-huh. And then what is the -- he had -- he had
13 interpersonal problems, according to you? The
14 relationships with adults.

15 A Lack of emotionally intimate relationships with
16 adults. He's 35 years old, and he only had one significant
17 relationship. That's somewhat unusual. Moreover, there
18 were problems in the marriage. There was a sexual problem
19 because he didn't want to have sex more than once a year
20 and she apparently wanted sex.

21 So there was some conflict about that. There was --
22 she had an affair with his brother because of the
23 difficulties in the marriage. So it ---

24 Q So it was ---

25 A --- was my assessment that he hasn't had an

1 emotionally intimate relationship with an adult.

2 Q And this is based on your conversation with him alone?

3 A That is.

4 Q And you didn't talk to his wife? Are they still
5 married?

6 A Apparently, they're still married, even ---

7 Q Okay.

8 A --- though he's been in prison.

9 Q Right. And has she -- to your knowledge, has she
10 filed anything in family court?

11 A Well, he said that she told him she was filing in 2013
12 but he never got any papers. So as far as he knows, he is
13 still married.

14 Q So did you do a search for any family court filings?

15 A I did not. It wasn't significant to my opinion that
16 he had pedophilic disorder and he was at -- at risk to
17 reoffend.

18 Q Well, we're -- we're talking about his risk, right?

19 A We are.

20 Q And one of the things ---

21 A We're ---

22 Q --- this ---

23 A --- talking about ---

24 Q Hold on -- hold on. Let me get the ---

25 A Okay.

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1 Q --- question out before you answer. One of the
2 reasons that you found that he had a -- a risk of
3 reoffending was you found that he had problems in his
4 marital life, yes or no?

5 A Yes. That was one of the risk factors ---

6 Q One of the ---

7 A --- that I ---

8 Q --- risk factors.

9 A --- considered.

10 Q And I'm not -- I'm not trying to put words in your
11 mouth, saying that that was the only reason why. But that
12 was one of the risk factors?

13 A That's correct.

14 Q Okay. And it was based on what he had told you about
15 his marriage?

16 A What he told me about his marriage and the history
17 that he provided me about his entire life.

18 Q Okay. But we'll just -- just -- let's just identify
19 this one area here. All right? He'd been married in --
20 for a two-year period of time, correct, based on what he
21 told you?

22 A That's correct.

23 Q All right. And he told you that monogamy was very
24 important to him?

25 A I don't know that he said that. I don't -- I don't

1 recall that.

2 Q Sure. If you don't recall, if you need to consult you
3 with your report, feel free to do so.

4 A No. He didn't tell me that monogamy was very
5 important to him.

6 Q Okay. But you also said that there was a -- a
7 disparity in desire between he and his wife?

8 A That's correct.

9 Q He denied ---

10 A Likely the ---

11 Q --- having -- I'm sorry.

12 A I'm sorry. I thought you were done. I apologize.

13 Q No, no, no. I -- I did -- I did what I accused you of
14 doing: I started talking over you. Go ahead.

15 A Okay. Yes. I asked him if the reason that he didn't
16 want to have sex with his wife is because he was really
17 attracted to little girls, and he denied that that was the
18 case.

19 Q Okay. I mean, naturally, you didn't believe him?

20 A I did not believe that. No.

21 Q Okay. And his wife apparently, not having enough sex
22 with her husband, cheated on him with his brother?

23 A That's correct.

24 Q Okay. And did you get any more background information
25 on that?

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1 A I did not. I don't -- didn't believe that I needed to
2 because he provided that information.

3 Q Right. Did you find out if it was early on in the
4 marriage or towards the end of the marriage?

5 A I don't believe -- the marriage was relatively short.
6 So I don't think it really mattered if it was early on or
7 -- or later.

8 Q But, I mean, if he found out -- and he was well aware
9 that his brother had had an affair with his wife.

10 A That's correct.

11 Q That wasn't something that you told him for the first
12 time when you met him?

13 A No. He gave me that ---

14 Q Okay.

15 A --- information.

16 Q Right. So he was aware of it. If he would've known
17 about the -- the affair early on and he and his wife
18 patched things up, that would go against the grain of what
19 you're concluding.

20 A (No audible response.)

21 Q You're saying that one of the dynamic risk factors
22 that he has is he can't really maintain relationships with
23 adults. He can't do what adults do and have these kind of
24 lasting relationships ---

25 A That's correct.

1 Q --- correct?

2 And one of those things is we all have problems; we
3 all have conflicts with one another, correct?

4 A That's correct.

5 Q Okay. So a man and a wife have marital difficulties,
6 whether they work it out or whether they resort to CDVs
7 and, you know, picking up charges and burning down their
8 houses, that's evidence against being able to act like an
9 adult, correct?

10 A Well, I'm looking at having intimate relationships
11 with adults.

12 Q Right.

13 A And that is based on the fact that he'd only had one
14 relationship; it was -- there was difficulty in the
15 relationship; and that he -- for someone who's 35, it would
16 be unusual to just have one short-term relationship.

17 Q You just said that he had been married for a long
18 period of time. But you still ---

19 A I ---

20 Q --- classify ---

21 A I'm sorry.

22 Q --- that as short-term?

23 A Short-term.

24 Q I'm -- I'm still not understanding. Are you saying
25 that -- that two-year marriage was short-term?

1 A Absolutely.

2 Q Okay. And again, this is all in light of the fact
3 that he had been incarcerated for a number of years
4 bookending his marriage?

5 A Well, he indicated the time period that he was
6 married. And ---

7 Q When was that?

8 A He was -- it was 2008, I believe.

9 Q Okay. So from 2008 until the present day, he's had a
10 marriage but the relationship was only really being lived
11 in from 2008 to, what, 2010?

12 A Well, they -- they separated in 2012.

13 Q Uh-huh.

14 A So ---

15 Q Likely because of the affair?

16 A I don't -- well, she said -- he said that she told him
17 that she was filing for divorce.

18 Q So you didn't find out why they had separated?

19 A Well, he indicated that she had an affair with his
20 brother.

21 Q That doesn't answer my question. You didn't find out
22 why they were separated?

23 A Yes, I did.

24 Q He said -- he told you that they had -- they had
25 separated because she filed for divorce or what? I --

1 maybe I missed it. Maybe I wasn't listening.

2 A Hold on. Let me just refer to my ---

3 MR. NASROLLAHI: And I know we've been going for a
4 while. I don't know.

5 THE COURT: How much longer you think you're going to
6 need on cross?

7 MR. NASROLLAHI: A little bit longer. Not -- not --
8 I'm not going for another hour or so, but maybe 15/20 more
9 minutes. I know I'm getting very long-winded on this.

10 THE COURT: Okay. Come up here just a minute.

11 MR. NASROLLAHI: Give me one second before you answer.

12 (Whereupon, a bench conference was held off the record
13 in the presence of the jury but out of the hearing of
14 the jury.)

15 THE COURT: Okay. Ladies and gentlemen, I think this
16 would be a good time -- because I -- I understand from the
17 lawyers that there still will be -- they still have some
18 more questioning of Dr. Swan. And so it may be a good time
19 that we go ahead and break for lunch. And so I'm going to
20 ask that you be back -- it's 20 after -- be back here at a
21 quarter till two. That'll give you about an hour and a
22 half break for lunch.

23 And again, as I talked to you yesterday, don't have
24 any conversations among yourselves about this case nor
25 anyone that you may come into contact with over your lunch

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1 break. And once again, if you're out in public, especially
2 at a restaurant or somewhere, have your juror pin on so
3 everybody will know that you're on this jury. And have a
4 good lunch, and we'll see you back here at a quarter till
5 two. Okay.

6 (Whereupon, the jury exited the courtroom at 12:24
7 p.m.)

8 THE COURT: Okay. We'll be in recess till quarter
9 till two. And, Dr. Swan, I know I don't have to tell you
10 this. But you can't have any conversations with -- with
11 any of the attorneys about your testimony. And you can,
12 certainly ---

13 THE WITNESS: That's correct.

14 THE COURT: --- talk with them, but talk with them
15 about something else, okay? All right. Everybody have a
16 good lunch. See you back at a quarter till two.

17 THE WITNESS: Thank you.

18 (Off the record from 12:24 p.m. until 1:55 p.m.)

19 THE COURT: We need to put something on the record?

20 MR. NASROLLAHI: I -- Judge, I -- over the break I had
21 a chance to read the state's proposed jury charge. I've
22 got no major exceptions, except on -- naturally, on page 1,
23 in the second paragraph, Mr. Ward is not -- he's named
24 Daniel Lee Laird.

25 MR. MORROW: Oh. It's a ---

1 MR. NASROLLAHI: He's -- yeah. I -- I -- I'm -- I --
2 I understand. I just wanted to bring that to the Court's
3 attention.

4 THE COURT: Okay.

5 MR. NASROLLAHI: My -- my second objection is going to
6 be on page 4. I'm looking at the second paragraph. And
7 this is the truth-seeking charge. If we're looking at --
8 you know, beyond a reasonable doubt standard, such as in a
9 criminal case, I -- I think the truth-seeking function of
10 the jury is -- I don't think that's what they're here for.
11 I think they're here to determine whether the state has
12 proved its case beyond a reasonable doubt.

13 And then, my last ---

14 THE COURT: Wait -- wait a minute, now.

15 MR. NASROLLAHI: I'm sorry.

16 THE COURT: All right. Page 4 where it has ---

17 MR. NASROLLAHI: (As read): "Keep in mind, throughout
18 this process, you have but one objection, to seek the
19 truth, regardless of the source or -- or from where it
20 comes."

21 THE COURT: Well ---

22 MR. NASROLLAHI: And I can understand a clear-and-
23 convincing standard. I can understand a preponderance-of-
24 the-evidence standard. But when we're talking about beyond
25 a reasonable doubt, that's ---

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1 THE COURT: Yeah. That kind of really consistent,
2 however, with the -- the Court's preliminary charge, where
3 you -- you know, you seek the truth. And I -- and I
4 realize that some defense lawyers in a criminal case ---

5 MR. NASROLLAHI: Right.

6 THE COURT: --- has -- has had some -- some issue with
7 that. You know, really doesn't matter a whole lot to me
8 whether we take it out or leave it in. Mr. Morrow, you --
9 you have a big issue about taking it out?

10 MR. MORROW: I -- I don't have a -- I don't have an
11 objection.

12 THE COURT: All right. We'll take out those -- those
13 three lines, starting with "keep in mind" and then ends
14 "where it comes."

15 MR. NASROLLAHI: Okay. And my final objection -- and
16 this may be pedantic, and I apologize if it is -- is on
17 page 8, this Subparagraph 1. It -- the -- the paragraph
18 starts with "The respondent has" -- it's going through the
19 elements of the SVP statute. It says that (As read): "The
20 respondent has been convicted of a sexually violent
21 offense." And then, the part that I take objection to is:
22 "I charge you that criminal sexual conduct with a minor in
23 the third degree is a sexually violent offense."

24 That -- that sounds to me like a comment on the facts.
25 I'm not -- I'm not saying that the state can't prove it.

1 But to me, that just sounds like it's a comment on the
2 facts, that here -- you know, the offense he's been
3 convicted of is a sexually violent crime; it meets this
4 definition. You see what I'm saying?

5 THE COURT: Well, can -- can I -- could I preface it
6 by saying, "As a matter of law, I charge you that"?
7 And it -- which -- which, of course, it is, but as a matter
8 of law, I charge you that a criminal sexual conduct with a
9 minor, third degree, is a -- is a violent offense.

10 MR. NASROLLAHI: How about the -- the law classifies -
11 --

12 THE COURT: Because the law ---

13 MR. NASROLLAHI: --- the statute ---

14 THE COURT: --- classifies it as a violent ---

15 MR. NASROLLAHI: Yeah.

16 THE COURT: --- offense.

17 MR. NASROLLAHI: Yeah.

18 MR. MORROW: Yeah.

19 MR. NASROLLAHI: The law classifies criminal sexual
20 conduct in the third degree as a ---

21 MR. MORROW: --- sexually violent ---

22 MR. NASROLLAHI: --- sexually violent -- yeah.

23 MR. MORROW: --- violent ---

24 MR. NASROLLAHI: I -- I have ---

25 MR. MORROW: --- offense.

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1 MR. NASROLLAHI: I -- and again, that's why I prefaced
2 everything I said with it may sound pedantic, but ---

3 THE COURT: Okay. I charge you that the law states
4 that csc with a minor-third is a sexually violent offense.

5 MR. NASROLLAHI: Uh-huh.

6 THE COURT: Okay.

7 MR. NASROLLAHI: That -- that -- those are my only
8 objections.

9 THE COURT: Okay. All right. Okay. Very good. All
10 right. Anything else before we bring the jury out?

11 MR. MORROW: Nothing from ---

12 MR. NASROLLAHI: Judge ---

13 THE COURT: Okay.

14 MR. MORROW: --- the state ---

15 MR. NASROLLAHI: --- that's all ---

16 MR. MORROW: --- Your Honor.

17 MR. NASROLLAHI: --- I have.

18 THE COURT: All right. Okay. Mr. Bolt, if you'll
19 bring the jury out, please.

20 (Off the record briefly.)

21 (Whereupon, the jury entered the courtroom at 2:00
22 p.m.)

23 THE BAILIFF: All the jurors are present, Your Honor.

24 THE COURT: Okay. Thank you, Mr. Bolt. We'll -- Mr.
25 Nasrollahi, we are still in your cross-examination. You

1 may proceed.

2 MR. NASROLLAHI: Thank you, Judge.

3 CROSS-EXAMINATION BY MR. NASROLLAHI CONTINUES

4 Q Dr. Swan. ---

5 A Good afternoon.

6 Q How was your lunch?

7 A Awesome.

8 Q Are you enjoying your time here in Laurens?/

9 A Yes.

10 Q Okay. I think where I left off -- and I'm -- I'm
11 going to wrap things up -- was I asked you if you had any
12 evidence indicating why the -- the marriage broke down
13 between Mr. Ward and his wife.

14 A Yes. He said the marriage was fractured when his wife
15 had an affair with his brother. But the reason it totally
16 ended was that he was arrested for the -- molesting the
17 victim in his second crime.

18 Q Okay. One of the other concerns that you had in the
19 dynamic risk factors was his low libido.

20 A It wasn't the low libido. It was the lack of an
21 emotionally intimate relationship with an age-appropriate
22 partner.

23 Q Okay. But you did scrutinize the fact that he had
24 told you that he was satisfied with having sex with his
25 wife once a year.

1 A That's correct. But -- and I -- as I said, I asked
2 him if it was because he was really sexually aroused by
3 children. He denied that, but it was a significant-enough
4 problem in the marriage that the marriage broke down as a
5 result.

6 Q Okay. And the -- the breakdown of the marriage was,
7 according to your understanding, that he had a low libido;
8 his wife wanted sex a whole lot more than he did; and
9 because of that, she had an affair with his brother?

10 A Well, I'm not sure that I would say he had a low
11 libido because he certainly didn't with his child victims,
12 because they repeated many, many acts over a period of
13 years. So I wouldn't classify it as a low libido.

14 I would say that he had trouble having an emotionally
15 or a physically intimate relationship with an adult female.
16 And it's my belief that it's because he's turned on by
17 children.

18 Q Okay. So he told -- but -- but just -- I just want to
19 make sure I'm -- I'm understanding. And I -- I got a
20 little bit lost in your answer here. He told you that he
21 preferred sex far less than his wife did?

22 A Once a year. Yes.

23 Q Okay. His wife wanted sex a whole lot more than he
24 did?

25 A That's what he said.

1 Q Okay. And you interpreted his low libido as, well,
2 that's because he's more interested in molesting children
3 than having sex with his wife?

4 A Well, not completely right. What I said was that he
5 had multiple sexual acts with children over a period of
6 years and he seemed to be aroused by that. However, he
7 only wanted to have sex with his adult-female partner once
8 a year versus multiple times with children. So it seems
9 that he's really not aroused to adult-female partners.

10 Q Okay. And so she went out and had an affair, and that
11 created conflict in the marriage?

12 A It did.

13 Q And ultimately, that rests with Mr. Ward?

14 A Not the fact that she went out. But he had difficulty
15 -- he doesn't seem to have friends, substantial
16 friendships; he tended to drift around with no emotional
17 ties. He only had the one relationship as an adult. And
18 that's why I determined that he had a lack of emotionally
19 intimate relationships with adults.

20 Q Okay. And to -- to get deeper into that, do you know
21 how long he and his wife dated before they got married?

22 A Let me see. He said they dated for a year and -- a
23 year and a half -- a year and a half before they got
24 married.

25 Q Okay. So they were together for approximately four

1 years?

2 A That's correct.

3 Q Okay. And we're talking about a ten-year period that
4 he was -- between incarcerations, those -- there's a ten-
5 year period, roughly, incarcerated by nearly a thousand
6 days of incarceration?

7 A I ---

8 Q He was arrested in 2002; spent seven months in jail?

9 A That's correct.

10 Q Okay. 2003 he's rearrested; does nearly a year again
11 before ---

12 A Correct.

13 Q --- he gets put back on probation ---

14 A Yes.

15 Q --- or his case is continued on probation?

16 Okay. So he doesn't get out until about 2004,
17 correct?

18 A Correct.

19 Q Okay. So from 2004 until he's -- when was he arrested
20 on the other charge, 2012?

21 A 2012.

22 Q Okay. And then he spends 543 days in jail, awaiting
23 the resolution of those charges?

24 A That's correct.

25 Q Okay. So from 2004 until 2008, half that time was

1 spent in a relationship?

2 A That's correct. But part of the -- my answer was that
3 he's only had one relationship as an adult. And for
4 someone who's 35, you would anticipate that they would've
5 at least had dating relationships as teenagers. And he
6 said that the longest -- the only other relationship he had
7 lasted two weeks.

8 Q Okay. And when was that? How old is he when that
9 happened?

10 A 'Let me just check that and I can tell you. He said he
11 only dated one other girl and only for one week.

12 Q Okay. But you don't know when that was?

13 A I don't.

14 Q Okay. I'm going to move ahead. According to your
15 report, you spent 2 1/2 hours interviewing Mr. Ward?

16 A That's correct.

17 Q Approximately how much time did you spend -- prior to
18 meeting with Mr. Ward did you spend reviewing these
19 documents?

20 A Typically, about 2 1/2 hours -- 2 1/2 to 3 hours,
21 depending on the amount of information.

22 Q Okay. So total of 5 hours ---

23 A Approximately.

24 Q --- including the meeting?

25 A Possibly.

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1 Q All right. How long did it take you to prepare your
2 report?

3 A Oh, that takes a long time. It usually takes me a
4 good 20 to 25 to 30 hours to do a report.

5 Q Okay. So you spent 40 hours on the case ---

6 A Right.

7 Q --- not including the -- the two days you've spent up
8 here at the courthouse?

9 A That's probably likely. Yes.

10 Q Okay. And is that typical for a case?

11 A It is.

12 Q Okay. And again, you testified that you receive a
13 flat fee?

14 A I do.

15 Q Of about \$4500?

16 A Yes. From the attorney general's office, I receive
17 \$4500 per case.

18 Q Okay. And you do other evaluation cases such as
19 competency evaluations?

20 A I do.

21 Q Okay. Those are a little bit lower, about \$4,000?

22 A No. Actually, those are like 1100.

23 Q 1100, so significantly lower?

24 A Yes.

25 Q So the money is in the evaluations?

1 A Well, I do all types of evaluations. Some pay more;
2 some pay less.

3 Q Okay. The -- the -- what I'm talking about -- there's
4 a lot of money to be made in the SVP cases?

5 A Well ---

6 Q Compared to the other evaluations?

7 A --- I guess more than in competencies, but
8 significantly less than I get in other states.

9 Q Uh-huh. Okay. And that's regardless of whether you
10 testify or not?

11 A That's correct.

12 Q Okay. And you are not the original evaluators in
13 these cases; that's another doctor?

14 A Well, it depends. In this particular case, I was not
15 the original evaluator. But I have a contract with the
16 Department of Mental Health. So in most of my cases, I am
17 the original evaluator.

18 Q Okay. And you said that you testified in several of -
19 - let's see here -- 760 SVP evaluations?

20 A Testified in 212; I've done 760 individuals.

21 Q Okay. And how long have you been working for the
22 State of South Carolina?

23 A Since 2013.

24 Q 2013.

25 A Yes.

1 Q Okay. And how many -- in South Carolina how many SVP
2 commitment evaluations have you performed?

3 A I do not know.

4 Q Well, ballpark it.

5 A Ballpark it? Probably 25.

6 Q Twenty-five?

7 A Uh-huh.

8 Q Okay. So Mr. Ward's is around your 25th?

9 A Probably.

10 Q Okay. And how many times have you had to go to court
11 on those?

12 A Well, I ---

13 Q Again, ballpark it, since we're using ballpark
14 figures.

15 A I've testified 21 times in South Carolina so ---

16 Q Since 2013?

17 A Yes.

18 Q Okay. Okay. And how many of those cases -- because,
19 I mean, you -- you alluded that, you know, if you believe
20 that somebody does not qualify for the SVP program, you
21 come -- come right in and say they don't qualify; they
22 shouldn't be committed, correct?

23 A Well, the cases that I've said that the individual
24 doesn't meet commitment criteria, I don't get called to
25 court because it usually doesn't go beyond that. The ---

1 Q Uh-huh.

2 A --- person ---

3 Q There's nothing ---

4 A --- is released.

5 Q --- to contest?

6 A Yes.

7 Q Both evaluators are saying this guy doesn't qualify?

8 A Well, there's only one evaluator unless it's -- a
9 second evaluation is requested. If the evaluator, me or
10 whoever from the Department of Mental Health, says the guy
11 doesn't meet criteria, then they typically get released.

12 Q Okay. Well, let me ask you: Of -- of the 25 -- and
13 again, I know we're using rough numbers -- the 25
14 evaluations you've done in South Carolina, how many of
15 those have you -- have been a situation where you're
16 offering a second evaluation?

17 A Hmm. I would probably say maybe six of them.

18 Q Okay. And how many have you said, okay, this guy does
19 not qualify; I agree with the first evaluator?

20 A Well, up until last week it, it was three. But after
21 last week, it's five.

22 Q It's five?

23 A Uh-huh.

24 Q Okay. So this is the only case where you've ever come
25 in and said 'this is -- I don't agree with the first

1 opinion?

2 A No. I'm not sure that -- I may have misunderstood
3 your question.

4 Q I think you did. Okay. I -- let me back up, then.

5 A Okay.

6 Q All right. You've done -- you've been to court -- or
7 no. You -- you've performed evaluations for diagnosis and
8 referral to the SVP program approximately 25 times in South
9 Carolina?

10 A That's correct.

11 Q Okay. And of those cases, six of them -- again,
12 roughly estimating -- six of them were basically what I'm
13 going to say is -- I know is probably not accurate -- a
14 second opinion?

15 A That's correct.

16 Q Okay. And you just said out of those six, five, you
17 said that they -- you agreed with the first ---

18 A Oh, no. Out of those six second opinions, I said one
19 time that the individual does not meet criteria.

20 Q Okay. That's including Mr. Ward -- I'm not -- I'm not
21 saying that he's the one.

22 A That's ---

23 Q Naturally, he's not. But that includes Mr. ---

24 A That ---

25 Q --- Ward's case?

1 A --- does include Mr. Ward's case. Yes.

2 Q Okay.

3 MR. NASROLLAHI: Beg the Court's indulgence for one
4 moment.

5 THE COURT: Sure. Take your time.

6 (Whereupon, Mr. Nasrollahi and the respondent
7 conferred.)

8 MR. NASROLLAHI: That's all I have at this time.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. MORROW:

12 Q Dr. Swan, Mr. Nasrollahi asked you about the records
13 that you received from the attorney general's office when
14 you're doing your evaluation. And you alluded to that you
15 received 33, roughly, documents ---

16 A Yes.

17 Q And you felt that, after seeing those 33 documents and
18 interviewing Mr. Ward, that you could confidently come to a
19 diagnosis of pedophilic disorder?

20 A I did.

21 Q Okay. And the only additional document that you
22 requested were some school records from Mr. Ward, correct?

23 A That's correct.

24 Q And are those school records that you requested
25 relevant to your diagnosis of pedophilic disorder?

1 A Not at all.

2 Q Okay. What would those school records be used to
3 diagnose a person with?

4 A For a diagnosis of antisocial-personality disorder,
5 which is one of the other disorders that typically used in
6 a sexually-violent-predator case, we look at any conduct
7 disorder or behavioral problems that the guy had under the
8 age of 15. So that's what I usually request the school
9 records for.

10 Mr. Ward told me that he really didn't have many
11 conduct infractions, so I didn't anticipate that the school
12 records would tell me anything different. But it did not
13 -- it was not any way relevant for my diagnosis of
14 pedophilic disorder.

15 Q So, Dr. Swan, you received significant amount of
16 documentation from our office, correct?

17 A Yes.

18 Q You met with -- with Mr. Ward?

19 A Yes, I did.

20 Q And based on that, you were able to diagnose him with
21 pedophilic disorder?

22 A That's correct.

23 Q And based on the information that you received and the
24 interview that you had with Mr. Ward, you -- you were able
25 to estimate Mr. Ward's risk to reoffend?

1 A That's correct.

2 Q And using -- you -- you -- the Static-99, which we
3 mentioned before, and the dynamic risk -- combination of
4 those two, you -- you were of the opinion that his
5 pedophilic disorder causes him significant difficulty in
6 controlling his behavior?

7 A Yes. That's correct.

8 Q And you were of the opinion that his pedophilic
9 disorder makes it likely for him to commit another sexual
10 offense if not confined for long-term control, care, and
11 treatment in the sexually-violent-predator unit?

12 A That's correct.

13 Q And you determined that Mr. Ward, based on all that
14 information, is a sexually violent predator and should be
15 committed to the sexually-violent-predator treatment unit?

16 A Yes, I did.

17 Q Okay.

18 MR. MORROW: No further questions of this witness,
19 Your Honor.

20 THE COURT: Any recross?

21 MR. NASROLLAHI: (Shook head from side to side.)

22 THE COURT: Okay. Thank you, Dr. Swan, for your
23 testimony. You can step down.

24 THE WITNESS: Thank you.

25 (Whereupon, the witness exited the witness stand.)

1 THE COURT: And you are free to leave the courthouse,
2 or you're welcome to remain with us, either one.

3 THE WITNESS: Okay.

4 THE COURT: Ladies and gentlemen of the jury, I need
5 to give you an instruction concerning Dr. Swan's testimony.
6 Any facts that were stated related to the three criminal
7 charges are not admitted into evidence for its truth of the
8 matter asserted, but received only for the limited purpose
9 of informing you, the jury, as to some of the basis for Dr.
10 Swan's opinion.

11 Mr. Morrow, any further witnesses?

12 MR. MORROW: Nothing from the state, Your Honor. At
13 this time the state would rest its case.

14 THE COURT: Okay. All right. Let me see the lawyers
15 for just a second, please.

16 (Whereupon, a bench conference was held off the record
17 in the presence of the jury but out of the hearing of
18 the jury.)

19 THE COURT: All right. Is the defense ready to
20 proceed?

21 MR. NASROLLAHI: Yes, Your Honor.

22 THE COURT: Or the respondent, rather.

23 MR. NASROLLAHI: We're going to call Dr. Marie Gehle.

24 THE COURT: Okay. Come around, Doctor.

25 (Whereupon, the witness came forward.)

1 MARIE GEHLE, having been first duly sworn,
2 testified as follows:

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MR. NASROLLAHI:

6 Q Dr. Gehle, I'm going to ask you to state your full
7 name for the record and spell your last name, please.

8 A It's Marie Elizabeth Gehle. And it's spelled G-e-h-l-
9 e.

10 Q Where, if anywhere, are you presently employed?

11 A I am employed by the Sexually Violent Predator Program
12 with the South Carolina Department of Mental Health.

13 Q Okay. And what kind of -- what do you -- what is your
14 employment there?

15 A My full-time job is to do these evaluations. I'm a
16 court appointed evaluator. And I do completely, entirely
17 precommitment evaluations.

18 Q Okay. And do you hold any certifications or degrees
19 or other qualifications that make you -- that allow you to
20 hold that position?

21 A I'm licensed to practice psychology in South Carolina
22 and in Georgia. I have a doctorate in psychology, a
23 master's in psychology, and a bachelor's degree in
24 psychology.

25 Q Okay. And -- and how long have you been employed with

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1 the Department of Mental Health?

2 A Since 2009.

3 Q All right. In 2009?

4 You previously worked for the State of Georgia?

5 A Yes.

6 Q Okay. And at that time were you doing contract work
7 with the State of South Carolina for DMH?

8 A No. I'm a full-time employee.

9 Q Now you're a full-time employee, but at any point were
10 -- were you doing contract work for them?

11 A Not for them. No.

12 Q Okay. And again, I misunderstood your -- your
13 background. And have you ever been called to court to
14 testify in a commitment proceeding just like this one?

15 A Yes.

16 Q Okay. How many times have you been to court to -- to
17 testify?

18 A Well, I know that I've been called to court -- I used
19 to do the annual reviews of people who are committed to the
20 program. So I've been to court on any -- anything under
21 the Sexually Violent Predator Act around a hundred times.

22 Q Around a hundred times?

23 I mean, you've been qualified as an expert
24 approximately a hundred times?

25 A Yes.

1 Q Okay. And in what areas are you -- have you been
2 recognized by a court as an expert?

3 A It's typically in forensic psychology: the evaluation
4 and treatment of sex offenders; the evaluation and
5 treatment of sexually violent predators. It really depends
6 on what the attorney -- what wording they tend to use. But
7 it's -- it's in that area.

8 Q Okay. Now, do you only testify for the State of South
9 Carolina, or do you testify for other individuals?

10 A I am the court appointed expert. So if my opinion
11 helps the respondent, I'm the respondent's witness. If my
12 opinion helps the state, I'm the state's witness. So I
13 testify on whatever side my opinion helps.

14 Q Okay. And you receive a salary at the Department of
15 Mental Health?

16 A I receive a salary.

17 Q It does not matter how many evaluations you perform;
18 you get paid the same?

19 A Correct.

20 Q It does not matter what kind of an opinion you give;
21 your salary remains the same?

22 A That's correct.

23 Q And again, you are -- when you say you're court
24 appointed -- the court appointed evaluator, you're not
25 somebody that's picked by the attorney general's office?

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1 A No. My name is on the court order. And the Court
2 gives me an order that I get from the attorney general's
3 office to do the evaluation. It's my understanding that,
4 you know, the Department of Mental Health tells the
5 attorney general's office which evaluators they can choose.
6 And currently, I'm the only one that works for the South
7 Carolina Department of Mental Health that is, you know,
8 assigned these cases.

9 Dr. Swan also works for the Department of Mental
10 Health under a contract and takes some of these cases when
11 I have too many.

12 Q Okay. And you were actually subpoenaed by the state
13 in another case that was set for trial this week, correct?

14 A Correct.

15 Q Okay. And what was -- who subpoenaed you for that,
16 the state?

17 A Yes.

18 Q Okay. And they subpoenaed you because you evaluated
19 another individual?

20 A Correct.

21 Q Okay. And they agreed with your evaluation and called
22 -- they were going to call you as an expert witness to say
23 that he needed to be admitted into the SVP program,
24 correct?

25 A Well, I said that he met criteria to be considered a

1 sexually violent predator. Yes.

2 Q Okay. And the -- the point I'm trying to get at is
3 either side can call you at this point?

4 A Yes.

5 Q Okay. And the state, in fact, in this same exact week
6 has called you as a witness?

7 A Yes. That's happened before, many times.

8 Q So you could find yourself on both sides, under having
9 respondent call you as a witness or the attorney general
10 call you as a witness?

11 A Yes. Day to that -- I mean, there's been times where
12 he's had trials in -- you know, two trials in one week.
13 And one -- one case, I will testify for the respondent; and
14 the other case, I will testify for the state.

15 Q Okay.

16 MR. NASROLLAHI: At this time, Judge, I'd like to have
17 Dr. Gehle admitted as a -- qualified -- excuse me -- as a
18 -- as an expert in forensic psychology and the treatment of
19 -- diagnosis and treatment of paraphilias, I guess ---

20 THE COURT: Okay.

21 MR. NASROLLAHI: --- would be the word.

22 THE COURT: All right. Mr. Morrow, any ---

23 MR. MORROW: Without objection, Your Honor.

24 THE COURT: All right. Without objection this -- this
25 witness as well will be qualified or found to be an expert

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1 in the same area as Dr. Swan in the area of forensic
2 psychology as it relates to the diagnosis, evaluation, and
3 treatment of alleged sexually violent predators. You may
4 proceed.

5 MR. NASROLLAHI: Okay.

6 Q And we got into this a little bit. You were court
7 appointed to evaluate Mr. Ward?

8 A Yes.

9 Q Okay. And when that happens, what kind of documents
10 do you generally receive?

11 A Well, I get a -- I get the petition -- well, first
12 off, I get the order that names me to do this evaluation.
13 That comes from the Court via the attorney general's
14 office. I get the petition, which is the case that the
15 attorney general's office says that they have against the
16 person. That's the document that they -- that they file to
17 begin these proceedings.

18 I also get some of same information that's in the
19 petition. But I get, like, copies that are -- where the
20 names are not blacked out. In the petition the names are
21 blacked out.

22 I'll get Department of Correction records. And, you
23 know, the petition contains things like arrest warrants,
24 sentencing sheets, indictments, police reports, victims'
25 statements -- you know, defendant's statements, things like

1 that.

2 Q And is that information that you typically rely on in
3 order to conduct these evaluations?

4 A Yes.

5 Q Okay. And you received much of the same documents in
6 the case of Mr. Ward?

7 A Yes.

8 Q Okay. And roughly, the -- you heard Dr. Swan testify.
9 Doesn't sound like she got anything that you didn't get?

10 A Not that I know of. I know I had the school records.
11 I requested those myself.

12 When I get a file of information from the attorney
13 general's office, I go through and see if there's anything
14 missing. Because oftentimes, there are arrest warrants
15 missing; there's indictments missing; there's sentencing
16 sheets missing. And I'll know these things exist from
17 their criminal-history report or things that I read in a
18 police report.

19 And I -- I just want to have all those documents in
20 line for every offense that I can. So I'll -- I'll make
21 sure that I -- everything's in order and I will see if
22 there's anything in the records that I originally received
23 that would indicate, you know, to look for other certain
24 types of documents like mental health records or things of
25 that nature. And then I'll request any documents after I

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1 meet with the person and -- and, if they tell me that
2 they've been here for treatment or that they had major
3 medical problems and they were treated at this hospital or
4 things like that, I'll request those records.

5 Q Okay. So -- and in reviewing those doctor --
6 documents, you were made aware of Mr. Ward's criminal
7 history?

8 A Yes.

9 Q Okay. And was that necessary for you to understand in
10 order to make a diagnosis?

11 A Yes.

12 Q Okay. Tell me: Typically -- I'll get -- I'll get to
13 that in just a second. After reviewing the -- the
14 documents, you met with Mr. Ward, correct?

15 A Yes.

16 Q Okay. And you -- and that was -- that's part and
17 parcel of the evaluation process?

18 A Meeting with him?

19 Q Yes.

20 A Yes.

21 Q Okay. You're not going to basically make a judgment
22 off just reading the paperwork?

23 A No. I -- I do not make judgments, as far as diagnosis
24 goes, until I am almost finished with my report until I
25 have, you know -- really have a good look at -- at what's

1 actually there, not just accusations, but what's been
2 proven.

3 Q Okay. And we've heard the phrase pedophilia and we've
4 heard the phrase pedophilic disorder.. What is that?

5 A Pedophilic disorder is a sexually attraction to
6 prepubescent children, so children who don't have any level
7 of sexual development yet: no pubic hair; no breast
8 development; they are typically, you know, very narrow-
9 hipped children.

10 Q Okay. And how does one go about diagnosing them?

11 A Well, first off, you look at what kind of crimes the
12 person has been charged with and convicted of. You also
13 ask questions in the interview. I look for any statements
14 that the person made.

15 I'm looking at what sexual acts were involved. But
16 it's really -- the age of the victim is the most important
17 part. But age of victim is not something that you can rely
18 on entirely, because we know that children start puberty at
19 different ages. The guideline is under 13 years old. But
20 most children start some level of sexual development,
21 especially females, below age 13.

22 And so I -- I like to see things like medical
23 examinations. If -- if a child discloses sexual abuse,
24 often they'll undergo a medical examination. And that
25 doctor, if they are trained in sexual-assault evaluations,

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1 they will stage the child's level of sexual development.

2 So I'll see -- it's what's called Tanner staging.

3 And they will determine if the child is a Tanner State

4 1. That means they're prepubescent; means no level of

5 sexual development. That could be anywhere from an infant

6 to, you know, a 10/12-year-old kid. We don't know. You

7 know, it's not based on age. It's based on development.

8 Or if they're a Tanner Stage II, III, IV, V, that

9 means that they have sexual development. So typically, I

10 like to see that in these cases as well.

11 Q Okay. And in this case were you able to arrive at a
12 diagnosis?

13 A No, I was not.

14 Q Okay. Can you explain to the jury why you were unable
15 to arrive at a diagnosis?

16 A Well, I -- I considered pedophilic disorder. That's
17 what the -- that's what his criminal history pointed to.
18 But unlike Dr. Swan, I -- I was really hung up on those
19 earlier charges. And they were assault and battery of a
20 high and aggravated nature, ABHANS. They're misdemeanors.

21 On the first one, the first one he was convicted of,
22 you know, it was specifically written on the sentencing
23 sheet that -- that he would not be placed on the sex-
24 offender caseload, the sex-offender registry. I did a
25 little research on the charge to see if I could understand,

1 because the indictment said that the aggravating factor was
2 indecent liberties. But I couldn't find a good definition
3 of what that meant. It was very vague. So I couldn't tell
4 if the Court had, in fact, determined that to be a sexual
5 offense.

6 The second set of charges, that went -- that was pled
7 down from a sexual offense, criminal sexual conduct in the
8 first degree, down to an ABHAN -- a misdemeanor ABHAN. And
9 it was the lesser-included offense. So again, I couldn't
10 tell if the Court had determined that he had committed a
11 sexual offense in that case.

12 Q Now, do you need a court to determine whether it was a
13 sexual offense in order to make a -- a diagnosis -- do --
14 in order to arrive at a diagnosis?

15 A Well, in these cases, because there's such high stakes
16 and liberty interests are -- are involved and the -- the
17 point of this case is to determine if somebody has a mental
18 abnormality -- and that's beyond a reasonable doubt -- it's
19 been my opinion that I rely on what's been proven in court
20 or what the person had reported.

21 So if -- if Mr. Ward told me that he was sexually
22 attracted to children, I would take him at his word. And
23 if he told me that that sexual attraction occurred over the
24 course of, you know, more than six months, I'm going to
25 diagnose him with pedophilia. If he denies all that, then

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1 I need the Court to make convictions.

2 Q Okay. And to be clear -- and as it's already been
3 stated in court here -- he -- he pled guilty to these two
4 ABHANS?

5 A Yes.

6 Q Okay. He accepted responsibility for those charges?

7 A He -- he pled and accepted responsibility in -- in
8 court. Yes.

9 Q Okay. Do we know what exactly it was -- what the fact
10 patters were supporting those ABHANS?

11 A Well, that's where I am a little bit confused. What
12 happens is, you know, you get police reports, incident
13 reports. And that says a whole wide range of behaviors.
14 That usually gets filtered down to what's included into the
15 arrest warrant. And then it even gets filtered down more
16 to what's included in the indictment.

17 In this case it was so filtered down that I couldn't
18 tell if it was even a sexual offense at that point. I know
19 that the allegations were that it was sexual in nature to
20 begin with. But I don't know if that's what the Court has
21 decided he was guilty of.

22 Q And you had the exact same incident reports, victim
23 statements, all that documentation, it sounds, that -- that
24 Dr. Swan had?

25 A Yes.

1 Q Okay. Why didn't you take those statements at face
2 value?

3 A Well, I -- I always look at that stuff and always
4 consider it. And I -- and it's always really important to
5 know that -- to know what those allegations were,
6 especially for the interview, to ask the questions to see
7 if people admit to what happened. And oftentimes, people
8 do admit, you know, that -- that this happened, that that
9 happened. And so that's always really important.

10 And it -- to me, it was difficult in this case to come
11 to the conclusion that those were absolutely sexual
12 offenses because the judge or whoever wrote on that
13 sentencing sheet, do not put them on the sex-offender
14 registry. I -- I also don't know why the Court didn't
15 charge him -- or why the -- why the solicitor didn't charge
16 him with a lewd act, which, if it was -- if his charges and
17 convictions were lewd act, I would've diagnosed pedophilia.
18 But since they're ABHAN -- misdemeanor ABHANS, it was hard
19 for me to come to the conclusion that they were based on
20 sexual behavior.

21 Q Okay. And without that previous finding of sexual
22 behavior, can you -- clinically state that Mr. Ward is a
23 pedophile?

24 A No.

25 Q All right. And at the exact same time that you did

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1 the evaluation and, you know, attempted to, you know, reach
2 a diagnosis in this case, you -- just like Dr. Swan, you
3 performed the Static-99?

4 A That's correct.

5 Q Okay. And that's -- Static-99R, I believe it's
6 called?

7 A Yes.

8 Q And you both arrived at the exact same score?

9 A Yes.

10 Q In fact, that's not surprising. You should ---

11 A Correct.

12 Q --- get. -- both of you should get with -- arrive at
13 the exact same score?

14 A Now, well, there are often discrepancies with
15 evaluators. But I don't think I've ever had a discrepancy
16 with scoring when I've been on the opposite side of Dr.
17 Swan.

18 Q Right. And -- because you guys both have the exact
19 same information in front of you, so you ---

20 A Yes.

21 Q --- should've scored it ---

22 A But still, there are other evaluators that I'll be on
23 the opposite side of and our scoring will be quite
24 different. But I don't think that she and I have ever had
25 a big scoring discrepancy ---

1 Q Right. And ---

2 A --- before.

3 Q --- in this case, there is no scoring ---

4 A That's ---

5 Q --- discrepancy?

6 A --- correct.

7 Q And there were -- you know, so he presents a moderate-
8 to-high risk?

9 A Yes.

10 Q You based on the information that you have that you
11 came to the same conclusion as Dr. Swan?

12 A Yes.

13 Q Okay. Aside from the -- the diagnosis, did you assess
14 any dynamic -- or did you recognize or acknowledge any
15 dynamic risk factors?

16 A Yeah. Dr. Swan and I approach our evaluations very
17 similarly. And we look at the same dynamic risk factors.
18 But I did not conclude that he had those.

19 Q Okay. What did you conclude?

20 A I believe I -- I don't think that he had any. Yeah.
21 I didn't think that any of those factors applied to him.

22 Q Okay. And you -- you've been present here in the
23 courtroom throughout the -- all of Dr. Swan's testimony,
24 correct?

25 A Yes.

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1 Q Okay. And -- and you heard her recite facts
2 supporting her opinion of his shiftless and instable life,
3 as, I guess, she would say?

4 A Yes.

5 Q Do you -- do you agree with that assessment, based on
6 the facts that you've heard and in your interviews with Mr.
7 Ward?

8 A No. I -- you know, I -- I didn't find that -- those
9 factors to be relevant to him ---

10 Q Okay.

11 A --- those risk factors.

12 Q Okay. At this point, in your expert clinical opinion,
13 do you believe that David Ward is a sexually violent
14 predator?

15 A I don't think that there is enough information to
16 conclude that he's a sexually violent predator.

17 Q Okay. And so if you were asked, you know, beyond a
18 reasonable doubt, could you sit here and tell this jury
19 whether he qualifies as a sexually violent predator? Your
20 answer would say no, I couldn't say that beyond a
21 reasonable doubt?

22 A That's correct.

23 Q Okay. And that all stems with, for example, the
24 diagnosis?

25 A Well, yes. For ---

1 Q Or the lack ---

2 A --- me, it ---

3 Q --- thereof?

4 A --- it -- it goes directly to the diagnosis. That has
5 -- that's a -- an essential element. You have to have that
6 diagnosis. Even if he was at, you know, very, very high
7 risk to do this again, it wouldn't matter if it's not
8 because of a mental abnormality or personality disorder.
9 That's an essential element. We cannot call people
10 sexually violent predators if they don't have a diagnosis
11 that's ---

12 Q Now, that's ---

13 A --- relevant.

14 Q Now, if -- if someone molests a child, does that, de
15 facto, make them a pedophile?

16 A No.

17 Q Okay. And so not all child molesters are pedophiles?

18 A No.

19 Q Okay.

20 MR. NASROLLAHI: Beg the Court's indulgence.

21 THE COURT: Sure.

22 (Whereupon, Mr. Nasrollahi and the respondent
23 conferred.)

24 MR. NASROLLAHI: That's all I have for this witness at
25 this time.

CROSS-EXAMINATION BY MR. MORROW - MARIE GEHLE

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1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. MORROW:

4 Q Good afternoon, Dr. Gehle.

5 A Good afternoon.

6 Q Dr. Gehle, you would agree that Mr. Ward was convicted
7 of criminal sexual conduct with a minor in the third
8 degree?

9 A Yes.

10 Q Okay. You would agree that that conviction involved a
11 victim who was 10 year old -- 10 years old at the time of
12 the offense?

13 A Yes.

14 Q You would agree that the victim in that 2013/2014
15 conviction was a family friend of Mr. Ward?

16 A Yes.

17 Q Okay. You would agree that Mr. Ward would often
18 babysit that the victim of the 2013/2014 offense?

19 A Now, why are we calling it the 2013/2014 offense?

20 Q Well, just -- the CSC conviction, criminal sexual
21 conduct ---

22 A Yeah. It's ---

23 Q --- conviction.

24 A --- my understanding that he would babysit for the --
25 for that individual. Yes.

1 Q Okay. So if -- so Mr. Ward was placed in a position
2 of trust over that individual, correct?

3 A Yes.

4 Q Okay. And you would agree that Mr. Ward pled guilty
5 to that offense, correct?

6 A Yes.

7 Q And you would agree that Mr. Ward had previously been
8 convicted of two counts of assault and battery of a high
9 and aggravated nature?

10 A That's correct.

11 Q Okay. You would agree that Mr. Ward's original charge
12 for one of those assault and battery of a high and
13 aggravated nature was criminal sexual conduct with a minor
14 in the first degree?

15 A That's correct.

16 Q Okay. You would agree that the victim in that assault
17 and battery of a high -- high and aggravated nature was Mr.
18 Ward's stepsister?

19 A Yes.

20 Q Okay. You would agree that Mr. Ward was also in a
21 position of trust involving that victim?

22 A I don't know if I would agree with that. I'm ---

23 Q It was a ---

24 A I -- I think that -- I ---

25 Q It was a familiar -- familial relationship? He was

1 ---

2 A Yes.

3 Q Okay. You would agree those ABHAN convictions require
4 an aggravating factor in order to -- in order to plead
5 guilty to ABHAN, you have to have some kind of aggravating
6 factor, correct?

7 A That is my understanding. Yes.

8 Q Otherwise, it would be a regular assault and battery,
9 correct?

10 A I'm not sure if that's -- that's more of a matter of
11 law that's -- that's beyond my knowledge.

12 Q Okay.

13 A But it's -- but I know that on the -- on the
14 indictment, it said aggravating factor and to wit and ---

15 Q And the -- and the aggravating factor listed was
16 indecent liberties, correct?

17 A Yes.

18 Q Okay. You would also agree that in your report, you
19 wrote that if earlier convictions were for sexual behavior,
20 he meets the criteria for pedophilic disorder, nonexclusive
21 type, sexually attracted to females?

22 A Yes.

23 Q Okay. And that, in fact, is what Dr. Swan diagnosed
24 Mr. Ward with ---

25 A That's correct.

1 Q --- correct?

2 Okay. And you also administered -- or -- let me see
3 -- you also scored the Static-99R for Mr. Ward, correct?

4 A Yes.

5 Q And you would agree with me that you scored Mr. Ward
6 as a 5?

7 A Yes.

8 Q Okay. And you would also agree with me that that
9 places him into the moderate-to-high-risk category?

10 A Yes.

11 Q Okay. And that was the same score that Dr. Swan gave
12 Mr. Ward?

13 A Yes.

14 Q Okay. And you would agree with me that his risk is
15 2.7 times higher than the average sex offender?

16 A Yes.

17 Q Okay. You would agree with me that he had not sex-
18 offender treatment?

19 A That's correct.

20 Q You would agree with me that he was offered sex-
21 offender treatment but declined to participate?

22 A I believe that's true.

23 Q Okay. You would agree with me that Mr. Ward denies
24 ever committing any kind of sexual offense, despite his
25 convictions?

1 A That's correct.

2 Q You would agree with me that -- that Mr. Ward pled
3 guilty to those offenses in court, correct?

4 A That's my understanding ---

5 Q Yeah.

6 A --- yes.

7 Q And you're an expert in forensic psychology, so you --
8 you're familiar with how a guilty plea works, correct?

9 A Yes.

10 Q The -- the defense stands over here with their client;
11 the solicitor stands over here. Solicitor gives a
12 recitation to the facts to the judge; the judge swears the
13 defendant in and -- and asks, "Is that what you did?" after
14 -- after he -- after he knowingly, voluntarily, and
15 intelligently waives his right to a trial on the matter?

16 That -- you would agree with that, that's how it works?

17 A I've seen a -- a guilty plea entered one time when I
18 just happened to be in court. So that -- that's how it
19 worked that time.

20 Q Okay. And you would agree that under oath in court,
21 Mr. Ward pled guilty to three different offenses: two
22 ABHANS and one criminal sexual conduct in -- at -- with a
23 minor in the third degree?

24 A Yes. That's my understanding.

25 Q Okay. Yet despite the fact that he pled guilty, you

1 would agree that Mr. Ward continues to deny that he ever
2 committed a sexual assault on anyone?

3 A Correct.

4 Q Okay. Now, we talked about the first criminal sexual
5 conduct with -- with a minor charge in the first degree
6 that was reduced to an ABHAN. Now, there might -- there
7 might be many reasons why a charge would be reduced by a
8 prosecutor, correct?

9 A I assume so.

10 Q Okay. It could be the prosecutor didn't have very
11 much evidence, or it could be that the prosecutor wanted to
12 spare a child the trauma of a trial. Both of those are
13 possible.

14 A I -- I -- I mean, I've never been a solicitor. So I'm
15 going to assume that that's possible.

16 Q Okay. So we don't know the answer to that question.
17 But we do know that he was accused of sexual abuse in 2002
18 and 2003, correct? That Mr. Ward was . . .

19 A Yes. I don't know about those specific years because
20 I think, you know, what happened was his second conviction
21 was actually for -- with an earlier offense date than the
22 first conviction. So he was accused, charged, convicted,
23 then accused of earlier behavior and convicted the -- the
24 first offense date is actually later than the second
25 offense date, if that makes sense so . . .

1 Q But regardless of that, you would agree that Mr. Ward
2 fully was well aware of the consequences of being accused
3 of sexual abuse and yet in 2012, he committed a criminal
4 sexual conduct with a minor in the third degree; is that
5 correct?

6 A (No audible response.)

7 Q He -- he had been sanctioned previously and -- and in
8 2002 and 2004 indictment. And he went on to again offend
9 in 2012; is that correct?

10 A He was sanctioned earlier and then offended -- yes --
11 in 2012.

12 Q Okay. And, Dr. Gehle, to clarify, you talked about
13 how Mr. Ward denied his sexual-abuse charges, regardless of
14 the fact that he pled guilty to them in court. Are you
15 familiar with the DSM-V?

16 A Yes.

17 Q And is that a treatise that is recognized by experts
18 in your field?

19 A Yes.

20 Q Okay. And does it list as the -- as -- does it list
21 different paraphilic disorders?

22 A Yes.

23 Q Okay. And in the DSM-V, does it list pedophilic
24 disorder?

25 A Yes.

1 Q Okay. And does it have diagnostic criteria in the
2 DSM-V for pedophilic disorder?

3 A Yes.

4 Q Okay. Also, in the DSM-V does it list diagnostic
5 features of pedophilic disorder? Does it have a page
6 talking about diagnostic features of pedophilic disorder?

7 A Yes.

8 Q Okay. And in that page, talking about diagnostic
9 features of pedophilic disorder, does it give or does it
10 state -- does it give any kind of indication about
11 individuals who deny their attraction to children and are
12 known to have sexually approached multiple children on
13 separate occasions? Is that ---

14 A I don't know specifically what that language is. I
15 mean, it's a, you know, thousand-page-long book.

16 Q Yeah.

17 A I don't know specifically what it says there.

18 Q Okay. Would it help you if I ---

19 A Sure.

20 Q --- refreshed your recollection?

21 A Sure.

22 (Whereupon, Mr. Morrow and Mr. Nasrollahi conferred.)

23 A I'm sorry. Was there a ---

24 Q Yeah.

25 A --- there a question?

1 Q The question is: Does the DSM-V address the
2 possibility that someone who's diagnosed with pedophilic
3 disorder may deny his prior charges?

4 A Well, it says that somebody may deny urges and
5 fantasies and that any known episodes of physical contact
6 were all unintentional or nonsexual. So it doesn't say
7 charges specifically in here.

8 Q And when you -- can I ---

9 A Sure.

10 Q Thank you. When you interviewed Mr. Ward about his
11 sexual offenses and his prior conduct -- his prior
12 convictions, rather, what did he indicate that -- did --
13 how -- how did he explain those offenses?

14 A Okay. Give me a second here. Are you talking about
15 when I interviewed him?

16 Q Yes.

17 A Okay.

18 Q When you interviewed Mr. Ward, did he indicate that
19 those -- that those -- those occasions were unintentional
20 or nonsexual?

21 A Yeah. He said that the only time that there was
22 anything like that where he could've touched the -- his
23 stepsister were when they were wrestling, but not that he
24 had tried to do anything like that to her. He said the
25 second one was -- you know, he might've been reaching

REDIRECT EXAMINATION BY MR. NASROLLAHI - MARIE GEHLE 272

1 across the girl and he might've inadvertently touched her
2 that way.

3 Q Okay. But to be clear, he did plead guilty to all
4 three of the offenses that we've discussed today?

5 A Yes. He pled guilty to three offenses.

6 Q Okay. Thank you.

7 MR. MORROW: No further questions for this witness ---

8 THE COURT: Okay.

9 MR. MORROW: --- Your Honor.

10 THE COURT: Redirect?

11 MR. NASROLLAHI: Very, very briefly.

12 REDIRECT EXAMINATION

13 BY MR. NASROLLAHI:

14 Q As a result of his conviction for criminal sexual
15 conduct in the third degree, he is now a registered sex
16 offender -- or he has to be placed on the sex-offender
17 registry if he's released?

18 A Yeah. He might be on the registry now. I -- I think
19 that, you know, he's finished his prison time. He's
20 finished his sentence, so he -- he is in the county jail,
21 waiting disposition of this. And he's already serving his
22 probation.

23 And so they might have required him to register at
24 that point. He might already be on the registry.

25 Q Right. And so that means if -- if he's released, he

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1 walks out of the front of this courthouse today, the very
2 first thing he has to do is he has to go to the sheriff's
3 department and show up and say, "Hey, I'm on the -- I'm on
4 the -- the South Carolina sex-offender registry and I need
5 to register with my local sheriff because I'll be living in
6 Laurens County"?

7 A I think that's one of the first things that he needs
8 to do. Yes.

9 Q And on top of that, he's going to be subject to
10 lifetime GPS monitoring?

11 A That's correct.

12 Q He can -- he -- he walks out of the courthouse today,
13 does well on probation, gets off probation, all his
14 criminal troubles are -- are behind him. He's still got to
15 have an ankle monitor on?

16 A That's correct.

17 Q And if, you know, he does something like he forgets to
18 charge the ankle monitor, a warrant goes out for him?

19 A I'm not sure what the consequences are of that. But
20 -- but he is subject to lifetime mandatory GPS monitoring.

21 Q Right. And this isn't something that he's just going
22 to be able to move to Georgia and -- and abscond from,
23 right?

24 A Well, he might be able to arrange that his supervision
25 be transferred to Georgia or something like that. I mean,

1 people are free to move. But it has to be all coordinated,
2 approved. He has to have permission.

3 Even if he wanted to go to Georgia, it's my
4 understanding, from talking to one of the probation agents,
5 that he'll need to let them know in advance that that's
6 where he's going. But they can't necessarily say, you know
7 you can't go.

8 Q Well, you would -- and -- and as somebody who -- who
9 works with individuals who are -- are convicted sex
10 offenders and you deal with this, even when he's off
11 probation, almost every state has some sort of reciprocity
12 with our own sex-offender laws. In other words, an
13 individual that moves into South Carolina with a -- a sex
14 offense -- a sex-offense conviction in another state would
15 still have to register here.

16 A Yes. And they might -- may still have to register in
17 their home state or ---

18 Q Right.

19 A --- you know ---

20 Q Okay. So there's no hiding from this?

21 A Not legally.

22 Q Okay. And if you -- we -- we've talking about --
23 we've looked at the word ABHAN. What is an assault and
24 battery of a high and aggravated nature?

25 A It could be ---

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1 Q You ---

2 A --- a variety of things. And -- and that's really
3 what my problem is, is that I don't know what -- when Mr.
4 Morrow said that there would've been a recitation of facts
5 into the record and that's what the person pled guilty to,
6 I don't know what that recitation of facts was.

7 Q Right. Okay.

8 A So I actually have no idea what ABHAN was in this, you
9 know, instance.

10 Q Well, and -- and a lot of people, they hear the words
11 "assault" and they hear the words "battery" and they think
12 that they have an understanding. To your knowledge, do you
13 even have to lay hands on somebody to be charged with an
14 assault and battery?

15 A I -- I don't think that you actually do.

16 Q You can attempt to lay your hands or to do something
17 physical against somebody, and that's enough for an assault
18 and battery, to your knowledge?

19 A Correct. And things have changed because that ABHAN
20 is no longer -- if you're charged with ABHAN now, it's not
21 a misdemeanor. But when he was charged, it was a
22 misdemeanor.

23 Q Right.

24 A So it's even hard to get what the definition was ---

25 Q Right.

1 A --- of the charge for back then.

2 Q And assault and battery, high and aggravated nature,
3 now is more of like a assault with intent to kill. They've
4 kind of been collapsed into each other? They're different

5 ---

6 A In ---

7 Q --- elements than they used to be?

8 A It's a felony now.

9 Q Yes. And it's -- it involves different criminal
10 conduct?

11 A Yes.

12 Q If -- okay.

13 And one of the -- back again, we've heard the
14 aggravating factor that elevates it from a simple assault,
15 which may or may not involve actually any physical contact,
16 one of the aggravating factors was this phrase "indecent
17 liberties."

18 A Yes.

19 Q And yesterday you didn't know what that -- what that
20 phrase meant?

21 A Well, I looked for a definition. I mean, when I do
22 these cases, I look at what are the -- what are the
23 elements of the crime that they've been convicted of.
24 There's a -- a Web site. It's, you know, the South
25 Carolina Judicial Web site; it's an official Web site. You

REDIRECT EXAMINATION BY MR. NASROLLAHI - MARIE GEHLE 277

1 can enter in a charge and they have something called a CDR
2 code.

3 Q Right.

4 A And you can enter it and get a definition and you can
5 get the sentencing guidelines and things like that. It's
6 harder to find on some of the retired charges, like ABHAN
7 or -- or that has changed so much. It's hard to find the
8 definition of those charges.

9 But I did a search on -- you know, a Google search and
10 a search on that Web site to see what the definition of
11 indecent liberties was. And I found no definition that --
12 that made any sense or that -- that said that this was
13 absolutely, you know, sexual in nature.

14 Q Right. And you and I -- we actually -- we -- we
15 pulled it up on Westlaw yesterday ---

16 A Yes.

17 Q --- trying to figure out if we could put our brains
18 together and figure out what indecent liberties meant.

19 A Yes.

20 Q Because right off the of your head, you think indecent
21 liberties, that -- that almost sounds a little sexual.

22 A Yes.

23 Q Okay. But when we looked at it, it could be something
24 as, you know, causing someone to disobey an authority.

25 A It potentially could be.

1 Q Right.

2 A Yes.

3 Q So there -- and -- and did we -- I -- did you identify
4 anything you looked at -- looked at the -- the legal -- the
5 cases that were pulled yesterday; did you identify anything
6 that said that it was sexual in nature, despite its name?

7 A Not that I recall. No.

8 Q Okay. And so that still causes you concern when, you
9 know, we keep throwing out assault and battery -- assault
10 and battery, high and aggravated. Aggravated is bad, you
11 know. And indecent liberties, but there's still nothing
12 that demonstrates that this was a sexual crime or a
13 sexually violent crime?

14 A Well, you know, I -- I take considerable care in doing
15 these evaluations. And it's my opinion that I need to come
16 to that diagnosis beyond a reasonable doubt. Because
17 that's what I'll be presenting to the jury, and that's the
18 same standard of proof that they have.

19 And so when I can't find things clearly stated, I'm
20 going to, you know, be very careful. And I'm -- I can't
21 come to that conclusion that he -- that those were
22 definitely sexually based crimes and that that constitutes
23 the beginning of his pedophilic behavior.

24 Q Okay. And through your relationship with the
25 Department of Mental Health, especially with the SVP

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1 program, again, you come into contact with a lot of
2 offenders and -- and such, right?

3 A Yes.

4 Q And, you know, Mr. -- Mr. Morrow was asking you some
5 questions about what could influence a prosecutor's
6 decision to either throw out a case or reduce the charges.
7 You -- you recall his asking you that in your testimony?

8 A Yes.

9 Q Okay. Are you aware of any case where the prosecution
10 threw out the charges or reduced the charges because the
11 case was just too strong?

12 A Oh.

13 Q They just had too much evidence?

14 A No.

15 Q Okay. And again, those -- the 2002/2003 allegations
16 are -- are, on their face, very serious?

17 A Yes.

18 Q And there is a large disparity, based on your work
19 through DMH and your involvement with sex offenders and
20 individuals with similar charges, convictions, and such --
21 there is a large disparity between he was accused of what
22 he was ultimately convicted of?

23 A Yes. I mean, he went -- I mean, the -- the first
24 charge was a misdemeanor and he pled to the same
25 misdemeanor.

1 Q Right.

2 A The -- the second charge was, you know, a major felony
3 and he pled to a misdemeanor.

4 Q I mean, a -- like, one of the biggest of the big
5 felonies, it was a capital crime.

6 A Yes.

7 Q And he went to a -- a misdemeanor?

8 A Yes. And that was after he was, you know, already
9 convicted of the first ABHAN.

10 Q That's right. And he never even went to prison for
11 these charges.

12 A That's correct.

13 Q In fact, I mean, he could -- after those -- after he
14 had entered a guilty plea, he could still go vote. His
15 right to vote wasn't taken away because he wasn't a
16 convicted felon.

17 A Right.

18 Q And one last thing before I sit down: There was some
19 -- let's talk about this CSC-third. Mr. Morrow had you
20 recite your understanding of what the -- the victims' ages
21 in these cases were. The CSC with a minor-third, how old
22 was she?

23 A She was 10.

24 Q Okay. And did you have any understanding of her
25 physical description? You -- you stated in -- in direct

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1 early on you needed information for a Tanner score -- or
2 Tanner scale. Did you come across any information that --
3 that gave you some kind of -- it -- it ---

4 A Well ---

5 Q --- put cloud in your mind?

6 A The only thing that I had about -- I had her age,
7 which was 10. And then, the -- on the incident report, her
8 height was listed as 5 feet tall and her weight is 160
9 pounds. So that also gave me pause because 160 pounds for
10 a 10-year-old is quite heavy. And it could indicate that
11 she had already hit puberty. You know, because when you
12 hit puberty, you gain weight; you grow.

13 Or she could just have been an overweight child. Or
14 this could've been, you know, a cop doing a horrible
15 estimate at a weight. I don't know.

16 But that gave me pause. There was no medical
17 examination. I had no idea what her level of sexual
18 development was.

19 Q Right. And when -- again, going -- as we've heard
20 numerous times from both you and Dr. Swan, the diagnostic
21 criteria for a pedophile is you have to be attracted to
22 prepubescent children?

23 A Yes.

24 Q Okay. So pubescent children would get -- would --
25 would rule you out from a diagnosis of pedophilia?

1 A Yes.

2 Q So an attraction to a child who looks pubescent -- for
3 example, a child that may have what appear to be developing
4 breasts -- would that ---

5 A Yes.

6 Q --- impact your -- your decision to diagnose?

7 A Well, it depends how much attraction there was to, you
8 know, other prepubescent -- I mean, if you are attracted to
9 prepubescent and pubescent, you can still be called a
10 pedophile.

11 Q Uh-huh.

12 A But if you don't have a six-month pattern of that
13 arousal, then you cannot be.

14 Q Right. So let me -- let me ask you some hypotheticals
15 on this. And then I'll -- I'll sit down and, hopefully,
16 we'll be done. If we don't know whether those first two
17 charges were sexual in nature and we don't know whether the
18 -- the victim in the CSC-third appeared to be pubescent or
19 not, can we reasonably come to a diagnosis of pedophilia?

20 A Well, my opinion is that I could not do that. There
21 was just too much doubt in my mind that he met the
22 criteria. That's why I didn't make the diagnosis.

23 Q Okay. And let -- let's go back. And -- and you said
24 your report -- and Dr. Swan brought this out -- if -- let's
25 say that the first two charges we -- we did an in-depth

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1 background look into it and we determined that they were
2 sexual in nature, but the child in the 2013 CSC appeared to
3 be pubescent. Would that change your diagnosis? Or would
4 that result in a diagnosis in the first place?

5 A If those first two offenses were indeed sexual in
6 nature and we knew that the -- the 2012 offense, that
7 victim was pubescent, then he still wouldn't meet criteria.

8 Q Sorry. Say that again?

9 A He still wouldn't meet criteria because those ABHANS
10 -- his -- the dates he was convicted -- or the -- the -- on
11 each sentencing sheet, it says date of offense. And this
12 is what the Court had determined happened. So he has an
13 ABHAN; the date offense is -- excuse me -- April 30th,
14 2012. That's one of them. And the second -- the other one
15 ---

16 Q Okay. Let's ---

17 A --- is May 9th, 2012. If those would be his only
18 offenses against a prepubescent child, there basically --
19 there's proof of ten days of pedophilic behavior. Because
20 the Court only determined that the date of offense is on
21 April 30th, 2012, and May 9th, 2012. So that would be
22 about nine or ten days of -- of pedophilic behavior.

23 Q Right. And -- and here's my last question; then I'll
24 sit down. But the -- the -- the attorney general
25 demonstrated, with regard to the ABHANS and -- we have no

1 clue what the solicitor who stood in the position here --
2 what he said. "Okay. Judge, you've got to make a factual
3 determination based on what I'm about to tell you and what
4 this defendant is about to admit to, that this supports a
5 charge." We have no clue what came out of that solicitor's
6 mouth and what the judge accepted?

7 A I -- I have no clue.

8 Q We have no clue whether it was even sexual in nature?

9 A That's correct.

10 Q And does the law, as far as you understanding it,
11 require for an ABHAN that it is sexual in nature?

12 A No.

13 Q In fact, if the law find -- if the judge finds that
14 it's sexual in nature, that's automatic sex-offender
15 registry?

16 A I -- I don't know. I -- I don't know if that's an
17 automatic. It -- I don't know.

18 MR. NASROLLAHI: That's all I have, Your Honor.

19 THE COURT: Any recross?

20 MR. MORROW: Nothing from the state, Your Honor.

21 THE COURT: Okay. Thank you, Dr. Gehle, for your
22 testimony. You can step down.

23 THE WITNESS: Thank you.

24 THE COURT: Anything further from the respondent?

25 MR. NASROLLAHI: I just need one brief minute to

1 confer with my client, Your Honor.

2 THE COURT: Okay.

3 (Whereupon, the witness exited the witness stand.)

4 THE COURT: Dr. Gehle, you're -- you're welcome to
5 remain with us or you're free to leave, ma'am ---

6 MR. NASROLLAHI: Yeah. I forgot to ---

7 THE COURT: --- either -- either way.

8 MR. NASROLLAHI: Should we ask if the witnesses be
9 relieved from their subpoenas? Judge, that's the
10 respondent's case.

11 THE COURT: Okay. Any rebuttal case from the state?

12 MR. MORROW: Nothing from the state, Your Honor.

13 THE COURT: Okay. All right. Thank you very much.

14 The evidentiary record in this case is now closed. And,
15 Mr. Foreman and ladies and gentlemen of the jury, this will
16 be a good time to take a -- an afternoon break. And then
17 what we will do, when you come back, is the lawyers will
18 make their closing arguments to you. And depending upon
19 how long they are with those closing arguments, we'll
20 either go straight into the Court's charge or maybe take a
21 short break before I charge you on the law in the case.

22 So I'll ask that you go back to the jury room. Again,
23 as I've stated previously, do not begin any discussions
24 among yourselves about this case. Don't start your
25 deliberations yet. And we'll get you back out shortly,

1 okay?

2 (Whereupon, the jury exited the courtroom at 3:04
3 p.m.)

4 (Off the record from 3:05 p.m. until 3:16 p.m.)

5 THE COURT: Okay. We ready?

6 MR. MORROW: Yes, Your Honor.

7 THE COURT: Okay. All right. And the state will open
8 in full and -- and close. Bring the jury out, please, Mr.
9 Bolt.

10 (Off the record briefly.)

11 (Whereupon, the jury entered the courtroom at 3:17
12 p.m.)

13 THE BAILIFF: All jurors present, Your Honor.

14 THE COURT: Okay. Thank you, Mr. Bolt. You ready,
15 sir?

16 MR. MORROW: Yes, Your Honor.

17 THE COURT: Okay. You may proceed.

18 CLOSING ARGUMENT BY MR. MORROW

19 MR. MORROW: Mr. Ward can't stop. He was convicted in
20 2002 and 2003 -- I'm sorry -- 2003 and 2004 of assault and
21 battery of a high and aggravated nature. The aggravating
22 factor for that assault and battery of a high and
23 aggravated nature was indecent liberties with a female.
24 The victim was his stepsister, a relationship of trust.
25 She was 11 years old at the time. He received a sentence

1 for that offense. He was sanctioned by the Court for his
2 crimes. He knew the consequences of his actions.

3 Yet what did he choose to do in 2012? In 2012 he
4 chose to offend again. He'd been given a second chance. A
5 new group of people gave him their trust. They let Mr.
6 Ward babysit their 10-year-old girl. And how did Mr. Ward
7 reward that trust? By fondling their 10-year-old daughter.

8 How do we know this? Because Mr. Ward pled guilty to
9 these crimes in court. He admitted on the record he did
10 what the allegations of the crime were.

11 Why did Mr. Ward offend again, despite having
12 previously been sanctioned? Because he can't stop
13 offending. His attraction to prepubescent girls is so
14 strong that he's willing to risk his freedom, despite the
15 fact that he could easily be caught.

16 He could not stop from violating the trust of his
17 stepsister. And he could not stop from violating the trust
18 of this new family. Now, Mr. Ward cannot stop. And
19 because he cannot stop, he is a sexually violent predator.

20 Now, let's talk about what you've heard today and what
21 the state has to prove. The state has to prove Mr. Ward
22 was convicted of at least one sexually violent offense.
23 We've done that. You're going to have the sentencing sheet
24 back there with you. And the judge will charge you that
25 CSC with a minor in the third degree, according to the law,

1 is a sexually violent offense. There's no question the
2 state has proven that element.

3 Now, the second thing the state has to prove to you is
4 that he suffers from a mental abnormality or personality
5 disorder that makes him likely to commit another act of
6 sexual violence if not confined to a secure facility for
7 long-term control, care, and treatment. Now, the state has
8 provided to you through the testimony of Dr. Amy Swan and
9 her expert opinion. Dr. Swan reviewed documents related to
10 Mr. Ward's offenses, and she interviewed Mr. Ward and
11 conducted an assessment of Mr. Ward's risk to reoffend.

12 She determined, based on the evidence, that he met the
13 criteria for pedophilic disorder. Dr. Swan told you that
14 that diagnosis means that he suffers from an attraction to
15 prepubescent children. And based on her diagnosis and
16 based on her -- she based that, in part, on his criminal
17 history and, in part -- and, in part, on -- based on her
18 interview with Mr. Ward and also on other documents that
19 she received that relate to those offense and relate to his
20 history.

21 When it comes to his risk to reoffend, if not
22 confined, Dr. Swan talked to you about how experts like her
23 analyze risk. They analyze both static factors for risk,
24 which are factors that do not change. And they ask -- they
25 analyze dynamic factors for risk, factors that are

1 changeable.

2 She spoke about the static factors. And those factors
3 she measured by using an actuarial assessment called the
4 Static-99R. In fact, Dr. Gehle testified for the
5 respondent; used that same risk-assessment document. And
6 she came to the same score as Dr. Swan. They both scored
7 him as a 5, in the moderate-to-high-risk category to
8 reoffend. And they also both stated that he's 2.7 times
9 more likely to reoffend than other sexual offenders.

10 She also talked to you about dynamic risk factors.
11 And for those Dr. Swan listed his sexual preference for
12 prepubescent children, his emotional congruence with
13 children, and his lack of emotional -- his lack of intimate
14 relationship with adults. Talked about his interview with
15 her, how Mr. Ward spoke to her about his lack of
16 relationships with adults, about how his relationship with
17 his wife, who was an adult -- he was okay with only having
18 sex -- let's -- once a year.

19 Yet he's been accused and/or convicted of sexual
20 conduct with minors multiple times over multiple years from
21 2002 to 2012. And she explained to you that it's -- it was
22 her expert opinion and belief the reason behind that was
23 because of his attraction to prepubescent children.

24 She -- and let's talk about Dr. Gehle. What did she
25 tell you? Dr. Gehle came up here to the stand and she took

1 the stand and she said that she performed an evaluation on
2 Mr. Ward. She also talked about that she was provided the
3 same information. And what did she agree with Dr. Swan on?

4 She agreed with Dr. Swan that his score on the Static-
5 99R was a 5. So she predicted the same amount of risk that
6 Dr. Swan predicted. She also agreed that if those two
7 ABHAN convictions were sexual in nature, that he would,
8 based on his convictions, meet the criteria for sexual --
9 meet the criteria for pedophilic disorder.

10 So we come down to the fact of -- or to the question
11 of what do you think indecent liberties with a child -- or
12 with a female means? I'll leave that to you.

13 But you also heard Dr. Swan talk about the incident
14 reports she reviewed and police reports that she reviewed
15 and the arrest warrants that she reviewed connected with
16 those two ABHAN offenses. And you heard her talk about how
17 the victim of those two ABHAN offenses accused him of
18 sexual behavior.

19 Now, the state has the burden of proof in this case,
20 ladies and gentlemen. And the burden of proof is beyond a
21 reasonable doubt. It's not beyond all doubt. It's not
22 beyond any doubt. It's not beyond a shadow of a doubt.
23 It's beyond a reasonable doubt. The judge will instruct
24 you what that means in a minute.

25 But I -- I'm going to tell you that it means that if

1 there's -- the -- that proof beyond a reasonable doubt
2 means proof that leaves you firmly convinced. Now, at the
3 end of the day, after the testimony today, if you are
4 firmly convinced that Mr. Ward meets the criteria for -- as
5 a sexually violent predator, you must find for the state
6 and that he should be committed to the Department of Mental
7 Health for treatment.

8 Look at the evidence. Look at the testimony provided
9 to you. I believe that you will come to that determine:
10 that David Allen Ward is a sexually violent predator and
11 should be committed to the Department of Mental Health for
12 treatment so he can get that treatment that he so
13 desperately needs and to protect the public during the
14 treatment process from him.

15 THE COURT: All right. Thank you, Mr. Morrow. Mr.
16 Nasrollahi, you ready, sir?

17 MR. NASROLLAHI: Thank you, Judge. May it please the
18 Court.

19 CLOSING ARGUMENT BY MR. NASROLLAHI

20 MR. NASROLLAHI: It's been a long two days. And this
21 time -- actually, a little bit less than 24 hours ago, I
22 stood in front of you guys and, you know, I -- I gave you
23 my spiel about how we're going to make this as
24 straightforward as possible. And you guys probably didn't
25 have any inkling of what we were going to get into.

1 I tried to warn you. I tried to say that we would get
2 into some subject matter that was some might even say
3 vulgar, if you were to talk about over a family dinner.
4 And I think I've unfortunately lived up to that
5 expectations. It's been -- this is a -- a very rough case.
6 We're dealing with a lot of rough subject matter. I think
7 rough is probably an understatement.

8 And when I say I'm going to be straight up and
9 straightforward with you, I'm going to be honest with you.
10 I'm not going to try and hide the ball. This isn't a
11 criminal case. This isn't a whodunit. This isn't a -- you
12 know, maybe the defendant did do it, but have we considered
13 all these other individuals. It's not like that.

14 We've got a conviction. And I'll -- I'll -- you're --
15 you're going to get these -- you're going to get these
16 documents in just a few minutes when we finally stop. And
17 you're going to see the -- everything that's been put into
18 evidence. You're going to see the conviction.

19 You're going to see that in Laurens County in this
20 courtroom, he signed a plea sheet and his guilty plea was
21 accepted; that he pled to criminal sexual conduct in the
22 third degree. That's going to happen. You're going to see
23 this. It's going back there with you. There's no hiding
24 that fact.

25 As far as the state's concerned, as far as their case

1 is concerned, with regard to proving those elements that I
2 said they were going to have to prove, they've got the
3 first one. David Allen Ward is a victim -- I mean, not a
4 victim -- excuse me -- far from it. He's not a victim. He
5 is a person and he has been convicted of a sexually violent
6 crime. They've got that. So I'm sorry.

7 That part's the easy part for the state. The second
8 part -- and remember, they have to prove their case, each
9 element of their case, beyond a reasonable doubt. Okay.
10 And I'll -- I'll get into that in just a second. I'm going
11 to talk about what the judge is going to tell you.

12 They've got this part checked off. Now we're talking
13 about -- he has to suffer from a mental abnormality. Okay.
14 In this case the attorney general has called Dr. Amy Swan
15 to the stand. She sat there for this morning, and I
16 probably kept her there longer than I needed to.

17 But she testified that in her firm believe, David
18 Allen Ward suffers from pedophilia. He is sexually
19 attracted to prepubescent children. In fact, her -- he --
20 she said that, if you'll recall her testimony, he is
21 sexually attracted to little girls. That's what she said,
22 okay?

23 Now, the basis of her opinion was she reviewed a
24 litany of documents. Okay. And she accepted every single
25 thing in those documents, these 33 documents that I asked

1 her about: warrants, indictments, incident reports, victim
2 statements, things like that. She read every single page.
3 And I don't -- I don't disbelieve her when she said that
4 she did.

5 She read every single page and accepted every single
6 thing in there as truth for the 2002 and 2003 ABHAN
7 convictions. Okay?

8 And based on that and his 2013/2014 CSC with a minor
9 conviction, she concluded that, pursuant to the -- the
10 DSM-V or whatever diagnostic system she used, that David
11 Allen Ward suffers from a mental abnormality -- abnormality
12 -- excuse me -- specifically, pedophilia. Okay?

13 The same information that she had, solicitors in
14 Greenville had more than a decade ago. Okay. There were
15 the allegations that he had fondled an 11-year-old child's
16 breasts, vagina, and buttocks. And she agreed with me and
17 -- that these -- this information was given to a solicitor.
18 The same information she had, they read it. And at some
19 point down the line, the solicitor decided that we're going
20 to, you know, just charge him with a misdemeanor and give
21 him probation. In fact, at some point a judge heard it --
22 and again, you're going to take this back and you're going
23 to see it -- and wrote on there "do not place on sex-
24 offender registry caseload," right here. And it was never
25 placed on the sex-offender registry. Judge specifically

1 found not to.

2 Then a little bit later, that same victim comes
3 forward and makes some of the worst allegations that you
4 could ever hear about a child. And then I -- on purpose I
5 asked her about it. She -- she said that he made him
6 perform oral sex on her. He raped her vaginally and then
7 he sodomized her -- not just once, numerous times over
8 several years. Okay? Those were the allegations.

9 Those prosecutors, those investigators in Greenville,
10 all the people associated with that case had that exact
11 same information. And on top of that, they had a previous
12 conviction for what Dr. Swan says is a sexual offense.
13 Okay? I'm going to get to what this actually is in just a
14 second.

15 But according to Dr. Swan, that was a sexual offense.
16 They had all of this information. And somehow this --
17 excuse me -- this is what we get. Again, you'll take this
18 back there. You can feel the stamp where the clerk -- the
19 clerk of court certified it. We get this negotiated
20 sentence, underlined twice.

21 Solicitor's signature is over here. Defense
22 attorney's signature is over here. Mr. Ward's signature is
23 over here. And you'll be able to read all through this.

24 He's given 5 years, suspended to probation and -- and
25 pulled with his current probation. I don't know about you.

1 There's only two things that I can get from that. Either
2 the solicitors in Greenville at this time were some of the
3 most incompetent or corrupt solicitors this state has ever
4 seen and just are -- are letting people charged with
5 heinous crimes just walk free. Because, I mean, again, he
6 was never placed on the sex-offender registry for this.

7 Or they knew something that you don't know; that --
8 something Dr. Swan didn't know. And -- and she reviewed
9 these documents, got the -- read through the victim
10 statements, incident reports, the warrants, the
11 indictments, and then got to these charges. And she
12 admitted on the stand, I thought to myself, This didn't
13 make any sense.

14 How do you go from being accused of -- of -- of
15 brutally raping a child in -- in the most unimaginable way
16 to -- to walking free on a misdemeanor? I mean, like I
17 said -- like I asked Dr. -- he could still vote after this.
18 Like, he -- he wouldn't even lose his right to vote. He
19 never would've seen the inside of a prison. Something is
20 missing. There's a big piece of information missing.

21 And I asked her about the -- her rights under the
22 statute. And she said, "I have rights under the statute to
23 request documentation in order to make a proper diagnosis
24 and to conduct an evaluation." She acknowledged that on
25 the stand.

1 She even says that she had a conversation with the
2 attorney general about how odd she thought that was. And
3 maybe I -- I just see things differently. But I would've
4 wanted to know more. It says ABHAN. That sounds bad.
5 That sounds terrible. Indecent liberties, well, that --
6 that sounds sexual, but how do you get -- you don't even
7 get a lewd act out of this? You're the prosecutor; you've
8 got this -- these statements that are so convincing that
9 they convince Dr. Swan.

10 But you can't even get a "lewd act with a minor"
11 charge out of this. It goes to ABHAN, a misdemeanor. We
12 go from a -- a criminal charge that carries the death
13 penalty to probation.

14 Okay. Now, doesn't matter because she read the
15 victim's statements. She read the incident reports,
16 secondhand information. Never called the victim. Never
17 called the victim's family. Never called the solicitors
18 who handled the case. Never tried to get a copy of their
19 file.

20 We don't have a transcript from the plea. We have no
21 clue what was said. We don't know what the fact pattern
22 was. She couldn't really tell us what ABHAN meant.

23 And based on that, we're supposed to just conclude
24 that it was sexual because she believes that the victim
25 told the truth. Well, I don't know what to tell you about

1 that. I don't -- I don't know how you, as a jury, are
2 supposed to look at that through the lens of reasonable
3 doubt and say you have everything that you need to know
4 about this. I mean, that -- that's -- that's what the
5 attorney general is supposed to do. They're supposed to --
6 to bring this to you.

7 And then -- then, we got in -- so she diagnosed him as
8 a pedophile. And then we got into the Static-99, which is
9 incredibly boring. But we went into the risk factors and
10 kept asking her about the risk. Like, he made a 5.

11 Nobody -- nobody here disagrees that it's a 5, that he
12 got a 5. Dr. Gehle said it. Dr. Swan said it. He got a
13 5. Based on the information they have, they -- 5, moderate
14 -- moderate-to-high risk.

15 And I kept asking her, "Well, the point, Dr. Swan" --
16 when she was sitting right here and I was standing right
17 here, pacing back and forth, asking her questions, I asked
18 her, "What does that mean? Like, how do these actuarial
19 tables work?" And she explained it to me.

20 What they do is you have a score. And they compare
21 you to known sex offenders in a group that were taken from
22 these studies and compiled in a group. And these numbers
23 are always changing.

24 And she said that, Okay. Well, David Allen Ward has a
25 5. So we look at these other individuals who have 5s in

1 this group. And what we see is they have these risk
2 factor.

3 And I asked her -- I was like -- I -- I tried to get
4 her to talk about the 15 percent. She acknowledged it, but
5 she kept coming back to the 85 percentile. That -- well,
6 at 85 percent -- you know, he's 85 percent riskier.

7 Did you hear how the test was done? You didn't hear
8 anything about that. You didn't hear about the -- what the
9 average score was. So hey, we don't know anything about
10 percentiles. Percentiles tell us nothing. Percentiles
11 just say that if we accept what she said at face value,
12 that he is in a higher-risk category of the one of two
13 groups.

14 Tried to talk about the -- the -- what she meant by
15 the 15 percent. We couldn't get her pinned down on that.
16 The -- the attorney general didn't mention in his closing,
17 but we don't even know what that means.

18 But then, we got into the dynamic risk factors that
19 she got into. And I -- I still -- I still don't really
20 know what -- what she was saying. He was married. Let --
21 let me -- I -- and I tried to pin her down on this. I
22 don't -- I don't think it came across. But let me go ahead
23 and get this out now.

24 In 2002 David Allen Ward spent 239 days in jail.
25 That's seven months. 2013 -- or between 2002 and 2013, he

1 spent 423 days in jail. And in 2013-2014, 565 days, nearly
2 a -- just over a thousand days in jail between 2002 and
3 2014. And he's been in prison since 2014.

4 So between 2004 and 2012, eight years, okay? And
5 we're talking about a young man. He's -- I think he's
6 about 35 now. He was 34 on -- on -- going on 35. So in --
7 if he was born in 1982, in 2002 he's just 20 years old.

8 He gets out of jail in 2004. He's about 24. So
9 between the ages of 24 and my -- if my math's wrong. I'm
10 sorry. I'm -- I -- I'm an attorney, not anyone who's good
11 with math.

12 Eight years he's out on the street. He meets a woman,
13 dates her for about a year and a half, marries her, and,
14 for some reason, that's completely discounted by her.
15 Well, he only got married one time. I mean, he -- he got
16 married. He had a -- I mean, he -- there was apparently --
17 she said that that marriage is just complete evidence of
18 his inability to have adult relationships.

19 All right. You got to convince me how the fact that
20 you know someone well enough for a year and a half that
21 they decide to go in front of God, friends, and family,
22 take vows, and agree to be married to you for the rest of
23 -- how that's evidence that there's a problem.

24 Then she talked about, well, he had a low libido; he
25 didn't want to have sex as much as his wife did. His wife,

1 not satisfied, went out and had an affair with his brother.
2 And that's somehow his fault. Well, if he would've had a
3 better -- bigger sex drive, then maybe she wouldn't have
4 cheated on him, in which case we'd be sitting here and
5 she'd be talking about how -- you know, how much of a sex
6 drive he has and that's a problem. I don't think there's
7 -- that -- that's a lose-lose when we get into David Allen
8 Ward's sex drive.

9 So what does she even know about his relationship?
10 Did she -- she call his wife? Did she check family court
11 for any filings? Did she talk to any family -- no. The
12 only person she interviewed was David Allen Ward. So we've
13 got -- we've got pure speculation on that.

14 But that's supposed to make you more concerned that
15 this man is -- is what the attorney general says he is:
16 that he's a risk; that if you let him out, it's only a
17 matter of time before he threatens the public again.

18 Now, when you go back there and talk about this, you
19 also need to remember this isn't the first person that ever
20 evaluated him. This isn't the first person that ever
21 looked at this information. The lady from DMH -- the
22 doctor from DMH, Dr. Gehle, was here. She's the lady that
23 does these evaluations. In some cases she testifies for
24 the attorney general.

25 If she sits down with an individual and, after

1 reviewing all the documentation and after interviewing that
2 -- that individual, she believes that that person suffers
3 from a mental abnormality and needs to be confined, she
4 sends her report to the attorney general and he comes to
5 court, just the same way that we've been here today, and he
6 puts Dr. Gehle on the stand. And he says, "Dr. Gehle" --
7 asking probably the exact -- leads off the exact same list
8 of questions. "Dr. Gehle, did you -- are these documents
9 necessary to, you know, reach a -- or clinical conclusion -
10 - what is a -- what is the Static-99? Did you come to a
11 diagnosis? What are his dynamic risks?" He's asking the
12 same question. And she testifies to have somebody
13 committed.

14 But in this case she reviewed the documentation. She
15 interviewed David Allen Ward. Payment was not contingent
16 on it. She was not going to see an increase in her salary
17 or decrease in her salary. She was just doing her job.

18 And she said, "I do not have nearly enough information
19 to conclude that this man suffers from any kind of mental
20 abnormality. And I don't see any of the dynamic risk
21 factors even if he did."

22 But the state disagreed with that opinion. So they
23 went and got a hired gun to do it. She got paid \$4500 to
24 spend 50 hours working on this one case, so that was about
25 average. She's done, since 2013, some -- something in the

1 neighborhood of 20/25 cases. At \$4500 that -- that's not
2 bad.

3 But she sat there and she -- we went over it, what is
4 ABHAN. In the context of these two convictions, what is
5 ABHAN? What is indecent liberties? Asked her, what does
6 that mean? Could mean something as -- as -- as far as we
7 could tell, it could include things like telling a --
8 somebody to disobey an authority figure.

9 We have no clue what that means. Nothing that the
10 state has presented brings you any closer to figuring out
11 what that means. In fact, when -- when Mr. Morrow just
12 stood up here, he asked you, what are indecent liberties?
13 I'll leave that for you to decide.

14 How are you going to stand here and argue to a jury of
15 12 people that they need to find that David Allen Ward is a
16 sexually violent predator beyond reasonable doubt when you
17 can't even sit here and tell me what these sentencing
18 sheets mean, what these charges mean, what indecent
19 liberties mean?

20 You heard Dr. Swan talk about how, if -- if someone's
21 a pedophile, 27 -- 31 -- she kept throwing out the years
22 that they've got -- that they're at risk -- 60s is -- is
23 usually around the time that the risk goes down. So we --
24 we -- he's going to be a menace till he's in his 60s. We
25 need to confined him for at least that long.

1 Do you think that you have the information you need to
2 determine that somebody needs to be confined that long?

3 We're not talking about a criminal trial. We're not
4 talking about punishing David Allen Ward. He's been
5 punished. Whether you think that those three charges, the
6 time that he got, is appropriate, that's up to you. And
7 that's up to you to think about sometime outside of your
8 jury deliberations. Because that's -- we're not here for
9 that.

10 If -- if you have an issue with these sentences, the
11 fact that somebody could be accused of these crimes and --
12 and the -- these are the sentences they get, write your
13 congressman, call your local solicitor, write him a letter,
14 do what you -- what -- what you have to do. But I'm going
15 to tell you right now: These are the sentences that he
16 got. And it was based on information that you don't have.

17 The second element -- and again, when I was breaking
18 it -- was that he suffers from a mental abnormality. We've
19 had two experts here, two individuals who are more
20 qualified than anybody else sitting in this courtroom right
21 now to make a diagnosis. And they could not agree.

22 Dr. -- Dr. Gehle doesn't work for me. She works for
23 DMH. She was court appointed; she gave her opinion. She
24 said he doesn't qualify; he's not -- he's not a pedophile;
25 and he's -- he's not a threat to the community. So we

1 subpoenaed her to court to testify.

2 The attorney general didn't like Dr. Gehle's opinion.
3 So they hired a new one. And you -- you see the -- the --
4 the thoroughness that she went over this, the conclusions,
5 that she jumped to. I mean, she said that the
6 documentation alone wasn't enough for her to make a
7 diagnosis. She -- she had her mind made up the minute she
8 finished reading the attorney general's packet.

9 There is nothing David Allen Ward could've said that
10 would've changed her mind. And then, you know, we -- we
11 got -- he got harped on because he went in and sat in the
12 evaluation with Dr. Swan. He denied doing anything wrong.

13 He hasn't -- he can -- he can sit there and -- and
14 tell Dr. Swan whatever he wants. We have these -- we have
15 these sentencing sheets. They had his signature on them,
16 right there in the middle, accepting guilt, taking
17 responsibility for the things that he did.

18 Now, it -- it's -- did he try to lie to some sort of
19 psychologist who he knew that the next 27 to 30 or even
20 more years were hanging in her hand and her diagnosis? Was
21 he trying to -- I don't know. I can't speak to that.

22 But as far as admitting to whether he had done
23 something, you have his signature. I can't deny that. The
24 -- the -- the state will stand up here and say you have all
25 you need to know that he did this. You don't know what

1 this means, but it's enough.

2 The State of South Carolina wants you to find that
3 David Allen Ward is a sexually violent predator who needs
4 to be committed. They're asking you to find that beyond a
5 reasonable doubt. They're asking you, essentially, to
6 disregard the evidence that you've spent your time today
7 listening to.

8 The complete disagreement between the experts --
9 because that's -- that's the reasonable doubt in and of
10 itself, if you have two qualified experts that can't even
11 agree. They're asking you to completely overlook all that
12 and to vote with your gut.

13 They're asking you to say there are allegations here
14 that he did something with a kid; it was a female; he pled
15 guilty to it. And then he pled guilty to this criminal
16 sexual conduct later on. That's enough for me. I could
17 care less about a diagnosis; I could care less about risk
18 factors; we just need to put him away.

19 That's what they're asking you to do. They're asking
20 you to disregard the evidence you've heard, to disregard
21 the jury instructions that this judge is about to give you,
22 and they're -- they're asking you to completely disregard
23 the oath that you swore yesterday afternoon to truly and
24 justly decide this case based on the evidence that you've
25 heard from that stand.

1 Ladies and gentlemen, when you go back there and
2 deliberate, after you talk about this, I am sure it's going
3 to be a difficult process. But the end result is going to
4 be that you will find that David Allen Ward does not fit
5 the statutory definition of a sexually violent predator.
6 Thank you.

7 THE COURT: Thank you, Mr. Nasrollahi. Mr. Morrow,
8 any -- any brief reply argument?

9 MR. MORROW: Nothing from the state, Your Honor.

10 THE COURT: Okay. Maryann, you good to keep going?

11 THE COURT REPORTER: Yes, sir.

12 THE COURT: Okay.

13 CHARGE OF THE COURT

14 THE COURT: All right. Mr. Foreman and ladies and
15 gentlemen of the jury, I'm now going to charge you the law
16 in this case. And -- and I want you to consider the charge
17 as a whole and not focus on just some portions to the
18 exclusion of other portions.

19 The State of South Carolina has brought this case
20 under the Sexually Violent Predator Act of South Carolina.
21 The state seeks the civil commitment of the respondent,
22 David Allen Ward, Jr., for long-term control, care, and
23 treatment in a secure facility. This is not -- as it's
24 been previously stated, it is not a criminal proceeding
25 seeking incarceration, but rather a proceeding seeking

1 civil commitment.

2 The State of South Carolina alleges that the
3 respondent, David Allen Ward, Jr., is a sexually violent
4 predator under the law. The respondent denies that he is a
5 sexually violent predator. And the burden of proof is
6 therefore on the state to prove by evidence sufficient to
7 satisfy each of you beyond a reasonable doubt that the
8 respondent is a sexually violent predator. If the state is
9 unable to meet that burden of proof as to one or more of
10 the elements of this claim, the respondent is entitled to a
11 finding by you that he is not a sexually violent predator.

12 In most civil cases, the petitioner only has the
13 burden of proving that a fact is more likely true than not
14 true, such as by the greater weight, or preponderance of
15 the evidence. However, in this type of case, the state's
16 burden of proof must be more powerful than that. It must
17 be beyond a reasonable doubt.

18 Under the constitution and laws of South Carolina, you
19 are the sole finders of facts in this case. I'm not
20 allowed to comment on or intimate to you in any way what I
21 think about the facts or claims in this case. You are also
22 the judges of the credibility and believability of
23 witnesses who have testified. In passing upon their
24 credibility, you may take into consideration many things
25 such as what was the manner and appearance of the witness

1 who testified. Was the witness straightforward or was the
2 witness hesitant in answering? How did the witness come to
3 know the facts that were testified to, or what was the
4 witness's ability to know these facts?

5 Is there some reason a witness would want to give
6 testimony which would help or hurt one side or the other?
7 In other words, was the witness biased or prejudiced? And
8 was the testimony of a witness strengthened or weakened by
9 other testimony or other evidence?

10 You, the jury, may believe as much or as little of
11 each witness's testimony as you think is proper. You may
12 believe the testimony of a single witness against that of
13 another witness or just the opposite. You may believe part
14 of a witness testimony and not believe the rest of the
15 testimony of that same witness.

16 And you do not determine the truth merely by counting
17 the number of witnesses presented by each side. The fact
18 that testimony is not controverted does not mean you must
19 accept it as true and undisputed. You must gauge the
20 credibility of the witness to determine the believability
21 or truth of the facts offered through the testimony of each
22 witness.

23 Now, Mr. Foreman and ladies and gentlemen, there are
24 two types of evidence which are presented during a trial,
25 that being direct evidence and circumstantial evidence.

1 Direct evidence is the testimony of a person who claims to
2 have actual knowledge of a fact, such as an eyewitness. It
3 is evidence which immediately establishes the main fact to
4 be proven.

5 Circumstantial evidence, however, is a proof of a
6 chain of facts and circumstances indicating the existence
7 of a fact. It is evidence which immediately establishes
8 collateral facts from which the main fact may be inferred.
9 Circumstantial evidence is based on inference and not on
10 personal knowledge or observation.

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than that of
15 direct evidence.

16 Now, I mentioned to you this morning concerning expert
17 witnesses. You've heard the testimony of two witnesses,
18 both being found by this Court to be an expert witness who,
19 by special knowledge, skill, experience, training, or
20 education in a particular field, and who has given their
21 opinion as an expert as to matters in which they are
22 skilled in. In determining the weight to be given to such
23 opinion, you should consider the qualifications and
24 credibility of each expert and their reasons given for
25 their respective opinions.

1 You're not bound by such opinions. Give them the
2 weight, if any, you deem their opinions to be entitled to.
3 The value and effect are -- of expert testimony is a matter
4 to be solely determined by you, the jury. No opinion of an
5 expert can be accepted in an of itself as truthful or
6 reliable, but must be weighed by you and -- and convince
7 you -- or convince your judgment, rather, beyond a
8 reasonable doubt and with the same force and effect as any
9 other fact proven in this case before you can rely upon it.

10 You must consider expert testimony in the same manner
11 as you do other testimony and give it such weight as you
12 believe it to be entitled when considered with all the
13 evidence in this case. Such expert testimony is given for
14 the purpose of helping you and not for the purpose of
15 controlling your judgment.

16 Now, the same constitution and law that makes you the
17 finders of fact and the evidence as I have discussed with
18 you makes me the judge -- the sole judge and instructor in
19 the law. You must accept as correct the law which I charge
20 and apply it to the evidence as you find it and reach a
21 verdict. If I should make an error in the law as I
22 instruct it to you, there's another time and another place
23 and another court in which that error can be considered
24 and, if necessary, corrected.

25 But for the purpose of the case today, you must accept

1 the law as I charge it. And in that regard I tell you that
2 neither you nor I, for that matter, should be concerned
3 about what we think the law ought to be, but only concern
4 yourselves with what I charge you the law, in fact, to be.

5 Now, it's been mentioned several times in this case,
6 as well as in this charge, concerning reasonable doubt. A
7 reasonable doubt is a kind of doubt that would cause a
8 reasonable person to hesitate to act. Proof beyond a
9 reasonable doubt is proof that leaves you firmly convinced.
10 And there are very few things in this world, ladies and
11 gentlemen, that we know with absolute certainty. And the
12 law does not require proof that overcomes every possible
13 doubt.

14 What is -- what is required is if, based on your
15 consideration of the evidence, you are firmly convinced
16 that Mr. Ward is a sexually violent predator, then you must
17 return a verdict for the state. If, on the other hand, you
18 think there's a real possibility that he is a not -- that
19 he is not a sexually violent predator, you must give him
20 the benefit of the doubt and find a verdict for Mr. Ward.

21 Reasonable doubt may arise from evidence that is in
22 the case or from the lack or absence of evidence in the
23 case. It is up to you, ladies and gentlemen, to determine
24 whether or not a reasonable doubt exists in this case.

25 Now, let me explain to you the elements which the

1 state must prove beyond a reasonable doubt. The first
2 element that the respondent, Mr. Ward, has been convicted
3 of a sexually violent offense. I charge you that the law
4 states that a criminal sexual conduct with a minor in the
5 third degree offense is a sexually violent offense.

6 Secondly -- or second element: that the respondent,
7 Mr. Ward, suffers from a mental abnormality or personality
8 disorder that makes him likely to engage in acts of sexual
9 violence if not confined in a secure facility for long-term
10 control, care, and treatment.

11 Inherent in these two elements is that the state must
12 prove the requirement that the respondent's mental
13 abnormality or personality disorder causes him serious
14 difficulty in controlling his behavior. In other words,
15 the state must prove beyond a reasonable doubt that the
16 individual it seeks to commit suffers from a mental illness
17 which he cannot sufficiently control without the structure
18 and care provided by a mental health facility, rendering
19 him otherwise likely to commit a dangerous act.

20 In order for you to better understand the elements of
21 the state's claim or cause of action, I'm going to define
22 for you some of the terms that I have just used. Number
23 one, mental abnormality means a mental condition affecting
24 a person's emotional or volitional capacity that
25 predisposes the person to commit sexually violent offenses.

1 This mental abnormality or personality disorder must cause
2 the respondent serious difficulty in controlling his
3 behavior. Secondly, likely to engage in acts of sexual
4 violence: That phrase means that the person's propensity
5 to commit acts of sexual violence of -- is of such a degree
6 as to pose a menace to the health and safety of others so
7 that he is dangerous to others.

8 Again, I remind you that the burden of proof is on the
9 state to prove to your satisfaction beyond a reasonable
10 doubt that the respondent, Mr. Ward, has been convicted of
11 a sexually violent offense, as I have instructed you, and
12 also suffers from a mental abnormality or personality
13 disorder that makes the respondent likely to engage in acts
14 of sexual violence if not confined in a secure facility for
15 long-term control, care, and treatment.

16 If the state carries its burden of proof and convinces
17 you beyond a reasonable doubt as to each of the two
18 elements of this cause of action or claim, then the state
19 is entitled to a finding that the respondent is a sexually
20 violent predator. If the state has not met its burden of
21 proof as to one or both of these elements, then the
22 respondent, Mr. Ward, is entitled to a finding that he is
23 not a sexually violent predator.

24 Now, ladies and gentlemen, I'm now drawing near the
25 end of my charge. And I want you to clearly understand

1 that you are not partisans or advocates for the state or
2 for the respondent. You do not serve as jurors to reward
3 your friends or punish your enemies. In this regard, you
4 have been selected by both the state and the respondent to
5 be fair and impartial jurors.

6 It is your duty, by your joint deliberations, to
7 determine the truth in this case, giving to the respondent
8 the benefit of every reasonable doubt on each and every
9 issue. Then, to the facts which you are to determine to be
10 true, you should take and apply the law which has been
11 given to you by this Court and thus arrive at a verdict
12 which speaks the truth in this case.

13 In fact, ladies and gentlemen, the word verdict, which
14 has a Latin derivative, means a true saying. Thus when you
15 have accomplished these responsibilities, you will have
16 satisfied your oath as jurors and you will have discharged
17 your duty to this Court and to the parties before this
18 Court.

19 Now, your verdict must be unanimous among the 12 of
20 you. And I have a verdict form. (And I'm going to come
21 down and show you. It's very simple, very straightforward.

22 It basically says: We, the jury, unanimously answer
23 the question as follows: Either yes, David Allen Ward is a
24 sexually violent predator. Mr. Foreman, you'll put your
25 initials there if that is your unanimous verdict.

1 If, on the other hand, you find that he is not a
2 sexually violent predator, then you would put your initials
3 right there on that line and sign and place today's date.
4 And again, your verdict must be unanimous.

5 Now, I realize that the charge I gave to you was a
6 mouthful. I told you a whole lot. And I'm going to let
7 you have a copy and take that back to the -- to the jury
8 room.

9 Now, do not start your deliberations yet. I'm going
10 to send you back to your jury room. And when -- I need to
11 talk with the lawyers to make sure that there are no
12 required changes or amendments to my charge. And if there
13 are being none, then when Mr. Bolt brings you the verdict
14 form, a copy of my final charge to you, and the exhibits in
15 this case, that will be your cue for two things to happen:
16 One, Mr. Medlin, the alternate, will need to exit the jury
17 room and come back into the courtroom; and secondly, for
18 you to begin your deliberations. But don't start yet until
19 Mr. Bolt comes back with those documents.

20 So if all 13 of you will go back to the jury room at
21 this time.

22 (Whereupon, the jury exited the courtroom at 4:05
23 p.m.)

24 THE COURT: All right. Does the state have any
25 objections or exceptions to the final charge?

1 MR. MORROW: No, Your Honor.

2 THE COURT: And from the defense ---

3 MR. NASROLLAHI: No ---

4 THE COURT: --- from the respondent?

5 MR. NASROLLAHI: No, Your Honor.

6 THE COURT: Is that a no?

7 MR. NASROLLAHI: That's a no.

8 THE COURT: Okay. All right. Thank you very much.

9 We're off the record.

10 (Off the record at 4:06 p.m.)

11 (Whereupon, the jury began deliberating at 4:07 p.m.)

12 (Off the record from 4:06 p.m. until 5:18 p.m.)

13 THE COURT: Okay. Gentlemen, I understand from Mr.

14 Bolt that we have a verdict. Okay. Let's bring the -- the
15 jury out, please, sir.

16 (Off the record briefly.)

17 (Whereupon, the jury entered the courtroom at 5:19
18 p.m.)

19 THE BAILIFF: All jurors are present, Your Honor.

20 THE COURT: Okay. Thank you, Mr. Bolt. Mr. Foreman
21 -- oh, excuse me.

22 (Off the record briefly.)

23 THE COURT: All right. Mr. Foreman, it's my
24 understanding that you have reached a verdict?

25 THE FOREPERSON: We have, Your Honor.

1 THE COURT: Okay. Without telling me what the verdict
2 is, was and is the verdict unanimous among ---

3 THE FOREPERSON: It is, sir.

4 THE COURT: --- the 12 of you?

5 THE FOREPERSON: Yes, sir.

6 THE COURT: Okay. If you'll hand the paperwork,
7 please, to Mr. Bolt.

8 THE BAILIFF: Just hand me that.

9 THE FOREPERSON: (Complied.)

10 THE BAILIFF: Okay.

11 THE COURT: All right. Madam clerk, if you will
12 publish the verdict.

13 VERDICT OF THE JURY

14 DEPUTY CLERK OF COURT: Okay. Your Honor, the -- in
15 the case of 2015-CP-30-00395, *in the Care and Treatment of*
16 *David Allen Ward*, the jury finds that he is a sexually
17 violent predator.

18 THE COURT: Okay. All right. Would either side like
19 a -- a polling of the jury?

20 MR. NASROLLAHI: No, Your Honor.

21 THE COURT: Okay. All right. Thank you. Y'all can
22 have a seat.

23 MR. NASROLLAHI: Thank you.

24 THE COURT: Thank you, madam clerk. Mr. Foreman and
25 ladies and gentlemen of the jury, first of all, let me

1 thank you very much for your jury service. I'm not
2 thanking you for your verdict, because the verdict does not
3 matter to me.

4 But what is important is that you effectively rendered
5 jury service. You were very attentive. This was not a
6 very long case. But you were very attentive, and that's
7 what we need jurors to be, is to -- to perform their --
8 their -- their duties diligently and conscientiously. And
9 that -- that -- that's the most important thing.

10 I hope your -- your time with us yesterday and today
11 has been a rewarding one in the sense of being educational
12 and that you've learned something about how at least a very
13 small part of our system works. I think I mentioned this
14 yesterday to the jury panel, maybe not; maybe y'all are
15 already selected back in the jury room.

16 But many say that serving on a jury is the second-
17 highest civic responsibility that we all have, second only
18 to serving in the military. So it is a -- a very high
19 responsibility. And I just hope that sometime in the
20 future, you will have an opportunity to once again sit on -
21 - on a jury. We have the greatest justice system in the
22 entire world. And you played a part in that today.

23 I like to shake the hands of my -- my jurors. So
24 you'll head out that way. And as you're heading out, I'll
25 -- I'll -- I'll shake your hand and thank you once again.

1 (Off the record briefly.)

2 THE COURT: Okay. Mr. Morrow, if you will prepare an
3 appropriate order.

4 MR. MORROW: Yes, Your Honor. I'll ---

5 THE COURT: Okay. You already have one in your
6 notebook?

7 MR. MORROW: I -- I do, Your Honor. There is one
8 problem on the order. The name of the defense attorney is
9 incorrect. I can ---

10 THE COURT: Okay.

11 MR. MORROW: --- e-mail you the correct order.

12 THE COURT: Why don't you just e-mail it to me. I'll
13 -- I'll ---

14 MR. MORROW: Okay.

15 THE COURT: --- be -- I'll be in an out of the office
16 first of the -- I mean, the rest of the week.

17 Anything on the record, Mr. Nasrollahi, before we
18 adjourn for the day?

19 MR. NASROLLAHI: Judge, we have ten days for our
20 posttrial motions?

21 THE COURT: You -- you want to take ten days? You've
22 got it.

23 MR. NASROLLAHI: Thank you, Judge.

24 THE COURT: Okay.

25 MR. NASROLLAHI: All right.

1 THE COURT: All right. Thank you.

2 MR. MORROW: Thank you, Your Honor.

3 THE COURT: Thank you very much. Y'all have a good
4 evening.

5 MR. NASROLLAHI: Thank you, Judge.

6 (Whereupon, the proceeding was concluded at 5:23 p.m.)

7 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 21ST
AND 22ND DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 27, 2016

State of South Carolina)
)
 County of Laurens)

In the Court of Common Pleas
 Eighth Judicial Circuit
 2015-CP-30-0395

In the Matter of the)
 Care and Treatment of)
)
)

Transcript of Record

David A. Ward,)
)
 Respondent.)
)
)
)
)
)

April 27, 2016
 Columbia, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

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

Christopher A. Morrow, Esquire
 Attorney for Applicant

Joshua S. Nasrollahi, Esquire
 Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>

No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:39 a.m.)

THE COURT: All right, gentlemen. We are on the record this morning. This is *in the matter of the Care and Treatment* -- is -- is Mr. Ward here?

MR. NASROLLAHI: No, Your Honor. We didn't have him transported.

THE COURT: Okay. All right. --- *in the Matter of the Care and Treatment of David Ward*. It's a 2015 case, File No. 395. Mr. Ward, through Josh Nasrollahi, has filed a motion to set a side judgment and for new trial. Cam Morrow is present, representing the attorney general's office.

Mr. Nasrollahi, your motion, be glad to hear from you.

MR. NASROLLAHI: Thank you, Judge. At pretrial -- and I think my objection was preserved during the trial -- I objected to the Court allowing the expert Dr. Swan to get into hearsay -- what we believe to be hearsay elements of incident reports and other documents that were presented to her by the attorney general's office.

In full disclosure to the Court, I've since researched this issue. And it appears that the Court of Appeals has found in -- a couple of exceptions allowing for hearsay to explain an expert's opinion. I feel like I -- under the, I guess, my -- my -- the requirements under the Rules of

1 Professional Conduct, I have to bring that to the Court's
2 attention.

3 But I believe that if the Court looks at those
4 decisions -- and I don't have those decisions offhand.
5 Those decisions were very limited. I believe what we have
6 here -- what the -- the Court's instruction at the motion
7 in limine was that the Court was going to allow Dr. Swan to
8 testify to essentially the -- the hearsay facts that led
9 her to -- that led her to come to her conclusions:
10 specifically, similarities of the age, race, sex, and other
11 similarities between the two victims. And if I'm recalling
12 that right, I'm sure the attorney general -- I mean, if I'm
13 recalling that incorrectly, the attorney general will
14 correct me on that.

15 But our position is, based on Dr. Swan's testimony, I
16 think it's clear that the main bulk of what she had to
17 testify, especially in those terms, was very -- I mean, it
18 -- it was just unsubstantiated, third-party hearsay.

19 THE COURT: Okay.

20 MR. NASROLLAHI: I think at one point -- I mean, she
21 -- she stated on the record that the only thing that she
22 relied on in making -- in reaching her conclusion was the
23 documentation provided to her by the attorney general. The
24 only other thing that she relied on in reaching her
25 conclusion was her interview with Mr. Ward.

1 She stated under oath that under the statute, she was
2 aware that she was allowed to conduct an investigation.
3 She was allowed to request certain documentation. And she
4 did not do that. I believe the only time that she wanted
5 something, according to what she testified to, was she
6 wanted some school records but never received those.

7 When she was questioned about some discrepancies --
8 and these are discrepancies that were important to Dr.
9 Gehle, who testified for the defense about the early-2000
10 convictions and how, like, the -- he had been accused of
11 some very heinous crimes but they had been resolved in a
12 manner that doesn't really -- there -- there just wasn't a
13 connection there.

14 She said that she did raise some sort of concerns with
15 the attorney general but never investigated that further.
16 I think that we have established that while it -- it may be
17 necessary for her to rely on this kind of information to
18 reach a conclusion, to allow her to present such -- I mean,
19 just uninvestigated, third-party, complete hearsay to the
20 jury basically denied my client a right to a fair trial in
21 this case.

22 She basically was a conduit for allegations that never
23 even -- for allegations for crimes that never even resulted
24 in the conviction which should've arisen out of them if
25 they were true. I believe that that -- this case puts the

1 Court -- is directly at odds with what the Court of Appeals
2 has already ruled on this. It -- it's a serious issue
3 when, you know -- especially when you have one -- one --
4 and I know this may be a -- a battle-of-the-experts issue.
5 But you have one counselor that says I have no clue what
6 happened in these cases in the early 2000s. It's not clear
7 from what the -- the recorded result was -- you know, and
8 one of the recorded results was a sentencing sheet that
9 says no sex-offender registry and then, the allegations.
10 There's a disconnect there.

11 I believe that that's just a backdoor means of getting
12 in untested and untried hearsay. And for that reason, I
13 believe that Mr. Ward was denied a fair trial and this
14 Court should set aside the -- the jury's decision and order
15 a new trial in this case.

16 THE COURT: Okay. All right. Thank you very much.
17 I'm -- give me just a moment. I -- I'm trying to see if I
18 can find my notes from the trial. And -- and -- and I
19 remember -- not specifically, but I do certainly remember,
20 generally speaking, our discussions concerning this issue
21 that you're raising in support of your motion.

22 Okay. Before I turn it over to you, Mr. Morrow, you
23 -- I think, just kind of in follow up with how you
24 summarized my ruling and looking at my notes, I ruled that
25 -- that I would allow and did allow a summary of the facts

1 of the prior offenses for the sole purpose of showing
2 similarity. But I did not allow Dr. Swan to -- I did not
3 allow Dr. Swan to read the -- her interviews with the --
4 the victim or victims in those prior offenses and that I
5 followed it up with a -- a curative instruction ---

6 MR. NASROLLAHI: Correct, Your Honor.

7 THE COURT: --- to -- to the jury.

8 MR. NASROLLAHI: And -- and -- and just to -- I -- I
9 believe I have -- my -- one of my arguments was -- pretrial
10 was it -- it -- it's -- I believe it's confusing for the
11 jury to hear the judge say that this is -- again, I believe
12 this was part of the curative instruction. I think this
13 curative instruction, in -- in a way has been permitted by
14 the Court of Appeals, it was confusing for the jury to hear
15 this Court instruct them that the testimony that's being
16 presented is not being presented for the truth of the
17 matter asserted. And I know I'm paraphrasing here. This
18 --

19 THE COURT: Right.

20 MR. NASROLLAHI: -- wasn't exactly what Your Honor
21 said -- and then, for them to just completely disregard
22 that as fact.

23 THE COURT: Okay.

24 MR. NASROLLAHI: And I -- there is also the issue
25 where, you know, she stated that despite doing, like,

1 nothing to further her investigation except rely on what
2 the state gave her and, you know, I believe that in -- and
3 I think I'm quoting her directly when she said, "I believe
4 the victim."

5 THE COURT: Right.

6 MR. NASROLLAHI: Like, that's why she relied on it.
7 And I believe that that's just a backdoor of, you know,
8 vouching for the credibility of the -- the victim and --
9 and basically introducing other third-party statements into
10 court.

11 THE COURT: No. I don't think that -- I don't recall
12 at least that I allowed Dr. Swan before the jury, possibly
13 in -- in the in-camera hearing. But I don't think I
14 allowed her to say, "I believe those victims in those prior
15 offenses," did I? Did I allow her to -- to -- to -- to
16 testify to that?

17 MR. NASROLLAHI: I don't know whether that happened
18 pretrial -- I can't recall whether that happened ---

19 THE COURT: I would ---

20 MR. MORROW: I believe ---

21 MR. NASROLLAHI: --- pretrial ---

22 MR. MORROW: --- that was at an in-camera hearing ---

23 THE COURT: I -- I would ---

24 MR. MORROW: --- Your Honor.

25 THE COURT: --- hope ---

1 MR. NASROLLAHI: Right.

2 THE COURT: I would hope, because of the -- the line
3 of cases that -- that we have concerning -- of course, it's
4 pretty much related to forensic interviews in -- in these
5 cases.

6 MR. NASROLLAHI: Right.

7 THE COURT: But nonetheless, as far as vouching for
8 the veracity of the -- of the victim, I -- I certainly hope
9 that I did not ---

10 MR. NASROLLAHI: I -- yeah.

11 THE COURT: --- permit her to say that in front of the
12 jury.

13 MR. NASROLLAHI: And I -- I -- I don't recall exactly
14 whether that happened. I just remember her saying that ---

15 THE COURT: Right.

16 MR. NASROLLAHI: --- as, like, the basis of why she
17 didn't ---

18 THE COURT: Okay.

19 MR. NASROLLAHI: --- do a further investigation ---

20 THE COURT: Okay.

21 MR. NASROLLAHI: --- into this.

22 THE COURT: All right. Thank you. Mr. Morrow, you
23 want to respond?

24 MR. MORROW: Yeah -- yes, Your Honor, briefly. First,
25 I -- in the footnote of -- of -- of counsel's argument

1 here, he says that at no point did the attorney general
2 indicate any exception to the hearsay prohibition, saying
3 no assertion or finding was made that the testimony did not
4 constitute hearsay, which is not -- which is not an
5 accurate representation of what happened.

6 I did argue that it was not hearsay. Specifically, I
7 argued for the curative instruction that the -- the
8 assertions of the summaries by Dr. Swan were not being
9 offered to prove the truth of the matter asserted. I even
10 suggested that curative instruction. So I -- I don't
11 believe that that is accurate.

12 Further, as far as this goes, Dr. Swan's testimony, at
13 least on -- in -- on direct was limited in -- to -- the
14 questions I asked her were: Who was the victim of the
15 offense? How old was she? How did Mr. Ward know the
16 victim? And what was the nature of the sexual abuse
17 reported by the victim, which Dr. Swan gave a very general
18 summary of that sexual abuse.

19 And I asked her: Did she receive documentation
20 concerning that offense? I asked her to identify that. I
21 went through the colloquy of identifying that
22 documentation.

23 And then, I asked her if those were the type of
24 documents that were typically and reasonably relied upon by
25 other experts in her field. And she responded in the

1 affirmative, that they were.

2 That was the sole sum of the summaries that were
3 offered into evidence in this case. It was a very brief
4 summary of the facts of the case.

5 And even if -- even if they -- you -- the Court were
6 to find that they were hearsay, it would also be -- be a --
7 a judgment of -- or -- of previous conviction under the
8 hearsay rule, under the -- an exception to the hearsay
9 rule, 803, would be allowed in. So I don't believe that
10 any of this evidence was hearsay.

11 THE COURT: Okay. All right.

12 MR. NASROLLAHI: And -- and in ---

13 THE COURT: Okay. Thank you very much. Mr.
14 Nasrollahi?

15 MR. NASROLLAHI: In brief reply, I mean, Judge, maybe
16 I'm recalling things wrong. But I don't remember the -- :
17 the attorney general's office ever standing up, pretrial or
18 otherwise, and saying, "Judge, this is not hearsay."

19 THE COURT: Right.

20 MR. NASROLLAHI: This -- we're not -- like, I don't
21 recall that. And -- and the record -- the record will
22 correct me if I'm wrong on this. But I don't recall that
23 argument. I'm -- I don't recall any specific rule or
24 exception being put forth.

25 With regard to the prior convictions, we -- we

1 stipulated to the sentencing sheets coming in. That's not
2 ---

3 THE COURT: Right.

4 MR. NASROLLAHI: The fact that he was convicted, I
5 don't believe that that was specifically an issue for us.
6 And -- and I think quite the opposite. Again, we -- we
7 stipulated to all the -- I guess, the sentencing sheets
8 coming in. And -- and Your Honor specifically ruled that
9 the indictments were to be left out.

10 THE COURT: Right.

11 MR. NASROLLAHI: But going to the -- the general
12 summary of the offense, it's not like she sat on the stand
13 and said, "Well, he abused these children." She went into:
14 Well, according to this 8-year-old child between the ages
15 of 8 and 11 or -- what was it? -- 6 and 11, it -- that he
16 made her perform oral sex on him. He had -- performed anal
17 sex on her and had vaginal sex with her. I mean, that's
18 more than just a general summary. That's just getting into
19 the specifics of -- of what was alleged to have happened.

20 I believe, again, that, you know, going back that far
21 in time, based on the uncontroverted evidence that we have
22 as to what resulted and the big gap of -- the -- the dearth
23 of evidence that we had between the time the -- the
24 allegations arose and the ultimate convictions, I just
25 believe that this was a way of getting in secondhand

1 information that wasn't -- I mean, that quite possibly
2 wasn't even good enough to take to trial in the first
3 instance in the general-sessions ---

4 THE COURT: Right.

5 MR. NASROLLAHI: --- cases.

6 THE COURT: Okay. Now, according to my notes
7 concerning her -- the -- the -- the -- the -- her testimony
8 is that -- had a CSC-third in 20 -- and -- and maybe the
9 dates might be off -- but a CSC-third from 2014 with a 10-
10 year-old and multiples times of fondling. And then, we had
11 a -- and -- and I put 2014; that may not be a correct date
12 -- but nonetheless, and then, had several ABHANS: 2003,
13 2004, age 6 to 11; kissing, fondling, intercourse.

14 I don't recall her actually detailing the type of
15 intercourse that -- that he was alleged to have taken
16 place. And -- and I understand your argument that even
17 stating intercourse, even stating fondling, should not have
18 been brought out. I -- I understand your argument. But I
19 don't think it -- it went into maybe quite as much detail
20 as maybe you recall that it -- that it had.

21 Again, these are my notes. My notes may not be -- I
22 try to keep accurate notes. But, you know, sometimes I
23 don't. Okay. All right.

24 Well, let -- let me -- I mean, this is extremely
25 important matter. And I want to give it every

1 consideration I possibly can. I'm going to look at
2 everything.

3 And -- and I appreciate, Mr. Nasrollahi, your candor
4 with the Court insofar as finding some Court of Appeals
5 cases that may -- may help the state and not necessarily
6 help you. And I -- I appreciate that. And we'll -- we'll
7 try to find those.

8 And I'll look at it and let you -- let you guys know
9 something soon as I can, okay?

10 MR. MORROW: Thank you.

11 MR. NASROLLAHI: Thank you, Judge.

12 THE COURT: All right. Thank you very much.
13 Appreciate y'all's hard work.

14 MR. NASROLLAHI: Thank you, Judge.

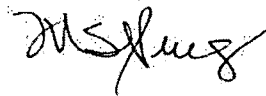
15 (Whereupon, the proceeding was concluded at 9:54 a.m.)

16 --- END OF TRANSCRIPT OF RECORD ---
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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR LAURENS COUNTY, SOUTH CAROLINA, ON THE 27TH
DAY OF APRIL, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 27, 2016

LYNN W. LANCASTER

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS)

2016 APR 29 A 11:55

IN THE MATTER OF THE CARE)
AND TREATMENT OF DAVID WARD)

ORDER

LAURENS COUNTY
CLERK OF COURT

15-CP-30-395

Mr. Ward timely filed a Motion to Set Aside Judgment and for New Trial. A hearing was held on April 27, 2016. Present at the hearing were Mr. Ward's attorney, Joshua S. Nasrollahi, and Christopher A. Morrow on behalf of the State. The basis for the Motion concerns certain evidence, deemed hearsay and inadmissible by Mr. Ward, that the Court allowed in at trial. After a careful and thorough review of the issues raised by Mr. Ward, the Court determines that the rulings by the Court at trial stand and the rulings and basis therefore placed on the record at trial are made a part hereof and incorporated herein by reference. Consequently, the Motion by Mr. Ward is respectfully denied.

SO ORDERED.



DONALD B. HOCKER
CIRCUIT COURT
EIGHTH JUDICIAL CIRCUIT

Laurens, South Carolina
4-29-16

STATE OF SOUTH CAROLINA	)	LYNN W. LANCASTER
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	CASE NO. 2015-CP-30-395
IN THE MATTER OF THE CARE	)	2015 JUN -3 A 9:30
AND TREATMENT OF	)	CONSENT ORDER FOR EVALUATION
	)	PURSUANT TO THE SEXUALLY VIOLENT
	)	PREDATOR ACT
DAVID ALLEN WARD,	)	LAURENS COUNTY CLERK OF COURT
RESPONDENT.	)	

This matter comes before me on petition of the State of South Carolina for an order requiring the Respondent, David Allen Ward, to submit to an examination and to be detained in appropriate secure facility pending a trial pursuant the Sexually Violent Predator Act (S. C. Code Ann. Sections 44-48-10 *et seq.*; hereafter "the Act"). The Respondent, through his attorney Joshua Nasrollahi, consents to this order. By his signature below Mr. Nasrollahi represents to the Court that he has consulted with his client, explained to Mr. Ward his rights under the Act, and that Mr. Ward has voluntarily consented to be evaluated pursuant to the Act.

I have considered the showing made in respect to this matter and am of the opinion that probable cause exists to find that the Respondent is a sexually violent predator as defined by South Carolina Code Section 44-48-30.

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED

That the Respondent shall be:

- (a) Confined in the Laurens County Detention Center until a final disposition of this action; and
- (b) Examined and observed at the appropriate facility of the South Carolina Department of Mental Health to determine whether the Respondent suffers from a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

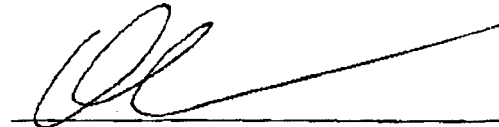
The ordered examination shall be requested by the Office of the Attorney General of South Carolina and scheduled by the examining facility as soon as possible. The Respondent is to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility. The Respondent continues under jurisdiction of this Court.

The qualified expert appointed by the Court is Marie E. Gehle, Psy.D., to examine the Respondent.

#1
DBA

Within five days of the receipt of the written report of the examination by the Office of the Attorney General of South Carolina, said office shall make a copy of such examination available to Respondent's attorney.

AND IT IS SO ORDERED.



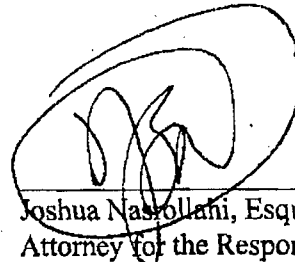
DONALD B. HOCKER
Chief Administrative Judge
Eighth Judicial Circuit
Court of Common Pleas

Laurens, South Carolina
June 3, 2015

WE CONSENT:



Christopher Andrew Morrow
Assistant Attorney General
Attorney for the State
Signed June 3, 2015



Joshua Nasrollahi, Esquire
Attorney for the Respondent,
David Allen Ward
Signed June 3, 2015

#2 ✓

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IN THE MATTER OF THE CARE AND
TREATMENT OF DAVID ALLEN WARD

Plaintiff(s)

vs.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 30-395

Submitted By: James G. Bogle, Jr.
Address: Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

SC Bar #: 755
Telephone #: 803-734-1173
Fax #: 803-734-6679
Other:
E-mail: jrbogle@scag.gov

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20____-CP-_____	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☒ Sexual Predator (510)		

Submitting Party Signature

Date: 5/21/2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

IN THE MATTER OF THE CARE)
AND TREATMENT OF:)

CIVIL ACTION NO. 2015-CP-30- 395

DAVID ALLEN WARD,)

PETITION PURSUANT TO THE
SEXUALLY VIOLENT PREDATOR
ACT

RESPONDENT.)

COMES NOW, Petitioner, State of South Carolina, by and through the undersigned, and for its cause of action herein alleges and states as follows:

1. This action is filed pursuant to the South Carolina Sexually Violent Predator Act, S.C. Code Ann. Sections 44-48-10 *et seq.* (hereafter, the Act).
2. The South Carolina Department of Corrections (SCDC), having determined that Respondent, David Allen Ward (hereafter, Respondent), had been convicted of at least one Sexually Violent Offense, referred Respondent to the Multi-Disciplinary Team for assessment pursuant to S.C. Code Ann. Section 44-48-40. **Respondent's max out date is currently on or about December 10, 2015.** His Inmate No. is 361677, and he was born in 1982.
3. The Multi-Disciplinary Team (MDT) on April 16, 2015 determined after assessment that Respondent satisfied the definition of a Sexually Violent Predator as set forth in S.C. Code Ann. Section 44-48-30, and referred Respondent to the Prosecutor's Review Committee for a determination pursuant to S.C. Code Ann. Section 44-48-60 as to whether probable cause exists to believe Respondent is a Sexually Violent Predator (attached as **PETITIONER'S EXHIBIT A**). The assessment of the Multi-Disciplinary Team is based on a review of existing records, which may include, but are not limited to the following: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions and/or adjudications; documentation, if any, of mental disorder(s); community and institutional adjustment; and risk factors.
4. The Prosecutor's Review Committee (PRC) on May 14, 2015 determined that there is probable cause to believe that Respondent is a Sexually Violent Predator as defined by statute (**EXHIBIT B**). The Prosecutor's Review Committee bases its determination on the records and reports provided by the Multi-Disciplinary Team including any information provided by the agency that prosecuted the qualifying offense.
5. The Petitioner now alleges that Respondent is a Sexually Violent Predator

LAURENS COUNTY
CLERK OF COURT

2015 MAY 20 A 08

LYNN W. LANCASTER

as defined by S.C. Code Ann. Section 44-48-30 (1), to wit:

QUALIFYING CONVICTION (EXHIBIT C):

- A. Type of Conviction: Criminal Sexual Conduct with a Minor in the third Degree.
- B. Date of Conviction: On or about October 10, 2014.
- C. Trial or Plea: Guilty Plea in Laurens County.
- D. Sentence Received: Five years.
- E. Original Charge(s): CSC with Minor in the First Degree (*nolle pros'ed*).
- G. Brief Facts:

Victim 1: 10-year-old Female/Niece.

In or about March 2013, Victim 1's mother reported to law enforcement that Victim 1's uncle had inappropriately touched her daughter on more than one occasion, starting sometime around in or about November 2012. Victim 1 reported that Respondent had touched her on her "private parts" at least nine times. The touching had taken place when Respondent had been babysitting Victim 1.

PRIOR SEXUALLY VIOLENT OFFENSE OR CONVICTION (EXHIBIT D):

- A. Type of Conviction: ABHAN.
- B. Date of Conviction: On or about June 9, 2004.
- C. Trial or Plea: Guilty Plea.
- D. Sentence Received: Five years, suspended to time served, balance suspended during probation.
- E. Original Charges: CSC with Minor in the Second Degree; and ABHAN.
- H. Brief Facts:

Victim 2: 6 to 11-year-old Female/Step Sister.

Victim 2's father reported to law enforcement that his daughter had revealed to him that she had been sexually assaulted on more than one occasion by her stepbrother. During an interview, Victim 2 stated that the sexual assaults had begun when she had been around six years of age, when Respondent had started touching her breasts and vaginal area. According to her, Respondent would also tell Victim 2 that he wanted to show her how to kiss using his tongue. When Victim 2 was about eight years old, Respondent began having vaginal, anal and oral sex with her. He also had Victim 2 perform oral sex on him.

OTHER CRIMES (EXHIBIT E):

- A. Type of Conviction: ABHAN.
- B. Date of Conviction: 03/18/2003
- C. Trial or Plea: Guilty Plea.
- D. Sentence Received: Seven years, suspended to 239 days served, suspended to 3 years' probation.
- E. Original Charge(s): See above conviction
- F. Brief Facts: No additional information available

PRIOR/OTHER OFFENSES (OTHER THAN SEXUAL) (If Known):

None.

SEX OFFENDER TREATMENT WHILE AT SCDC (EXHIBIT F):

None.

GENERAL NOTES: Risk factors common to cases of this nature include, but may not be limited to: (1) Offender age 18 to 24.9; (2) never legally married or never lived with lover for at least two years, (3) not related to victim, (4) length of sexual offending history one to six years, (5) multiple acts on a single victim, (6) more than one victim, and (7) victim age 11 or younger.

- (a) Sufficient evidence exists or will exist to determine that Respondent suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, and that the Respondent has serious difficulty in controlling his behavior, or sexual desire impulses.
- (b) In support of the State's allegations that the Respondent has a mental abnormality or personality disorder that makes him likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment, the State, in addition to any other evidence which Petitioner may present to the Court hereafter, submits the following for consideration:
 - i. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for Pedophilic Disorder are:

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
 - B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
 - C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A. **(EXHIBIT G).**
- ii. According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, the diagnostic criteria for **Paraphilic Disorder** are:
 - A. Any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners **(EXHIBIT H).**
- ii. "[P]revious instances of violent behavior are an important indicator of future violent tendencies." *Kansas v. Hendricks*, 521 U.S. 346, 358, 117 S. Ct. 2072, 2080 (1997). The Respondent's instances of violent and non-violent behavior are:
 - A. The basis of his 2014 conviction for Criminal Sexual Conduct with a Minor in the Third Degree **(EXHIBIT C, supra)**.
 - B. The basis of his 2004 ABHAN conviction **(EXHIBIT D)**.
 - C. The basis of his 2003 ABHAN charge **(EXHIBIT E)**.
 - D. The basis of his lack of sex offender treatment while at SCDC **(EXHIBIT F)**.
 - E. Respondent's full NCIC Report is available to the Court as a sealed exhibit at a Probable Cause hearing, if necessary, and will be provided to his attorney and any

Court-appointed evaluator.

- iii. The facts of the Respondent's offenses indicate the existence of a mental abnormality in that they could involve recurrent sexual urges, or behaviors involving an underage child occurring over a period of at least six months.

WHEREFORE, Petitioner requests that based on the above information the Court find there is probable cause to believe Respondent David Allen Ward is a Sexually Violent Predator and order:

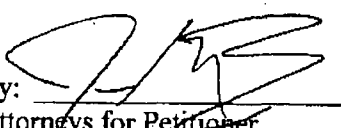
1. Respondent be taken into custody and confined in a secure facility, if he has not already been so confined;
2. Respondent be notified by the Court of the opportunity to appear in person at a hearing to contest probable cause as to whether he is a Sexually Violent Predator;
3. A hearing to contest probable cause be held within 72 hours after Respondent is taken into custody, but only if he is not already in custody;
4. Counsel be appointed for Respondent if necessary;
5. If probable cause is found at that hearing, that Respondent remain in custody and be transferred to an appropriate facility for an evaluation as to whether Respondent is a Sexually Violent Predator;
6. The Court appoint a qualified expert for such an evaluation if probable cause is found;
7. If probable cause is found a trial be held on all issues, and if Respondent is found to be a Sexually Violent Predator that he be committed to the custody of the South Carolina Department of Mental Health for long term control, care, and treatment, until such time as Respondent's mental abnormality or personality disorder has so changed that Respondent is safe to be at large and has been released pursuant to the requirements of S.C. Code Ann. Section 44-48-10 *et seq.*, and
8. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

(Signatures continued of following page.)

JAMES G. BOGLE, JR.
Senior Assistant Attorney
General

By: 
Attorneys for Petitioner
S. C. Bar No. 755
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
V: 803.734-1173
F: 803.734-6679
jbogle@scag.gov

May 21, 2015
Columbia, South Carolina

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

A

SEXUAL PREDATOR REFERRAL FORM

Offender Name: DAVID ALLEN WARD JR	Offender Number: 361677	Jurisdictional Agency: SCDC
Age: 32	County: LAURENS	Qualifying Offense(s): Guilty Plea: Trial:
Gender: Male	No. of Incarcerations: 2	Criminal Sexual Conduct 3rd
Adult 5 years	Parole Eligibility	Max-Out
Sentence:	Date:	Date: 12/10/2015
Juvenile	Parole	SFH
Guidelines:	Release Date:	Date:

The review of this case is based on the offender's records which include, but are not limited to, the following information: description of the qualifying offense(s); history of other sexual assault(s); history of other criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors. Findings are strictly based on the legal criteria set forth in Section 44-48-30 of the Sexually Violent Predator Act, and are not to be interpreted as a clinical assessment.

VOTES TO REFER/NOT REFER TO PROSECUTOR'S REVIEW COMMITTEE:

YES	NO	ABSTAIN
<u>4</u>	<u>0</u>	<u>0</u>

The following Sexual Predator Multi-Disciplinary Team Members participated in the review process:

[Signature] SCDC -- CHAIRPERSON
[Signature] SCDPPS
[Signature] DMH
[Signature] JDG
[Signature] ATTORNEY

MULTIDISCIPLINARY TEAM April 16

The offender's records were assessed by the Multidisciplinary Team on March 19, 2015, and based upon that assessment, we find that:

- ☒ The offender satisfies the definition of a sexually violent predator and a review by the Prosecutor Review Committee is warranted.
- ☐ The offender does not satisfy the definition of a sexually violent predator and a review by the Prosecutor Review Committee is not warranted.

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

B

**PROSECUTOR'S REVIEW COMMITTEE
PROBABLE CAUSE DETERMINATION**

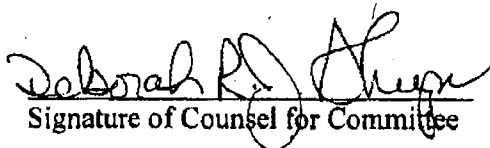
INMATE NAME:	INMATE NUMBER	PRC REVIEW DATE:
DAVID ALLEN WARD, JR.	361677	May 14, 2015
		MEMBERS PRESENT:
		John McIntosh for Alan Wilson David M. Stumbo via telephone Beebe James via telephone

DATE RECEIVED FROM MULTIDISCIPLINARY TEAM: APRIL 20, 2015

The Multi-Disciplinary Team referred this case to the Prosecutor's Review Committee pursuant to S.C. Code Ann. § 44-48-50, for review to determine whether probable cause exists to believe this person is a sexually violent predator. S.C. Code Ann. § 44-48-60. The Prosecutors Review Committee reviewed all information received from the Multi-Disciplinary Team, including without limitation: documentation of the qualifying offense as well as other sexual assault(s) or criminal convictions/adjudications; documentation of mental disorder(s); community and institutional adjustment; and risk factors.

PROBABLE CAUSE DETERMINATION:

By a vote of 2-1 (Abstained), the Prosecutor's Review Committee found probable cause to believe that this individual has been convicted of a sexually violent offense, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.


Signature of Counsel for Committee

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

C

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATELaurens
S.C.

David Allen Ward Jr.

AKA:

Race:

Sex: M

Age:

12

DOB:

SSN:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
FO: Sex / Criminal sexual conduct with minor - 3rd degree

INDICTMENT CASE#: 140530-001

AW#: 2014D1000100383

Date of Offense: 9/10/2012

S.C. Code §: 16-03-0635

CDR Code #: 3661

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0635

of the S.C. Code of Laws, bearing CDR Code # 3661

☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☒ Mandatory GPS(CSC

w/minor 1st or 2nd Act)

☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,☒ Negotiated Sentence,☐ Recommendation by the State.

TEST:

Sheek, C. Lance

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

5

d./m./yths./year or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 21-13-40 to be calculated and applied by the State Department of Corrections. Credit 565 Days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

\$

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 36-5-2995 (DUI Assessment)

\$12

\$

§ 36-1-236 (DUI Breath Test)

\$25

\$

Proviso 17.9 (Public Def/Prob)

\$500

\$

§ 14-1-213 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21411 (DUI Breath Test Fee)

\$50

\$

§ 56-5-2912(1) (Vehicle Assessment)

\$400

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

\$

TOTAL

\$

\$

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA 217.03.2011

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF LAURENS

Criminal Sexual Conduct with Minor, 3rd degree
§16-03-0655

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That David Allen Ward Jr. did, on or about September 10, 2012, in Laurens County, being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: [REDACTED] date of birth: [REDACTED] 2002, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, [REDACTED] in violation of Section 16-3-655(C) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

Assistant Solicitor

WITNESSES

Juan Galarza

Laurens County Sheriff

WARRANT NUMBER

2014D3000100388

Foreman of the Grand Jury

Date: _____

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30-1617

THE STATE

vs.

David Allen Ward Jr.

INDICTMENT FORCriminal Sexual Conduct with Minor, 3rd degree
§16-03-0655

CDR: 3661

ARREST WARRANT

2013A3010100462

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

THE STATE

13000881

against

David Allen Ward, Jr

address:

Clinton, SC 29325-5332

born:

SSN:

sex: M Race: Height: 6 3 Weight: 280

4. Finger: SC DL#: 911168607

OR: Agency ORI #: SC0300000

executing Agency: Laurens County Sheriff's Office

executing Officer: J R Galarza - 2150

Offense: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Offense Code: 0385

Offense/Ordinance Sec: 16-03-0635(A)(1)

he is/was is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

who:

RETURN

copy of this arrest warrant was delivered to defendant

on

DO NOT WRITE IN THESE SPACES

RETURN WARRANT TO:

General Sessions
100 Hillcrest Square
P.O. Box 287
Laurens, SC 29360

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

Personally appeared before me the affiant J R Galarza

being duly sworn deposes and says that defendant David Allen Ward, Jr

did within this county and state on or about 9/10/2012

violate the criminal laws of the State of South Carolina for ordinance of ☒ County/ ☐ Municipality of Laurens

in the following particulars:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That between September 10, 2012 and November 10, 2012 in the County of Laurens, one David Allen Ward Jr did engage in sexual battery with a minor by fondling the victim over her clothing, the victim being less than eleven years old and the defendant being more than three years older.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Laurens

Affiant's Address 216 West Main Street
Laurens, SC 29360

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/10/2012 defendant David Allen Ward, Jr

did violate the criminal laws of the State of South Carolina for ordinance of

☒ County/ ☐ Municipality of Laurens) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Given to and subscribed before me on 9/20/2013

Paul Dean Lyles Magistrate

Judge Code: 5787

Judge's Address P.O. Box 925
Laurens, SC 29360

Judge's Telephone (864)683-4485

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

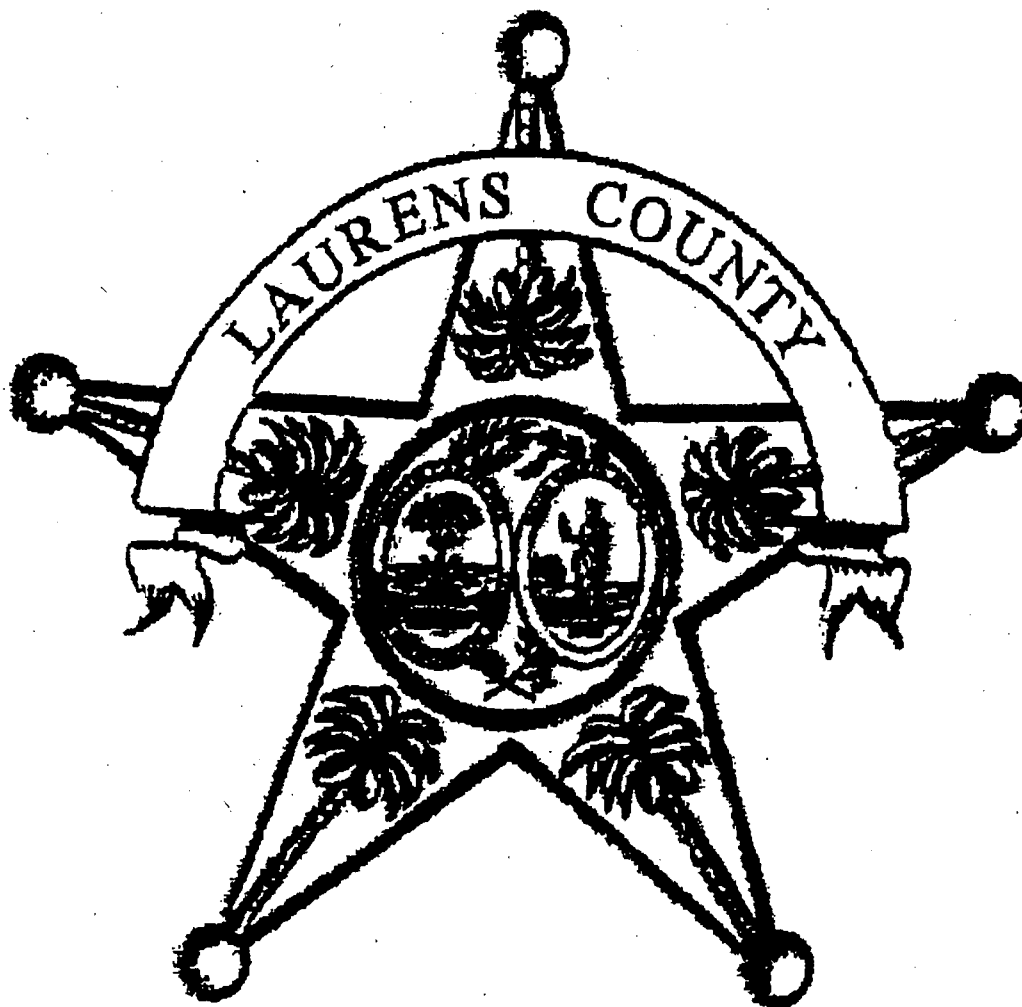
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OFFICE OF THE SHERIFF
LAURENS COUNTY, SOUTH CAROLINA



INVESTIGATING OFFICER: SGT. J. R. GALARZA
CASE NUMBER: 13000661



LAURENS COUNTY SHERIFF'S OFFICE

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INCIDENT NUMBER: 13000661

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X	VICTIM RIGHTS / NOTIFICATION FORM
X	STATEMENT (VICTIM)
X	STATEMENT (DEFENDANT)
N/A	STATEMENT (WITNESS)
N/A	COPY OF SEARCH WARRANT
N/A	COPY OF TELEPHONE RECORDS
N/A	COPY OF POWER BILL
N/A	COPY OF MEDICAL RECORDS
X	COPY OF LAB REPORTS
N/A	COPY OF DATAMASTER REPORT
N/A	COPY OF AUTOPSY REPORT
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X	COPY OF ARREST WARRANT
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X	COPY OF DRIVER'S RECORD
X	COPY OF CRIMINAL HISTORY
X	MISC. PAPER WORK



LAURENS COUNTY SHERIFF'S OFFICE

SUMMARY REPORT



CASE INFORMATION	CASE NUMBER:	11800561	INCIDENT DATE:	September 10, 2012
	COMPLAINANT:	SALWAY, JENNIFER	COMPLAINANT PHONE:	[REDACTED]
COMPLAINANT INFORMATION	ADDRESS:	[REDACTED]		
	VICTIM # 1:	[REDACTED]	VICTIM # 1 PHONE #:	[REDACTED]
VICTIM INFORMATION	ADDRESS:	[REDACTED]		
	VICTIM # 2:	[REDACTED]	VICTIM # 2 PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		
DEFENDANT INFORMATION	SUBJECT:	WARD JR, DAVID ALLEN	SUBJECT PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		
CRIMINAL CHARGES	CHARGE # 1:	CRIMINAL SEX CONDUCT W/ MINOR OR ATTEMPT- VICTIM UNDER 11 YRS OF AGE 1ST DEGREE		
	CHARGE # 2:	[REDACTED]		
	CHARGE # 3:	[REDACTED]		
	CHARGE # 4:	[REDACTED]		
	CHARGE # 5:	[REDACTED]		
CO-DEFENDANT INFORMATION	SUBJECT # 2:	[REDACTED]		
	SUBJECT # 3:	[REDACTED]		
	SUBJECT # 4:	[REDACTED]		
EVIDENCE INFORMATION LISTED	[REDACTED]			
	[REDACTED]			
	[REDACTED]			
	[REDACTED]			
WITNESS INFORMATION	WITNESS # 1:	SALWAY, JENNIFER	WITNESS # 1 PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		
	WITNESS # 2:	[REDACTED]	WITNESS # 2 PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		
	WITNESS # 3:	[REDACTED]	WITNESS # 3 PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		
	WITNESS # 4:	[REDACTED]	WITNESS # 4 PHONE #:	[REDACTED]
	ADDRESS:	[REDACTED]		



LAURENS COUNTY SHERIFF'S OFFICE

Deputy Input In Criminal Case



INCIDENT NUMBER: 13000661

DEPUTY: SGT J.R. GALARZA

DEFENDANT: WARD JR, DAVID ALLEN

CHARGE # 1: CRIMINAL SEX CONDUCT W/ MINOR OR ATTEMPT- VICTIM UNDER 11 YRS OF AGE 1ST DEGREE

CHARGE # 2:

CHARGE # 3:

CHARGE # 4:

WARRANT/TICKET #: 2011A3010100462

THIS SOLICITOR HAS THE RESPONSIBILITY FOR THE PROPER DISPOSITION OF EACH AND EVERY CASE. YOUR INPUT IS VERY IMPORTANT TO THE SOLICITOR, AND HIS STAFF, IN CARRYING OUT THIS RESPONSIBILITY AND MAKING THE FINAL DECISION ABOUT THIS DISPOSITION. PLEASE COMPLETE THIS FORM AND PLACE IT IN THE CASE FILE. PLEASE FEEL FREE TO CALL SOLICITOR JERRY PEACE AT (864) 984-2202, IF YOU HAVE ANY QUESTIONS.

SOLICITOR JERRY PEACE

☒ I WISHED TO BE NOTIFIED FOR ANY PLEA.
MY TELEPHONE NUMBERS ARE: (HOME)
(WORK)
(MOBILE)

☐ I RECOMMEND THAT YOU USE YOUR DISCRETION IN THE DISPOSITION OF THESE CHARGES.
☐ I RECOMMEND OR HAVE NO OPPOSITION TO THE FOLLOWING:

DISMISSAL: ☐
PTI: ☐
PROBATION: ☐

☒ I RECOMMEND INCARCERATION BECAUSE:

DUE TO THE DEFENDANT'S PAST HISTORY, MR. WARD JR. HAVE BEEN CHARGED FOR THE SAME OR SIMILAR TYPE OF INCIDENT IN THE YEAR OF 2003, BY GREENVILLE COUNTY SHERIFF'S OFFICE. FURTHER INFORMATION WILL BE ATTACHED TO THE FOLDER.

ADDITIONAL INFORMATION

ARE THERE ANY CO-DEFENDANTS? YES ☒ NO ☐

IF YES, PLEASE GIVE NAMES:

ARE YOU CURRENTLY WORKING OR PLANNING TO WORK THIS DEFENDANT? YES ☐ NO ☒

IS THE CI AVAILABLE FOR COURT? YES ☐ NO ☒

OTHER COMMENTS



LAURENS COUNTY SHERIFF'S OFFICE

SYNOPSIS



INCIDENT NUMBER: 13000661

BETWEEN THE MONTHS OF SEPTEMBER 10, 2012 AND NOVEMBER 10, 2012 THE DEFENDANT MR. DAVID ALLEN WARD JR. DID ENGAGE IN A SEXUAL BATTERY WITH A MINOR BY FONDLING THE VICTIM OVER HER CLOTHING, THE VICTIM BEING LESS THAN ELEVEN YEARS OLD AND THE DEFENDANT BEING AN ADULT. THIS INCIDENT DID TAKE PLACE IN THE COUNTY OF LAURENS.

:KRG

700	ENTO

ON THE ABOVE DATE AND TIME AT THE LCSD RQ SPoke WITH THE COMPLAINANT ABOUT THE VICTIM'S UNCLE TOUCHING HER ON HER PRIVATE PARTS. THE COMPLAINANT STATED THAT THE VICTIM TOLD HER THAT THE SUBJECT DID THIS MORE THAN ONE TIME STARTING IN NOVEMBER OF 2012. THIS HAPPENED WHEN THE VICTIM WAS VISITING THE SUBJECT AT HIS RESIDENCE: CN HWY 78. THE COMPLAINANT STATED THAT SHE DOES NOT KNOW THE ADDRESS OF THE HOUSE BUT IT IS ACROSS FROM THE GRAVE YARD (PINE LAWN) ON HWY 78 OUT OF CLINTON GOING TO JOANNA. THE VICTIM STATED THAT THE SUBJECT DID TOUCH HER PRIVATE AREA BUT DID NOT PUT HIS HANDS INSIDE HER PANTS. THE COMPLAINANT STATED THAT THE SUBJECT HAS BEEN CHARGED WITH THIS SAME THING BEFORE IN GREENVILLE. THE COMPLAINANT STATED THAT SHE DOES WANT TO PRESS CHARGES ON THE SUBJECT. THIS CASE HAS BEEN TURNED OVER TO INVESTIGATION.

		JURISDICTION OF THE LAW ENFORCEMENT AGENCY				JURISDICTION OF RECEIVING LAW ENFORCEMENT AGENCY	
PROPERTY	TYPE (GROUP)						TOTAL VALUE
	Stolen						
	Carjacked						
	Carjacked						
	Repossessed						
	Stolen						
ADDITIONAL INFORMATION	STOLEN IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☐ YES ☒ NO	☐ ACTIVE ☐ UNFOLLOWED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
	REASON FOR RECEIPTIAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ DIVERSION SERVED 4. ☐ VOTER DECLINED COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER	
	SOT. JEFFERY B. TUCKER	33/08/2013	223	CAPTAIN GUANE HOWARD		33/08/2013	203
FOLLOWUP INVESTIGATION OFFICER							
			YES ☐ NO ☒ SERGEANT JUAN R. GALARZA		03/08/2013	1-20	

INCIDENT REPORT SUPPLEMENTAL

Page #: 1

Case Number: 13000861

Officer: 2035 GALARZA, JUAN

Date Entered/Changed: 03/21/2013

Reviewer:

Review Date:

STATED STATEMENT OF INVESTIGATION: ON 18 MARCH 2013, I/O MET WITH MR. JENNIFER SALWAY AND HER DAUGHTER (VICT) AT THE SHERIFF'S OFFICE. I/O CONDUCTED AN INTERVIEW WITH [REDACTED] AND MR. SALWAY IN REFERENCE TO THE INCIDENT. I/O QUESTIONED [REDACTED] ABOUT THE ALLEGATIONS AND SHE [REDACTED] DISCLOSED THAT THE (SUN) NEON SHE CALL'S UNCLE DAVID HAS PUT HIS HAND ON HER PRIVATE AREA, AND WHEN SHE WOULD TRY TO MOVE AWAY HE WOULD HOLD HER BACK FROM MOVING. [REDACTED] STATED THAT THREE INCIDENTS OCCURRED AT LEAST NINE TIMES. I/O DID ASK [REDACTED] TO GIVE A POSSIBLE TIME WHEN THE INCIDENT OCCURRED, ACCORDING TO [REDACTED] SHE GAVE A TIME FRAME BETWEEN SEPTEMBER AND NOVEMBER OF 2012. [REDACTED] DISCLOSED THAT INFORMATION BY STARTING IT WAS JUST AFTER SCHOOL BECAME AND LAST INCIDENT BEING BEFORE TRANSPORTING. [REDACTED] STATED THAT THE (SUN) UNCLE DAVID TOUCHED HER PRIVATE AREA OVER HER CLOTHING AND WHEN'S UPON ANYTHING ELSE. [REDACTED] ALSO DISCLOSED THAT THE SUBJECT ALSO TOLD HER NOT TO SAY ANYTHING TO HER MOTHER. [REDACTED] STATED TO I/O THAT SHE FEEL UNCOMFORTABLE AND WAS SHOCK WHEN HER UNCLE DAVID WOULD TOUCH HER IN THAT MANNER. [REDACTED] ALSO STATED THAT THE INCIDENT DID TAKE PLACE WHEN UNCLE DAVID WOULD BASTARD HER (VICT) AND HER SISTER AT HIS RESIDENCE.

ON 19 MARCH 2013, I/O SGT. GALARZA, SGT. TUCKER, AND CPT. MOSE WENT TO VISIT MR. DAVID ALLEN WARD JR. (SUN) AT HIS RESIDENCE FOR QUESTIONING ABOUT THE ALLEGED ALLEGATION AGAINST HIM. I/O ASK MR. WARD IF HE WOULD COME TO THE SHERIFF'S OFFICE TO TALK ABOUT THE ALLEGATIONS, MR. WARD AGREED TO DO SO. ONCE AT THE SHERIFF'S OFFICE I/O SGT. GALARZA ADVISE MR. WARD OF HIS RIGHTS AT WHICH TIME HE (MR. WARD) WAIVED HIS RIGHTS. I/O ASK MR. WARD QUESTION'S DUE TO THE INCIDENT BEFORE. MR. WARD COOPERATED BY ANSWERING QUESTION'S AND CONFESSED TO TOUCHING [REDACTED], AT THE SAME TIME MR. WARD STATED THAT HE DIDN'T DO IT INTENTIONALLY. MR. WARD DID AGREE TO WRITE A STATEMENT WHICH STATES HIS ACTIONS REFERENCE TO THE INCIDENT.

ON 20 MARCH 2013, I/O SGT. GALARZA MET WITH THE MAGISTRATE JUDGE TO OBTAIN AN AFFIDAVIT FOR CSC- W/ A MINOR VIOLATION. MAGISTRATE JUDGE REVIEWED THE CASE FILE AND GRANTED THE WARRANT FOR THE CHARGES MENTIONED. LATER THAT AFTERNOON I/O SGT. GALARZA AND DEPUTY PATTERSON ARRESTED MR. DAVID ALLEN WARD JR. AT WHICH TIME DEPUTY PATTERSON TRANSPORTED THE SUBJECT TO THE JOHNSON DETENTION CENTER IN LAURENS COUNTY.

AGENCY I.D. 300300000		DATE/TIME OF ARREST 03/20/2013 2000		BOOKING REPORT LAURENS COUNTY SHERIFF'S OFFICE		CASE NUMBER 1,3,0,0,0,6,6,1	
DEFENDANT NAME (LAST, FIRST, MIDDLE) WARD, DAVID ALLEN JR						RACE W	SEX M
DATE OF BIRTH 10						DOCKET NUMBER	
DOB	ETH	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER	
10	W	5-3	210	BLK	BLU	NONE	
ADDRESS (CITY AND STREET) CLINTON						STATE SC	ZIP CODE 29325
CITY						STATE	ZIP CODE
CLINTON						SC	29325
ALIAS DRAGON						DRIVER'S LICENSE NUMBER	STATE
GREENVILLE, SC USA							SC
EMPLOYER OR OCCUPATION CONCEPT STAFFING		NEXT OF KIN MARY BELL		MOTHER		ADDRESS (CITY AND STATE)	
BOOKING OF DEFENSE NAME		NUMBER		ARRESTING OFFICER		AGENCY	
DET. DETUTY BRIAN J BEAMON		88780		SERGEANT JUAN N. GALAZA		LAURENS COUNTY	
ARRESTED		YES		WEAPON TYPE		NUMBER	
JUVENILE DISPOSITION		1. HANDLED, RELEASED		2. REFERRED TO OTHER AUTHORITY		J-This Jurisdiction S-Other O-Outside State U-Unknown	
ADDITIONAL CASE NUMBERS						MORE IN REMARKS	
IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A B C							
CHARGE I.D.	208	A		B		C	
CHARGE	180 / CRIMINAL SEXUAL CONDUCT						
STATUTE	16-03-0655 (A) (1), 0656 /						
BOOKMARK	2013A3010100462						
BOND AMOUNT							
BOND TYPE	BOND DENIED						
RECEIPT DATE							
DISPOSITION							
	DAYS	AMOUNT	DAYS	AMOUNT	DAYS	AMOUNT	
SENTENCE							
TIME SERVED							
GOOD TIME							
BALANCE							
PAY							
RECEIPT NUMBER							
RELEASE DATE		TIME	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO		
SIGNATURE OF RECEIVING OFFICIAL X						LIST REMARKS BELOW	
TRIAL DATE: / /						REMARKS: ON 03-30-13 RELEASED BLACK WALLET AND BLACK ZIP	
CELLPHONE TO MARY ADAMS. AL-TEAM.							
TOTAL RESTITUTIONS (IF ANY)				TOTAL RESTITUTIONS COLLECTED			
DEFENDANTS PERSONAL PROPERTY RECEIPT				TOTAL CASH AT TIME OF ARREST		\$ 0.00	
QUANTITY	ITEM			QUANTITY	ITEM		
1	PAIR OF PANTS						
1	SHIRT						
1	BLACK BELT						
1	COAT						
1	PAIR OF SHOES						
1	BLACK WALLET W CONTENTS						
1	SET OF KEYS						
1	BASIC CELL PHONE						
I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							
X DEFENDANT'S SIGNATURE AT THE TIME OF ARREST							
OFFICER							
I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.							
X							
From: J-LA-0017193							

PAGE NO 1 OF 1 PAGES

VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF Lawrence

PERSONALLY appeared before me: J.B. Tucker

who 'stayed

"My name is

My address is

Date of Birth:

Social Security Number:

Phone Number:

I completed the 2nd grade in school, and I can ~~cannot~~ read and write.

Before answering any questions or making any statements,

• a person who identified himself as

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law for the offense or offenses concerning which the following statement is being/are made; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promises or hope of reward, without fear or threat of physical harm, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whatsoever.

My uncle touched my privet and he
done it when my sister was in the bath
room and my little brother was in a room
playing with his toys.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and sometimes, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 11:59 A.M. on the 8 day of Mar, 2013

SWORN TO AND SUBSCRIBED TO BEFORE

ME THIS DAY OF 20

Signature of person giving voluntary statement

WITNESSES

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires:

WITNESS:

PAGE NO 1 OF 2 PAGES

VOLUNTARY STATEMENT

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

PERSONALLY appeared before me _____, who states:

"My name is Daniel Allen Wood Jr. My address is _____

Date of Birth: _____, Social Security Number: _____, Phone Number: _____

I completed the 9 grade in school, and I can cannot read and write.

Before answering any questions or making any statements, _____

a person who identified himself as _____
 duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statements I make can and will be used against me in a court of law for the offense or offenses concerning which the following statement is before a law officer; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, force or offer of force, without leniency or offer of leniency, by any person or persons whatsoever.

To Daniel A. Wood Jr. is no way intentionally touched any one inappropriately. I do know of a few incidents it may have been possible. One example is at one time I was getting off the couch and she went to stand up without to give me a shove to get by. I don't know I bumped into her when I went by and do not know. I told her I was sorry to knock her down and went to the bathroom. There were times when we would watch movies on my computer and I would wear my own bikini whenever was beside me. At times I would reach over her to get my drink of the table beside my desk. At this time my couch was in front of my desk as it used always is until I rearranged last week end. For sleeping arrangement they would sleep on a mattress in the floor between my kitchen and living room. I would sleep on the couch. The bed was in there because I only have 2 electric heaters and my bedrooms are hard to heat due to lack of insulation. I still have my bed in the living room but it is now in front of my couch. I normally got there Friday nights and they would be picked up Sunday morning. At times I would get my nephew during the week. I was asked if I had any cause to believe she was lying and I do not know. What I do know is that I wouldn't do anything to her. I have

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 2045 P.M. on the 19th day of March, 2013.

SWORN TO AND SUBSCRIBED TO BEFORE

ME THIS _____ DAY OF _____, 20____

Signature of person giving voluntary statement

WITNESS: A. B. Gallen

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires _____

WITNESS: _____

PAGE NO. 2 OF 2 PAGESVOLUNTARY STATEMENT
SUPPLEMENTAL

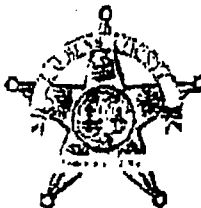
Statement of, Continued.

always been account is one way or another. I love them as my own. I was asked if I remember any instances I might have done and I do not except for what I stated earlier. At this time I do not recall any other instances. I was ask the last time I babysat them, about 3 or 4 weeks ago my sister Heather brought them over at a Saturday night for me to keep. They came in and went to bed. About 20 minutes later she showed back up to pick them up because she ~~wasn't~~ needed at work. Before that I believe the last time was about 2 weeks prior. I didn't babysit every weekend. They usually called me a day before to see if I could or if I had any plans. They would usually be on the computer watching netfix or playing playstation. I tried to let them be to themselves unless they started fighting. At that time I would not let them play games or watch movies. Every time they were picked up I told either my sister or their mom about how they were. I was asked if I've had any thought about doing anything to a child I have got. I was asked how ~~old~~ old my wife was when we got together and how long we have been married. We got together in march 2008 I ~~believe~~ believe she was 19 at the time. We got married October 4, 2008. 3 days after she turned 20. I was asked if my mother's separation had any affect on how I was. It did put me in a deep depression for a few months. During that time I don't remember if I got the kids, but I don't believe I did. I'm trying to remember more, but I'm half asleep right now.

Person giving statement to place initials behind
last word of statement as appears on last page.
Signature of person giving voluntary statement

Office of the
Sheriff

Ricky W. Chastain



Advisement of Rights

Case Number: 13000661 Date: 3-19-13 Time: 1835 PM

Before we'll ask you any questions you must understand your rights.

- You have the right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we'll ask you any questions and to have him/her with you during questioning.
- If you have no money to pay a lawyer's fee, the court will appoint one to represent you without cost if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

Please Initial Your Responses

Do you understand each of these rights I have explained to you?

Yes ☒ No ☐

Do you want a lawyer?

Yes ☐ No ☒

Do you want to answer questions now?

Yes ☒ No ☐

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

[Signature]
Witness

[Signature]
Signature

[Signature]
Witness

1837 PM
Time

26/03/2013 13:48 6643302893

THE CHILD'S PLACE

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Date(s) of Interview: April 29, 2013

CHILD INFORMATION

Child's Name: [REDACTED]	Gender: Female
DOB/Ages: [REDACTED] 10 years old	Race: White
School/Grade or Daycare: Hickory Tavern Elementary: 3 rd Grade	
Legal Guardian/Relationships: Jennifer Salway / Mother	
Person Accompanying Child/Relationships: Jennifer Salway / Mother	

AGENCY INVOLVEMENT

- Reason for referral:
☒ Sexual Abuse ☐ Physical Abuse ☐ Other _____
- Law Enforcement Agency: Laurens County Sheriff's Office
 Investigator: Bobby Galarza
- Department of Social Services: N/A
 Caseworker:
- Did EPC/Relative Placement Occur? No

FAMILY CONSTELLATION

All individuals living in the home with the child, including non-relatives:

Name	Age	Gender	Relationship
Jennifer Salway	34	Female	Mother
[REDACTED]	12	Female	Sister
"Aunt" Heather Ward	33 or 34	Female	Mother's Friend
[REDACTED]	4	Male	Heather's son

SPECIAL ACCOMODATIONS ASSESSMENT

Child	Yes	No	Comments:
Speech/Hearing difficulties	☐	☒	
Special school placements	☒	☐	[REDACTED] is in Montessori classes. [REDACTED] has resource classes for Math and Reading.
Diagnosed developmental delays	☒	☐	Ms. Salway reported that [REDACTED] has a

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THE CHILD'S PLACE

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Forensic Interview Summary Report
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Other diagnosed conditions ☐ ☒ learning disability with Math.

What is the child's primary language? English

CHILD BEHAVIOR HISTORY

Does the child have a history of any of the following behaviors:

	YES	NO	Comments
Aggressive/Angry Behavior	☒	☐	Ms. Salway reports that [REDACTED] will "fly off the handle". [REDACTED] yells and throws stuff.
Hyperactivity	☐	☒	
Sleep Disturbances/Nightmares	☐	☒	
Enuresis (wetting) or Encopresis (soiling)	☒	☐	[REDACTED] wets the bed nightly. She wears a pull-up. Ms. Salway reports that [REDACTED] has wet the bed her entire life.
Depression	☐	☒	
Headaches/Stomachaches	☐	☒	
Attempts to Hurt Self/Others	☒	☐	[REDACTED] left a note on her mother's bed and said that she wanted to die. Mother called the school counselor and they did a risk assessment with [REDACTED].
Sexual Acting Out	☒	☐	[REDACTED] was caught touching a friend who is also around 10 years old.
Other Allegations of Abuse	☐	☒	
Changes in Eating Habits/Weight	☐	☒	
School Problems/Grade Fluctuation	☐	☒	
Hurting Animals/Setting Fires	☐	☒	

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THE CHILD'S PLACE

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Exposure to Pornography	☐	☒	
Running Away	☐	☒	
Regressed Behavior	☐	☒	
Previous exams and/or interviews for sexual/physical abuse before?	☒	☐	Bobby Galarza (Laurens County Sheriff's Office) briefly interviewed [REDACTED]
Other	☐	☒	

PARENTAL SUPPORT IMPRESSIONS/SAFETY CONCERNS

Does the parent appear to support and believe the child? What risk factors, if any are present regarding the target child or other children in the home? Ms. Salway appeared to believe and support her daughter. [REDACTED]

ALLEGATION HISTORY

1. **Historian/Relationships:** Jennifer Salway / Mother
2. **Allegations:** Ms. Salway stated that [REDACTED] was staying at a friend's house ([REDACTED]) and was caught touching [REDACTED]. [REDACTED] mother asked [REDACTED] if anyone has ever touched her. [REDACTED] indicated that David Ward has touched her. Ms. Salway indicated that [REDACTED] refers to David as her Uncle. Ms. Salway said that David is not [REDACTED] Uncle. David is Ms. Salway's best friend's brother.
3. **Last known date of alleged perpetrator/child contact:** February 2013
4. **Date of disclosure:** 3/8/13
5. **Date of alleged incident:** Unknown; Ms. Salway thinks that David started touching [REDACTED] two weeks after November 2nd, 2012.

ALLEGED OFFENDER INFORMATION

Names: David Ward	Gender: Male
Age: 30	DOB: [REDACTED]
Race: White	
Criminal History: Ms. Salway said that she thinks David Ward was charged with assault for touching his step sister.	
Alcohol/Drug Use: Unknown	

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THE CHILD'S PLACE

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Forensic Interview Summary Report
 Salway, S. / Page 4 of 7

Mental Health History: Unknown
Employments: Ms. Salway stated that David Ward works in Clinton but was unsure of where.
Marital Status/Children: Separated / 4 month old son
Previous allegations of abuse/perpetration? According to Ms. Salway, David Ward has been accused before of touching his step sister.
Other:

INTERVIEW SUMMARY

1. Individuals Viewing Interviews: N/A
2. Competency Assessments: See chart below

	ASSESSED? Y = Yes, N = No N/A = Not Age Appropriate
Concepts (esp. for use with young or delayed children)	
a. Numbers	N/A
b. Colors	N/A
c. Age	Y
Comments: Savannah stated that she is 10 years old.	
Body Parts	
a. General	Y
b. Genital	Y
Comments: Savannah labeled the following parts on the female anatomical drawing: private (breasts), private (vagina), and private (buttocks). Savannah labeled the following parts on the male anatomical drawing: private (chest), private (penis), and private (buttocks).	
Truth vs. Lie / Right vs. Wrong Task	N/A
Comments: This task is completed with children ages 4-7 years old.	
Rules of Interview Room	
a. No Guessing	Y
b. Correct the interviewer if needed	Y
c. Tell the truth	Y
Comments: The rules were introduced and reinforced throughout the interview.	

3. Forensic Interview Protocol used: *Child First*, a semi-structured RATAC protocol

4. Did the child make a disclosure of abuse? ☒ Yes ☐ No ☐ Other

Comment:

If yes: How did the child demonstrate the alleged abuse?

☒ Verbally ☐ Drawing ☐ Dolls ☐ On Self ☐ Writing

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THE CHILD'S PLACE

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If yes: Was there a delay in the child disclosing abuse? ☒ Yes ☐ No
Comments: It is not uncommon for child sexual abuse victims to delay disclosure.

6. Summary of Statements by Child:

I oriented [redacted] to the interview room and engaged her in rapport building questions. [redacted] listed the following during the family circles activity: Mom-Jennifer, Aunt-Heather, Aunt-Karl, Aunt-Julia, Uncle-Mickey, Grandma-"Mamaw", [redacted] sister (12), Papa-Sid, [redacted] Aunt Heather's son (4), Tanya-Momma's best friend, [redacted] Tanya's daughter (1), and [redacted] Tanya's son (7). [redacted] said that she lives with her momma and her sister, [redacted] in a trailer.

I asked [redacted] what she knew about coming to The Child's Place. [redacted] only knew that her mom said she had to come here.

I introduced the anatomical drawings to [redacted]. [redacted] participated in labeling the body parts on the anatomical drawings (Please see the Competency Assessment chart above and the anatomical drawings). I asked [redacted] if there are any places on the body that no one is supposed to touch. [redacted] indicated the private parts (breasts, chest, vagina, penis and butt) are the places that no one is supposed to touch. I asked [redacted] if anyone has touched her on any of the places that no one is supposed to touch. [redacted] indicated that David Ward has touched her on her private (breasts) and private (vagina). [redacted] said she didn't want David to touch her and she didn't like it when David touched her. [redacted] indicated that she was 9 years old when David started touching her and 10 years old the last time that David touched her. [redacted] said that David started touching her in the winter time. [redacted] said that David touched her private (breasts) more than one time with his hand. [redacted] said that David touched her private (breasts) on top of her clothes. [redacted] denied David said anything when he touched her private (breasts). [redacted] said that she would ask David to stop but David didn't say anything. [redacted] said that she was at David's apartment in the living room when he touched her. [redacted] explained that David babysat her, [redacted] and [redacted] while [redacted] mother and Heather were at work. [redacted] explained that her mother and Heather worked at night time. [redacted] indicated that she would spend the night at David's apartment. [redacted] said that she would be alone in the living room with David when he would touch her. [redacted] explained that [redacted] would be in the play room when David would touch her. When [redacted] would go to the bathroom, David would touch [redacted].

[redacted] said that David touched her private (vagina) on top of her clothes one time. [redacted] said that she was sitting on a chair in David's living room when he touched her private (vagina). [redacted] said that the chair is tan and has designs on it. [redacted] said that the chair is close to the couch. [redacted] said that it was just her and David in the living room. David was on the couch and reached over and touched her private (vagina) on top of her clothes. [redacted] said that it felt weird when David touched her private (vagina). [redacted] indicated that she was 10 years old when David touched her private (vagina). [redacted] denied that he has touched her anywhere else on her body. [redacted] denied anyone ever saw David touch her. I asked

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THE CHILD'S PLACE

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██████████ if David did anything else that made her feel uncomfortable. David told ██████████ that if she told her momma about the touching he would do something. ██████████ said that when David said that it made her feel like it wasn't ok to tell her momma. ██████████ indicated that David told her more than one time not to tell her momma.

██████████ described David's living room (See DVD). ██████████ indicated that David has a TV on a stand with an Xbox. ██████████ said that David has a computer in the living room. David has his bed in the living room. ██████████ said that the kitchen is beside the living room. David had a clothes line in the living room where he hung his clothes.

██████████ denied anyone else has touched her on any of the places that no one is supposed to touch. ██████████ denied that anyone has put their mouth on her on any of the places that no one is supposed to touch. ██████████ denied anyone has asked her or made her touch them on any of the places that no one is supposed to touch. ██████████ denied anyone has asked or made her put their mouth on them on any of the places that no one is supposed to touch. ██████████ denied getting any other touches that she didn't like. ██████████ denied ever getting a touch that hurts. ██████████ denied seeing anyone get a touch that hurt.

I asked ██████████ how people found out that David had touched her. ██████████ indicated that her momma asked her if anyone has ever touched her. ██████████ told her mom that David had touched her. ██████████ mom called the police station. ██████████ said that she went to the police station with her mom and she had to write on paper what happened and she spoke with a police officer.

I asked ██████████ if anyone has ever told her that they got a touch they didn't like. ██████████ indicated that when her sister was a baby that another little girl touched her sister. ██████████ sister told their mother and their mother took ██████████ sister to the doctor. ██████████ denied anyone else has told her that they got a touch that they didn't like. ██████████ denied she has ever seen anyone get a touch they didn't want.

██████████ denied ever seeing any pictures of people without clothes on. ██████████ said that he has seen people on TV without clothes on. ██████████ said that her momma would make her close her eyes. ██████████ said that she also saw a movie that had people without their clothes on at her dad's house. ██████████ said that she used to go to her dad's house but now she knows that he is not her real dad. ██████████ said when they watched the movie at her dad's house that his girlfriend made her cover her eyes. ██████████ said that her dad did not know the movie had people without clothes in it. ██████████ denied seeing any other movies that had people in them without their clothes on. ██████████ said that she has seen her sister without clothes on when her and her sister would take a shower together. ██████████ said that when she takes a shower with her sister that they just wash their hair and wash their body and then get out. ██████████ said that no one helps her bathe her body. ██████████ said that a few times her mom has helped her wash her hair. ██████████ denied seeing anyone else in person without their clothes on. ██████████ denied that anyone has taken any pictures of her without her clothes on.

06/03/2013 10:48

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THE CHILD'S PLACE

PAGE 28/18

The Child's Place
Forensic Interview Summary Report
Salway, S. / Page 7 of 7

I asked [REDACTED] what happens when she gets in trouble. [REDACTED] stated that her momma has given her spanking on her butt on top of her clothes with her hand. [REDACTED] denied that she has ever had a mark on her from a spanking. [REDACTED] said that her aunt Chrissy spanked her one time because she was fighting with [REDACTED]. [REDACTED] said that Aunt Chrissy popped her on the hand with her hand. [REDACTED] said that her hand was red for a few minutes. [REDACTED] said that her Aunt Heather sends her to her room sometimes. [REDACTED] denied Heather has ever spanked her. [REDACTED] denied anyone else spans her or punishes her.

[REDACTED] said that she has seen her momma's ex-husband using drugs. [REDACTED] said that she has seen her mom's ex-husband smoking with a "tube thing." [REDACTED] said that she saw her mom's ex-husband smoking the tube thing at his house. [REDACTED] mom's ex-husband's name is Flip Craig. [REDACTED] said that Flip lived with her, her momma and sister for 8 years. [REDACTED] said that her mom found out that Flip was cheating on her and Flip moved out. [REDACTED] said that she and her sister told their mom about Flip smoking the tube thing and they never had to go back to his house. [REDACTED] denied ever seeing anyone else use drugs.

[REDACTED] denied that anyone has told her to say something during the interview. [REDACTED] denied anyone has told her not say something during the interview.

After I returned from a break, I continued the interview with [REDACTED]. I discussed personal safety with [REDACTED]. I thanked [REDACTED] for talking to me and ended the interview.

****This is a summary of the forensic interview. The forensic interview in its entirety is saved on DVD.****

7. Recommendations:

1. It would benefit [REDACTED] to receive counseling to address her disclosure of sexual abuse.

3. Conclusion:

- ☒ Disclosure of sexual abuse
☐ No disclosure of sexual abuse
☐ Disclosure of physical abuse
☐ No disclosure of physical abuse
☐ Recanted
☐ Other: _____

Comments:

Signature of Interviewer and Date Interview Completed:

Heather Bennett

Interviewer: Heather Bennett, MEd., LPC-I, NCC

4/29/13

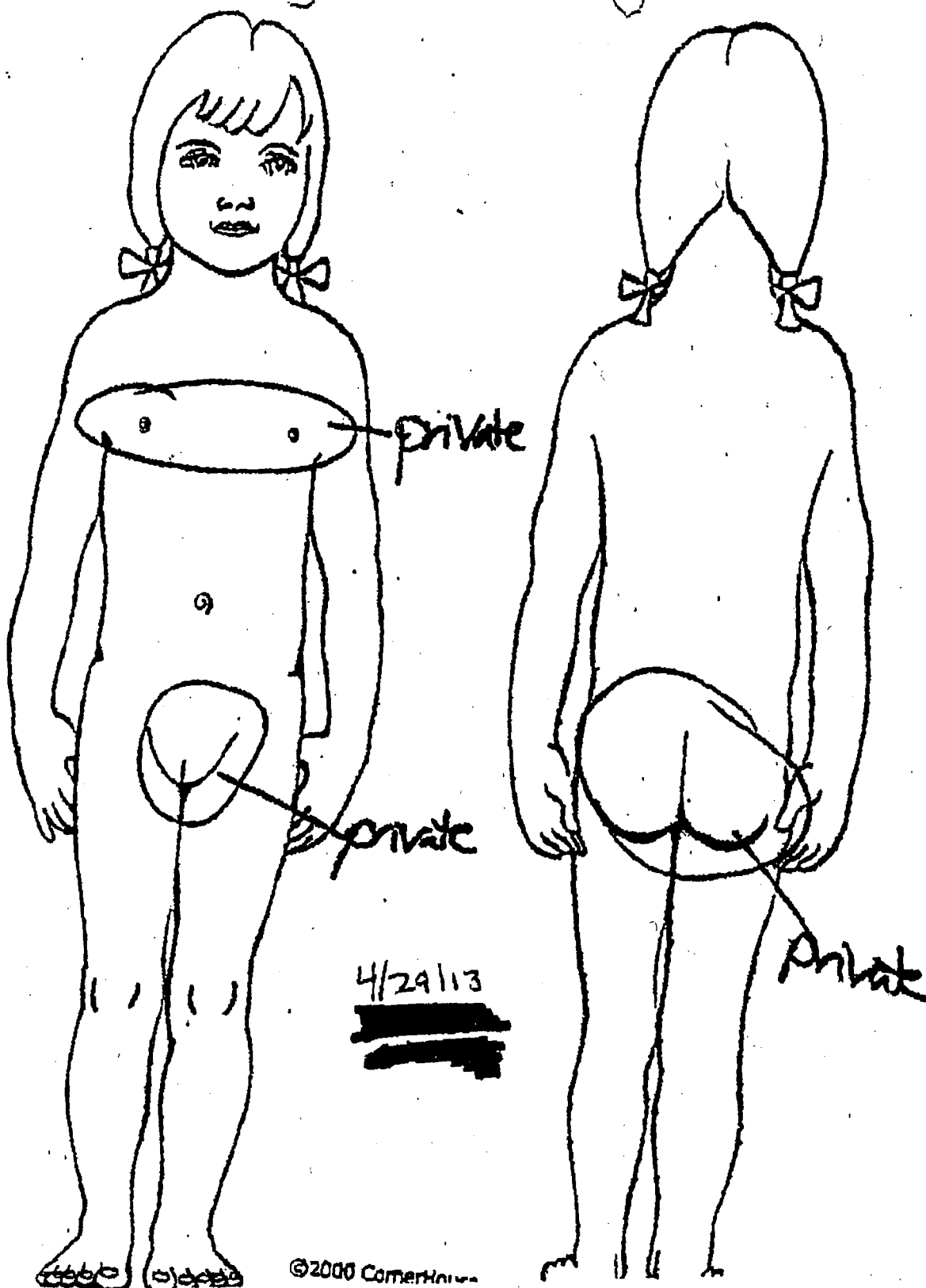
Date

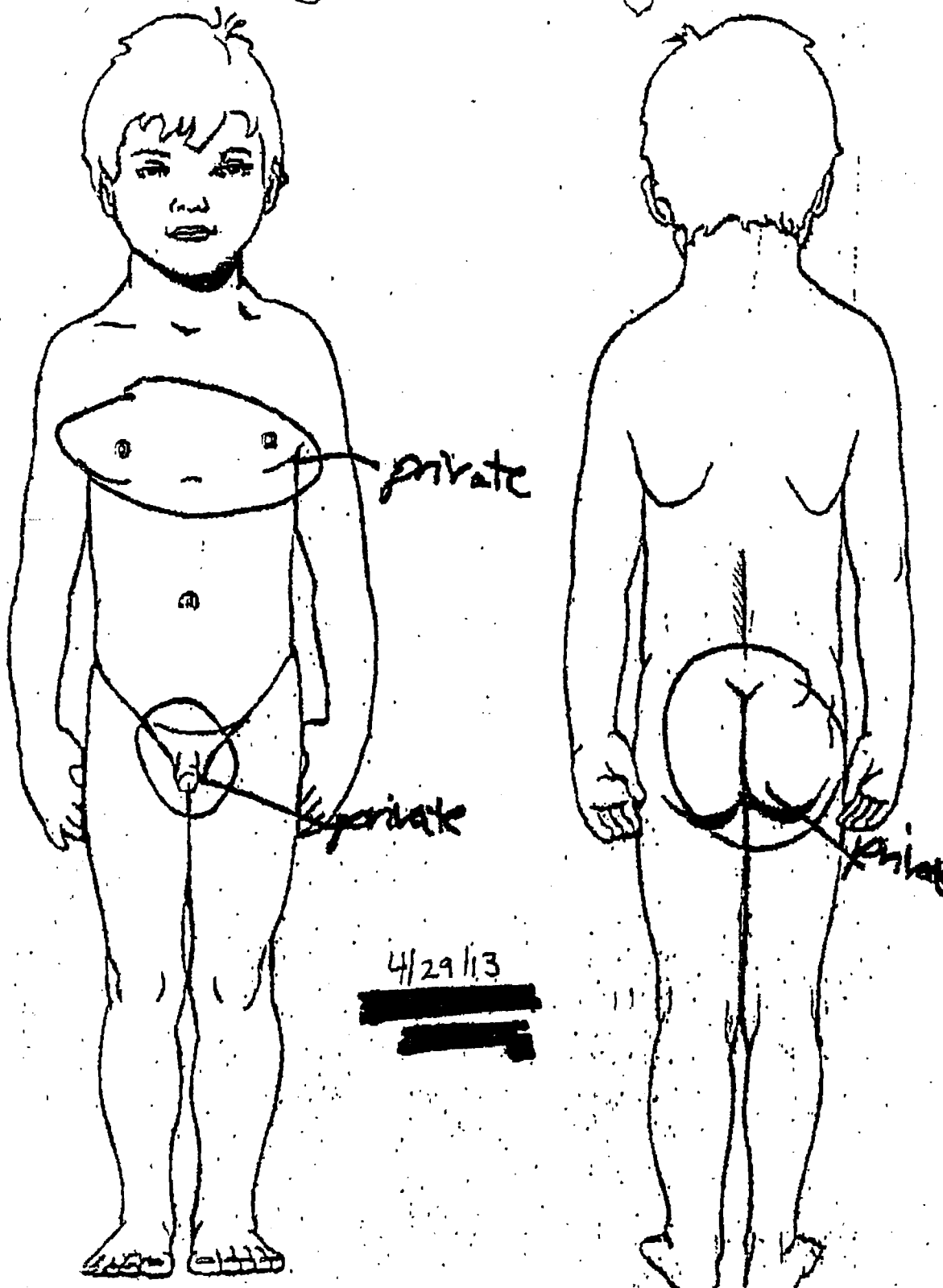
05/03/2013 10:43

9543302053

THE CHILD'S PLACE

PAGE 09/10





Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

D

STATE OF SOUTH CAROLINA
 COUNTY OF Greenville
 STATE VR
 WARD DAVID ALLEN JR
 AKA:
 Race: W Sex: M Age: 20
 DOB: [REDACTED] SSN: [REDACTED]
 Address: [REDACTED]
 MAILING SC 29667
 DJJ: [REDACTED] SIDP: [REDACTED]

2008-40-23-1180
 A/V#: CA94407
 Date of Offense: 09-02-2007
 S.C. Code: § 17-29-0010
 CDR Code: 0017
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was
 TO: ASSAULT/ASSAULT AND BATTERY, ABHAN
 in violation of § 17-29-0010 of the S.C. Code of Laws, bearing CDR Code § 0013

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-29-48
 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Prosecution to Grand Jury.
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:
 Claire Davis Solicitor
 Paul A. Williams Defendant
 Ernest H. [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 7 months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 237 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 3
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 237 days/months/years.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

Do not place on sex offender
 Casati

SPECIAL CONDITIONS:
☐ INSTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
 Total: \$ _____ plus 20% fee \$ _____
 Payment Terms: set by SCDPPPS
 Recipient: _____

PTUP _____
☒ 10 days/months Public Service Employment
 Obtain ORD _____
 Attend Van Alstede or Job Corps _____
 May serve W/B beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly
 payments of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund.
 Other: No Victim in Contact

Pinel: _____ \$
 § 14-1-206 - Assessments 100 % _____ \$
 § 14-1-211(A)(1) (Surcharge) _____ \$ 100
 § 14-1-211(A)(2) (Surcharge) _____ \$
 § 16-5-2495 (DUI Assessment) _____ \$
 3% to County (if paid in installments) _____ \$
 TOTAL _____ \$

Paul B. [Signature]
 Clerk of Court/Deputy Clerk
 Court Reporter: Jenkins
 probation begins today

PRESIDING JUDGE [Signature]
 Judge Code: _____
 Sentence Date: 1/18/08
 3024217 (1/2007)

GREENVILLE COUNTY SHERIFF'S OFFICE INCIDENT REPORT

AGENCY I.D.
SC0230008

OFFENSE

CLASS

DAY

CASE NUMBER

ICIG
ENTRY

030000014804

CRIMINAL SEXUAL CONDUCT WITH A MINOR		20		Residence	
#1 Fifth Street, Concess, Greenville, 29605					
04-01-98 1800		05-09-02 1900		06	
Wright, James		AQ		JSOU W M 33	
Columbia, SC		29072		CJ19	
Columbia, SC		29072		CJ19	
WARD, David, Allen, Jr., W M 19, 602, 235, Bld, Blu					
Mandlin, SC, 29662, 03A					
CHARGES					
The complainant in this case stated that his daughter the listed victim has been attending therapy and she has disclosed additional information involving her and the listed suspect. The complainant stated he did not know the extent of what happened with his daughter and the suspect but she has stated that the suspect has had sex with her.					
The victim was brought to this inv.'s office and she gave an account of what happened to her and the suspect. The victim stated that she remembers the abuse started when she was six years old. She stated that the suspect started feeling on her breast and her vaginal area. He then told her he wanted to teach her how to kiss. He would tongue kiss her. She stated she think she was around eight years old when the suspect started putting his penis inside her vagina. He was performing oral sex on her. Having her perform oral sex on him. He was having anal sex with her. The victim stated that she was afraid that if she told she would get in trouble. The suspect had told her that she would be arrested if she told anyone. The victim stated that her brother and sister caught her and the suspect on the bed once kissing and they told their mom. The victim stated she lied to her her mom and told her that it wasn't true what her siblings					
ADMINISTRATIVE					
Aulin, Jhr 0011 23-18-03 632 Brown, Sgt. 03-18-03 601					

JAN 20 2003

3/22/03 S9 E

AGENCY I.D. SCO230000		GREENVILLE COUNTY SHERIFF'S OFFICE SUPPLEMENTAL REPORT		CASE NUMBER 030000044804		NCIC 100 100																										
OFF																																
☒ CASE FILE REPORT ☐ ALPHEMENTAL REPORT		☐ STATUS CHANGE ☐ ADDITIONAL OFFENSES		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL REDUCED PROPERTY		SUSPECT TYPE: Criminal Sexual Conduct With A Minor PAGE 2 OF 2 PAGES																										
COMPLAINT		NAME LAST, FIRST, MIDDLE Wright, James		DOB AQ		SEX M																										
ADDRESS [REDACTED]		CITY Columbia		STATE SC		ZIP CODE 29607																										
HEIGHT 5'10"		WEIGHT 180		HAIR BRN		EYES BLU																										
RACE W		SEX M		AGE 33		DOB 03-18-03																										
COMPLAINT OF NON-CONSENTED SEXUAL INTERCOURSE		VICTIM UNDER 18 ☐ YES ☒ NO		VICTIM UNDER 18 ☐ YES ☒ NO		VICTIM UNDER 18 ☐ YES ☒ NO																										
SUSPECT NO 1		SUSPECT NO 1		SUSPECT NO 1		SUSPECT NO 1																										
ARRESTED ARMED ☐ YES ☒ NO		WEAPON TYPE ☐ YES ☒ NO		ON VIEW ARREST ☐ YES ☒ NO		SUMMONED ☐ YES ☒ NO																										
JUVENILE DISPOSITION ON 1 ☐ HANDLED ☒ RELEASED ☐ REFERRED TO OTHER AUTHORITY																																
were saying. She stated the suspect had told her that her mom couldn't find out about them. She stated that the suspect left their house awhile and went to live with his sister. When he returned he started doing the same thing to her that he had been doing before he left. The victim stated that the last time the suspect did something to her the day he took her to his place in Mauldin. She stated that day the suspect had anal, vaginal and oral sex with her. She stated that they suspect had sex with her a lot. The victim stated she didn't know whether the suspect was doing anything to her sister. She stated he spent as much time with her as he could without being suspicious. The victim stated she hadn't been totally open with this inv. in the past because would have more comfortable with a female. She stated she didn't feel comfortable talking with a man. She stated when she started seeing her therapist she was able to tell about all that had happened to her with the suspect.																																
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>TYPE</th> <th>QUANTITY</th> <th>UNIT</th> <th>VALUE</th> <th>TOTAL VALUE</th> </tr> <tr> <td>STOLEN</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>DAMAGED</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>RECEIVED</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>LOST</td> <td></td> <td></td> <td></td> <td></td> </tr> </table>								TYPE	QUANTITY	UNIT	VALUE	TOTAL VALUE	STOLEN					DAMAGED					RECEIVED					LOST				
TYPE	QUANTITY	UNIT	VALUE	TOTAL VALUE																												
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>REPORTER'S OFFENSE(S)</th> <th>DATE</th> <th>UNIT NO.</th> <th>APPROVING OFFICER</th> <th>DATE</th> <th>UNIT NO.</th> </tr> <tr> <td>Assault, 11m</td> <td>03-18-03</td> <td>532</td> <td>Brown, Sgt.</td> <td>03-18-03</td> <td>01</td> </tr> </table>								REPORTER'S OFFENSE(S)	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.	Assault, 11m	03-18-03	532	Brown, Sgt.	03-18-03	01													
REPORTER'S OFFENSE(S)	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.																											
Assault, 11m	03-18-03	532	Brown, Sgt.	03-18-03	01																											

AGENCY I.D.
SC0230000GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORTCASE NUMBER
3003000044804

☐ OFFENSE CHARGE	☐ OTHER CHARGE	☐ OFFENSE ACTED	☐ OFFENSE / (VIOLENT PROPERTY)	ARREST TYPE <u>Warrant Served</u>
☒ SUPPLEMENTAL REPORT	☐	☐ OFFENSE OFFENSE	☐ OFFENSE / (VIOLENT PROPERTY)	ARREST METHOD <u>DS</u>

L.D. CASEFLOW	☐ COMPLAINT	NAME LAST, FIRST, MIDDLE <u>Ward, David Allen Jr.</u>		AGE <u>20</u>	DOB <u>09/01/87</u>
	☒ SUSPECT	DOB <u>09/01/87</u>	SEX <u>M</u>	RACE <u>W</u>	ETHNICITY <u>W</u>
	☐ PLANNING	DOB <u>09/01/87</u>	SEX <u>M</u>	RACE <u>W</u>	ETHNICITY <u>W</u>
	☐ SEARCHED	DOB <u>09/01/87</u>	SEX <u>M</u>	RACE <u>W</u>	ETHNICITY <u>W</u>
☐ INDEXED	DOB <u>09/01/87</u>	SEX <u>M</u>	RACE <u>W</u>	ETHNICITY <u>W</u>	
☐ FILED	DOB <u>09/01/87</u>	SEX <u>M</u>	RACE <u>W</u>	ETHNICITY <u>W</u>	

ARRESTED ARMED ☐ YES ☒ NO WEAPON TYPE ☐ HANDGUN ☐ LONG GUN ☐ OTHER ☐

JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

I went to above listed location in reference to serving a warrant.
There I made contact with David Ward (Suspect). David Ward gave me
his ID upon request. Using the ID I verified through that Desk that the
suspect had an active warrant. The suspect was arrested and taken to detention
where warrant # 359065 Criminal Sexual Conduct w/ Minor was served.
Suspect was placed in detention with a Temporary Commitment.

APR 13 2003

ARRESTION OF SUSPECT	ARRESTION OF PROBATION	☐ ACTIVE	☐ ARRESTED UNDER 18	☐ CLEARANCE UNDER 18
<u>NONE</u>	<u>NONE</u>	☐ UNFOUNDED	☒ ARRESTED 18 AND OVER	☐ CLEARANCE 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/WRITERS DECLINE COOPERATION ☒ EXTRADITION ORDER ☐ JUVENILE, NO ARREST	REPORTING OFFICER <u>Rivera, R.J. #767</u>	DATE <u>04/12/03</u>	UNIT NUMBER <u>D45</u>	APPROVING OFFICER <u>NICHOLAS</u>
REPORTING OFFICER	DATE	UNIT NUMBER	OFFICER	DATE
				<u>04/14/03</u>

RECORDS

AGENCY I.D.
SC0230000GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

0,3,0,0,0,0,4,4,8,0,4

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VEHICLE	☐ ADDITIONAL VEHICLE PROPERTY	INCIDENT TYPE: <u>Criminal Sexual Conduct With A Minor</u>
☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL VEHICLE PROPERTY	PATROL DISTRICT: <u>06</u>	PAGE: <u>1</u> OF: <u>1</u>

I.D. OVERFLOW	☒ COMPLAINT	NAME LAST, FIRST, MIDDLE		RELATIONSHIP TO SUSPECT		RESIDENT	RACE	AGE	DOB	SEX
	☐ VEHICLE #	Wright, James		AQ			W	M	33	
	☐ VEHICLE #	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT	EXEMPT PHONE		
	☐ REPAIR	Columbia		SC	29290	CJ19				
	☐ WEAPON	HEIGHT	WEIGHT	HAIR	EYES	FACIAL MARK, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.				
	☐ WARRANT									
	☐ ARMED									
	☐ MISSING									
	☐ JAIL									
	☐									
ARRESTED ARMED ☐ YES ☐ NO WEAPON TYPE: ☐ PALM AUTO ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY JUVENILE DISPOSITION: ☐ HANDLED RELEASED ☐ REFERRED TO OTHER AUTHORITY										

Suspect: Ward, David, Allen, W/M, 19 yoa, DOB: [REDACTED].
 On Friday April 11, 2003, Summary Court Judge J. Hudson issued warrant # H-359065 charging David Allen Ward Jr. with Criminal Sexual Conduct With A Minor First Degree. The warrant was signed by J. Austin as affiant.

Warrant placed in warrant division for assistance in service.

PROPERTY	TYPE									TOTAL VALUE
	STOLEN									
	DAMAGED									
	LOST									
	RECOVERED									
ADMIN	REPORT DATED		REPORT LOCATED		REPORTED BY		REPORTED BY		REPORTED BY	
	YES ☐ NO ☐		YES ☐ NO ☐		YES ☐ NO ☐		YES ☐ NO ☐		YES ☐ NO ☐	
	REASON FOR DISPOSITION: ☐ OFFENDER DEATH ☐ NO PROSECUTION ☐ VICTIM/POSSIBLE COOPERATION		EXTRACTION SERVICE		JUVENILE NO ARREST					
	REPORTING OFFICER(S)		DATE	UNIT NO.	APPROVING OFFICER		DATE	UNIT NO.		
	Austin, Jim		4-11-03	532	Brown, Sgt. J.M.		4-11-03	532		

85-6-035

GREENVILLE COUNTY SHERIFF'S OFFICE
INCIDENT REPORT

AGENCY I.D.
3C0230000

॥ श्रीगणेशाय नमः ॥

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DAY

INCIDENT REPORT

CASE NUMBER

YES
INTERVIEW

0 2 0 0 0 9 3 0 7 5

ARREST TYPE		OFFENSE NUMBER		OFFENSE DATE		OFFENSE TIME		OFFENSE LOCATION	
A. ARREST		10		10		10		Residence	
Indecent Liberties With A Female		10		10		10			
10		10		10		10			
10		10		10		10			
Mauldin		29662							
05-09-02		1700		05-09-02		1900		03	
Wright, James		J90U		W M		32			
Billion		SC		29-22				018	
CP		J90U		W F		11			
Greenville		SC		2966				08	
WARD, David Allen Jr.		W M		19				602 215 Bro Blk	
243-57-2210		Mauldin		SC		29662		03	
CHARGES		HANDLED, RELEASED		REFERRED TO OTHER AUTHORITY		ON VIEW ARREST		SUMMONED	
The complainant states that his daughter, the listed victim, disclosed to her mother, Amy Ward, on the listed incident date that the listed suspect, the victim's step brother picked the victim up at her house and stated that he was taking her to K-Mart or Wal-Mart to pick up some things. The suspect instead took the victim to his residence, the listed incident location. Once there the suspect took the victim into his room. The victim was asked to lie on the bed and take her pants down. She did as she was asked. The suspect kissed the victim on the face several times. He then rubbed her on her buttocks. At that time the victim pulled her pants up and shortly after that the suspect brought the victim home, once the victim got home she disclosed what had taken place. The victim was taken to the Mauldin Police Dept. where this investigation initially started. The victim was also taken to the Greenville Memorial H.R. where the victim was examined for evidence of sexual abuse. The complainant states that his daughter stays with her mom. He states he gets visitation. The victim is presently coming back home from a visitation with him. He further stated that he had not talked with his daughter about what took place with her step brother. He stated he was leaving the questioning up to the police.		AUTHORITY OF COURT		APPROVED BY CLERK		DATE FILED		FILE NO	
Brown, Sgt., M.I.		06-14-02		32		06-14-02		501	

6/29/02 58 ✓

AGENCY I.D. SC0234000 OF		GREENVILLE COUNTY SHERIFF'S OFFICE SUPPLEMENTAL REPORT		0,2,0 0 0,1,3,5,2,0											
☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT		☐ STATUS CHANGE ☐ ADDITIONAL OFFENSES ☐ ADDITIONAL RECOVERED PROPERTY		INCIDENT TYPE: Lewd Act On A Minor x 2 PAROLE OFFENSE: 06		PAGE 1 OF 1 PAGES									
ID OVERFLOW	☒ COMPLAINT ☐ VICTIM ☐ SUSPECT ☐ WITNESS ☐ OTHER			NAME (LAST, FIRST, MIDDLE) Wright, James		IDENTIFICATION (SEE INSTRUCTIONS) AQ		RESIDENT W		RACE M		AGE 32		DOB	
	ADDRESS Columbia			CITY Columbia		STATE SC		ZIP CODE 29123		PAROLE DISTRICT CJ19		DAYTIME PHONE 8		EVENING PHONE 8	
	HEIGHT 5			WEIGHT 150			HAIR BRN			EYES GRN			FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PECULIARITIES, ETC.		
	☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN		
	☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN		
	☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN		
	☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN		
	☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN			☐ VICTIM HAS EXPLAIN		
	☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN			☐ SUSPECT HAS EXPLAIN		
	☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN			☐ WITNESS HAS EXPLAIN		
☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			☐ OTHER HAS EXPLAIN			
ARRESTED & ARMED ☐ YES ☒ NO WEAPON TYPE:															
JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY															
Ward, Sr., David, Allen, W/M, 44 yrs, DOB:															
On Monday October 28, 2002, David Allen Ward Sr. came to this inv.'s office in reference to the outstanding warrants on him. Mr. Ward was advised of his rights (of which he stated he understood) and he signed a waiver of rights. Warrant H-149967 and Warrant H-149968 for Lewd Act On A Minor was served on David Allen Ward Sr. by Inv. A. Bailey. Andrea Rogers, DSS case worker present. Mr. Ward stated that his wife told him about the charges on him this past week end. He stated he has not touched either of the girls he is accused of touching to his knowledge. He stated he may have touched them accidentally when he hugs them but not on purpose. He stated he may have touched Jamie accidentally but he stated he has not touched Chastity. He stated any thing is possible but he has no knowledge of touching Chastity. Mr. Ward was taken before Judge J. Hudson where he was arraigned. His bond was set at five thousand dollars on each charge. This inv. advised James Wright of David Allen's arrest. Amy Beth Ward was also notified. Judge Hudson allowed David Allen Ward to sign his own recognizance bond. David Allen Ward Sr. was taken to the identification section where he was finger printed and photographed and released. Case cleared by arrest.															
NOV 6 23:01															
PROPERTY	TYPE STOLEN														
	DAMAGED														
	BURIED														
	RECOVERED														
	OTHER														
ADMIN	REPORTED BY 0011														
	DATE 10-28-02														
	BY 632														
	APPROVING OFFICER Brown, Sgt., J.M.														
	DATE 10-28-02														

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 03-44804Date March 18, 2003

I, [REDACTED], do hereby give freely and voluntarily this statement to
Sgt. Jim Austin and [REDACTED] who have identified themselves to
me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 12 years old and I reside at [REDACTED] Columbia, SC 29072

I am twelve years old. I go to Red Bank Elementary School. I am in the fifth grade.

When I was six years old my step brother David came to live with us. He started touching me on my breast and he would put his hand on my pee pee. He did this on the outside of my clothes.

When I was eight years old David started teaching me how he wanted me to kiss him. He would kiss me and put his tongue in my mouth. David would still touch my pee pee and my breast. He started putting his weenie in my butt and he started putting his weenie in my pee pee.

David put his mouth on my pee pee and had me put my mouth on his weenie.

David left the house and went to live with his sister for awhile. He came back to live with us. When he came back he started kissing me and putting his weenie in my pee pee and putting his weenie in my butt. Some times he would do this at our house. My mom would be at work most of the time. When David moved out he took me to his place and he put his weenie in my pee pee. He did that alot.

My sister and brother caught me and David on thwe bed kissing and they told my mom. When my mom ask me about it I lied because David didn't want me to tell anyone what we were doing.

The last time David did something to me was at his place. He took me to his place. His friend was home but he left. Davis took me into his room and he kissed me. He touched my breast and he put his weenie in my pee pee and in my butt. He put his mouth on my pee pee and had me to put my mouth on his weenie. After I put my mouth on his weenie I had to go drink alot of water because it was nasty.

I didn't say anything about all this in the beginning because I didn't feel comfortable talking with a man. I didn't say anything to my mom because David told me if I told I would go to jail. End of Statement *****

I have read the above statement of 1 pages and it is true and correct as best as I recall.

WITNESS:

[REDACTED]
I have received a copy of this statement.
[REDACTED]

Sworn before me this

18 day of March 2003

Juste D. Brooker
NOTARY PUBLIC FOR SOUTH CAROLINA

OF

FO:BO 03/18/03

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

E

AGENCY I.D.
SC0230000GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

0,2,0 0 0,1,3,8,5,2,0

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL ALCOHOL PROPERTY	MURDER TYPE <u>Lowd Act On Minor x 2</u>
☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL ALCOHOL PROPERTY	PARTIAL BIRTHDAY <u>06</u>	PAGE <u>1</u> OF <u>3</u> PAGES

I.D. OVERFLOW	COMPLAINANT	NAME LAST, FIRST, MIDDLE		OTHER RELATIONSHIP TO SUBJECT		IRBENT	RACE	SEX	AGE	DOB	DOB	
	☐ VICTIM	Wright, James		AQ			W	M	32			
	☐ SUSPECT	ADDRESS		CITY	STATE	ZIP CODE	PATROL DISTRICT		LIVING PHONE			
	☐ ALIBI	Columbia		SC	29123	CJ19						
	☐ WITNESS	FACIAL HAIR, BONES, TATTOOS, GLASSES, CLOTHING, PHYSICAL, REGULATION, ETC.										
	☐ WITNESS	HEIGHT	WEIGHT	HAIR	EYES	COMPLAINT OF NON-WEAPONABLE	VICTIM'S ALCOHOL	NO	YES	TYPE	NO	YES
	☐ WITNESS	COMPLAINT OF NON-WEAPONABLE	NO	YES	TYPE	NO	YES	TYPE	NO	YES	TYPE	
	☐ WITNESS	COMPLAINT OF NON-WEAPONABLE	NO	YES	TYPE	NO	YES	TYPE	NO	YES	TYPE	
	☐ WITNESS	COMPLAINT OF NON-WEAPONABLE	NO	YES	TYPE	NO	YES	TYPE	NO	YES	TYPE	
	☐ WITNESS	COMPLAINT OF NON-WEAPONABLE	NO	YES	TYPE	NO	YES	TYPE	NO	YES	TYPE	
☐ ARRESTED ARMED ☐ YES ☐ NO WEAPON TYPE ☐ STORAGE ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY ☐ JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY												

Suspect Ward, David, Allen, Sr., W/M, 44 yrs, DOB: 04-22-58.
 On Wednesday September 11, 2002, Amy Ward brought her two daughter to this inv.'s office for interview purposes regarding the incident report taken in this case. Andrea Rogers, case worker with DSS present during interviews.
 Interview with [redacted] 12 year old.

Inv: What is your name?
 Vic: [redacted]
 Inv: How old are you?
 Vic: Ten.
 Inv: When is your birthday?
 Vic: October 31st.
 Inv: Do you go to school?
 Vic: Yep.
 Inv: What school do you go to?
 Vic: Sara Collins.
 Inv: What grade are you in?
 Vic: Fourth.
 Inv: Who is your teacher?
 Vic: Ms. Brown.
 Inv: Where do you live?
 Vic: Conestoga.
 Inv: Who do you live with?
 Vic: My mom.
 Inv: What is your mother's name?
 Vic: Amy Beth Ward.
 Inv: What is you dad's name?
 Vic: David Ward (stepdad)(real dad) James Wright.
 Inv: Do you have sisters and brothers?
 Vic: Yep.
 Inv: What are their names?
 Vic: [redacted]
 Inv: How old are they?
 Vic: Eleven and Ten.
 Inv: Do they go to school?
 Vic: Yes.
 Inv: Do you know your telephone number?
 Vic: No.
 Inv: Why are you here today?
 Vic: To tell about my step dad.
 Chasity was given an anatomical drawing of a grammar school female to name body parts. She named: Hair, Eyes, Nose, Mouth, Boobs(nipples), Belly(navel), Pee Pee(vaginal area), Knees, Leg, Foot, Back, Arm and But.
 Inv: Chasity, has anyone ever touched you in any of your private parts?
 Vic: My step dad.
 Inv: What did he touch?
 Vic: My Boobs
 Inv: How did he touch them?
 Vic: He rubbed them.
 Inv: What part of the house were you in when this happened?
 Vic: In the living room after I did my homework.
 Inv: How many times did this take place?
 Vic: A lot.
 Inv: Did he rubbed you on the outside of your clothes or on the inside?
 Vic: On the outside.
 Inv: Does your step dad do anything else?
 Vic: He comes in the bathroom when I'm taking a bath.
 Inv: Why does he come in there?
 Vic: He tells me to hurry up and finish.
 Chasity gave information that her step dad grabbed her arm one day and she pulled away and fell and hit her head and her knees. She had bruises on her knees. She stated another time her step dad put soap in her mouth and told her to turn her tv off. She refused. He grabbed her

PROPERTY	TYPE							TOTAL VALUE
	STOLEN							
	DAMAGED							
	LOST							
	RECOVERED							
ADMIN	INVESTIGATOR	VIEWED LOCATED	ACTIVE	ALIBI OFFERED	ARRESTED UNDER 18	EX-CLAS (UNDER 18)	EX-CLAS (18 AND OVER)	
	YES	NO	YES	NO	YES	NO	YES	
	SEARCHED FOR EVIDENCE, CLEARANCE	OFFENSE BY STATE	NO PROSECUTION	VICTIM'S COOPERATION	EX-CLAS (UNDER 18)	EX-CLAS (18 AND OVER)	EX-CLAS (18 AND OVER)	
	REPORTING OFFICER	DATE	UNIT NO.	APPROVING OFFICER	DATE	UNIT NO.		
	Austin, Jim	09-11-02	532	Brown, Sgt. J.M.	09-11-02	201		

10-402

AGENCY I.D.
SC023000GREENVILLE COUNTY SHERIFF'S OFFICE
SUPPLEMENTAL REPORT

0, 2, 0, 0, 0, 1, 3, 3, 5, 2, 0

☐ ORIGINAL REPORT	☐ STATUS CHANGE	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL SUSPECTS/PROPERTY	NO DEFENSE TYPE: <u>Lowd Act On Minor x 2</u>
☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL OFFENSES	☐ ADDITIONAL RECOVERED PROPERTY	PATROL DISTRICT: <u>06</u>	PAGE: <u>2</u> OF <u>3</u> PAGES

ID OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)		BY MAIL DELIVERY TO SUSPECT		RESIDENT	RACE	SEX	AGE	DOB	ETC	
	☐ VICTIM	Wright, James		AQ			W	M	32			
	☐ SUSPECT	ADDRESS		CITY	STATE	ZIP CODE	FEDERAL DISTRICT		EVENING PHONE			
	☐ WITNESS	Columbia		SC	29123	CJ19						
	☐ WANTED	FACIAL NAME, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PERMANENT, ETC.										
	☐ WARRANT	VICTIM NO.		VICTIM NAME	☐ YES ☒ NO	COMPLAINT OF NON-MOLESTATION	☐ YES ☒ NO	VICTIM USED ALCOHOL	☐ YES ☒ NO	TWO-WHEEL VEHICLE	☐ DETENTIONAL ARMED	☐ ALCOHOL
	☐ ARREST	VICTIM NO.		VICTIM NAME	☐ YES ☒ NO	COMPLAINT OF NON-MOLESTATION	☐ YES ☒ NO	VICTIM USED ALCOHOL	☐ YES ☒ NO	TWO-WHEEL VEHICLE	☐ DETENTIONAL ARMED	☐ ALCOHOL
	☐ SUSPECT	VICTIM NO.		VICTIM NAME	☐ YES ☒ NO	COMPLAINT OF NON-MOLESTATION	☐ YES ☒ NO	VICTIM USED ALCOHOL	☐ YES ☒ NO	TWO-WHEEL VEHICLE	☐ DETENTIONAL ARMED	☐ ALCOHOL
	☐ WITNESS	VICTIM NO.		VICTIM NAME	☐ YES ☒ NO	COMPLAINT OF NON-MOLESTATION	☐ YES ☒ NO	VICTIM USED ALCOHOL	☐ YES ☒ NO	TWO-WHEEL VEHICLE	☐ DETENTIONAL ARMED	☐ ALCOHOL
	☐ WARRANT	VICTIM NO.		VICTIM NAME	☐ YES ☒ NO	COMPLAINT OF NON-MOLESTATION	☐ YES ☒ NO	VICTIM USED ALCOHOL	☐ YES ☒ NO	TWO-WHEEL VEHICLE	☐ DETENTIONAL ARMED	☐ ALCOHOL

ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE: ☐ HANDGUN ☐ LONG GUN ☐ OTHER ☐ ON VIEW ARREST ☐ SUMMONED ☐ CUSTODY

JUVENILE DISPOSITION: ☐ HANDLED, RELEASED ☐ REFERRED TO OTHER AUTHORITY

by the arm, she pulled away and she fell and hit her knee on the dresser. She stated that her step dad didn't directly cause her bruises but he contributed to them. Chastity stated that her step dad has been touching her boobs during the month of August. Interview ends.

Interview with [redacted] eleven year old, Andrea Rogers present.

Inv: What is your name?

Vic: [redacted]

Inv: How old are you?

Vic: Eleven.

Inv: When is your birthday?

Vic: November 5th.

Inv: What school do you go to?

Vic: Sam Collins.

Inv: What grade are you in?

Vic: Fifth.

Inv: Who do you live with?

Vic: My mom, my dad, my brother and my sister

Inv: What's your mother's name?

Vic: Amy.

Inv: What's your dad's name?

Vic: James.

Inv: Do you have brothers and sisters?

Vic: Yes.

Inv: What are their names?

Vic: [redacted]

Inv: How old are they?

Vic: They are ten, they are twins.

Inv: Jamie why are you here today?

Vic: To talk about my step dad, Davis Allen Ward.

Inv: What do you want to say?

Vic: I want to say that he has been touching my breast.

Inv: How long has this been going on?

Vic: Since last year, I told my mom about it.

Inv: What did she do?

Vic: She told me she told him not to do it.

Inv: Did he stop?

Vic: For a little while then he started again.

Inv: Was he touching your breasts or was he rubbing them?

Vic: He was doing both, touching and rubbing.

Inv: How did he do it?

Vic: I would give him a hug and he would do it then.

Inv: How many times do you think he did it?

Vic: Every time he got a chance.

Inv: Where was your mom?

Vic: She would be gone sometime.

Inv: So he rubbed and touched your breasts a lot.

Vic: Yes.

Inv: What did you do when he touched your breasts?

Vic: I would move away from him.

Inv: When he touched or rubbed your breasts, was it on the inside or the out side of your clothing?

Vic: On the outside.

Inv: Did he ever try to get you to touch him anywhere?

Vic: No.

Inv: Did he do anything else?

Vic: He comes into the bathroom when I'm showering.

Inv: What does he do?

Vic: He pulls the curtain back and tell me to hurry up.

Inv: Does he see you naked?

Vic: Uh huh.

Inv: Did that bother you, him looking at you?

Vic: No.

Inv: Do you remember when he started touching you again this year?

Vic: I think he started again in August.

PROPERTY	TYPE	DATE	LOCATION	VALUE	TOTAL VALUE
	STOLEN				
	DAMAGED				
	RECOVERED				
	WITNESSED				
ADMIN	REPORTING OFFICER	DATE	UNIT NO.	APPROVING OFFICER	DATE
	Austin, Jim	09-11-02	633	Brown, Sgt. J.M.	09-11-02
	SEARCHED FOR EVIDENTIAL CLEARANCE	☐ YES ☒ NO	NO PROB. SOLUTION	☐ YES ☒ NO	EX-CLERK UNDER 18
	EX-CLERK UNDER 18	☐ YES ☒ NO	EX-CLERK UNDER 18	☐ YES ☒ NO	EX-CLERK UNDER 18
	EX-CLERK UNDER 18	☐ YES ☒ NO	EX-CLERK UNDER 18	☐ YES ☒ NO	EX-CLERK UNDER 18

[illegible]

10	INT

☐ 1. WANTED
IN REPORT ☐ 2. STATUS
CHANGED ☐ 3. ADDITIONAL
WITNESSES ☐ 4. ADDITIONAL
STOLEN PROPERTY

☒ 5. SUPPLEMENTAL
INQUIRY ☐ 6. ADDITIONAL
ATTORNEYS ☐ 7. ADDITIONAL
ATTORNEYS PROPERTY

NOTICE TYPE: ABHIAN/Indecent Liberties With A Female

PATROL OFFICE: 05 PAGE 2 OF 2 PAGES

I.D. OVERFLOW	1 COMPLAINT		NAME (LAST, FIRST, MIDDLE)		STREET ADDRESS (TO NUMBER)				APARTMENT		AGE	DOB	DOB	DOB	DOB	DOB	
	2 VICTIM		Wright, James		#		AQ		#		W	M	32				
	3 SUBJECT		104230		CITY		STATE		ZIP CODE		PATROL DISTRICT		COUNTY		EVENTS PHONE		
	4 BUREAU		Pillbox		SC		29123		CJ19						H		
	5 WANTED		HEIGHT		WEIGHT		HAIR		EYES		FACIAL TARS, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL, PSYCHIATRIC, ETC.						
	6 WARRANT																
	7 ARREST		1 VICTIM NO.		1 VEHICLE NO.		1 COMPLAINT BY		1 VICTIM WERE ALCOHOL		1 TWO-WAY VEHICLE		1 DETENTION/PL. ASST.		1 ALONG		
	8 SUSPENSE		REPLACE		NO		YES		DRIVEN		NO		YES		TYPED		
	9 JAIL		1 CHARGE NO.		1 VEHICLE NO.		1 NO		1 YES		1 LANE		1 ARRESTED ON CURRENT OFFENSE		1 RELEASED BY ARREST ON PRIOR OFFENSE		
	10		1 LANE		1 NO		1 YES		1 TYPE		1 LANE		1 RELEASED BY ARREST ON PRIOR OFFENSE		1 RELEASED BY ARREST ON PRIOR OFFENSE		
11		1 ARRESTED ARMED		1 YES		1 NO		1 WEAPON TYPE		1 SIGNATURE		1 ON VIEW ARREST		1 SUMMONED		1 CUSTODY	
12		1 JUVENILE DISPOSITION		1 NO		1 HANDLED		1 RELEASED		1 REFERRED TO OTHER AUTHORITY							

Inv: Has he touched with anything else?	Vict: No.
Inv: Has any other of your private parts been touched?	Vict: No.
Inv: Who was home when David picked you up?	Vict: My dad and my brother.
Inv: Where was your mom?	Vict: She was at work.
Inv: Has anybody else ever touched you that made you uncomfortable?	Vict: No.
Jaimee has a speech impediment from her hearing impairment. It is with some of the things she attempt to say, difficult to understand what she's trying to she's saying. This interview ends.	

This inv. talked with the complainant, James Wright. He stated that he had contacted the victim's mother so she could be at this office also. He stated that she knew more of the details than he did. He stated that the victim's mother advised him that she was working a double shift on her job and that she was not going to be able to make the interview. Mr. Wright stated that he had not talked with his daughter about the incident. He stated further that the Macon Police had started an investigation in this case and then it was learned that the incident location was in the County of Greenville. Mr. Wright stated that his daughter would be going back to her mother's house from this inv.'s office. Nothing further.

PROPERTY	TYPE									TOTAL VALUE
	STORY									
	DAMAGE									
	INJURED									
	RECOVERED									
	OTHER									
ADMIN	SUBJECT IDENTIFIED ☐ YES ☒ NO	SUBJECT LOCATED ☐ YES ☒ NO	ACTIVE ☒ ARMED GUNNER ☐ UNARMED	☐ ARMED UNDER 18 ☐ ARMED 18 AND OVER	☐ BOMB CLEAR UNDER 18 ☐ BOMB CLEAR 18 AND OVER					
	AREA FOR ADDITIONAL CLEARANCE: ☐ OFFENSE CRIME ☐ NO FUGITIVE CRIME ☐ VICTIM CRIME COOPERATION ☐ EXTRACTION CASE ☐ REVIEW AND REPORT									
	REPORTING OFFICER'S	DATE	UNIT NO.	APPROVING OFFICER	DATE					
	Austin, Jim	06-14-02	532	Brown, Sgt., M.J.	06-14-02					
				OVER ☒ NO ☐						
				(OFFICE)						

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

F

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
SEXUAL PREDATOR MULTI-DISCIPLINARY TEAM**

REFERRAL DATA

INMATE: Ward Jr David A.**SCDC #** 361677**INSTITUTION:** MacDougall**SSN#:****VICTIM/WITNESS:** None**DOB/AGE:** (32 y/o)**SCDC ARRIVAL DATE:** 10/13/2014**MAX OUT DATE:** 12/10/2015**SENTENCE START DATE:**
JUVENILE SENTENCE: N/A**SUPERVISED FURLOUGH
ELIGIBILITY DATE:** N/A**DATA SOURCE(S):**

Automated Medical Record: ✓
Institutional Record:
Sex Offender Treatment Record:
Inmate Interview:
Attachment:

Hard Copy Medical Record:
Central Inmate Record:
Offender Management Summary: ✓
Other Data Source(s):
Specify:

CONVICTION HISTORY:

Current Conviction(s):
Criminal Sex Conduct 3rd Degree
Prior SCDC #'s:
Prior Conviction(s): Two counts of Assault & Battery-High & Agg
Parole Revocation(s): N/A
Probation Revocation(s): N/A
Other Information:

INSTITUTIONAL ADJUSTMENT:

Disciplinary(s): Total: 0 Assaultive: 0
Narrative(s):
Work History: Ward Keeper
Other Information:

Sexual Misconduct: 0

SP Multi-Disciplinary Team
 Ward David - 361677
 Page 3

HEALTH INFORMATION AND HISTORY:

Physical Health/Condition: HTN
 Medications: Lisinporil 10mg
 Other Information:

MENTAL HEALTH INFORMATION AND HISTORY:

Diagnosis: None
 Medications:
 Problems/Compliance: N/A
 Treatment History:
 Other Information:

SOCIAL HISTORY: N/A

Inmate's History of Sexual Abuse (age at time of abuse, age of perpetrator
 Length of abuse, relationship to perpetrator, gender of perpetrator):

Juvenile History: N/A
 Other Information:

SEX OFFENDER TREATMENT HISTORY: None in the file

	TYPE	DATES	STATUS
Phase I:			
SOTP			
Phase II:			
Phase III:	Education		
OTHER			
RTU:	Intensive Residential Treatment		

Admission of Sex Offense(s):
 Other Information:

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

G

Development and Course

Individuals with sexual sadism in forensic samples are almost exclusively male, but a representative sample of the population in Australia reported that 2.2% of men and 1.3% of women said they had been involved in bondage and discipline, "sadoomasochism," or dominance and submission in the previous year. Information on the development and course of sexual sadism disorder is extremely limited. One study reported that females became aware of their sadoomasochistic orientation as young adults, and another reported that the mean age at onset of sadism in a group of males was 19.4 years. Whereas sexual sadism *per se* is probably a lifelong characteristic, sexual sadism disorder may fluctuate according to the individual's subjective distress or his or her propensity to harm nonconsenting others. Advancing age is likely to have the same reducing effect on this disorder as it has on other paraphilic or normophilic sexual behavior.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for sexual sadism disorder (e.g., antisocial personality disorder, sexual masochism disorder, hypersexuality, substance use disorders) sometimes occur also as comorbid diagnoses. Therefore, it is necessary to carefully evaluate the evidence for sexual sadism disorder, keeping the possibility of other paraphilias or mental disorders as part of the differential diagnosis. The majority of individuals who are active in community networks that practice sadistic and masochistic behaviors do not express any dissatisfaction with their sexual interests, and their behavior would not meet DSM-5 criteria for sexual sadism disorder. Sadistic interest, but not the disorder, may be considered in the differential diagnosis.

Comorbidity

Known comorbidities with sexual sadism disorder are largely based on individuals (almost all males) convicted for criminal acts involving sadistic acts against nonconsenting victims. Hence, these comorbidities might not apply to all individuals who never engaged in sadistic activity with a nonconsenting victim but who qualify for a diagnosis of sexual sadism disorder based on subjective distress over their sexual interest. Disorders that are commonly comorbid with sexual sadism disorder include other paraphilic disorders.

Pedophilic Disorder

Diagnostic Criteria

302.2 (F65.4)

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The individual is at least age 16 years and at least 5 years older than the child or children in Criterion A.

Note: Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old.

Specify whether:

Exclusive type (attracted only to children)

Nonexclusive type

Specify if:

- Sexually attracted to males
- Sexually attracted to females
- Sexually attracted to both

Specify if:

Limited to incest

Diagnostic Features

The diagnostic criteria for pedophilic disorder are intended to apply both to individuals who freely disclose this paraphilia and to individuals who deny any sexual attraction to prepubertal children (generally age 13 years or younger), despite substantial objective evidence to the contrary. Examples of disclosing this paraphilia include candidly acknowledging an intense sexual interest in children and indicating that sexual interest in children is greater than or equal to sexual interest in physically mature individuals. If individuals also complain that their sexual attractions or preferences for children are causing psychosocial difficulties, they may be diagnosed with pedophilic disorder. However, if they report an absence of feelings of guilt, shame, or anxiety about these impulses and are not functionally limited by their paraphilic impulses (according to self-report, objective assessment, or both), and their self-reported and legally recorded histories indicate that they have never acted on their impulses, then these individuals have a pedophilic sexual orientation but not pedophilic disorder.

Examples of individuals who deny attraction to children include individuals who are known to have sexually approached multiple children on separate occasions but who deny any urges or fantasies about sexual behavior involving children, and who may further claim that the known episodes of physical contact were all unintentional and nonsexual. Other individuals may acknowledge past episodes of sexual behavior involving children but deny any significant or sustained sexual interest in children. Since these individuals may deny experiencing impulses or fantasies involving children, they may also deny feeling subjectively distressed. Such individuals may still be diagnosed with pedophilic disorder despite the absence of self-reported distress, provided that there is evidence of recurrent behaviors persisting for 6 months (Criterion A) and evidence that the individual has acted on sexual urges or experienced interpersonal difficulties as a consequence of the disorder (Criterion B).

Presence of multiple victims, as discussed above, is sufficient but not necessary for diagnosis; that is, the individual can still meet Criterion A by merely acknowledging intense or preferential sexual interest in children.

The Criterion A clause, indicating that the signs or symptoms of pedophilia have persisted for 6 months or longer, is intended to ensure that the sexual attraction to children is not merely transient. However, the diagnosis may be made if there is clinical evidence of sustained persistence of the sexual attraction to children even if the 6-month duration cannot be precisely determined.

Associated Features Supporting Diagnosis

The extensive use of pornography depicting prepubescent children is a useful diagnostic indicator of pedophilic disorder. This is a specific instance of the general case that individuals are likely to choose the kind of pornography that corresponds to their sexual interests.

Prevalence

The population prevalence of pedophilic disorder is unknown. The highest possible prevalence for pedophilic disorder in the male population is approximately 3%–5%. The population prevalence of pedophilic disorder in females is even more uncertain, but it is likely a small fraction of the prevalence in males.

Development and Course

Adult males with pedophilic disorder may indicate that they become aware of strong or preferential sexual interest in children around the time of puberty—the same time frame in which males who later prefer physically mature partners became aware of their sexual interest in women or men. Attempting to diagnose pedophilic disorder at the age at which it first manifests is problematic because of the difficulty during adolescent development in differentiating it from age-appropriate sexual interest in peers or from sexual curiosity. Hence, Criterion C requires for diagnosis a minimum age of 16 years and at least 5 years older than the child or children in Criterion A.

Pedophilia *per se* appears to be a lifelong condition. Pedophilic disorder, however, necessarily includes other elements that may change over time with or without treatment: subjective distress (e.g., guilt, shame, intense sexual frustration, or feelings of isolation) or psychosocial impairment, or the propensity to act out sexually with children, or both. Therefore, the course of pedophilic disorder may fluctuate, increase, or decrease with age.

Adults with pedophilic disorder may report an awareness of sexual interest in children that preceded engaging in sexual behavior involving children or self-identification as a pedophile. Advanced age is as likely to similarly diminish the frequency of sexual behavior involving children as it does other paraphilically motivated and normophilic sexual behavior.

Risk and Prognostic Factors

Temperamental. There appears to be an interaction between pedophilia and antisociality, such that males with both traits are more likely to act out sexually with children. Thus, antisocial personality disorder may be considered a risk factor for pedophilic disorder in males with pedophilia.

Environmental. Adult males with pedophilia often report that they were sexually abused as children. It is unclear, however, whether this correlation reflects a causal influence of childhood sexual abuse on adult pedophilia.

Genetic and physiological. Since pedophilia is a necessary condition for pedophilic disorder, any factor that increases the probability of pedophilia also increases the risk of pedophilic disorder. There is some evidence that neurodevelopmental perturbation in utero increases the probability of development of a pedophilic orientation.

Gender-Related Diagnostic Issues

Psychophysiological laboratory measures of sexual interest, which are sometimes useful in diagnosing pedophilic disorder in males, are not necessarily useful in diagnosing this disorder in females, even when an identical procedure (e.g., viewing time) or analogous procedures (e.g., penile plethysmography and vaginal photoplethysmography) are available.

Diagnostic Markers

Psychophysiological measures of sexual interest may sometimes be useful when an individual's history suggests the possible presence of pedophilic disorder but the individual denies strong or preferential attraction to children. The most thoroughly researched and longest used of such measures is *penile plethysmography*, although the sensitivity and specificity of diagnosis may vary from one site to another. *Viewing time*, using photographs of nude or minimally clothed persons as visual stimuli, is also used to diagnose pedophilic disorder, especially in combination with self-report measures. Mental health professionals in the United States, however, should be aware that possession of such visual stimuli, even for diagnostic purposes, may violate American law regarding possession of child pornography and leave the mental health professional susceptible to criminal prosecution.

Differential Diagnosis

Many of the conditions that could be differential diagnoses for pedophilic disorder also sometimes occur as comorbid diagnoses. It is therefore generally necessary to evaluate the evidence for pedophilic disorder and other possible conditions as separate questions.

Antisocial personality disorder. This disorder increases the likelihood that a person who is primarily attracted to the mature physique will approach a child, on one or a few occasions, on the basis of relative availability. The individual often shows other signs of this personality disorder, such as recurrent law-breaking.

Alcohol and substance use disorders. The disinhibiting effects of intoxication may also increase the likelihood that a person who is primarily attracted to the mature physique will sexually approach a child.

Obsessive-compulsive disorder. There are occasional individuals who complain about ego-dystonic thoughts and worries about possible attraction to children. Clinical interviewing usually reveals an absence of sexual thoughts about children during high states of sexual arousal (e.g., approaching orgasm during masturbation) and sometimes additional ego-dystonic, intrusive sexual ideas (e.g., concerns about homosexuality).

Comorbidity

Psychiatric comorbidity of pedophilic disorder includes substance use disorders; depressive, bipolar, and anxiety disorders; antisocial personality disorder; and other paraphilic disorders. However, findings on comorbid disorders are largely among individuals convicted for sexual offenses involving children (almost all males) and may not be generalizable to other individuals with pedophilic disorder (e.g., individuals who have never approached a child sexually but who qualify for the diagnosis of pedophilic disorder on the basis of subjective distress).

Fetishistic Disorder

Diagnostic Criteria

302.81 (F65.0)

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from either the use of nonliving objects or a highly specific focus on nongenital body part(s), as manifested by fantasies, urges, or behaviors.
- B. The fantasies, sexual urges, or behaviors cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The fetish objects are not limited to articles of clothing used in cross-dressing (as in transvestic disorder) or devices specifically designed for the purpose of tactile genital stimulation (e.g., vibrator).

Specify:

- Body part(s)
- Nonliving object(s)
- Other

Specify if:

In a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in fetishistic behaviors are restricted.

In full remission: There has been no distress or impairment in social, occupational, or other areas of functioning for at least 5 years while in an uncontrolled environment.

Sexually Violent Predator Act, S. C. Code Ann. Sections 44-48-10 *et seq.*

PETITIONER'S EXHIBIT

H

Paraphilic Disorders

Paraphilic disorders included in this manual are voyeuristic disorder (spying on others in private activities), exhibitionistic disorder (exposing the genitals), frotteuristic disorder (touching or rubbing against a nonconsenting individual), sexual masochism disorder (undergoing humiliation, bondage, or suffering), sexual sadism disorder (inflicting humiliation, bondage, or suffering), pedophilic disorder (sexual focus on children), fetishistic disorder (using nonliving objects or having a highly specific focus on nongenital body parts), and transvestic disorder (engaging in sexually arousing cross-dressing). These disorders have traditionally been selected for specific listing and assignment of explicit diagnostic criteria in DSM for two main reasons: they are relatively common, in relation to other paraphilic disorders, and some of them entail actions for their satisfaction that, because of their noxiousness or potential harm to others, are classed as criminal offenses. The eight listed disorders do not exhaust the list of possible paraphilic disorders. Many dozens of distinct paraphilias have been identified and named, and almost any of them could, by virtue of its negative consequences for the individual or for others, rise to the level of a paraphilic disorder. The diagnoses of the other specified and unspecified paraphilic disorders are therefore indispensable and will be required in many cases.

In this chapter, the order of presentation of the listed paraphilic disorders generally corresponds to common classification schemes for these conditions. The first group of disorders is based on *anomalous activity preferences*. These disorders are subdivided into *courtship disorders*, which resemble distorted components of human courtship behavior (voyeuristic disorder, exhibitionistic disorder, and frotteuristic disorder), and *algolagnic disorders*, which involve pain and suffering (sexual masochism disorder and sexual sadism disorder). The second group of disorders is based on *anomalous target preferences*. These disorders include one directed at other humans (pedophilic disorder) and two directed elsewhere (fetishistic disorder and transvestic disorder).

The term *paraphilia* denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. In some circumstances, the criteria "intense and persistent" may be difficult to apply, such as in the assessment of persons who are very old or medically ill and who may not have "intense" sexual interests of any kind. In such circumstances, the term *paraphilia* may be defined as any sexual interest greater than or equal to normophilic sexual interests. There are also specific paraphilias that are generally better described as *preferential* sexual interests than as intense sexual interests.

Some paraphilias primarily concern the individual's erotic activities, and others primarily concern the individual's erotic targets. Examples of the former would include intense and persistent interests in spanking, whipping, cutting, binding, or strangulating another person, or an interest in these activities that equals or exceeds the individual's interest in copulation or equivalent interaction with another person. Examples of the latter would include intense or preferential sexual interest in children, corpses, or amputees (as a class), as well as intense or preferential interest in nonhuman animals, such as horses or dogs, or in inanimate objects, such as shoes or articles made of rubber.

A *paraphilic disorder* is a paraphilia that is currently causing distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to

others. A paraphilia is a necessary but not a sufficient condition for having a paraphilic disorder, and a paraphilia by itself does not necessarily justify or require clinical intervention.

In the diagnostic criteria set for each of the listed paraphilic disorders, Criterion A specifies the qualitative nature of the paraphilia (e.g., an erotic focus on children or on exposing the genitals to strangers), and Criterion B specifies the negative consequences of the paraphilia (i.e., distress, impairment, or harm to others). In keeping with the distinction between paraphilias and paraphilic disorders, the term *diagnosis* should be reserved for individuals who meet both Criteria A and B (i.e., individuals who have a paraphilic disorder). If an individual meets Criterion A but not Criterion B for a particular paraphilia—a circumstance that might arise when a benign paraphilia is discovered during the clinical investigation of some other condition—then the individual may be said to have that paraphilia but not a paraphilic disorder.

It is not rare for an individual to manifest two or more paraphilias. In some cases, the paraphilic foci are closely related and the connection between the paraphilias is intuitively comprehensible (e.g., foot fetishism and shoe fetishism). In other cases, the connection between the paraphilias is not obvious, and the presence of multiple paraphilias may be coincidental or else related to some generalized vulnerability to anomalies of psychosexual development. In any event, comorbid diagnoses of separate paraphilic disorders may be warranted if more than one paraphilia is causing suffering to the individual or harm to others.

Because of the two-pronged nature of diagnosing paraphilic disorders, clinician-rated or self-rated measures and severity assessments could address either the strength of the paraphilia itself or the seriousness of its consequences. Although the distress and impairment stipulated in the Criterion B are special in being the immediate or ultimate result of the paraphilia and not primarily the result of some other factor, the phenomena of reactive depression, anxiety, guilt, poor work history, impaired social relations, and so on are not unique in themselves and may be quantified with multipurpose measures of psychosocial functioning or quality of life.

The most widely applicable framework for assessing the strength of a paraphilia itself is one in which examinees' paraphilic sexual fantasies, urges, or behaviors are evaluated in relation to their normophilic sexual interests and behaviors. In a clinical interview or on self-administered questionnaires, examinees can be asked whether their paraphilic sexual fantasies, urges, or behaviors are weaker than, approximately equal to, or stronger than their normophilic sexual interests and behaviors. This same type of comparison can be, and usually is, employed in psychophysiological measures of sexual interest, such as penile plethysmography in males or viewing time in males and females.

Voyeuristic Disorder

Diagnostic Criteria

302.82

- A. Over a period of at least 6 months, recurrent and intense sexual arousal from observing an unsuspecting person who is naked, in the process of disrobing, or engaging in sexual activity, as manifested by fantasies, urges, or behaviors.
- B. The individual has acted on these sexual urges with a nonconsenting person, or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The individual experiencing the arousal and/or acting on the urges is at least 18 years of age.

Specify if:

In a controlled environment: This specifier is primarily applicable to individuals living in institutional or other settings where opportunities to engage in voyeuristic behavior are restricted.

COURT OF COMMON PLEAS AND GENERAL SESSIONS

EXHIBIT RECORD AND RECEIPT FORM

PLAINTIFF

State

DEFENDANT

David A Ward

ATTORNEY

Cam Morrow

ATTORNEY

Joshua Nasrollahi

CASE NO.

2015-CP-30-0395

JUDGE

Donald B. Hocker

DATE STARTED

03/21/16

COURT REPORTER

Margann S Newers

DATE ENDED

03/22/16

PLAINTIFF'S EXHIBITS

DEFENDANT'S EXHIBITS

1. Sentence Sheet (St 1/Ct 1) EV

1. Sentence Sheet EV

2. _____

2. Sentence Sheet EV

3. _____

3. _____

4. _____

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18. Ct 2 - Indictment

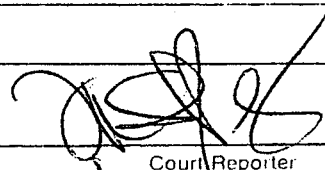
18. _____

19. _____

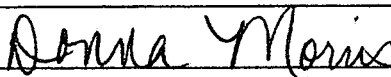
19. _____

20. _____

20. _____



Court Reporter



Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Laurens

VS.

David Allen Ward Jr.

AKA:

Race:

Sex: M

Age: 32

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct with minor - 3rd degree

INDICTMENT/CASE#: 14GS30-1617

A/W#: 2014D3000100388

Date of Offense: 9/10/2012

S.C. Code §: 16-03-0655

CDR Code #: 3661

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0655 of the S.C. Code of Laws, bearing CDR Code # 3661

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ARREST:

Sheek, C. Lance

SC Bar# 65396

Defendant

Attorney for Defendant

SC Bar# 78940

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 ~~days~~ ~~months~~ ~~years~~ or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit 565 Days☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Del/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B)(1) Breath Test Fee	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: **A TRUE COPY OF ORIGINAL**

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County CCCP & GS☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2167

10/6/14



STATE OF SOUTH CAROLINA

COUNTY OF Greenville

STATE VS.

WARD, DAVID ALLEN JR

AKA:

Race: W Sex: M Age: 20DOB: SS#:Address: MAULDIN, SC 29662DL#: 9999999999 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2003-gp-23-1180A/W#: G654402Date of Offense: 05-09-2002S.C. Code §: C/L 17-25-0030CDR Code #: 0013☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was
TO: ASSAULT / ASSAULT AND BATTERY, ABHANin violation of § C/L 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0013☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Claire Davis
Solicitor:Paul A. Whetters
DefendantErnest M. Ogryll
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 239 days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 3
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ The Defendant is to be given credit for 239 days/months/jail time.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 - Assessments 100 % _____ \$ _____

§ 14-1-211(A)(1) (Surcharge) _____ \$ 100

§ 14-1-211(A)(2) (Surcharge) _____ \$ _____

§ 56-5-2995 (DUI Assessment) _____ \$ _____

3% to County (if paid in installments) _____ \$ _____

TOTAL _____ \$ _____

Paul B. Whetters
Clerk of Court/Deputy ClerkCourt Reporter: JenkinsPTUP _____
10 days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: NO VICTIM CONTACTPRESIDING JUDGE Ernest M. OgryllJudge Code: 1-18-03Sentence Date: 3/18/03

SCCA/217 (1/2001)

probation begins today

A Certified Copy

DEFENDANT'S

6869

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
 STATE VS.
David Ward

AKA:

Race: W Sex: M Age: 21DOB: SS#:Address: MAULDIN, SC 29662DL#: 9999999999999999 SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2004GS2302430

A/W#: H359065Date of Offense: 04-30-2002S.C. Code § : 16-03-0655(1)CDR Code #: 0385☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: ASSAULT / ASSAULT AND BATTERY. ABHANin violation of § C/L, 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0013☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor:[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of time served days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation, for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services, standard conditions of probation, which are incorporated by reference. * 423 day

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient:

*Fine:

	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce, Funding)	\$25	\$
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment \$40/en	\$	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

[Signature]
 Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

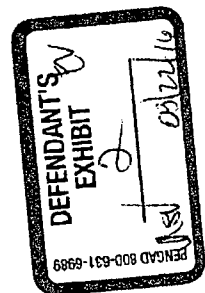
PTUP

 days/hours Public Service EmploymentObtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, § 35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature]Judge Code: 210170Sentence Date: 16/9/04

A Certified Copy
[Signature]
 Clerk of Court C.P. & G.S.
 Greenville County, SC
 Dated 3-16-2016



THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

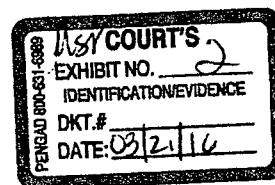
Criminal Sexual Conduct with Minor, 3rd degree
§16-03-0655

At a Court of General Sessions, convened on the 3rd day of October, 2014, the Grand Jurors of Laurens County present upon their oath:

That David Allen Ward Jr. did, on or about September 10, 2012, in Laurens County, being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: Minor, date of birth: 2002, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, Minor, in violation of Section 16-3-655(C) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

O. Warren Young Jr.
Assistant Solicitor



A TRUE COPY OF ORIGINAL

Lynn W. Lancaster
Lynn W. Lancaster
Laurens County CCCP & GS

WITNESSES

Juan Galarza

Laurens County Sheriff

WARRANT NUMBER

2014D3000100388

*True Bill**Walter E. DeLeon*

Foreman of the Grand Jury

Date: *10/3/14***VERDICT**

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2014

Indictment # 14GS30-1617

THE STATE

vs.

David Allen Ward Jr.

INDICTMENT FORCriminal Sexual Conduct with Minor, 3rd degree
§16-03-0655

CDR: 3661

2014 OCT 14 PM 4:00
CLERK OF COURT
LAURENS COUNTY
SOUTH CAROLINA

L. J. LANCASTER

STATE OF SOUTH CAROLINA
COUNTY OF LAURENSCOURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2016 APR -5 A 9 50

Case No. 2015-CP-30-395

In the Matter of the Care and Treatment of
David WardLAURENS COUNTY
CLERK OF COURTRESPONDENT'S MOTION TO SET
ASIDE JUDGMENT AND FOR NEW
TRIAL

Inadmissible hearsay testimony so permeated Dr. Amy Swan's testimony that Respondent David Allen Ward was denied a fair trial. Ward's case was brought by the Attorney General under South Carolina's Sexually Violent Predator Act¹ prior to Ward's release from the South Carolina Department of Corrections, where he had been incarcerated for a 2013 Criminal Sexual Conduct with a Minor in the Third Degree² conviction. Dr. Marie Gehle, chief psychologist with the South Carolina Department of Mental Health, was appointed by the Court to determine whether Ward fell within the SVPA's criteria for a sexually violent predator.

According to Dr. Gehle's testimony at Ward's jury trial on March 22, 2016, she was bothered by the dearth of facts surrounding Ward's 2003 and 2004 convictions for assault and battery of a high and aggravated nature.³ The materials provided to Dr. Gehle by the Attorney General's office drew out a horrific set of facts involving the repeated molestation, rape, and sodomy of a child from the age of 6 to 11. But what bothered Dr. Gehle the most was the fact that these brutal allegations had resulted in misdemeanor

¹ Hereinafter "SVPA."

² Hereinafter "CSC 3rd".

³ Hereinafter "ABHAN."

convictions and time-served and probationary sentences. In fact, the sentencing sheet in Ward's first ABHAN conviction was annotated to indicate that Ward was not to be placed on the sex offender registry. In her opinion, it was impossible to reconcile the allegations contained within the materials provided her with the subsequent convictions and sentencing. She ultimately concluded that Ward did not meet the definition of a sexually violent predator.

Not so for Dr. Swan. Unhappy with Dr. Gehle's diagnosis, the Attorney General requested a second opinion from Dr. Swan. Providing her with the same information which had been provided Dr. Gehle—approximately thirty-three documents, ranging from incident reports and forensic interviews to warrants and indictments—Dr. Swan set out to diagnosis Ward with pedophilia. Aside from requesting Ward's school records, Dr. Swan independently requested no additional information. At trial, she even acknowledged that she was clinically required to perform an independent investigation into Ward's case and that she was empowered under the SVPA to request additional materials for the purpose of conducting her evaluation. She even admitted under oath that she found the circumstances surrounding the ABHAN convictions to be suspicious, so much so that she discussed the matter with the Attorney General's office. Even so, she never interviewed anyone related to the underlying convictions aside from Ward and requested no additional information relating to these allegations. Instead, as she would matter-of-factly testify at trial, she simply believed the allegations and dismissed her concerns with widely sweeping speculation.

Prior to trial, Ward moved in limine to prevent Dr. Swan from testifying as to any of the information contained in the packet provided her by the Attorney General's office.⁴ At that time, the Respondent conceded that under cases such as In the Matter of the Care and Treatment of James P. Ettel, 377 S.C. 558, 660 S.E.2d 285 (2008), evidence of prior acts were relevant. The Respondent also conceded that it was permissible under the South Carolina Rules of Evidence for Dr. Swan to rely on hearsay evidence for the purpose of forming an opinion. The Respondent objected, however, to the introduction of the hearsay allegations underlying the Respondent's convictions. In support, the Respondent relied on Rule 703, SCRE, in addition to State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013) and In the Matter of the Care and Treatment of Peter E.J. Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003), to stand for the proposition that an expert witness⁵ may not take the stand and regurgitate hearsay to the jury.

The Court ruled that documents such as warrants and indictments would not be introduced in evidence but ruled that Dr. Swan could testify as to the information contained in the documents she relied upon in order to form her opinion. In this regard, Dr. Swan's testimony was limited to the facts surrounding the age, race, and similarities of the victims and circumstances involving all three convictions. The Court reasoned, inter alia, that it was necessary in order for the expert to convey to the jury how Dr. Swan

⁴ At no point did the Attorney General indicate any exception to the South Carolina hearsay prohibition. Instead, as far as the Respondent can tell, it was asserted that such hearsay was admissible because it was relevant and necessary to Dr. Swan's opinion. The Court, in making its determination, found no specific hearsay exception other than finding that it was necessary to explain Dr. Swan's testimony, discussed infra. In the same way, no assertion or finding was made that the testimony did not constitute hearsay.

⁵ Dr. Swan was admitted as an expert without objection.

reached her opinion.⁶ In this way, Dr. Swan was permitted to testify wholesale as to information which she admitted was not firsthand but, rather, second-, third-, and even fourth-hand information. To this end, Dr. Swan essentially recited the brutal facts surrounding all three of Ward's prior convictions as set forth not from Dr. Swan's personal and independent investigation but as set out in the Attorney General's packet.

To allow Dr. Swan to present the unsworn assertions of countless other individuals constitutes reversible error as recognized by Harvey, 355 S.C. at 62–63. It is well-settled law that, although Dr. Swan could rely on inadmissible evidence to form an opinion, she was not at liberty to testify to the same. See Kromah, 401 S.C. at 358 (“[Rule 703] does not, however, make hearsay automatically admissible simply because it was relied upon by the expert.”)(citing Allegro, Inc. v. Scully, *infra*); Allegro, 400 S.C. 33, 46–47, 733 S.E.2d 114, 122 (Ct.App.2012) (“However, Rule 703 does not allow the admission of hearsay evidence simply because an expert used it in forming his opinion; the rule only provides the expert can give an opinion based on facts or data that were not admitted into evidence.”); Wright v. Hiester Const. Co., 389 S.C. 504, 523, 698 S.E.2d 822, 832 (Ct. App. 2010)(“[Rule 703], however, does not allow for the unqualified admission of hearsay evidence merely because an expert has used it in forming an opinion.”)(quoting Jones v. Doe, 372 S.C. 53, 62, 640 S.E.2d 514, 519 (Ct. App. 2006)).

It is difficult, furthermore, to reconcile the admission of such hearsay testimony by Dr. Swan with the curative instruction given by the Court, namely that the evidence presented not demonstrate the truth of any matter asserted but rather to establish the basis of Dr. Swan's opinion. Dr. Swan testified that in order to be diagnosed as a pedophile, an

⁶ The Court did prohibit Dr. Swan testifying directly from her notes while on the stand.

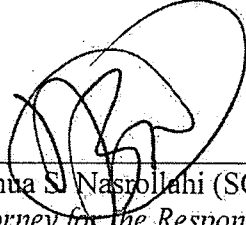
individual must have sexual urges aimed at prepubescent children on which the individual has acted. Dr. Swan went on to testify that based on the lurid facts contained in the Attorney General's packet that she believed that Ward was a pedophile. There is no getting around the fact that Dr. Swan testified to the allegations at issue not in a hypothetical or academic context, but rather with a specific emphasis that the allegations were true. Dr. Swan was not deterred by the dramatic reduction in charges, the leniency in sentences, and the fact that neither of the ABHAN convictions were considered sexual crimes. This did not prevent her from testifying that these acts had occurred, she believed the statements of the victims, and that there untold reasons for the eventual outcomes. She testified emphatically that these events had occurred.

In the end, the jury was presented with myriad hearsay statements from an individual who had been qualified by the Court to testify as an expert. This expert testified to this unsworn, unauthenticated evidence in a manner that undeniably demonstrated that she was asserting the truth of such evidence. Then, the jury was instructed not to consider the hearsay facts presented by Dr. Swan for the truth of the matter asserted, but rather to explain her reasoning. The admission of the aforementioned hearsay testimony was clearly prejudicial to Ward as it contained incredibly graphic and violent allegations. Moreover, the jury was likely confused at the contradiction between the emphatic assertions of truthfulness by Dr. Swan and the Court's curative instruction.

For this reason, this Court should set aside the jury's verdict as tainted by Dr. Swan's hearsay testimony. Or, in the alternative, reconsider its earlier decision on the Respondent's pre-trial motions, and set aside the judgment as a result of an erroneous ruling.

Respectfully Submitted.

LANCASTER

2016 APR -5 A 9:50 By: 
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 201-B Waller Avenue
 Greenwood, SC 29646
 Tel.: (864) 538-6000
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 josh@jsnasrollahi.com

LAURENS COUNTY
 CLERK OF COURT

March 31, 2016
 Greenwood, South Carolina

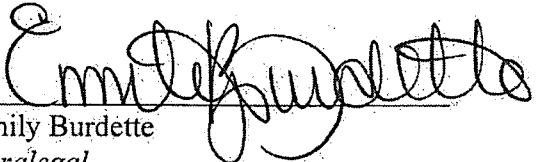
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing in the above-captioned case has been
 furnished to the parties of record by depositing the same with the U.S. Postal Service,
 with sufficient postage affixed thereto, and directed to the following:

Christopher A. Morrow
Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211-1549

Hon. Donald Hocker
 P.O. Box 972
 Laurens, SC 29360

Dated this 31st day of March 2016
 At Greenwood, S.C.


 Emily Burdette
Paralegal

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March 31, 2016

VIA U.S. MAIL

Laurens County Clerk of Court
PO Box 287
Laurens, SC 29360
(864) 984-3538
(864) 984-7023 (fax)

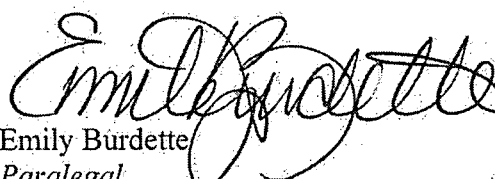
Attention: **Laurens Common Pleas**

RE: *In the Matter of the Care and Treatment of David Ward, 2015-CP-30-395*
Our File No. SVP-15.1694.01(I)

Dear Clerk:

Please file the enclosed document(s) and return a clocked copy of each document in the enclosed return envelope. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience. With kind regards, I am

Very Sincerely Yours,


Emily Burdette
Paralegal

Encl. Motion
SASE

cc: David Allen Ward

File

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

State of South Carolina

vs.

David Ward

IN THE COURT OF COMMON PLEAS

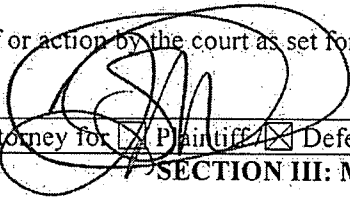
LANCASTER EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-30-395

MOTION AND ORDER INFORMATION

A 9:50 FORM AND COVERSHEET

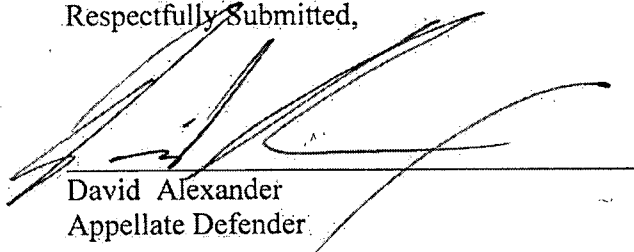
Defendant's COUNTY
CLERK OF COURT

Plaintiff's Attorney: <u>Cam Morrow</u> Bar No. _____ Address: <u>1000 Assembly Street, Room 519, Columbia, SC,</u> <u>29201, United States</u> Phone: <u>(803) 734-3970</u> Fax <u>(803) 253-6283</u> E-mail: Other: _____	Defendant's Attorney: <u>Joshua S. Nasrollahi</u> , Bar No. _____ Address: <u>201-B Waller Ave., Greenwood, SC 29646</u> Phone: <u>(864) 538-6000</u> Fax <u>(864) 538-6014</u> E-mail: <u>josh@jsnasrollahi.com</u> Other: _____																
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO																	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☒ Defendant 03/31/2016 Date submitted																	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) <table border="0"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☒ Sexually Violent Predator Act</td> <td>☐ Motion for Execution (Rule 69, SCRCPP)</td> </tr> <tr> <td>☐ Motion for Publication</td> <td>☐ Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Stay in Bankruptcy	☒ Sexually Violent Predator Act	☐ Motion for Execution (Rule 69, SCRCPP)	☐ Motion for Publication	☐ Proposed order submitted at request of the court; or,	reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
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Name of Court Reporter: _____																	
☐ Other: _____																	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____																	

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,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

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 19th day of May, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

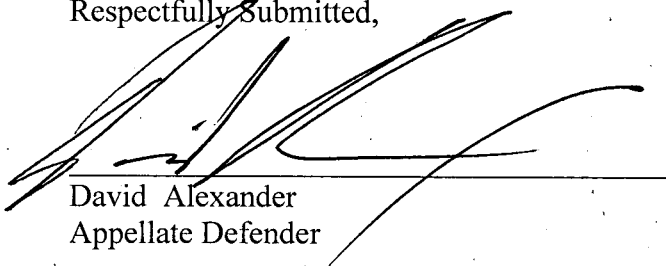
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MAY 19 2017

SC Court of Appeals

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 19th day of May, 2017.